



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

March 22, 2013 Government Records Council Meeting

Frank Boslet
Complainant

Complaint No. 2012-29

v.

Greenwich Township (Warren)
Custodian of Record

At the March 22, 2013 public meeting, the Government Records Council (“Council”) considered the March 15, 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:

1. Although the Complainant asserted in his Denial of Access Complaint that the Custodian failed to respond to his OPRA request, the Custodian has borne her burden of proving that she timely responded to said request. Specifically, the Custodian legally certified in her SOI submission that she provided a written response to the Complainant’s OPRA request on September 9, 2011, the fifth (5th) business day following the Custodian’s receipt of said request. The Custodian also attached a copy of said response to her SOI submission. As such, the Custodian timely responded to the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
2. Although the Custodian denied the Complainant’s OPRA request on the basis that personnel records are exempt from public access under OPRA, the Custodian did not unlawfully deny access to the Complainant’s request because said request for an entire personnel file fails to identify specific government records sought and constitutes a broad and unclear request. As such, the Complainant’s OPRA request is invalid pursuant to 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), Kelley v. Rockaway Township (Morris), GRC Complaint No. 2009-19 (November 2009), and Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011).

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 22nd Day of March, 2013

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

Robin Berg Tabakin, Esq., Chair
Government Records Council

Decision Distribution Date: March 26, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 22, 2013 Council Meeting**

**Frank Boslet¹
Complainant**

GRC Complaint No. 2012-29

v.

**Greenwich Township (Warren)²
Custodian of Records**

Records Relevant to Complaint: Patrolman Christopher Tasiopoulos' personnel file – work records.

Request Made: September 1, 2011³

Response Made: September 9, 2011

GRC Complaint Filed: February 1, 2012⁴

Background⁵

The Complainant submitted his Open Public Records Act (“OPRA”) on September 1, 2011 seeking the records listed above. The Custodian responded to said request in writing on September 9, 2011, the fifth (5th) business day following receipt of said request, denying said request on the basis that N.J.S.A. 47:1A-1 exempts personnel files from public access.

The Complainant filed this Denial of Access Complaint on February 1, 2012 asserting that the Custodian failed to respond to his OPRA request for Patrolman Tasiopoulos' personnel file.

On May 26, 2012, the GRC received the Custodian's Statement of Information (“SOI”) in response to the Complainant's Denial of Access Complaint. The Custodian certifies that she received the Complainant's OPRA request on September 1, 2011 and denied said request on September 9, 2011.⁶ The Custodian asserts that N.J.S.A. 47:1A-10 exempts personnel files from public access.

¹ Represented by Evan M. Levow, Esq., (Cherry Hill, NJ).

² Kimberly Viscomi, Custodian of Records. Represented by Brent T. Carney, Esq., of Maraziti, Falcon & Healey, LLP (Short Hills, NJ).

³ The Complainant asserts in his Denial of Access Complaint that the OPRA request is dated September 6, 2011.

⁴ The GRC received the Denial of Access Complaint on said date.

⁵ 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.

⁶ The Custodian attaches a copy of her written response to the Complainant's OPRA request dated September 9, 2011.

Analysis⁷

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). As also prescribed under N.J.S.A. 47:1A-5(i), a custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁸ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

The Complainant filed this Denial of Access Complaint asserting that the Custodian failed to respond to his OPRA request dated September 1, 2011.⁹ In the Custodian's SOI, the Custodian legally certified that she provided a written response to the Complainant's OPRA request on September 9, 2011, the fifth (5th) business day following the Custodian's receipt of said request. The Custodian also attached a copy of said response to her SOI submission.

Therefore, although the Complainant asserted in his Denial of Access Complaint that the Custodian failed to respond to his OPRA request, the Custodian has borne her burden of proving that she timely responded to said request. Specifically, the Custodian legally certified in her SOI submission that she provided a written response to the Complainant's OPRA request on September 9, 2011, the fifth (5th) business day following the Custodian's receipt of said request. The Custodian also attached a copy of said response to her SOI submission. As such, the Custodian timely responded to the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).

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.

⁷ 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.

⁸ It is the GRC's position that a custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

⁹ Although the Complainant states in his complaint that the OPRA request is dated September 6, 2011, the Complainant attaches an OPRA request dated September 1, 2011.

In this complaint, the Custodian denied access to the requested personnel file on the basis that personnel records are exempt from public access pursuant to N.J.S.A. 47:1A-1¹⁰ and N.J.S.A. 47:1A-10¹¹.

Personnel records of any individual in the possession of a public agency, shall not be considered a government record under OPRA and shall not be made available for public access, except for limited information regarding an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received, among other exceptions. N.J.S.A. 47:1A-10.

Notwithstanding OPRA's personnel record exemption, both the GRC and the New Jersey courts have determined the level of specificity required for an OPRA request to be considered valid. 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.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),¹² 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."¹³

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..."

The GRC has previously rendered similar OPRA requests for entire personnel files invalid. In Kelley v. Rockaway Township (Morris), GRC Complaint No. 2009-19 (November 2009), the complainant sought access to the personnel file of the Township's Zoning Officer. The Council held that "...the Complainant's request is overly broad under OPRA..." Also, in Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011), the complainant sought access to her own personnel file. The Council held that "[t]he [c]omplainant's request for the entire personnel file fails to identify specific government records sought and constitutes a broad and unclear request."

¹⁰ The Custodian cited to this provision in her September 9, 2011 response to the Complainant's OPRA request.

¹¹ The Custodian cited to this provision in her SOI submission to the GRC.

¹² Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹³ As stated in Bent, *supra*.

Therefore, although the Custodian denied the Complainant's OPRA request on the basis that personnel records are exempt from public access under OPRA, the Custodian did not unlawfully deny access to the Complainant's request because said request for an entire personnel file fails to identify specific government records sought and constitutes a broad and unclear request. As such, the Complainant's OPRA request is invalid pursuant to 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), Kelley v. Rockaway Township (Morris), GRC Complaint No. 2009-19 (November 2009), and Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Although the Complainant asserted in his Denial of Access Complaint that the Custodian failed to respond to his OPRA request, the Custodian has borne her burden of proving that she timely responded to said request. Specifically, the Custodian legally certified in her SOI submission that she provided a written response to the Complainant's OPRA request on September 9, 2011, the fifth (5th) business day following the Custodian's receipt of said request. The Custodian also attached a copy of said response to her SOI submission. As such, the Custodian timely responded to the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
2. Although the Custodian denied the Complainant's OPRA request on the basis that personnel records are exempt from public access under OPRA, the Custodian did not unlawfully deny access to the Complainant's request because said request for an entire personnel file fails to identify specific government records sought and constitutes a broad and unclear request. As such, the Complainant's OPRA request is invalid pursuant to 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), Kelley v. Rockaway Township (Morris), GRC Complaint No. 2009-19 (November 2009), and Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011).

Prepared By: Dara L. Barry
Communications Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

March 15, 2013