



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

November 19, 2013 Government Records Council Meeting

Gloria Siciliano
Complainant

Complaint Nos. 2013-98 and 2013-99

v.

NJ Motor Vehicle Commission
Custodian of Record

At the November 19, 2013 public meeting, the Government Records Council (“Council”) considered the November 12, 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 requests are invalid under OPRA because the requests are overly broad, fail to identify specific government records and would require the Custodian to conduct research in order to determine which records may be responsive to the requests. *See* MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005), and NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

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 19th Day of November, 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 21, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 19, 2013 Council Meeting**

**Gloria Siciliano¹
Complainant**

**GRC Complaint No. 2013-98
GRC Complaint No. 2013-99
Consolidated²**

v.

**New Jersey Motor Vehicle Commission³
Custodial Agency**

Request dated March 24, 2013: Copies via e-mail of all license restoration letters sent from March 11, 2013 to March 15, 2013, by the New Jersey Motor Vehicle Commission (“MVC”) to New Jersey drivers who are suspended for reasons as determined by the courts, the MVC, or any other agency. Personal information may be redacted but the name and address is not subject to redaction.

Request dated March 27, 2013: Unredacted copies of all municipal court orders in which there was a driver license suspension, which were received by the MVC from March 11, 2013 to March 15, 2013, inclusive.

Custodian of Records: Joseph Bruno

Requests Received by Custodian:

The March 24, 2013 request was received on March 24, 2013.

The March 27, 2013 request was received on March 27, 2013.

Responses Made by Custodian:

A March 25, 2013 response was made to the March 24, 2013 request.

A March 27, 2013 response was made to the March 27, 2012 request.

GRC Complaints Received: April 2, 2013

Background⁴

Requests and Responses:

On March 24, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On March 25, 2013, the first (1st) business day following receipt of said request, the Custodian responded in writing denying the request because

¹ No legal representation listed on record.

² The GRC has consolidated these complaints for adjudication because of the commonality of the parties and issues.

³ Represented by Deputy Attorney General Valentina M. DiPippo.

⁴ 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.

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the requested records contain personal information and are exempt from disclosure under OPRA pursuant to the New Jersey Driver's Privacy Protection Act ("DPPA"), N.J.S.A. 39:2-3.3 et seq. The Custodian also informs the Complainant that the DPPA expressly prohibits the MVC from "knowingly disclosing or otherwise making available to any person, personal information about any individual obtained by the MVC in connection with a motor vehicle record." N.J.S.A. 39:2-3.4. Furthermore, the Custodian states that the procedure for obtaining MVC records that contain personal information is set forth at N.J.S.A. 39:2-3.4(b).

On March 27, 2013, the Complainant submitted an OPRA request seeking the above-listed records. On March 27, 2013, the same day on which the request was received, the Custodian responded in writing denying the request for the same reason he asserted in his March 25, 2013 response.

Denial of Access Complaints:

On April 2, 2013, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council ("GRC"). The complaints were subsequently numbered 2013-98 and 2013-99. The request which formed the basis of GRC Complaint No. 2013-98 is dated March 27, 2012, and the Complainant states that the Custodian denied the request on March 27, 2013. The request which formed the basis of GRC Complaint No. 2013-99 is dated March 24, 2013, and the Complainant states that the Custodian denied the request on March 25, 2013.

Statements of Information:⁵

On May 23, 2013, the Custodian filed two (2) Statements of Information ("SOIs") addressing GRC Complaint No. 2013-98 and GRC Complaint No. 2013-99. With respect to GRC Complaint No. 2013-98, the Custodian certified that he received the request on March 27, 2013, and responded in writing to it on the same date. With respect to GRC Complaint No. 2013-99, the Custodian certified that he received the request on March 24, 2013, and responded in writing to it on March 25, 2013. The Custodian set forth the same reason for denying access to the records in each of the SOIs.

The Custodian certifies that he properly denied the Complainant's requests on two grounds: (1) that the Complainant failed to specifically identify the records sought; and (2) that she failed to comply with the DPPA, which sets forth procedures for obtaining certain records from the MVC.

As a threshold issue, the Custodian contends that the Complainant failed to specifically identify the requested records. The Custodian certifies that MVC records, including restoration notices and municipal court suspension records, are contained within its database, which is indexed by driver license number and contains millions of motor vehicle records. As such, the Custodian certifies that the MVC needs the driver license numbers pertaining to the specific records sought in order to retrieve the records. The Custodian further certifies that obtaining

⁵ It should be noted that some of the information contained in the Statement of Information for Complaint No. 2013-98 pertained to Complaint No. 2013-99 and vice versa; however, the GRC was able to match the Custodian's responses to the correct complaint case numbers.

records directly from the MVC database would entail manually reviewing millions of records to find responsive documents. The Custodian further certifies that the MVC mails out thousands of notices each day which are stored on microfilm. The Custodian certifies that to retrieve municipal court orders of suspension the MVC would have to review the thousands of mail certifications stored on microfilm to find references to municipal court orders, and then cross-reference that information with its database. The Custodian further certifies that, thereafter, specific driver histories would have to be reviewed to find the appropriate municipal court order which would have to be separately retrieved. The Custodian states that OPRA requires a requestor to specifically describe the records being sought. The Custodian cites MAG Entm't, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) as holding that agencies are required to disclose only identifiable government records. The Custodian also states that in Lambo v. NJ Dep't of Transportation, Motor Vehicle Commission, GRC Complaint No. 2007-67 (October 2007), the Council found that an OPRA request was properly denied by the MVC because the complainant did not request an identifiable government record.

Secondly, the Custodian certifies that a state statute applicable to OPRA through N.J.S.A. 47:1A-9(a) exempts the requested records from disclosure. The Custodian certifies that the records the Complainant requested from the MVC contain personal information. As such, the Custodian certifies that disclosure of the requested records is proscribed by N.J.S.A. 39:2-3.3 et seq. The Custodian certifies that he informed the Complainant that N.J.S.A. 39:2-3.4(b) provides guidance in the proper procedure for requesting MVC records.

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.

There is no dispute between the parties that the Custodian responded in writing to the March 24, 2013 request on March 25, 2013 and that the Custodian responded in writing to the March 27, 2013 request on March 27, 2013. The Custodian therefore responded to the Complainant's requests in a timely manner.

The Custodian certified that he denied the request on two separate grounds: (1) that the Complainant failed to specifically identify the records sought; and (2) that the Complainant failed to comply with the DPPA, which sets forth procedures for obtaining certain records from the MVC.

With respect to the first reason for the denial of access, 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 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 NJ Builders Assoc. v. NJ 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).

This matter is substantially different from the facts presented in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. (emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. Id. at 515-16.

Here, the Complainant in her March 24, 2013 request sought all license restoration letters sent by the MVC during the period of March 11, 2013 to March 15, 2013. In her March 27, 2013 request, the Complainant requested all municipal court orders of suspension received by the MVC during the same period of time. The Custodian certified that thousands of records

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

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potentially responsive to the Complainant's requests are generated by the MVC on a daily basis. Therefore, because the Complainant's requests failed to identify specific government records, the Custodian would be required to conduct research to locate and identify records responsive to the requests.

Accordingly, the Complainant's requests are invalid under OPRA because the requests are overly broad, fail to identify specific government records and would require the Custodian to conduct research in order to determine which records may be responsive to the requests. MAG, supra, Bent, supra, and New Jersey Builders, supra.

Because the GRC has determined that the Complainant's request is invalid under OPRA, it is unnecessary for the Council to address the applicability of the DPPA as a reason for denial of access to the requested records.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's requests are invalid under OPRA because the requests are overly broad, fail to identify specific government records and would require the Custodian to conduct research in order to determine which records may be responsive to the requests. *See* MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005), and NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

Prepared By: John E. Stewart, Esq.

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

November 12, 2013