



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

June 24, 2014 Government Records Council Meeting

David J. Roundtree
Complainant

Complaint No. 2013-276

v.

Camden County Clerk's Office
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council ("Council") considered the June 17, 2014 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 did not unlawfully deny access to request item No. 3 because the Custodian certified that no responsive records exist and there is no competent, credible evidence to refute the Custodian's certification. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
2. Because the Complainant's June 13, 2013 request item Nos. 2 and 4 through 8 and June 22, 2013 amended request sought non-specific records, information and verification of facts, the request is invalid under OPRA. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Morgano v. NJ Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012). Thus, the Custodian has not unlawfully denied access to the Complainant's initial and amended requests.

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 24th Day of June, 2014

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 26, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 24, 2014 Council Meeting**

**David J. Roundtree¹
Complainant**

GRC Complaint No. 2013-276

v.

**Camden County Clerk's Office²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. "A complete list of all the names that was (sic) given to the printer to supply each sample ballot to be mail (sic) in the primary."
2. "Please verify the letter sent to the printer and the sample ballot format used."
3. ". . . correspondence between the Superintendent of Elections, the County Clerk that verifies what was being sent to the printer."
4. "The documentation from the printer to all parties of the county; in reference to sample ballot (need a verification that the list of names received)."
5. ". . . please verify each [c]andidate name and [s]ignature as list for the [s]ample ballot with [the County's] NJ Voters data bank (throughout the county)."
6. ". . . the names and verify the signatures as signed on the following papers, the oath, cert. of acceptance, disclosure statement and the circulator notarize name and signature of all candidates who ran in the primary election . . ."
7. "Please verify by all agencies on official letterhead that all candidates was (sic) on the [s]ample ballot list that went to the printer . . ."
8. "If none of the names, signatures as listed can be verify (sic) as a legal voter using the signature taken out on the document and petition please provide a letter on official letter head to state that all officers have received a falsified document by all candidates not found in the NJ Voter data bank."

Custodian of Record: Maria Efstratiades

Request Received by Custodian: June 13, 2013

Response Made by Custodian: June 21, 2013

GRC Complaint Received: September 20, 2013

¹ No legal representation listed on record.

² Represented by Howard Goldberg, Esq. (Camden, NJ).

Background³

Request and Response:

On June 13, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 21, 2013, the Custodian responded in writing as follows:

1. The responsive voter file is over 300,000 voters and cannot be e-mailed. If the Complainant is interested in receiving the file on compact disc (“CD”), he must confirm such and pay \$2.14 for a CD and postage.
2. This item failed to identify a specific record and is invalid. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).
3. No correspondence between the Superintendent of Elections and County Clerk exists.
4. This item failed to identify a specific record and is invalid. MAG, 375 N.J. Super. at 546.
5. This item failed to identify a specific record and is invalid. MAG, 375 N.J. Super. at 546.
6. This item failed to identify a specific record. Further, under OPRA, custodians do not verify signatures.
7. This item is not a request for records.
8. This item failed to identify a specific record and is invalid. MAG, 375 N.J. Super. at 546.

On June 22, 2013, the Complainant stated that the Custodian could break the voter file responsive to item No. 1 into several e-mails by category and transmit it electronically. Additionally, the Complainant amended his request as follows:

2. “[V]erify the letter sent to the printer and the same ballot format used.”
 - 2A. “This letter to the printer will verify the printer got the list from the County and that this list was provided for the [s]ample ballot names that are to be used to verify the legal voter in the county.”
 - 2B. “These names also can be verified by the printer to those printed according to the law.”
 - 2C. “[V]erify the signatures of all candidates for the primary election by screen shot as stated in the signed notarized documents . . .”
 - 2D. “Candidates listed on sample ballot, please provide a screen shot that each named are listed in the NJ register as signed and verify the signature to know that all would get a sample ballot too as well as being a legal voter who would meet the NJ [C]onstitution requirements to be a candidate.”
3. “A copy of the correspondence between the [Superintendent] of Election [and] the County Clerk that verifies what was sent to the printer.”
 - 3A. “[F]ederal and state (sic) guidelines requires some paper trail to exist, a letter to the printer giving him [an] outline and format setup of this sample ballot and who are (sic) on the ballot, where each sample ballot is to be address (sic) to by city to county . . . please get the communication and provide a screen shot for all candidates who were listed . . .”

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.

4/5A. “. . . [T]he printer has a complete list of names that each register (sic) voter name is listed to receive a sample ballot . . . I am asking to see if there is a name for each candidate as printer (sic) on the ballot for those candidates, if not please state the candidate is not listed as a register (sic) voter to receive a sample ballot in the [S]tate of NJ.”

4/5B. “. . . verify the name and signature of each candidate as listed on the sample ballot . . . provide a screen shot of the name as printed and signed signatures on the petition [(etc.)] . . . by looking up the profile voter list of names and voter signature card . . .”

The Complainant stated that the seven (7) business day time frame was set to expire in two (2) days. The Complainant further demanded that the Custodian contact the New Jersey Department of State (“DOS”) for the responsive records since she had done so in the past.⁴ Finally, the Complainant provided another request seeking “all written communications by inter office mail or e-mails dealing with this matter . . .”

On June 28, 2013, the Custodian responded advising that because the Complainant did not include a time frame, the Clerk’s Office assumed he was seeking records pertinent to the 2013 Primary Elections. The Custodian addressed the Complainant’s concerns and amended request items as follows:

1. The sample ballot file size is 75.1 MB and cannot be broken down as suggested by the Complainant. Further, the Custodian’s e-mail is only capable of sending 10 MB in a single e-mail. The records are being sent to the Complainant free of charge on two (2) CDs: a text file as sent to the printer and a Microsoft Excel® file converted by the Clerk’s Office. Further, the file was sent to an internet dropbox that the Complainant would be able to access with the attached instructions. It should be noted that the list is the same list given to the printer on June 4, 2013, and a new list could not be printed because it is updated regularly.
2. This item failed to identify a specific record and is invalid. MAG, 375 N.J. Super. at 546.
- 2A. This item failed to identify a specific record and is invalid. MAG, 375 N.J. Super. at 546; NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). Additionally, the Clerk’s Office notified the printer by telephone that the records were sent via File Transfer Protocol (“FTP”). This means the records were moved from the Clerk’s Office to the printer’s files via FTP.
- 2B. This item failed to identify a specific record and is invalid. MAG, 375 N.J. Super. at 546; NJ Builders, 390 N.J. Super. at 180.
- 2C. This item failed to identify a specific record and is invalid. Additionally, the Clerk’s Office does not create screen shots of voters and/or candidates sample ballots as articulated in MAG, and NJ Builders.
3. As previously stated on June 21, 2013, no record exists because there was no communication between the Superintendent’s and Clerk’s offices. The procedure is such that communications take place between the Clerk’s Office and printer staff.
- 3A. This item is overly broad and is invalid. MAG, 375 N.J. Super. at 546; NJ Builders, 390 N.J. Super. at 180.

⁴ There is no evidence in the record to indicate that the Custodian endeavored to obtain records from DOS to respond to a previous request.

4/5A. This item is overly broad and further does not identify specific government records. MAG, 375 N.J. Super. at 546; NJ Builders, 390 N.J. Super. at 180.

4/5B.“. . . verify the name and signature of each candidate as listed on the sample ballot . . . provide a screen shot of the name as printed and signed signatures on the petition [(etc.)] . . . by looking up the profile voter list of names and voter signature card . . .” Also note that signatures are not listed on sample ballots.

The Custodian further noted that the Complainant’s amended request, as a whole, is overly broad and unclear by failing to identify records sought as required under OPRA. N.J.S.A. 47:1A-5(f). Finally, the Custodian noted that she only provides records that the County of Camden (“County”) creates and/or maintains and has no obligation to retrieve records from DOS.

Denial of Access Complaint:

On September 20, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to reply to his request even after contacting her via telephone. The Complainant contended that the GRC should penalize the Custodian for failing to comply with his request. The Complainant noted that he included in this complaint a sample of a screenshot provided by Atlantic City and a State certification of nominees letter as examples of the records sought.

Statement of Information:

On October 30, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s initial request on June 13, 2013 and responded on June 21, 2013. The Custodian certified that she received the Complainant’s amended request on June 24, 2013 and responded on June 28, 2013.

The Custodian affirmed that the Complainant’s initial request was on the GRC’s model request form and sent to various divisions and agencies until it reached her on June 13, 2013. The Custodian certified that, notwithstanding the overly broad nature of the request, she forwarded same to the Clerk’s and Superintendent’s offices with instructions to decipher the request to the best of their ability and provide responsive records accordingly. The Custodian certified that the Clerk’s Office returned the sample ballot file.

The Custodian argued that the remainder of the Complainant’s requests are invalid because they failed to identify specific records. MAG, 375 N.J. Super. at 546; NJ Builders, 390 N.J. Super. at 180. Further, the Custodian contended that the request would have forced the Custodian to research and provide records not related to or maintained by the County and also to provide verification of those records. The Custodian asserted that the County’s response was proper.

Analysis

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 GRC notes that it will not address item No. 1 of the Complainant’s request because the Custodian provided the responsive sample ballot that was sent to the printer via both CD and dropbox free of charge.

Request Item No. 3

In Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant’s request for billing records existed and the complainant submitted no evidence to refute the custodian’s certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence is present in the record to refute the custodian’s certification, there was no unlawful denial of access to same.

Here, the Complainant sought correspondence between the Superintendent and Clerk’s Office about the information sent to the printer. Notwithstanding the fact that the Complainant’s request item failed to identify a time frame in conformity with a proper request for correspondence (*See Armenti v. Robbinsville Bd. Of Educ. (Mercer)*, GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011)), the Custodian initially responded stating that no records exist. Thereafter, the Custodian addressed the Complainant’s disagreement by advising that no communication between the Superintendent’s and Clerk’s offices existed as their procedure is such that communications take place between the Clerk’s Office and printer staff. The Custodian also certified to this fact in the SOI.

Therefore, the Custodian did not unlawfully deny access to request item No. 3 because the Custodian certified that no responsive records exist and there is no competent, credible evidence to refute the Custodian’s certification. *See Pusterhofer*, GRC 2005-49.

Validity of Request

The New Jersey 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.” MAG, 375 N.J. Super. at 546 (emphasis added). The Court reasoned that:

Most 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. at 549 (emphasis added).

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.” Id. (emphasis added). See also Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005),⁵ NJ Builders, 390 N.J. Super. at 180 and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Moreover, in Morgano v. NJ Civil Serv. Comm’n, GRC Complaint No. 2011-69 (April 2012), the complainant requested “. . . a certification clarifying . . .” facts about a certain issue. The custodian denied the complainant’s request as invalid and the Council agreed, reasoning that:

The Complainant’s request that the Custodian provide a certification . . . does not seek the Custodian’s disclosure of an existing identifiable government record but instead seeks that the Custodian perform the action of clarifying facts through the creation of a legal certification. The performance of such an action does not further the Legislative purpose of increasing public access to information contained in records. Moreover, the performance of such an action is not among the enumerated duties of a custodian set forth in OPRA. As such, the Complainant’s request is invalid . . .

Id. at 5.

Further, 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 Council 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] and [Bent] . . .” Id. at 6.

In the instant matter, the Complainant contended that the Custodian failed to provide information in response to his request. In the SOI, the Custodian argued that a majority of the

⁵ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Complainant's request and amended request was invalid because it sought information, failed to identify specific records and further sought verification of facts.

Notwithstanding item Nos. 1 and 3 of the Complainant's June 13, 2013 request, the remainder of the request clearly seeks information (names), verification of facts and non-specific records (documentation). The Complainant's June 22, 2013 amended request failed to cure these deficiencies; it was actually less clear than the initial request. Specifically, the amended request items were contained within a number of paragraphs that failed to exude the records sought with any reasonable clarity. Further, no time frames were present in any of the request items and the Complainant's request for "screen shots" is devoid of candidate names. The Custodian would have to ascertain every candidate in the County from ballots and then enter the names into the NJ Voters Data Bank, which is clearly research the Custodian was not required to conduct.

Therefore, because the Complainant's June 13, 2013 request item Nos. 2 and 4 through 8 and June 22, 2013 amended request sought non-specific records, information and verification of facts, the request is invalid under OPRA. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; LaMantia, GRC 2008-140; Morgano, GRC 2011-69. Thus, the Custodian has not unlawfully denied access to the Complainant's initial and amended requests.

In closing, the GRC notes that there is no evidence in the record to support that the Custodian previously contacted DOS to obtain records in response to a request submitted to the County. However, notwithstanding whether the Custodian previously took this action, she is under no obligation to attempt to obtain records from an agency entirely separate from the County.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to request item No. 3 because the Custodian certified that no responsive records exist and there is no competent, credible evidence to refute the Custodian's certification. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
2. Because the Complainant's June 13, 2013 request item Nos. 2 and 4 through 8 and June 22, 2013 amended request sought non-specific records, information and verification of facts, the request is invalid under OPRA. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Morgano v. NJ Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012). Thus, the Custodian has not unlawfully denied access to the Complainant's initial and amended requests.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

June 17, 2014