



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Acting Commissioner

FINAL DECISION

April 25, 2012 Government Records Council Meeting

Ali S. Morgano  
Complainant

Complaint No. 2011-69

v.

New Jersey Civil Service Commission  
Custodian of Record

At the April 25, 2012 public meeting, the Government Records Council (“Council”) considered the April 18, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant’s request that the Custodian provide a certification “‘clarifying how’ the [CSC] discovered Office Elbert N. Eutsey’s real name and certifying that there are no personnel records under the name ‘Jack Eutsey’” does not seek the Custodian’s disclosure of an existing identifiable government record but instead seeks that the Custodian perform the action of clarifying facts through the creation of a legal certification. The performance of such an action does not further the Legislative purpose of increasing public access to information contained in records. Moreover, the performance of such an action is not among the enumerated duties of a custodian set forth in OPRA. As such, the Complainant’s request is invalid under OPRA. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-5.a. – 5.d.; N.J.S.A. 47:1A-5.g.; N.J.S.A. 47:1A-5.i.; Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 183 N.J. 519, 535 (2005); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004). The Custodian has therefore borne his burden of proof that the denial of access was authorized by law. N.J.S.A. 47:1A-6.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 25<sup>th</sup> Day of April, 2012



Robin Berg Tabakin, Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: April 30, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 25, 2012 Council Meeting**

**Ali S. Morgano<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-69**

v.

**New Jersey Civil Service Commission<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** “Provide ... a certification clarifying ...” how the New Jersey Civil Service Commission (“CSC”) discovered Officer Elbert N. Eutsey’s real name and that there are no personnel records under the name “Jack Eutsey.”

**Request Made:** February 1, 2011<sup>3</sup>

**Response Made:** February 15, 2011

**Custodian:** Chris Randazzo

**GRC Complaint Filed:** March 14, 2011<sup>4</sup>

**Background**

**February 1, 2011**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the record relevant to this complaint listed above on an official OPRA request form.

**February 15, 2011**

Custodian’s response to the OPRA request. The Custodian responds in writing via letter to the Complainant’s OPRA request on the sixth (6<sup>th</sup>) business day following receipt of such request.<sup>5</sup> The Custodian states that access to the requested record is denied because the Complainant’s request is an invalid request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Gannett New Jersey Partners v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005). The Custodian states that the CSC is only required to disclose identifiable government records.

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by DAG Todd Wigder, on behalf of the NJ Attorney General.

<sup>3</sup> The Complainant noted in the Denial of Access Complaint that his OPRA request was dated January 25, 2011. However, the evidence of record indicates that the Complainant sent a letter to the CSC on January 25, 2011 asking that an OPRA request from 2009 be reopened. The Complainant subsequently submitted the OPRA request at issue herein on February 1, 2011.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

<sup>5</sup> The Custodian certifies in the Statement of Information that he received the Complainant’s OPRA request on February 7, 2011.

**March 14, 2011**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Letter from Mr. Warren Barclay (“Mr. Barclay”), previous Custodian for the CSC, to the Complainant dated July 21, 2009.
- Letter from the Custodian to the Complainant dated February 15, 2011.<sup>6</sup>

The Complainant states that he submitted an OPRA request to the CSC seeking a certification verifying information that Mr. Barclay provided to him in July 2009.

**April 15, 2011**

Offer of Mediation sent to both parties.

**April 18, 2011**

The Custodian declines mediation.<sup>7</sup>

**April 29, 2011**

Request for the Statement of Information (“SOI”) sent to the Custodian.

**May 5, 2011**

Custodian’s SOI with the following attachments:

- Letter from Mr. Barclay to the Complainant dated July 21, 2009.
- Complainant’s OPRA request dated February 1, 2011.
- Letter from the Custodian to the Complainant dated February 15, 2011.

The Custodian certifies that the type of search performed is not applicable.

The Custodian also certifies that the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management is not applicable.

The Custodian certifies that he received the Complainant’s OPRA request on February 7, 2011. The Custodian certifies that he responded in writing on February 15, 2011 denying access to the Complainant’s OPRA request as invalid pursuant to MAG, *supra*, NJ Builders, *supra*, and Gannett, *supra*.

The Custodian’s Counsel submits a letter brief in support of the CSC’s position. Counsel recapitulates the facts of this complaint and contends that the Custodian properly denied access to the Complainant’s OPRA request. Counsel further contends that in 2009 the Complainant received information from the CSC regarding the detective who testified at the trial for which the Complainant was charged with murder. Counsel asserts that the Complainant’s OPRA request asked that the Custodian to certify whether such

---

<sup>6</sup> The Complainant attached additional documents that are not relevant to the instant complaint.

<sup>7</sup> The Complainant did not respond to the Offer of Mediation.

information is factual, but no certification exists and the Custodian is not required to create same for the Complainant.

Counsel argues that the information the Complainant seeks is not a government record pursuant to N.J.S.A. 47:1A-1.1. Counsel argues that the Complainant is requesting that the Custodian create a certification reflecting the veracity of information that Mr. Barclay provided the Complainant in 2009. Counsel asserts that no such certification exists and the Custodian is under no obligation to create same.

Counsel asserts that this complaint should be dismissed because the Custodian lawfully denied access to the Complainant's OPRA request.

### Analysis

#### **Whether the Complainant's request is invalid under OPRA?**

OPRA provides that:

*“government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest,”* [Emphasis added]. N.J.S.A. 47:1A-1.

OPRA further provides that:

“ ‘Government record’ or ‘record’ means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, *that has been made, maintained or kept on file* in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, *or that has been received* in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof....” [Emphasis added]. N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“... [t]he public agency shall have the burden of proving that the denial of access is authorized by law ...” N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In the matter before the Council, the Complainant's request asked the Custodian to provide a certification "'clarifying how' the [CSC] discovered Office Elbert N. Eutsey's real name and certifying that there are no personnel records under the name 'Jack Eutsey.'" The Complainant's request is invalid under OPRA because the Complainant's request seeks that the Custodian perform an action such as clarify certain events via the creation of a legal certification, which is not required under OPRA.

The New Jersey Supreme Court has stated that "[t]he purpose of OPRA 'is to maximize public knowledge about public affairs ... and to minimize the evils inherent in a secluded process.'" Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 183 N.J. 519, 535 (2005)(*quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Office*, 374 N.J. Super. 312, 329 (Law Div. 2004)). Those who enacted OPRA understood that knowledge is power in a democracy, and that *without access to information contained in records* maintained by public agencies citizens cannot monitor the operation of our government or hold public officials accountable for their actions. An underlying premise of OPRA is that society as a whole suffers when "governmental bodies are permitted to operate in secrecy." (Emphasis added). See Asbury Park Press, supra, 374 N.J. Super. at 329.

Moreover, the New Jersey Superior Court has held that "OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, ... OPRA ... operates to make identifiable government records 'readily accessible for inspection, copying, or examination.' N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt ...." (Emphasis added.) *Id.* at 549.

The duties of custodians under OPRA do not include the performance of actions. OPRA requires, among other things, that a custodian respond in writing to an OPRA request within seven (7) business days of receipt thereof, granting access, denying access, requesting clarification of such request or requesting an extension of time to respond to the request, (N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i.), promptly comply with a request to inspect, examine, copy, or provide a copy of a government record and advise the requestor if a record is not available (N.J.S.A. 47:1A-5.g.), perform redactions to records to protect material which is exempt from disclosure (N.J.S.A. 47:1A-5.a. and N.J.S.A. 47:1A-5.g.), and may charge fees for the production of records (N.J.S.A. 47:1A-5.b., N.J.S.A. 47:1A-5.c. and N.J.S.A. 47:1A-5.d.).

Here, the Complainant's request sought that the Custodian provide a certification clarifying how the CSC discovered Officer Elbert N. Eutsey's real name and further certify that there are no personnel records under the name "Jack Eutsey." In the SOI, Custodian's Counsel asserted that the Complainant's request asked that the Custodian certify whether such information is factual, but that no certification exists and the Custodian is not required to create same for the Complainant. Counsel further argued that the Complainant's request does not seek a government record pursuant to N.J.S.A. 47:1A-1.1. and asserted that the Complainant is instead requesting that the Custodian

create a certification that does not exist; the Custodian is under no obligation to create same.

The Complainant's request that the Custodian provide a certification "clarifying how' the [CSC] discovered Office Elbert N. Eutsey's real name and certifying that there are no personnel records under the name 'Jack Eutsey'" does not seek the Custodian's disclosure of an existing identifiable government record but instead seeks that the Custodian perform the action of clarifying facts through the creation of a legal certification. The performance of such an action does not further the Legislative purpose of increasing public access to information contained in records. Moreover, the performance of such an action is not among the enumerated duties of a custodian set forth in OPRA. As such, the Complainant's request is invalid under OPRA. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-5.a. – 5.d.; N.J.S.A. 47:1A-5.g.; N.J.S.A. 47:1A-5.i.; Lafayette Yard; MAG; Asbury Park Press. The Custodian has therefore borne his burden of proof that the denial of access was authorized by law. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant's request that the Custodian provide a certification "clarifying how' the [CSC] discovered Office Elbert N. Eutsey's real name and certifying that there are no personnel records under the name 'Jack Eutsey'" does not seek the Custodian's disclosure of an existing identifiable government record but instead seeks that the Custodian perform the action of clarifying facts through the creation of a legal certification. The performance of such an action does not further the Legislative purpose of increasing public access to information contained in records. Moreover, the performance of such an action is not among the enumerated duties of a custodian set forth in OPRA. As such, the Complainant's request is invalid under OPRA. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-5.a. – 5.d.; N.J.S.A. 47:1A-5.g.; N.J.S.A. 47:1A-5.i.; Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 183 N.J. 519, 535 (2005); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004). The Custodian has therefore borne his burden of proof that the denial of access was authorized by law. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

April 18, 2012