



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

July 23, 2013 Government Records Council Meeting

Dr. Modris O. Baum
Complainant

Complaint No. 2012-291

v.

Township of Rockaway (Morris)
Custodian of Record

At the July 23, 2013 public meeting, the Government Records Council (“Council”) considered the July 16, 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. The Custodian responded, in writing on October 2, 2012, and subsequently in her SOI that no responsive records exist to the Complainant’s First Request (Item No. 1) and the Fifth Request (Item No. 8). Therefore, the Custodian’s denial of access to the records is lawful pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint 2005-49 (July 2005).
2. The Complainant’s First Request (Items No. 2, 3 & 4) and Second Request (Item No. 5) seek information rather than identifiable government records, the request is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (March 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005) (OPRA only allows request for records, not request for information.)
3. The Custodian provided access to the Property Cards within the statutorily mandated seven (7) business days to the Complainant and thus complied with the Complainant’s Third and Fourth Requests (Items Nos. 6 and 7). N.J.S.A. 47:1A-5(i).

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 23rd Day of July 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: July 26, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 23, 2013 Council Meeting**

**Dr. Modris O. Baum¹
Complainant**

GRC Complaint No. 2012-291

v.

**Township of Rockaway (Morris)²
Custodial Agency**

Records Relevant to Complaint:³

September 21, 2012 Requests:

First Request:

1. A list of properties with VCS = AC24 (this is probably a very short list);
2. Definition of this category and requirements for property to be valued accordingly;
3. Actual basis for including existing properties in AC24;
4. Data/method used to determine the valuation for this category.⁴

Second Request:

5. Please provide (or request from the revaluation company) explanations for the land adjustments [of properties] noted on the attached sheet⁵.

Third Request:

6. Please provide property records cards for 2012 for [the] properties listed.⁶

Fourth Request:

7. Please provide Property Record Cards for 2011 (reflecting the previous revaluation of 2002) for the attached list of properties.⁷

September 26, 2013 Request:

Fifth Request:

8. Land value map showing neighborhood designation prior to the revaluation.

¹ No legal representation listed on record.

² Represented by Iacofano & Perrone, Esqs., (Morristown, NJ).

³ The Complainant, by completing separate request forms, made four requests on September 21, 2012. In addition, he made a fifth request on September 26, 2013.

⁴ The Complainant added to his request that if the Custodian did “not have this information, [they] should request it from the revaluation company.”

⁵ Complainant attached a two (2) page list of sixty-one (61) properties.

⁶ Complainant attached a list of thirty-three (33) properties.

⁷ Complainant attached a list of thirty-four (34) properties. Complainant added the following to his request: “It is my understanding that a complete list of adjustments is required on the cards. If this information is not available on the cards, please supply it from the computer data base.”

Custodian of Record: Susan Best, RMC

Request Received by Custodian: September 21, and September 26, 2012

Response Made by Custodian: October 2, 2012

GRC Complaint Received: October 25, 2012

Background⁸

Request and Response:

On September 21, 2012, the Complainant submitted four Open Public Records Act (“OPRA”) requests seeking the above-listed documents Item Nos. 1-7. Thereafter, on September 26, 2012, the Complainant filed a fifth OPRA request seeking Item No. 8. On October 2, 2012, the 7th business day following receipt of said request, the Custodian responded to the Complainant’s requests.

Complainant’s First Request: As to Item No. 1, which requested a list of properties, there were no records responsive to your request; as to Items No. 2, 3 and 4, the requests are not appropriate OPRA requests as the information requested is not included within the scope of government records.

Complainant’s Second Request: the Custodian responded that the request was not appropriate because it is not the function of the Custodian to solicit information or to pose questions to an independent contractor.

In response to the Complainant’s Third and Fourth requests: the Custodian supplied redacted Property records cards for 2011 and 2012. The Custodian provided that “certain notations made by the Assessor” may have been redacted from individual cards as the notations constituted deliberative information which is not subject to release pursuant to OPRA.

To the Complainant’s Fifth request: the Custodian responded that no such documents exist.

Denial of Access Complaint:

On October 25, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant challenges the Custodian’s responses that “no such document” exists. The Complainant further states that although he received property record cards (“Property Cards”), the Property Cards did not include a “list of land value adjustments.” Further, he asserts that the format of the Property Cards differed from the Property Cards he had received in response to a prior request.

⁸ 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.

The Complainant claims that he addressed the alleged missing information on the Property Cards with the Tax Assessor. The Complainant states that the Tax Assessor promised to contact the revaluation contractor to “correct this deficiency” and to obtain “clarification of the adjustment terms (such as ‘use’, ‘utility’, and ‘wet’).”

The Complainant cites to various sections of the “Handbook for New Jersey Assessors” in support of his arguments.

Statement of Information:

On March 21, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she provided 218 pages of Property Cards and thus complied with the Complainant’s request. The Custodian further certifies that some requests sought either explanations or definitions of information not contained in the records. The Custodian argues that providing definitions and explanations is outside the scope of the Custodian’s responsibilities under OPRA. N.J.S.A. 47:1A-1.1 et. seq. In addition, the Custodian argues that some of the Complainant’s requests sought explanations from an independent revaluation contractor which were subject to the inter/intra-agency consultative or deliberative information exception. *See Diamond v. Atlantic County Prosecutor*, GRC Complaint No. 2004-71. Finally, the Custodian argues that some of the requests were either broad and/or unclear, and also required the Custodian to conduct research. The Custodian deemed these requests to be inappropriate. MAG Entertainment v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 and Donato v. Township of Union, GRC Complaint No. 2005-182.

Analysis⁹

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.

First Request (Item No. 1) and Fifth Request (Item No. 8):

In Pusterhofer v. New Jersey Department of Education, GRC Complaint 2005-49 (July 2005), the Complainant sought telephone billing records showing a call made to him from the New Jersey Department of Education. The Pusterhofer custodian certified in the SOI that no responsive records existed. The GRC determined that where the custodian certified that there were no responsive records, there was no unlawful denial of access.

⁹ 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.

In the matter at hand, the Complainant's First Request (Item No. 1) seeks a list of properties using VCS = AC24 for land value calculation, while his Fifth Request (Item No. 9) seeks a land value map showing the neighborhood designation prior to the revaluation.

The Custodian advised the Complainant that no responsive records exist to his requests for the list of properties with VCS = AC24 and the land value map. The Complainant, in his denial of access complaint, adds that: "The VCS used for each property is on the computerized property record card used by the Tax Assessor. Hence it should be a searchable field." He does not argue that the records exist, only that the information could be compiled.

Further, with respect to the land value map, the Complainant argues that the "map must have existed" and that the "Handbook for New Jersey Assessor" prohibits destruction [sic] of any records without formal authorization." He further contends that the Tax Assessor stated that he did not have a copy of the map. The Custodian, in a letter dated October 2, 2012, advises that no such map exists. In her SOI the Custodian opines that the Complainant interacted with the Tax Assessor as opposed to Municipal Clerk who is the official custodian of records. The Custodian states that she cannot be responsible for any complaints based upon that interaction nor for information not provided. The Complainant did not reply or contest the Custodian's SOI or otherwise supplement his Complaint.

The Custodian responded, in writing on October 2, 2012, and subsequently in her SOI that no responsive records exist to the Complainant's First Request (Item No. 1) and the Fifth Request (Item No. 8). The Complainant fails to refute the Custodian's certification. Therefore, the Custodian's denial of access to the records is lawful pursuant to Pusterhofer. Id.

First Request (Items No. 2, 3 & 4) and Second Request (Item No. 5):

The Complainant's First Request (Items No. 2, 3 & 4) seek a "definition" and "requirements" for valuation of property, the actual "basis" for characterizing certain properties, and the "data/method" used to determine valuation, respectively. Similarly, the Complainant's Second Request (Item No. 5) seeks "explanations for the land adjustments."

While 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."

MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (March 2005) (*citing*, N.J.S.A. 47:1A-1). The MAG Court further held that: "[u]nder OPRA, agencies are required to disclose only "identifiable" government records not otherwise exempt. Wholesale requests for general information to be analyzed, collated and compiled by the [Custodian] are not encompassed therein. Id. at 549. In other words, OPRA does not support open-ended searches for information. Id.

By letter dated October 2, 2012, the Custodian provided that request Items No. 2, 3, & 4 from the Complainant's First Request were informational and not included within the scope of government records. Similarly, the Custodian, in another letter dated October 2, 2012, stated that Item No. 5 from the Complaint's Second Request was not appropriate under OPRA as it required the Custodian to solicit information from an independent contractor. The Custodian in her SOI reiterated her legal basis for the denial of the Complainant's informational requests.

The Complainant's First Request (Items No. 2, 3 & 4) and Second Request (Item No. 5) seek information rather than identifiable government records, thus the request is invalid pursuant to MAG, 375 N.J. Super. at 546, and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005) (OPRA only allows request for records, not request for information.)

Third and Fourth Requests (Item Nos. 6 and 7):

In his Third and Fourth OPRA requests the Complainant sought copies Property Cards from 2012 (Item No. 6) and 2011 (Item No. 7) respectively. By letters dated October 2, 2012, the Custodian transmitted the 2012 and 2011 Property Cards. Further in her SOI the Custodian certifies that she provided 218 pages of responsive records.

The Custodian provided access to the Property Cards within the statutorily mandated seven (7) business days to the Complainant and thus complied with the Complainant's Third and Fourth Requests (Items Nos. 6 and 7). N.J.S.A. 47:1A-5(i).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian responded, in writing on October 2, 2012, and subsequently in her SOI that no responsive records exist to the Complainant's First Request (Item No. 1) and the Fifth Request (Item No. 8). Therefore, the Custodian's denial of access to the records is lawful pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint 2005-49 (July 2005).
2. The Complainant's First Request (Items No. 2, 3 & 4) and Second Request (Item No. 5) seek information rather than identifiable government records, the request is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (March 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005) (OPRA only allows request for records, not request for information.)

3. The Custodian provided access to the Property Cards within the statutorily mandated seven (7) business days to the Complainant and thus complied with the Complainant's Third and Fourth Requests (Items Nos. 6 and 7). N.J.S.A. 47:1A-5(i).

Prepared By: Dawn R. SanFilippo, Esq.
Senior Attorney

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

July 16, 2013