



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

October 29, 2013 Government Records Council Meeting

John Ciszewski
Complainant

Complaint No. 2013-79

v.

Sparta Police Department (Sussex)
Custodian of Record

At the October 29, 2013 public meeting, the Government Records Council (“Council”) considered the October 22, 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 because the Complainant’s OPRA request fails to seek specific, identifiable records, the request is therefore overly broad and invalid under OPRA pursuant to MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), and the Council’s decisions in Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007), Elcavage v West Milford Twp., GRC Complaint No. 2009-07 (April 2010), and Armenti v. Robbinsville Bd. of Educ., GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011). Additionally, the Custodian denied access to the records based upon the fact that no responsive records exist. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Accordingly, the Custodian has not unlawfully denied the Complainant access to said records. N.J.S.A. 47:1A-6.

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 29th Day of October, 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: November 1, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 29, 2013 Council Meeting**

**John Ciszewski¹
Complainant**

GRC Complaint No. 2013-79

v.

**Sparta Police Department (Sussex)²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. All records of my correspondence to the Sparta, NJ Police by email, fax, Postal, etc. beginning in January 2010 and all records generated in response to this correspondence.
2. All records, logs, etc. of fax, phone, email, postal mail, etc. of the transmission of this correspondence I sent to Sparta, NJ Police and all records generated in response to them, being sent to the USPS OIG, the USPS, and any and all other entities. Please provide all records, email logs, fax logs, etc. of this correspondence being transmitted to the USPS OIG, the USPS, the Postal Inspection Service and all other entities.
3. All records of correspondence (email, fax, telephone, USPS) between the Sparta, NJ Police and the OIG USPS, the USPS and all other entities concerning my correspondence to the Sparta, NJ Police PD and all records generated in response to this correspondence.

Custodian of Record: Mary J. Coe

Request Received by Custodian: February 27, 2013

Response Made by Custodian: February 28, 2013

GRC Complaint Received: March 8, 2013

Background³

Request and Response:

On February 27, 2013 the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, Lt. Joseph Schetting of the Sparta Police Department (“SPD”) requested, in writing, that the Complainant contact him to clarify the request. The Complainant responded only by providing

¹ No legal representation listed on record.

² Represented by Richard Stein, Esq., of Ladday, Clark & Ryan (Sparta, NJ).

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.

Lt. Schetting a copy of a previous OPRA request sent on February 25, 2010. On February 28, 2013, one (1) business day later, the Custodian responded, in writing, that a records search was conducted and that the SPD had no records pertaining to the Complainant's request.

On March 7, 2013, the Complaint replied via email to Lt. Schetting questioning: "[C]ould you provide some explanation how you and [the Custodian] could find no records responsive to my OPRA request when an attached USPS return receipt shows that "O'Connor" signed a certified letter from me to the [SPD] on February 18, 2010?"⁴

Denial of Access Complaint:

On March 8, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that the SPD should have a responsive record on the basis that Complainant sent a certified letter to the SPD which was signed for on February 18, 2010. In support of his claim, the Complainant submits a photocopy of two alleged certified return receipts purporting to have been delivered to the SPD and Newton Police Department on February 18, 2010. Both return receipts appear to bear the signature of an "O'Conner."

Statement of Information:

On April 2, 2013, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that she received the Complainant's original OPRA request via email on February 26, 2013, and his revised request on February 27, 2013. Since the Complainant was requesting records regarding the SPD, the Custodian certifies that she forwarded the request via email to Lt. Schetting.

The Custodian further certifies that on February 28, 2013, she received a letter from Lt. Schetting informing her that the SPD conducted a computer search and found no records involving the Complainant and the SPD. In addition, the Custodian certifies that both she and Lt. Schetting informed the Complainant on February 28, 2013, in writing (via email) that there were no records responsive to his OPRA request.

The Custodian also certifies that Complainant responded to her email on March 7, 2013, requesting an affidavit certifying that there were no responsive records to Complainant's OPRA request. The Custodian responded that OPRA does not contain a provision requiring a sworn statement in response, thus she did not reply to the Complainant.

⁴ The Complainant further requested that the Custodian provide an affidavit "made under penalty of perjury by a person with actual knowledge."

Analysis⁵

Unlawful Denial of Access

No Records Responsive

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.

In Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the Complainant sought telephone records showing a call made to him from the New Jersey Department of Education. The Custodian certified that no records responsive to the Complainant’s request existed. The GRC determined that, because the Custodian certified that no records responsive to the request existed, there was no unlawful denial of access to the requested records.

Here, the Custodian certified that Lt. Schetting of the SPD conducted two searches for the requested records. Both the Custodian and Lt. Schetting contacted the Complainant via email informing him that there were no records responsive to his request. The Complainant challenged the Custodian’s denial of access by providing a photocopy of two alleged return mail receipts; one sent to the Newton Police Department and the other sent to the SPD. Both return receipts bear the date of February 18, 2010, and purport to have been signed for by the same individual: “O’Conner.”

The Custodian denied access to the records based upon the fact that no responsive records existed. *See Pusterhofer*, GRC No. 2005-49. Although the Complainant provides documentation that, if accurate, shows that the SPD received a letter from the Complainant in 2010, that is insufficient evidence to prove that the SPD has retained said document as a government record. Furthermore, the Complainant’s request is invalid as overly broad and vague under OPRA.

Overly Broad and Vague Requests

The New Jersey Appellate Division has held that:

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.”* N.J.S.A. 47:1A-1.

MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).

The MAG 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. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁶ N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

A specifically identifiable government record is disclosable barring any exemptions. MAG, 375 N.J. Super. at 544 (*citing*, N.J.S.A. 47:1A-1). In Sandoval v. N.J. State Parole Bd., the Council established a criterion which, if satisfied, sufficiently identifies an email for disclosure. GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007). In Sandoval, the complainant requested “e-mail ... between [two individuals] from April 1, 2005 through June 23, 2006 [using seventeen (17) different keywords].” The Custodian denied the request, claiming that it was overly broad. The Council held that “[t]he Complainant in the complaint now before the GRC requested specific e-mails *by recipient, by date range and by content*. Based on that information, the Custodian has identified [numerous] e-mails which fit the specific recipient and date range criteria Complainant requested.” Id. at 16 (emphasis added). The Council in Sandoval found that the request was not overly broad.

In Elcavage v West Milford Twp., the Council examined what constitutes a valid request for e-mails under OPRA. The Council determined that:

In accord with MAG, supra, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof.

⁶ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

GRC Complaint No. 2009-07 (April 2010), (emphasis in original).The Council has applied the three part test set forth in Elcavage to other forms of correspondence, such as letters. *See Armenti v. Robbinsville Bd. of Educ.*, GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011).

Here, the Complainant's OPRA request failed to satisfy all three requirements to be sufficiently specific when requesting records of correspondence, as enumerated in Elcavage and Armenti. In requested Item No. 1, the Complainant provides a sender, recipient, and date range, but does not specify the subject matter or content sought. For requested Item Nos. 2 and 3, the Complainant provides the subject matter and sender, but does not provide any date ranges. Accordingly, the Complainant's OPRA request fails to seek specific identifiable records and are therefore overly broad and invalid. MAG, 375 N.J. Super. at 549, Sandoval, GRC 2006-167, Elcavage, GRC 2009-07, and Armenti, GRC 2009-154. As such, the Custodian did not unlawfully deny the Complainant access to said records.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's OPRA request fails to seek specific, identifiable records, the request is therefore overly broad and invalid under OPRA pursuant to MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), and the Council's decisions in Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007), Elcavage v West Milford Twp., GRC Complaint No. 2009-07 (April 2010), and Armenti v. Robbinsville Bd. of Educ., GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011). Additionally, the Custodian denied access to the records based upon the fact that no responsive records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Accordingly, the Custodian has not unlawfully denied the Complainant access to said records. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

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

October 22, 2013