



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

April 28, 2015 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2014-263

v.

NJ Office of the Governor
Custodian of Record

At the April 28, 2015 public meeting, the Government Records Council (“Council”) considered the March 24, 2015 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 the Complainant’s request is invalid because it failed to include the subject or content of the e-mails and letters sought. 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); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010). The Custodian has thus lawfully denied access to the Complainant’s request. 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 28th Day of April, 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: April 30, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2015 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2014-263

v.

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

Records Relevant to Complaint: Electronic copies on a compact disc of all e-mails sent from thomascaggiano@gmail.com to the Custodian and letters sent to the New Jersey Office of the Governor (“Office”), Chief of Staff Kevin O’Dowd and his press secretary from January 2, 2014 to June 29, 2014.

Custodian of Record: Andrew J. McNally
Request Received by Custodian: June 30, 2014
Response Made by Custodian: July 10, 2014
GRC Complaint Received: July 17, 2014

Background³

Request and Response:

On June 29, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 10, 2014, the Custodian responded in writing denying the Complainant’s OPRA request as invalid because it countenanced an open-ended search of the Office’s files. 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). *See also Spectraserve, Inc. v. Middlesex Cnty. Util. Auth.*, 416 N.J. Super. 565, 576 (App Div. 2010).

Denial of Access Complaint:

On July 17, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s denial of access, but provided no additional relevant arguments.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Valentina M. 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.

Statement of Information:

On August 7, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 30, 2014.⁴ The Custodian certified that he responded in writing on July 10, 2014, denying the Complainant’s request as overly broad and invalid.

The Custodian stated that the GRC has previously set forth the following criteria necessary for an appropriate OPRA request seeking e-mails: (1) content or subject; (2) specific date or range of dates; and (3) sender and/or recipient. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Custodian noted that the GRC later applied these criteria to requests for correspondence. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). Further, the Custodian noted that the Council has previously determined that a request failing to contain the subject or content of the correspondence sought was invalid. See Ciszewski v. Sparta Police Dep’t (Sussex), GRC Complaint No. 2013-79 (October 2013).

The Custodian argued that the Complainant’s request was invalid because it failed to identify a subject matter or content. Also, the Custodian asserted the request was mostly indiscernible diatribe loosely referring to a six (6) month time period. However, the Custodian argued that, should the GRC determine that the request was valid, there was no unlawful denial of access because the Complainant sought records he sent to the Office. To this end, the Custodian asserted that in Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008), the Appellate Division previously determined that a requestor could not be unlawfully denied access to records already in their possession. See also Blay v. Ocean Cnty. Health Dep’t, GRC Complaint No. 2012-223 (June 2013). The Custodian argued that a holding in the Complainant’s favor would only enable his campaign of submitting a large volume of correspondence to the Office and subsequently request same for the sole purpose of harassment.

Analysis

Validity of Request

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*

⁴ The GRC notes that the Complainant submitted his OPRA request on a Sunday.

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). Bent, 381 N.J. Super. at 37;⁵ 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).

The GRC established criteria deemed necessary under OPRA to specifically request an email communication in Elcavage, GRC 2009-07. The Council determined that to be valid, such requests must contain (1) the content and/or subject of the email, (2) the specific date or range of dates during which the email(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. *See Elcavage*, GRC 2009-07; Sandoval v. NJ State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage, to other forms of correspondence, such as letters. *See Armenti*, GRC 2009-154.

In Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010), the complainant's OPRA request sought all e-mails to or from a particular e-mail account for a specific time period. The custodian's counsel responded advising the complainant that his OPRA request was invalid because it represented an open-ended search of the Borough's files. The Council held that the complainant's request was invalid under Elcavage, GRC 2009-07 because it did not include a subject or content. Id. at 7.

Here, the Complainant's request sought e-mails he sent (based on the e-mail address provided) from thomascaggiano@gmail.com to the Custodian. Additionally, the Complainant sought letters he sent to the Office, Chief of Staff and his press secretary. These requests were

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

loosely framed by a time period of January 1, 2014 to June 29, 2014, which is mentioned at the beginning of the request prior to a lengthy paragraph a multitude of different allegations, conspiracies and crimes. Even if the time frame were applied to the request portion of the paragraph, this request still lacks a definable subject or content. Similar to the request at issue in Verry, the request here is invalid because it did not identify a subject or the content of the e-mails sought.

Therefore, the Complainant's request is invalid because it failed to include the subject or content of the e-mails and letters sought. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Elcavage, GRC 2009-07; Armenti, GRC 2009-154; Verry, GRC 2009-124. The Custodian has thus lawfully denied access to Complainant's request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request is invalid because it failed to include the subject or content of the e-mails and letters sought. 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); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010). The Custodian has thus lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6.

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

Approved By: Dawn R. SanFilippo
Deputy Executive Director

March 24, 2015⁶

⁶ This complaint was prepared for adjudication at the Council's March 31, 2015 meeting, but could not be adjudicated due to lack of quorum.