



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

January 30, 2015 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2014-166

v.

NJ Office of the Governor
Custodian of Record

At the January 30, 2015 public meeting, the Government Records Council (“Council”) considered the November 10, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that although the Complainant’s e-mail request invoked OPRA, it was nonetheless invalid because same was sent to thirty-three (33) different e-mail addresses with no reasonable indication that same was being submitted to the Office. Further, because the request did not reasonably resemble the non-form request envisioned in Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009), the Custodian did not unlawfully deny access to said request. N.J.S.A. 47:1A-6. Finally, because the Complainant’s e-mail request was invalid, the GRC declines to address the remainder of the parties’ arguments.

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 30th Day of January, 2015

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: February 4, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 30, 2015 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2014-166

v.

**State of New Jersey Office of the Governor²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. Balancing test required by “State of NJ court decisions that denied access via [the Complainant’s] common law right of (sic) access request on each of” three (3) requests the Complainant recently submitted.
2. Job description of the attorney that reviewed the Custodian’s response and name of the “OPRA custodian and attorney” that may have assisted the Custodian.
3. E-mail addresses and telephone numbers for the individuals above, as well as a roster of Office of the Governor (“Office”) employees having “jurisdiction over OORA (sic) requests and (sic) responses ana (sic) also common law right of access requests, preparing the three prong analysis required to deny such access.”

Custodian of Record: Andrew J. McNally
Request Received by Custodian: February 18, 2014
Response Made by Custodian: None
GRC Complaint Received: April 10, 2014

Background³

Request and Response:

On February 18, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On April 10, 2014, the Complainant filed a Denial of Access Complaint with the

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Valentina DiPippo.

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.

Government Records Council (“GRC”). The Complainant argued that he never received a response to his OPRA request. The Complainant contended that the Office unlawfully denied access to information regarding the identities of those persons receiving and responding to OPRA and common law requests.

Statement of Information:

On June 3, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian affirmed that in 2014, the Complainant has submitted over 130 e-mails to the Office. Further, the Custodian stated that while all of these e-mails contain lengthy diatribes of generalized and baseless allegations of corruption with frequent errors, some utilize the Office’s OPRA request form.

The Custodian certified that he did not receive a valid OPRA request from the Complainant on February 18, 2014 and thus did not respond to same, which contained thirty-three (33) e-mail addresses and no salutation indicating that the request was directed to the Office. The Custodian noted that the Complainant did not use the Office’s official form, but instead mirrored his e-mail request after the litany of e-mails he sends to multiple government and news agencies regularly. The Custodian certified that the Complainant spoke of three (3) OPRA and common law requests, but provided no date or reference number for them.

The Custodian argued that, if even considered a request, same sought information regarding the individuals that reviewed and responded to the three (3) prior unidentified requests. The Custodian asserted that requests for information are not valid OPRA requests. Gannett N.J. Partners, L.P. v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005); MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep’t, 387 N.J. Super. 30, 37 (App. Div. 2005).

Further, the Custodian contended that the Complainant’s continued inundation of correspondence indicates his intentions to harass the Office. *See Caggiano v. Borough of Stanhope (Sussex)*, GRC Complaint No. 2007-20 *et seq.* (September 2007)(holding that the complainant’s repetitive requests in a short time were made solely to harass the custodian). To this end, the Custodian asserted that this complaint should be dismissed as frivolous. N.J.S.A. 47:1A-7(e).

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.

Here, the Custodian certified in the SOI that the Complainant had sent the Office over 130 lengthy e-mails in 2014. Further, the Custodian certified that, at times, the Complainant would utilize an OPRA request form to seek records. The Custodian affirmed that, in this instance, he did not respond to the e-mail request because it was invalid and unclear that same was being submitted to the Office. The Custodian averred that he was one (1) of thirty-three (33) recipients of the e-mail request in question. The Custodian certified that the e-mail request did not contain any type of salutation or indication for which he could have identified the e-mail as addressed to the Office. Also, the Custodian certified that although the Complainant spoke of three (3) OPRA/common law requests recently submitted, he did not identify the requests by status numbers, dates, *etc.*

Thus, the threshold issue in this complaint is whether it is reasonable for the Custodian to not respond to the Complainant's e-mail request. OPRA provides that:

The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following:

- 1) specific directions and procedures for requesting a record;
- 2) a statement as to whether prepayment of fees or a deposit is required;
- 3) the time period within which the public agency is required by [OPRA], to make the record available;
- 4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
- 5) space for the custodian to list reasons if a request is denied in whole or in part;
- 6) space for the requestor to sign and date the form;
- 7) space for the custodian to sign and date the form if the request is fulfilled or denied.

N.J.S.A. 47:1A-5(f).

Furthermore, OPRA states that “a request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian.” N.J.S.A. 47:1A-5(g).

In Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009), the Appellate Division held that although requestors shall continue to use public agencies' OPRA request forms when making requests, no custodian shall withhold such records if the written request for such records, not presented on the official form, contains the requisite information prescribed in the section of OPRA requiring custodians to adopt a form. Id. Specifically, the Court reasoned that:

The custodian must have before it sufficient information to make the threshold determination as to the nature of the request and whether it falls within the scope of OPRA. Accordingly, we conclude that the form should be used, but no request for information should be rejected if such form is not used.

Id. at 246.

In effect, this permits requestors to write their own correspondence seeking records from a custodian, as long as the request properly invokes OPRA. *See* Wolosky v. Twp. of East Hanover (Morris), GRC Complaint No. 2010-205 (Interim Order dated January 31, 2012).

Here, the Complainant's request did cite directly to OPRA in the subject line by stating that "[t]his is an OPRA request and Press Enterprise II request for information." Thus, it is clear that the Complainant's e-mail was intended to be an OPRA request.

However, the Complainant's request departs from Renna, and Wolosky, thereafter. Specifically, the e-mail included thirty-three (33) recipients, ranging from legislators and media groups to State agencies, employees and private citizens. It should be noted that the Custodian's e-mail address was first among those e-mail addresses. However, this is no real indication that the ensuing e-mail would pertain directly to the Office only, especially given that other State agencies responsible for responding to OPRA requests were copied on the e-mail.

Further, without any salutations, the Complainant advised that he recently filed OPRA/common law requests and wanted generic personnel records of unnamed individuals who handled same. It is not until halfway through the e-mail, in the third (3rd) enumerated request item seeking a "roster of people in the [Office] that have jurisdiction over" OPRA requests, that the Complainant hints that the request is for the Office. The Complainant's request thereafter contains two (2) lengthy paragraphs alleging a multitude of different conspiracies and crimes.

The GRC not satisfied that the request falls within the type of non-formal request envisioned in Renna. In fact, a review of same indicates that the request goes beyond the bounds of reasonableness. Specifically, although the Complainant advised that the e-mail was an OPRA request, the Complainant failed to indicate to whom the request was submitted. Save the veiled referral to the Office in request item No. 3, there is no reasonable indication present in the e-mail to alert the Custodian that the request was addressed to him. Allowing such a request to be valid would cause custodians the undue burden of deciphering the request and determining whether it was meant for them.

Accordingly, although the Complainant's e-mail request invoked OPRA, it is was nonetheless invalid because same was sent to thirty-three (33) different e-mail addresses with no reasonable indication that same was being submitted to the Office. Further, because the request did not reasonably resemble the non-form request envisioned in Renna, the Custodian did not unlawfully deny access to said request. N.J.S.A. 47:1A-6. Finally, because the Complainant's e-mail request was invalid, the GRC declines to address the remainder of the parties' arguments.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that although the Complainant's e-mail request invoked OPRA, it is was nonetheless invalid because same was sent to thirty-three (33) different e-mail addresses with no reasonable indication that same was being submitted to the Office. Further, because the request did not reasonably resemble the non-form request envisioned in Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009), the Custodian did not unlawfully deny access to said request. N.J.S.A. 47:1A-6. Finally, because the Complainant's e-mail request was invalid, the GRC declines to address the remainder of the parties' arguments.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

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

November 10, 2014⁴

⁴ This complaint was prepared for adjudication at the Council's November 18, and December 16, 2014 meetings, but could not be adjudicated due to lack of quorum.