



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
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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**

T. Napieralski  
Complainant

Complaint No. 2014-406

v.

Township of Waterford (Camden)  
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 did not unlawfully deny access to request item number 1 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. *See Pusterhofer v. NJ Dep’t of Educ.*, GRC Complaint No. 2005-49 (July 2005).
2. The Complainant’s request item number 2 is invalid because it fails to seek an identifiable government record. *MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control*, 375 N.J. Super. 534 (App. Div. 2005). *See also LaMantia v. Jamesburg Public Library (Middlesex)*, GRC Complaint No. 2008-140 (February 2009) and *Watt v. Borough of North Plainfield (Somerset)*, GRC Complaint No. 2007-246 (September 2009). Thus, the Custodian did not unlawfully deny 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 28<sup>th</sup> 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**

**T. Napieralski<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-406**

v.

**Township of Waterford (Camden)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via regular mail of:

1. The written order(s) for all of the existing Ellwood Avenue stop sign placements.
2. "...[W]hy are there any painted lines on Ellwood Avenue when there is no file or record of existing, and are nonconforming as written in the 2013 Waterford Road Program, plus differ from given internet web sight, <http://muted.fhwa.dot.gov/s.>, and at <http://state.nj.us/transportation/eng/#Specifications> internet web site?" (*sic*).

**Custodian of Record:** Debra L. Shaw-Blemings

**Request Received by Custodian:** October 16, 2014

**Response Made by Custodian:** October 24, 2014<sup>3</sup>

**GRC Complaint Received:** December 1, 2014

**Background<sup>4</sup>**

Request and Response:

On October 14, 2014, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian, seeking the above-mentioned records. The Custodian certified that she received the request on October 16, 2014. On October 24, 2014, the sixth (6<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing, informing the Complainant that item number 1 of the request is denied because no responsive record exists, and item number 2 of the request is denied because it is not a valid request for a government record but rather a request for information.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by David C. Patterson, Esq., of Maressa Goldstein Patterson (Berlin, NJ).

<sup>3</sup> A duplicate response dated October 27, 2014, also appears in the record; however, the Complainant stated that he received the response on October 24, 2014.

<sup>4</sup> 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.

### Denial of Access Complaint:

On December 1, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that he submitted the request to the Custodian on October 14, 2014, and that the Custodian denied the request on October 24, 2014. The Complainant refers the GRC to an attached OPRA request and response for further information regarding the complaint.

### Statement of Information:

On December 17, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 16, 2014, and responded in writing on October 27, 2014. The Custodian certifies that no records are responsive to the request. The Custodian certifies that she searched the 2013 Road Program file maintained in the Clerk’s Office for a record responsive to request item number 1 to no avail. The Custodian certifies that, thereafter, she contacted the Township Engineer for assistance in locating a record responsive to request item number 1; however the Township Engineer stated that there is no written order for all of the existing stop sign placements. With respect to request item number 2, the Custodian certifies that there is no record responsive to that item because it is a question, not a records request.

### 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.

#### Request item number 1

In Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant’s request for billing records existed and the complainant submitted no evidence to refute the custodian’s certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian’s certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified that the records responsive to request item number 1 do not exist, because after searching the Township files and consulting with the Township Engineer, it was determined that there is no written order for existing stop sign placements.

As such, the Custodian did not unlawfully deny access to request item number 1, because the Custodian certified that such records do not exist and the Complainant failed to submit any

competent, credible evidence to refute the Custodian's certification. See Pusterhofer, GRC 2005-49.

### Request item number 2

The New Jersey Superior Court has held that “[w]hile 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.” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (citing N.J.S.A. 47:1A-1) (quotations omitted). The Court reasoned that:

[m]ost 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. (emphasis added). See also Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005), N.J. Builders Ass’n v. N.J. 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).

Further, in LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that held library cards. The GRC determined that the complainant's request was not for an identifiable government record, but for information. Id. As such, the request was deemed invalid pursuant to MAG. Id.; see also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). Similarly, in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the complainant made an OPRA request in the form of several questions regarding when a property was added to the “tax rolls,” how much tax was owed, and why there was any delay in adding the property to the tax roll. The Council determined that the request was invalid because it failed to identify government records. Id.

Here, the Complainant's request item number 2 consisted of the following question: “[W]hy are there any painted lines on Ellwood Avenue when there is no file or record of

existing, and are nonconforming as written in the 2013 Waterford Road Program, plus differ from given internet web sight, <http://muted.fhwa.dot.gov/s>, and at <http://state.nj.us/transportation/eng/#Specifications> internet web site?" (*sic*). The Custodian responded to the Complainant, informing him that request was being denied because it is not a valid request for a specific government record but rather a request for information. The Custodian cited to N.J. Builders Ass'n, 390 N.J. Super. 166 and Bent, 381 N.J. Super. 30 in support of the denial.

The Complainant's request item number 2 was a question, not a request for an "identifiable government record." MAG, 375 N.J. Super. 534 at 549. As such, similar to the requests in LaMantia, GRC Complaint No. 2008-140 and Watt, GRC 2007-246, the Complainant's request item number 2 is also invalid.

Therefore, the Complainant's request item number 2 is invalid because it fails to seek an identifiable government record. MAG, 375 N.J. Super. 534. *See also* LaMantia, GRC No. 2008-140 and Watt, GRC 2007-246. Thus, the Custodian did not unlawfully deny 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 did not unlawfully deny access to request item number 1 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See Pusterhofer v. NJ Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005).
2. The Complainant's request item number 2 is invalid because it fails to seek an identifiable government record. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). *See also* LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009) and Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart

Reviewed By: Joseph D. Glover  
Executive Director

April 21, 2015