



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

June 30, 2015 Government Records Council Meeting

Michael Palkowitz
Complainant

Complaint No. 2014-346

v.

Borough of Hasbrouck Heights (Bergen)
Custodian of Record

At the June 30, 2015 public meeting, the Government Records Council (“Council”) considered the June 23, 2015 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 OPRA request seeking “every minute of police footage” from various general and unidentified locations during a ten (10) month period fails to identify specific records and is therefore invalid. 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); Rivera v. Wall Police Dep’t (Monmouth), GRC Complaint No. 2008-280 *et seq.* (Interim Order dated April 8, 2010). For this reason, the Custodian lawfully denied access to the Complainant’s OPRA 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 30th Day of June, 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: July 2, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Michael Palkowitz¹
Complainant**

GRC Complaint No. 2014-346

v.

**Borough of Hasbrouck Heights (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Copies of “every minute of police footage from every police vehicle as well as at the headquarters, interviews, interrogations, front desk and anything else allowed under the [O]pen [P]ublic [R]ecords [A]ct” between January 1, 2014, and October 12, 2014.

Custodian of Record: Rose Marie Sees
Request Received by Custodian: October 12, 2014
Response Made by Custodian: October 14, 2014
GRC Complaint Received: October 16, 2014

Background³

Request and Response:

On October 12, 2014,⁴ the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 14, 2014, the Custodian’s Counsel responded in writing on behalf of the Custodian, stating that the Complainant’s wholesale request was invalid. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).

Denial of Access Complaint:

On October 16, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Borough of Hasbrouck Heights (“Borough”) unlawfully denied him access to the requested records. The Complainant argued that the Bergen Record published an article on October 10, 2014, reporting

¹ No legal representation listed on record.

² Represented by Ralph W. Chandless, Jr., Esq., of Chandless, Weller & Kramer (Hasbrouck Heights, 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.

⁴ October 12, 2014, was a Sunday.

on recent Superior Court decisions that found that video recorded by police cameras is subject to disclosure.⁵

Statement of Information:

On October 28, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 12, 2014. The Custodian certified that the Custodian’s Counsel responded in writing on her behalf on October 14, 2014, stating that the request was invalid. The Custodian argued that OPRA does not countenance wholesale requests for general information; rather, a requestor must identify with reasonable clarity those records sought. MAG, 375 N.J. Super. at 546-549.

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 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

⁵ <http://www.northjersey.com/news/public-wins-access-to-police-videos-after-nj-judge-says-they-re-open-records-1.1107230> (Accessed on May 27, 2015).

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).

The Council has previously set forth criteria for a valid OPRA request that seeks access to police recordings. Specifically, in Rivera v. Wall Police Dep’t (Monmouth), GRC Complaint No. 2008-280 *et seq.* (Interim Order dated April 8, 2010), the Council determined that the complainant’s OPRA request for mobile video recordings (“MVR”)(the typical name for recordings made by dash cameras in police vehicles) made by a certain police officer included a specific time and date was thus a valid OPRA request. The Council reasoned that the complainant identified “the records sought by media, date, time and officer who created such records.” Id. at 10. However, the Council then turned to a number of other items that sought various transmissions, audio recordings and telephone calls. The Council determined that same were overly broad because the complainant “failed to identify the records he sought or even to make an attempt to identify the records by incident number, name of the person or persons involved, location of incident or even the type of incident in generic terms.” Id. at 13.

Here, the Complainant’s request sought “every minute of police footage” from every police car and different locations, presumably during interviews and interrogations, and “anything else allowed under OPRA” over ten (10) month, ten (10) day period. This request is similar to those items that the Council determined to be invalid in Rivera, GRC 2008-280. That is, notwithstanding the inclusion of a time frame, the Complainant here sought video for every minute of every day over ten (10) months without the inclusion of any limiting criteria. By its very nature, the request requires an open-ended search that the MAG Court held is not countenanced under OPRA. The GRC notes that the Complainant identified a news article referring to unpublished cases that stand for the proposition that the records sought are disclosable. However, plaintiff’s request, in at least one of the cases referenced in the article, included necessary identifiers, thus allowing the defendants to locate the responsive records. *See Paff v. Ocean Cnty. Prosecutor’s Office*, 2014 N.J. Super. Unpub. LEXIS 1899 (July 31, 2014).

Accordingly, the Complainant’s OPRA request seeking “every minute of police footage” from various general and unidentified locations for over a ten (10) month period fails to identify specific records and is therefore invalid. 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; Rivera, GRC 2008-280. For this reason, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's OPRA request seeking "every minute of police footage" from various general and unidentified locations during a ten (10) month period fails to identify specific records and is therefore invalid. 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); Rivera v. Wall Police Dep't (Monmouth), GRC Complaint No. 2008-280 *et seq.* (Interim Order dated April 8, 2010). For this reason, the Custodian lawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6.

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

Reviewed By: Joseph D. Glover
Executive Director

June 23, 2015