



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

April 28, 2015 Government Records Council Meeting

Mary D'Arcy Bittner, Esq.
Complainant

Complaint No. 2014-364

v.

NJ Department of Human Services
Custodian of Record

At the April 28, 2015 public meeting, the Government Records Council ("Council") considered the April 21, 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:

1. The Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, there was no "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
2. Because the Complainant's request failed to identify a specific government record, same is invalid under OPRA. 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); Bradley-Williams v. Atlantic Cnty. Jail (Atlantic), GRC Complaint No. 2011-232 (December 2012). 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**

**Mary D’Arcy Bittner, Esq.¹
Complainant**

GRC Complaint No. 2014-364

v.

**New Jersey Department of Human Services²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the registration for, or listing of, all properties in the City of Wildwood (“City”) where clients are sent for housing.

Custodian of Record: Bonny E. Fraser
Request Received by Custodian: September 12, 2014
Response Made by Custodian: September 15, 2014
GRC Complaint Received: October 28, 2014

Background³

Request and Response:

On September 11, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian, seeking the above-mentioned records. On September 15, 2014, Sheila Hill, Technical Program Assistant, responded in writing on behalf of the Custodian, denying the Complainant’s OPRA request as invalid pursuant to NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007) and Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005) because it sought information.

Denial of Access Complaint:

On October 28, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that the City wanted to obtain the list of properties within its limits where social service clients are sent, or request to be sent, with rent paid by social services. The Complainant stated that the City was advised that a list of qualified landlords exists and that the City was interested in obtaining same.

¹ The Complainant represents the City of Wildwood.

² Represented by Deputy Attorney General Erick Lucadamo.

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.

The Complainant asserted that the local/county social services office informed her that she would have to request the list from the New Jersey Department of Human Services (“DHS”), which she did via OPRA Central on September 11, 2014. The Complainant asserted that she received no response from DHS.

Supplemental Submissions:

On November 25, 2014, via letter, the Custodian advised the GRC that Ms. Hill responded to the Complainant on September 15, 2014, denying the OPRA request as invalid. The Custodian stated that she enclosed a copy of the e-mail response. The Custodian noted that the Complainant’s Denial of Access Complaint contained more detail about the records sought than the original request. The Custodian asserted that she did not fail to respond to the Complainant’s OPRA request. Finally, the Custodian noted that, if the Complainant wanted to submit a more specific OPRA request, DHS would do their best to comply with same.

Statement of Information:

On December 16, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on September 12, 2014. The Custodian certified that Ms. Hill responded in writing on her behalf on September 15, 2014, denying the OPRA request as invalid.

The Custodian noted that DHS operates multiple programs through many divisions for the benefit of eligible families and individuals. The Custodian stated that DHS divisions provide services to thousands of New Jerseyans, some of which may be referred to as “clients.” The Custodian averred that some of these “clients” may also receive residential services. The Custodian asserted that a proper OPRA request must identify the records sought with reasonable clarity. Bent, 381 N.J. Super. at 37.

The Custodian contended that the Complainant’s OPRA request was invalid because it failed to identify specific government records. NJ Builders, 390 N.J. Super. at 180. The Custodian argued that the request did not define the term “clients” adequately. Further, the Custodian argued that the Complainant also failed to identify the program or division providing housing to the unidentified “clients.” The Custodian also contended that the term “housing” is vague because it could refer to private residences or businesses within the City to which “clients” were sent. Finally, the Custodian argued that the request did not include a time frame.

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to

N.J.S.A. 47:1A-5(g).⁴ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

The Complainant filed this complaint asserting that she never received a response from DHS. However, on November 25, 2014, the Custodian provided proof that DHS responded in writing via e-mail to deny the Complainant's OPRA request as invalid. Of note, the e-mail address contained in the response matches the e-mail address provided by the Complainant in her OPRA request and subsequent Denial of Access Complaint.

Therefore, the Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, there was no "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

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 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

⁴ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

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, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In Bradley-Williams v. Atlantic Cnty. Jail (Atlantic), GRC Complaint No. 2011-232 (December 2012), the complainant initially requested a copy of her entire correctional record. However, in the Amended Denial of Access Complaint, the complainant more specifically identified some of the records sought. The Council determined that the complainant’s request was invalid, reasoning that:

[T]he Complainant’s initial request sought her complete correctional record. In support of the Custodian’s argument that the request was invalid, the Custodian noted that she was able to identify records only after the Complainant further clarified in the Denial of Access Complaint that she was seeking disciplinary, medical, transport and intake records. Moreover, the Complainant provided a more detailed list in her amended Denial of Access Complaint. Each time, the Complainant identified new records to which she sought access. Thus, the evidence sufficiently indicates that the Complainant’s initial request was overly broad and thus invalid under OPRA.

Id. at 8-9.

Here, the Complainant’s request sought “a registration for, or listing of” properties in the City to which DHS clients are sent. The Custodian responded, denying the request as invalid because it sought information. However, in the Denial of Access Complaint, the Complainant stated that the City was advised that there was a list of qualified landlords registered with DHS and that they wished to obtain same. The Custodian acknowledged this new level of detail in her letter to the GRC on November 25, 2014. Further, the Custodian argued in the SOI that the Complainant’s request was invalid because the Complainant failed to identify the division/program, whether the housing was residential or a business and a specific time frame.

The facts of this complaint are similar to those presented in Bradley-Williams, GRC 2011-232. Specifically, the Complainant’s initial request appeared to seek basic address information about the DHS approved properties within the City within an undefined time frame. However, the record described in the Denial of Access Complaint, a list of qualified landlords registered with DHS, narrowed the scope of the request. Notwithstanding the narrowed scope,

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

the Complainant still failed to include a division or time frame. As was the case in Bradley-Williams, the narrowed scope provided for in the Denial of Access Complaint here sufficiently indicates that the Complainant's initial request was invalid under OPRA.

Therefore, because the Complainant's request failed to identify a specific government record, same is invalid under OPRA. 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; Bradley-Williams, GRC 2011-232. The Custodian has thus lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, there was no "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
2. Because the Complainant's request failed to identify a specific government record, same is invalid under OPRA. 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); Bradley-Williams v. Atlantic Cnty. Jail (Atlantic), GRC Complaint No. 2011-232 (December 2012). 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

Reviewed By: Joseph D. Glover
Executive Director

April 21, 2015