



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
Commissioner

FINAL DECISION

September 29, 2015 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2014-408

v.

NJ Office of the Governor
Custodian of Record

At the September 29, 2015 public meeting, the Government Records Council (“Council”) considered the September 22, 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 has failed to establish in his request for reconsideration of the Council’s July 28, 2015, Final Decision that either: 1) the Council’s decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on the several categories identified in the request for reconsideration. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. The Complainant failed to prove that requiring the Office to disclose the records somehow advances the purposes of OPRA. Specifically, although public agencies are required to adhere to their retention schedules, OPRA was clearly not intended to allow citizens to utilize public entities as taxpayer funded repositories for personal correspondence. Thus, the Complainant’s request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 29th Day of September, 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: October 5, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
September 29, 2015 Council Meeting

Thomas Caggiano¹
Complainant

GRC Complaint No. 2014-408

v.

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 opracustodian@gov.state.nj.us from January 1, 2014, to November 10, 2014, regarding corruption within the New Jersey Office of the Governor (“Office”), “Division of Law preparing false statements of information to the corrupt Department of Community Affairs GRC,” and “corruption throughout Sussex and Morris County.”³

Custodian of Record: Heather Taylor

Request Received by Custodian: November 14, 2014

Response Made by Custodian: November 25, 2014

GRC Complaint Received: December 1, 2014

Background

July 28, 2015 Council Meeting:

At its public meeting on July 28, 2015, the Council considered the July 21, 2015, Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. By a majority vote, the Council adopted said findings and recommendations. The Council, therefore, found that:

1. The Custodian bore her burden of proof that she timely responded to the Complainant’s November 11, 2014, OPRA request. N.J.S.A. 47:1A-6. As such, there was no “deemed” denial of the Complainant’s 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).

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Valentina M. DiPippo.

³ The Complainant appears to have requested additional records that are not at issue in this complaint. However, that part of the submission is unclear, as it consists of a lengthy paragraph that is devoid of punctuation and recites a multitude of different allegations, conspiracies, and crimes.

2. The Complainant's OPRA request is valid because it contained the required criteria necessary to be considered valid 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); Elcavage, GRC 2009-07; Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010).
3. The Custodian was not required to provide the responsive records to the Complainant because he sought e-mails that he, himself, composed and sent to the Office and because disclosure of same to him "does not advance the purpose of OPRA . . ." Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008). For this reason, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.

Procedural History:

On July 30, 2015, the Council distributed its Final Decision, dated July 28, 2015, to all parties. On August 17, 2015, the Complainant filed a request for reconsideration of the Council's Final Decision based on extraordinary circumstances, fraud, new evidence, change in circumstances, and illegality. Therein, the Complainant asserted that the Council erred by determining that the Office was not required to provide him correspondence that he, himself, had previously sent to them. The Complainant contended that the Council reached this decision without any evidence to show that he was still in possession of the responsive records.

The Complainant contended that he has actively deleted many e-mails or encountered instances where e-mails were destroyed in the last few months. The Complainant asserted that members of the public are not required to maintain records; however, public agencies must adhere to retention schedules.⁴ Further, the Complainant contended that he sought the e-mails for the purpose of determining whether the Office was retaining same in accordance with their schedules. The Complainant also noted that other agencies, including the GRC, previously responded to OPRA requests by providing him access to similar records.⁵

On August 19, 2015, the Custodian's Counsel submitted objections to the request for reconsideration. Counsel first noted that the Complainant appeared to e-mail a copy of the request for reconsideration to the Office on August 10, 2015; however, the e-mail was addressed to over 50 recipients and contained no salutation. Counsel asserted that this e-mail does not meet the "served on all parties" requirement. N.J.A.C. 5:105-2.10(c). Additionally, Counsel noted that

⁴ The Complainant also requests a stay "request for if needed hundreds of additional records on many CDs . . . as they are evidence" (sic). However, the GRC notes that the Council's July 28, 2015, decision was a Final Decision. Additionally, the Complainant's request for a stay does not address the required factors to determine the applicability of same. N.J.A.C. 5:105-2.12.

⁵ In responding to previous OPRA requests submitted by the Complainant, the GRC reminded the Complainant of Bart and the possible impact on future requests for records presumed to be in his possession. See Letter from the GRC to the Complainant, dated February 18, 2014; Letter from the GRC to the Complainant, dated February 21, 2014.

the Office did not receive a hard copy of the request for reconsideration until August 17, 2015, well beyond the deadline to submit same.

Counsel asserted that, in the instance that the GRC accepts the request for reconsideration as timely, the Office opposes same. Counsel asserted that the Council's Final Decision was correct. Counsel further asserted that the Complainant failed to demonstrate any reasonable basis for reconsideration. Counsel argued that, buried among the lengthy diatribe, the Complainant contended that he should have been provided with responsive records because he destroyed his own copies. Counsel asserted that such an argument is insufficient because: 1) the Complainant never argued this point prior to the Council's Decision; and 2) the fact that the Complainant destroyed his own records is irrelevant. Counsel contended that requiring disclosure of records that the Complainant failed to preserve does not further the purpose of OPRA.⁶

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council, and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Complainant filed the request for reconsideration on August 17, 2015, twelve (12) business days from the issuance of the Council's Final Decision. However, the Complainant stated therein that he did not receive the Final Decision until returning from vacation on August 9, 2015. Therefore, the Complainant actually filed the request for reconsideration six (6) business days after receipt of same. For that reason, the request for reconsideration is timely.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

⁶ Counsel also noted that the Complainant appeared to raise common law issues, over which the GRC has no authority. Ciesla v. NJ Dep't of Health & Senior Serv., 429 N.J. Super. 127, 133 (App. Div. 2012).

In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. *See Cummings*, 295 N.J. Super. at 384. The Complainant failed to establish that the complaint should be reconsidered based on the several categories identified in the request for reconsideration. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. *See D'Atria*, 242 N.J. Super. at 401. The Complainant failed to prove that requiring the Office to disclose the records somehow advances the purposes of OPRA. Specifically, although public agencies are required to adhere to their retention schedules, OPRA was clearly not intended to allow citizens to utilize public entities as taxpayer funded repositories for personal correspondence. Thus, the Complainant's request for reconsideration should be denied. *Cummings*, 295 N.J. Super. at 384; *D'Atria*, 242 N.J. Super. at 401; *Comcast*, 2003 N.J. PUC at 5-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council's July 28, 2015, Final Decision that either: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on the several categories identified in the request for reconsideration. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. The Complainant failed to prove that requiring the Office to disclose the records somehow advances the purposes of OPRA. Specifically, although public agencies are required to adhere to their retention schedules, OPRA was clearly not intended to allow citizens to utilize public entities as taxpayer funded repositories for personal correspondence. Thus, the Complainant's request for reconsideration should be denied. *Cummings v. Bahr*, 295 N.J. Super. 374 (App. Div. 1996); *D'Atria v. D'Atria*, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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

Reviewed By: Joseph D. Glover
Executive Director

September 22, 2015



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
Commissioner

FINAL DECISION

July 28, 2015 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2014-408

v.

NJ Office of the Governor
Custodian of Record

At the July 28, 2015 public meeting, the Government Records Council (“Council”) considered the July 21, 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:

1. The Custodian bore her burden of proof that she timely responded to the Complainant’s November 11, 2014, OPRA request. N.J.S.A. 47:1A-6. As such, there was no “deemed” denial of the Complainant’s 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).
2. The Complainant’s OPRA request is valid because it contained the required criteria necessary to be considered valid 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); Elcavage, GRC 2009-07; Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010).
3. The Custodian was not required to provide the responsive records to the Complainant because he sought e-mails that he, himself, composed and sent to the Office and because disclosure of same to him “does not advance the purpose of OPRA . . .” Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008). For this reason, the Custodian lawfully denied access to the responsive records. 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 July, 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 30, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2014-408

v.

**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 opracustodian@gov.state.nj.us from January 1, 2014 to November 10, 2014 regarding corruption within the New Jersey Office of the Governor (“Office”), “Division of Law preparing false statements of information to the corrupt Department of Community Affairs GRC,” and “corruption throughout Sussex and Morris County.”³

Custodian of Record: Heather Taylor
Request Received by Custodian: November 14, 2014
Response Made by Custodian: November 25, 2014
GRC Complaint Received: December 1, 2014

Background⁴

Request and Response:

On November 11, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian, seeking the above-mentioned records. On November 25, 2014, the seventh (7th) business day after receipt of the OPRA request, 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). Additionally, the Custodian stated that OPRA does not require an agency to provide records to a requestor that the requestor, himself, submitted. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609,618 (App. Div. 2008).

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Valentina M. DiPippo.

³ The Complainant appears to have requested additional records that are not at issue in this complaint. However, that part of the submission is unclear, as it consists of a lengthy paragraph that is devoid of punctuation and recites a multitude of different allegations, conspiracies, and crimes.

⁴ 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 argued that the Custodian failed to respond to his OPRA request in a timely manner. The Complainant contended that according to the certified mail tracker, the Office received his OPRA request on November 13, 2014. However, the Custodian did not respond until November 25, 2014.

Further, the Complainant asserted that the Custodian unlawfully denied access to the responsive e-mails, notwithstanding that he properly requested same.

Statement of Information:

On December 19, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 14, 2014. The Custodian certified that she responded in writing on November 25, 2014, denying access to the Complainant’s OPRA request as invalid. Additionally, the Custodian certified that she advised the Complainant that OPRA did not require a public agency to provide records to a requestor that he, himself, submitted.

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); Ciszewski v. Newton Police Dep’t (Sussex), GRC Complaint No. 2013-90 (October 2013).

The Custodian argued that the Complainant’s request is invalid because it fails to identify a subject matter or content. Also, the Custodian asserted the request is mostly indiscernible diatribe that loosely refers to time periods for some portions of his request.

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 that end, the Custodian noted that the Appellate Division previously determined that requestors cannot be unlawfully denied access to records already in their possession. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008). *See also* Blay v. Ocean Cnty. Health Dep’t, GRC Complaint No. 2012-223 (June 2013). The Custodian contended that requiring her to disclose records to the Complainant that he submitted “does not advance the purpose of OPRA . . .” Bart, 403 N.J. Super. at 618.

Moreover, the Custodian noted that the Complainant has submitted repetitive requests: for example, the request at issue here is very similar to the requests at issue in Caggiano v. State

of NJ Office of the Governor, GRC Complaint No. 2014-263 (January 2015) and Caggiano v. State of NJ Office of the Governor, GRC Complaint No. 2014-272 (April 2015). 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 requesting same for the sole purpose of harassment. The Custodian noted that the Council has previously addressed the Complainant's similar practices with other agencies. See Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2007-20 *et seq.* (September 2007).

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).⁵ 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).

Here, the Complainant argued that the Custodian failed to respond in a timely manner, asserting that the Office received his OPRA request on November 13, 2014. The Complainant included a copy of the certified mail tracking page he relied upon in his Denial of Access Complaint. However, the Custodian certified in the SOI that she received the Complainant's OPRA request on November 14, 2014. A review of the tracking page supports the Custodian's certification. Specifically, the tracking page indicates that the Office received the subject OPRA request at 10:53 a.m. on November 14, 2014. The evidence thus supports that the Custodian timely responded within seven (7) business days after receipt of the OPRA request.

Accordingly, the Custodian bore her burden of proof that she timely responded to the Complainant's November 11, 2014, OPRA request. N.J.S.A. 47:1A-6. There was therefore no "deemed" denial of the Complainant's request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Validity of Request

In the matter currently before the Council, the Custodian denied access to the Complainant's OPRA request in part, arguing that same was invalid under OPRA. The Complainant filed this complaint, arguing that his request contained the proper criteria for requesting e-mails. In the SOI, the Custodian contended that the Complainant made a blanket request for all correspondence that failed to comply with the Council's decision in Elcavage,

⁵ 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.

GRC 2009-07. Thus, as a threshold issue, the Council must first determine whether the Complainant's OPRA request was valid.

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 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;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 GRC has established criteria deemed necessary under OPRA to request an email communication. 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 also* 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.

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

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, not correspondence in general, that he sent (based on the e-mail address provided) from thomascaggiano@gmail.com to opracustodian@gov.state.nj.us from January 1, 2014, to November 10, 2014. Additionally, the Complainant identified the subject or content of said records; namely, corruption in several State and county agencies. The GRC notes that, although decided during the pendency of this complaint, the Council twice decided that the Complainant's requests seeking similar e-mails were invalid because they failed to include the content or subject or the records sought. *See* Caggiano, GRC 2014-263; Caggiano, GRC 2014-272. However, the Complainant cured these deficiencies in this OPRA request. For this reason, the GRC is satisfied that the Complainant included the required criteria as set forth under Elcavage.

Therefore, the Complainant's OPRA request is valid because it contained the required criteria necessary to be considered valid 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; Elcavage, GRC 2009-07; Verry, GRC 2009-124.

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.

Having determined that the Complainant's OPRA request was valid, the GRC will now address the issue of whether the Custodian unlawfully denied access to responsive records.

New Jersey Courts have provided that "[t]he purpose of OPRA 'is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.'" Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005)(quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). In Bart, 403 N.J. Super. 609,⁷ the Appellate Division looked to the Lafayette Yard case in determining whether a custodian knowingly and willfully violated OPRA by not providing to the complainant a record already in his possession. The Court held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. Id. at 617. The Appellate Division reasoned that requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not advance the purpose

⁷ Reversing Bart v. City of Paterson Hous. Auth., GRC Complaint No. 2005-145 (May 2006).

of OPRA, which is to ensure an informed citizenry. Id. at 618 (*citing Lafayette Yard*, 183 N.J. at 535).

The Appellate Division's decision in Bart, however, turns upon the specific facts of that case. The Council's decision noted that the custodian certified that copies of the requested record were available at the Housing Authority's front desk upon simple verbal request by any member of the public. Bart v. City of Paterson Hous. Auth., GRC Complaint No. 2005-145 (May 2006). Moreover, the complainant actually admitted that he was in possession of this record at the time of the OPRA request for the same record. Id.

Additionally, in Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer), GRC Complaint No. 2012-330 (Interim Order February 2013), the complainant sought access to student discipline reports. The custodian's counsel responded, indicating that he provided the records in response to a prior OPRA request. The Council held that:

The Custodian did not unlawfully deny access to the records responsive to request item no. 8 because at the time of the Complainant's December 14, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to [Bart, 403 N.J. Super. 609].

Id. at 13.

In the matter currently before the Council, the Custodian contended that providing the Complainant with e-mails that he composed and sent to the Office "does not advance the purpose of OPRA . . ." Bart, 403 N.J. Super. at 618. Although the Complainant has not affirmatively established that he possessed all responsive e-mails he sent to the Office at the time of his request, the intent of the Court's decision in Bart can be applied to the facts of this complaint. Specifically, requiring the Custodian to locate, reproduce, and disclose same does not advance the purposes of OPRA. Additionally, disclosing to the Complainant e-mails that he composed and sent to the Office neither maximizes his own knowledge about public affairs nor fosters a more informed Complainant. Simply put, the Complainant could not glean any insight into the inner workings of government by reviewing e-mails he, himself, composed.

Therefore, the Custodian lawfully denied the Complainant access to the responsive records because he sought e-mails that he composed and sent to the Office and because disclosure of same to him "does not advance the purpose of OPRA . . ." Bart, 403 N.J. Super. at 618; N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian bore her burden of proof that she timely responded to the Complainant's November 11, 2014, OPRA request. N.J.S.A. 47:1A-6. As such, there was no "deemed" denial of the Complainant's 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).
2. The Complainant's OPRA request is valid because it contained the required criteria necessary to be considered valid 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); Elcavage, GRC 2009-07; Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010).
3. The Custodian was not required to provide the responsive records to the Complainant because he sought e-mails that he, himself, composed and sent to the Office and because disclosure of same to him "does not advance the purpose of OPRA . . ." Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008). For this reason, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.

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

Reviewed By: Joseph D. Glover
Executive Director

July 21, 2015