



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

July 23, 2013 Government Records Council Meeting

Bob Thomas
Complainant

Complaint No. 2012-297

v.

County of Camden
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 the Complainant’s request is invalid under OPRA because it fails to reasonably specify identifiable government records and requires the Custodian to conduct research outside the scope of her duties. The request is merely seeking information. As such, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005). See also Herron v. Township of Montclair, GRC Complaint No. 2008-46 (April 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 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**

**Bob Thomas¹
Complainant**

GRC Complaint No. 2012-297

v.

**County of Camden²
Custodial Agency**

Records Relevant to Complaint:

1. Actual and accurate written number of interest responses received by the county with regards to employment in the Camden County Police Department.
2. Actual and accurate written number of interest responses received by the county from current members of the Camden City Police Department with regards to employment with the Camden County Police Department.

Custodian of Records: Maria Efstratiades

Request Received by Custodian: October 17, 2012

Response Made by Custodian: October 24, 2012

GRC Complaint Received: November 5, 2012

Background³

Request and Response:

On October 17, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On October 24, 2012, the fifth (5th) business day following receipt of said request, the Custodian responded in writing denying the request because the Custodian informed the Complainant that his request was not for records. The Custodian cited MAG Entertainment v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), in support of her denial.⁴

Denial of Access Complaint:

¹ No legal representation listed on record.

² Represented by Howard Goldberg, Esq. (Camden, NJ); however, there are no submissions from the Custodian’s Counsel to the GRC on file.

³ 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.

⁴ The Custodian did mention in the response that the County’s police force had over 2,100 inquiries.

On November 5, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contends that he provided his request to the Custodian on October 16, 2012 and that the Custodian denied his request on October 24, 2012.⁵

The Complainant asserts that Camden County officials published different statistics regarding the number of Camden County Police Department interest cards returned to the County. The Complainant states that he wants an accurate accounting of the interest card responses.

Statement of Information:

On December 12, 2012, the Custodian filed a Statement of Information (“SOF”). The Custodian certifies that she received the Complainant’s OPRA request on October 17, 2012, and that she responded to the request on October 24, 2012.

The Custodian certifies that the request filed by the Complainant is not a request for records, but rather a request for a calculated number of people who have expressed an interest in obtaining employment with a yet-to-be created County police department. The Custodian cites MAG Entertainment v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), as holding that agencies are required to disclose only identifiable governmental records not otherwise exempt. The Custodian certifies that the request as submitted is therefore invalid under OPRA.

Analysis⁶

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 Appellate Division 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*

⁵ The copy of the OPRA request that the Complainant attached to the complaint is date stamped by the Custodian on October 17, 2012.

⁶ 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.

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),⁷ 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."⁸

In Herron v. Township of Montclair, GRC Complaint No. 2008-46 (April 2009), where a complainant sought statistical information regarding juvenile offenders, the Council determined that:

"...Because the Complainant's request does not specify identifiable government records and would require the Custodian to conduct research and create a new record, the Complainant's OPRA request is invalid pursuant to MAG Entertainment LLC. V. Div. of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005)."

Here, in both request items numbered 1 and 2, the Complainant sought an "accurate written number" of responses received by Camden County regarding interest in its proposed police department. The Complainant did not even mention a government record, much less an identifiable government record, in his request. The Complainant was merely seeking information.

Accordingly, the Complainant's request is invalid under OPRA because it fails to reasonably specify identifiable government records and requires the Custodian to conduct research outside the scope of her duties. The request is merely seeking information. As such, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6. See MAG, *supra*, and Bent, *supra*. See also Herron *supra*.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it fails to reasonably specify identifiable government records and requires the Custodian to conduct research outside the scope of her duties. The request is merely seeking information. As such, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005). See also Herron v. Township of Montclair, GRC Complaint No. 2008-46 (April 2009).

⁷ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁸ As stated in Bent, *supra*.

Prepared By: John E. Stewart, Esq.

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

July 16, 2013