



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

October 29, 2013 Government Records Council Meeting

Ryan Curioni
Complainant

Complaint No. 2013-81

v.

Borough of Lodi (Bergen)
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 is for information and not a specific identifiable record, and because a custodian is not required to conduct research in response to an OPRA request, the Complainant’s OPRA request is invalid pursuant to MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007), and O’Shea v. West Milford Twp. GRC Complaint No. 2008-224 (November 18, 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 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**

**Ryan Curioni¹
Complainant**

GRC Complaint No. 2013-81

v.

**Borough of Lodi (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Any evidence that would allow the public to see whom George Reggo, Lodi Tax Assessor, lowered property assessments “in house” without filing a tax appeal at the county or state level. This evidence can include copies of:

1. Property cards of those properties that had an assessment lowered “in house;”
2. A log of those Mr. Reggo met with to have an assessment lowered “in house;” and
3. A receipt of any action taken during a meeting when an assessment was lowered “in house.”

Custodian of Record: Debra A. Ciliento
Request Received by Custodian: February 28, 2013
Response Made by Custodian: March 11, 2013
GRC Complaint Received: March 12, 2013

Background³

Request and Response:

On February 28, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 11, 2013, seven (7) business days later, the Custodian responded in writing denying the Complainant’s request on the basis that the request would require the Custodian to analyze, collate and compile data and perform research to identify and siphon information, and is therefore invalid under OPRA.

¹ No legal representation listed on record.

² Represented by Alan P. Spiniello, Esq. (Hackensack, 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.

Denial of Access Complaint:

On March 12, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). Complainant asserts that members and friends of the Lodi Borough manager as well as other Lodi elected officials have had their property tax assessments lowered “in house” without the need to file an appeal at the county or state level. Complainant requested any evidence, including records, logs, or receipts, documenting this occurrence and disputes Custodian’s denial on the basis that his request requires creation of documents.

Statement of Information:

On April 2, 2013, Alan P. Spiniello, Esq., Counsel for the Custodian (“Custodian’s Counsel”), filed a Statement of Information (“SOI”). The Custodian’s Counsel certifies that on March 11, 2013, the Custodian provided a written response to Complainant’s request that she “[c]annot respond to increases and/or decreases and cannot be accumulated by rational [sic]. If you have specific request of a particular property I will address that.”

According to the Custodian and the Borough of Lodi’s (“Lodi”) tax assessor, George Reggo (“Tax Assessor”), there are over 5,000 property record cards for properties within Lodi. The Custodian certifies that there is no separate list of reductions to property tax assessments or a list of “in house” reductions. The Custodian’s Counsel certifies that the Complainant could request the current and prior property cards for specific properties for his review, or for a copy of each and every current and prior property card in Lodi. The Custodian’s Counsel certifies that instead of making that request, the Complainant is asking the Custodian to conduct research to identify and siphon information, which is not required under OPRA. Custodian’s Counsel cites to MAG Entm’t, LCC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005) (“OPRA does not require record custodians to conduct research among its records for a requestor and correlate data from various government records in the custodian’s possession” (*citations omitted*)), and Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), (OPRA is not intended to be used as a research tool for requestors, requiring custodians to identify and siphon information, nor are general requests for information to be analyzed, collated and compiled by the custodian valid requests under OPRA).

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 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, 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. at 549 (emphasis added). See Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁴ 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).

In Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007), the Council held that pursuant to MAG, a custodian is obligated to search his or her files to find identifiable government records listed in a requestor’s OPRA request. The Complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The Custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

“[p]ursuant to MAG, the Custodian is obligated to *search* her files to *find* the identifiable government records listed in the Complainant’s OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word *search* is

⁴ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

defined as ‘to go or look through carefully in order to find something missing or lost.’ The word *research*, on the other hand, means ‘a close and careful study to find new facts or information.’” (emphasis added, citations omitted).

In O’Shea v. West Milford Twp., GRC Complaint No. 2008-224 (November 18, 2009), the Complainant requested among other items, any proposals between a party and the township which listed the party’s regular hourly fee versus a discounted rate. The Council held that the Complainant’s request was invalid pursuant to MAG and Donato, as the Custodian would have to read through each proposal or contract on file with the township and determine if said document matches the request.

Similarly, in the instant case the Complainant’s request requires the Custodian to search all property cards under Lodi’s jurisdiction for evidence of any property’s tax assessment lowered “in house” without the need for the property owner to file an appeal. The Tax Assessor, through the Custodian’s Counsel, states that no records exist to detail this evidence. The Complainant’s request for this evidence is not for a specific, identifiable record, but rather information requiring the Custodian to analyze, compile, and collate the tax assessments on all current and prior property cards on file with Lodi to provide the evidence the Complainant is seeking; in other words, to conduct research on Complainant’s behalf.

Therefore, because the Complainant’s OPRA request is for information and not a specific identifiable record, and because a custodian is not required to conduct research in response to an OPRA request, the Complainant’s OPRA request is invalid pursuant to MAG, 375 N.J. Super. 534, Donato, GRC 2005-182, and O’Shea, GRC 2008-224.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant’s OPRA request is for information and not a specific identifiable record, and because a custodian is not required to conduct research in response to an OPRA request, the Complainant’s OPRA request is invalid pursuant to MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007), and O’Shea v. West Milford Twp. GRC Complaint No. 2008-224 (November 18, 2009).

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

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

October 22, 2013