



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  
Commissioner

**FINAL DECISION**

**May 28, 2013 Government Records Council Meeting**

William H. Gettler  
Complainant

Complaint No. 2012-162

v.

Township of Wantage (Sussex)  
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 the Custodian has not unlawfully denied access to the twenty-seven (27) records the Complainant asserts were withheld because the Complainant’s OPRA request is overly broad and invalid. The Complainant’s request fails to identify any government records and rather seeks “every public record” on file with the agency. See 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), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). Additionally, the Council declines to conduct an *in camera* review on the records provided since the Complainant’s OPRA request is invalid.

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 28<sup>th</sup> 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**

**William H. Gettler<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-162**

v.

**Township of Wantage (Sussex)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** For calendar years 2011 and 2012, a copy of every public record, written or electronic, between the members of the Township Committee, the Office of the Wantage Tax Assessor, the Wantage Clerk/Administrator, the Wantage Township Attorney, Melissa Rockwell, Tom DeKorte, Kristy Lockburner, any other Township officials and/or employees, and/or the Office of the Sussex County Board of Taxation concerning the Assessment Compliance Plan that is being implemented by the Wantage Tax Assessor.

**Request Made:** January 26, 2012

**Response Made:** January 31, 2012

**GRC Complaint Filed:** May 30, 2012<sup>3</sup>

**Background<sup>4</sup>**

**Request and Response:**

On January 26, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On January 31, 2012, the third (3<sup>rd</sup>) business day following receipt of said request, the Custodian responded in writing granting access to records and providing a redaction index regarding the redacted portions of the records.

**Denial of Access Complaint:**

On May 30, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the Custodian failed to provide all records responsive to his OPRA request. The Complainant contends that the Custodian unlawfully denied access to twenty-seven (27) records the Complainant asserts are

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

<sup>2</sup> James R. Doherty, Custodian of Records. Represented by Michael Garafalo, Esq., of Laddey, Clark & Ryan (Sparta, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> 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.

responsive to his request, which he received from the Sussex County Board of Taxation in response to a separate OPRA request. Additionally, the Complainant claims that the Custodian made twenty-seven (27) redactions to the records provided, but only provided the specific legal basis for sixteen (16), leaving eleven (11) redactions with no legal basis. The Complainant requests that the Council conduct an *in camera* review of the redacted records to confirm that the Custodian's confidentiality claims are accurate.

Statement of Information:

On June 29, 2012, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that he received the Complainant's OPRA request on January 29, 2012, and provided records responsive with redactions on January 31, 2012. The Custodian certifies that he conducted a universal word search on the e-mail programs of the Administrator and the Tax Assessor to locate all responsive e-mails containing the term "compliance plan." The Custodian also certifies that he conducted a search of the paper files in the Clerk's Office and the Tax Assessor's Office using the same parameters.

The Custodian asserts that this complaint should be dismissed in accordance with L.R. and O/B/O J.R. v. Camden Board of Education Custodian, Docket No. A-4712-10T3 (App. Div. May 2012). The Custodian states that in Camden, the complainant sought "all documents (whether electronic or paper) and objects in your, your attorney's, agent's, employees' or students' possession which make reference to L.R. and/or J.R." The Custodian states that the Board of Education denied the request as overly broad and improper. The Custodian states that the complainant filed a complaint with the Superior Court, prior to which the complainant received the requested records via trial discovery. The Custodian states that the Superior Court Judge dismissed the OPRA complaint, reasoning that:

"[i]n short, this is an overbroad request and I am denying it for that reason. I'm denying it for a second reason. Its [sic] essentially moot. There has been no demonstration that the documents here have not been produced in the underlying action which I note this was a parallel request for documents and MAG [Entm't, LLC v. Division of Alcoholic Beverage Control], 375 N.J. Super. 534 (App. Div. 2005)] notes...the fact that one's in litigation does not exempt the public agency, but in essence they've been produced in the context of that agency and to the extent that the plaintiff is seeking a counsel fee, you get a counsel fee if you're a catalyst and you produce records."

The Custodian states that the Appellate Division affirmed the dismissal for the reasons stated by the trial judge. The Custodian states that here, the Complainant admitted to receiving additional records allegedly responsive to his OPRA request from the Sussex County Board of Taxation prior to filing this complaint. As such, the Custodian asserts that the records allegedly withheld have been produced and this complaint is not the catalyst for the production of the allegedly withheld records.

## Analysis<sup>5</sup>

### 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 ‘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 ...* In short, OPRA does not countenance open-ended searches of an agency’s files.” (Emphasis added.) *Id.* at 549.

In determining that MAG Entertainment’s request for “all documents or records” from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted 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.” *Id.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>6</sup> the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records “accessible.” “As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency’s documents.” *Id.*

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<sup>5</sup> 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.

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

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...”

Here, the Complainant requested “every public record” regarding the Assessment Compliance Plan. The Custodian granted access to records, with some redactions. The Complainant contends that the Custodian unlawfully denied access to twenty-seven (27) records responsive to his request, which he received from the Sussex County Board of Taxation in response to a separate OPRA request. The Complainant also requests that the Council conduct an *in camera* review of the records provided to confirm that the Custodian’s confidentiality claims are appropriate.

This matter is substantially different from the facts presented in Gannett v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005). In Gannett, the Court held that although Gannett’s request was improper and Middlesex County could have refused to produce any records responsive, Middlesex County instead provided Gannett with most of the records responsive to the request, denying access to the remaining records based on confidentiality claims. Gannett brought action against the County of Middlesex seeking disclosure of the remainder of the records responsive. The Court held that “[s]uch a voluntary disclosure of most of the documents sought by Gannett and refusal to release the remaining documents solely on confidentiality grounds constituted a waiver of whatever right the County may have had to deny Gannett’s entire OPRA request on the ground that it was improper.” *Id.* at 213. This complaint is distinguishable from Gannett in that the Custodian did not deny access to any records at issue based on confidentiality claims. The Custodian never identified in his response to the OPRA request the twenty-seven (27) records the Complainant alleges were denied. Thus, the Custodian has not waived any right to deny the request on the grounds that it was improper.

This matter is also substantially different from the facts presented in Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” *Id.* at 508. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. *Id.* at 515-16. Here, the Complainant fails to specify any type of document, but rather requests “every public record, whether written or electronic.”

Additionally, in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the Court noted that plaintiff’s request was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information, namely, EZ-Pass benefits provided to Port Authority retirees. The Court determined that, as in Burnett, *supra*, the request was limited to particularized, identifiable government records, namely, correspondence with another government entity, rather than information generally. The Court further held that the defendant “performed a search and was able to locate records responsive ...” which “... belied any

assertion that the request was lacking in specificity or was overbroad.” *Id.* at 177. This complaint is distinguishable from Burke in that the Complainant failed to identify any specific government records, but rather requested “every public record, whether written or electronic.”

The Complainant’s request here more closely resembles the facts in MAG, *supra*, and NJ Builders, *supra* wherein both courts determined that a valid OPRA request must seek *identifiable government records* and *a party cannot satisfy this requirement by requesting all of an agency’s documents* (emphasis added). Seeking “every public record” regarding a specific subject matter does not meet the standard of a valid OPRA request, and a custodian cannot be found to have unlawfully denied access to records which were not properly requested in the first place. Penalizing a custodian for attempting to respond to an otherwise overly broad request and failing to provide access to every piece of information in the agency’s possession would be unreasonable.

Therefore, the Custodian has not unlawfully denied access to the twenty-seven (27) records the Complainant asserts were withheld because the Complainant’s OPRA request is overly broad and invalid. The Complainant’s request fails to identify any government records and rather seeks “every public record” on file with the agency. *See* MAG, *supra*, Bent, *supra*, and NJ Builders, *supra*. Additionally, the Council declines to conduct an *in camera* review on the records provided since the Complainant’s OPRA request is invalid.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian has not unlawfully denied access to the twenty-seven (27) records the Complainant asserts were withheld because the Complainant’s OPRA request is overly broad and invalid. The Complainant’s request fails to identify any government records and rather seeks “every public record” on file with the agency. *See* 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), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). Additionally, the Council declines to conduct an *in camera* review on the records provided since the Complainant’s OPRA request is invalid.

Prepared By: Dara L. Barry  
Communications Manager

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

May 21, 2013