



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

May 28, 2013 Government Records Council Meeting

Peter J. DeRobertis
Complainant

Complaint No. 2012-149

v.

Township of Montclair (Essex)
Custodian of Record

At the May 28, 2013 public meeting, the Government Records Council (“Council”) considered the May 21, 2013 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 that the Complainant’s request is an invalid request for information that fails to seek identifiable government records. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant’s request. LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

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 28th Day of May, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council



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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: June 11, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 28, 2013 Council Meeting**

**Peter J. DeRobertis¹
Complainant**

GRC Complaint No. 2012-149

v.

**Township of Montclair (Essex)²
Custodian of Records**

Records Relevant to Complaint: Electronic copies via e-mail of all tows and charges on vehicles towed by Roach's Towing and Sam's Garage from January 1, 2012 to May 7, 2012.

Request Made: May 7, 2012

Response Made: May 7, 2012 and May 18, 2012

GRC Complaint Filed: May 18, 2012³

Background⁴

Request and Response:

On May 7, 2012, the Complainant submitted an Open Public Records Act ("OPRA") request to the Township of Montclair ("Township"). On May 7, 2012, the Custodian allegedly responded advising the Complainant that impound records were available for pickup and further denied access to the requested tows and charges advising that same were not a Township record.

On May 8, 2012, the Complainant e-mailed the Custodian's Counsel stating that he was denied access to the responsive towing charges because they were not a Township record. The Complainant further noted that according to Township Ordinance §322-17, the Township can obtain the responsive information. On May 9, 2012, Counsel responded advising that he had no knowledge of the Complainant's OPRA request, but would look into the Township's response.

On May 18, 2012, the Complainant responded advising that he had not been contacted in ten (10) days. On the same day, Counsel responded advising that the Complainant's OPRA request is denied because it failed to identify a specific government record in the possession of the Township. The Complainant responded questioning whether the Township keeps track of

¹ No legal representation listed on record.

² Linda Wanat, Custodian of Records. Represented by Joseph C. Angelo, Esq. (Montclair, NJ).

³ The GRC received the Denial of Access Complaint on said date.

⁴ The parties may have submitted additional correspondence, or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

vehicles towed as is required by §322-17. The Complainant further noted that, at the very least, the Township should be able to provide monthly reports since January 1, 2012. Counsel responded stating that the Complainant's OPRA request fails to identify a specific government record. Counsel further advised that the Township encourages the Complainant to submit a new OPRA request for a specific record.

Denial of Access Complaint:

On May 18, 2012, the Complainant submitted a Denial of Access Complaint to the Government Records Council ("GRC") arguing that the Township has an ordinance requiring "[e]very person authorized to tow shall record in a book ... details of each disabled vehicle towed, serviced or transported ... and the charges paid ... kept open for inspection at all times by any duly authorized representative of the Township." §322-17. The Complainant contends that the information sought can be easily obtained, copied and disclosed.

Statement of Information:

On June 8, 2012, the Custodian submitted a Statement of Information ("SOI"). The Custodian certifies that she received the Complainant's OPRA request on May 7, 2012. The Custodian certifies that Lieutenant Richard Cavanaugh ("Lt. Cavanaugh"), Records and Identification Bureau Commander for the Township Police Department, compiled impound records and contacted the Complainant for pickup. The Custodian notes that numerous calls were made to the Complainant and that as of May 30, 2012, the Complainant had not picked up the records.

The Custodian asserts that the Complainant's OPRA request sought information and not a specific, identifiable government record. The Custodian certifies that Counsel informed the Complainant of this fact on May 18, 2012, at which point the Complainant submitted a new OPRA request that the Township responded to accordingly.

Analysis⁵

Unlawful Denial of Access

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.

The New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records*

⁵ There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

‘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 reasoned that:

“[m]ost significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division’s records custodian to manually search through all of the agency’s files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.” [Emphasis added]. *Id.* at 549.

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency’s files.” (Emphasis added.) *Id.* See also Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),⁶ New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant’s request was a request for information, holding that “... because request Item No. 2 of the Complainant’s June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG, *supra*] ...” *Id.* at pg. 6. See also Ohlson v. Township of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

Here, the Complainant sought “tows and charges” for two (2) towing companies over an approximate four (4) month period. Similar to the request at issue in LaMantia, this request seeks information regarding tows and the charges assessed for same. Regardless of whether this information can be gleaned from a specific government record, “tows” and “charges” constitute information.

Therefore, the Complainant’s request is an invalid request for information that fails to seek identifiable government records. MAG, supra; Bent, supra; NJ Builders, supra; Schuler, supra. Thus, the Custodian did not unlawfully deny access to the Complainant’s request. LaMantia, supra.

The GRC notes that after being denied access to the information sought, the Complainant e-mailed the Custodian’s Counsel identifying an ordinance that requires companies authorized to tow for the Township to keep a book containing certain types of information to include the information sought. However, the GRC notes that the Complainant did not identify this book as

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

the record sought in his OPRA request, thus the GRC refrains from an analysis as to whether such book constitutes a public record.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request is an invalid request for information that fails to seek identifiable government records. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

May 21, 2013