



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

April 26, 2016 Government Records Council Meeting

Janell Bolden
Complainant

v.

Black Horse Pike Regional School District (Camden)
Custodian of Record

Complaint No. 2015-181

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the March 22, 2016 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 Complainant’s cause of action was not ripe at the time she filed the Denial of Access Complaint at 2:54 PM on June 15, 2015: the Custodian had not technically denied access to any records at the time of the Complaint’s filing, because the statutorily mandated seven (7) business day time frame for the Custodian to respond had not yet expired. Moreover, the Custodian did ultimately reply in writing later that day, at 4:07 PM. Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. *See Sallie v. N.J. Dep’t of Banking and Ins.*, GRC Complaint No. 2007-226 (April 2009); N.J.S.A. 47:1A-5(i).
2. Because the Complainant’s request failed to specifically identify the minutes sought, the request is invalid pursuant to MAG Entertainment, LCC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 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). The Custodian has thus lawfully denied access to 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 26th Day of April, 2016

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: May 2, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 26, 2016 Council Meeting**

**Janell Bolden¹
Complainant**

GRC Complaint No. 2015-181

v.

**Black Horse Pike Regional School District (Camden)²
Custodial Agency**

Records Relevant to Complaint:³

A copy of the minutes for the board decision to provide courtesy busing for children living along Jarvis Road, on the opposite side of Timber Creek High School.

Custodian of Record: Jean Grubb
Request Received by Custodian: June 4, 2015
Response Made by Custodian: June 15, 2015
GRC Complaint Received: June 16, 2015

Background⁴

Request and Response:

On June 4, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 15, 2015, the Custodian responded in writing, denying the request as overly broad and burdensome, as it did not provide the Custodian meeting dates for the records sought. The Custodian argued that searching through an unspecified amount of minutes would interrupt agency functions. The Custodian further asserted that the District was not required to search through minutes to determine which ones, if any, would be responsive.

The Custodian cited to Bent v. Township of Stratford Police Department, Custodian of Records, 381 N.J. Super 30 (App. Div. 2005), where the Court affirmed the GRC’s finding that no denial under OPRA had occurred. In that matter, the Court opined that “a records custodian is not required to conduct research among its records . . . and correlate data from various

¹No legal representation listed on record.

²Represented by Daniel H. Long (Laurel Springs, NJ).

³The Complainant made a second OPRA request on that same day but asserted no denial of access with respect to those items. The GRC will therefore not address the second request.

⁴The 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.

government records in the custodian's possession." *Id.* at 37. The Custodian also noted the Court's declaration that a request must "reasonably identify a record and not generally data, information or statistics." The Custodian additionally pointed to MAG Entertainment, LCC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), where the Court held the Division was not required to comply with MAG's invalid OPRA request for "all documents or records, evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd and immoral activity." *Id.* at 539-540.

The Custodian noted in the denial that, were the Complainant to specify by date the minutes she requested, the District might be able to locate and forward responsive records. The Custodian additionally noted that while the District did not waive the objection to the validity of the request, she nonetheless provided a document titled "District Policy 8600 (Transportation)," which was dated April 2009, for review.

Denial of Access Complaint:

On June 15, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC") via e-mail, at 2:54 PM. The Complainant asserted that, in response to Superintendent Brian Repici's statement that the decision not to bus students was made prior to his appointment, she sought a copy of the minutes from the meeting where the decision was made. The Complainant alleged that she did not receive a response to her request. She claims that, following her inquiry on June 10, 2015, she was told that she "would be hearing from the Business Administrator very soon." The Complainant asserted that as of the time she filed her complaint, she "ha[d] not heard anything from the Administrator."

Statement of Information:

On June 30, 2015, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on June 4, 2015. The Custodian certified that she responded in writing on June 15, 2015, denying the request as overly broad and burdensome, as it did not specify dates for which minutes should be produced. She further certified that undertaking such a search would interrupt agency functions. The Custodian additionally argued that the District is not required to search through minutes to determine which minutes, if any, would be applicable.

The Custodian further noted that the Complainant verified and filed her Denial of Access Complaint on June 15, 2015, which was the 7th day following the Custodian's receipt and still within the statutory timeframe for response to her OPRA request. The Custodian stated that the District e-mailed a response to her inquiry on June 15, 2015, thereby timely responding to the request, contrary to the Complainant's assertions.

Additional Submissions:

On March 3, 2016, the GRC sent a request to the Custodian for additional information, seeking clarification as to the time she responded to the Complainant on June 15, 2015. The

Custodian responded on March 4, 2016, attaching the original e-mail response from that date, time stamped at 4:07:38 P.M.

Analysis

Unripe Cause of Action

OPRA provides that “a custodian of a government record shall grant access to a government record or deny access to a government record as soon as possible, but not later than *seven business days after receiving the request . . .*” N.J.S.A. 47:1A-5(i) (emphasis added). OPRA further states that “[a] person who is denied access to a government record by the custodian of the record . . . may institute a proceeding to challenge the custodian’s decision by filing . . . a complaint with the Government Records Council . . .” N.J.S.A. 47:1A-6.

In Sallie v. N.J. Dep’t of Banking and Ins., GRC Complaint No. 2007-226 (April 2009), the complainant forwarded a complaint to the GRC, asserting that he had not received a response from the custodian and that seven (7) business days would have passed by the time the GRC received the Denial of Access Complaint. The custodian argued in the SOI that the complainant filed the complaint prior to the expiration of the statutorily mandated seven (7) business day time frame set forth in N.J.S.A. 47:1A-5(i). The Council held that:

[B]ecause the Complainant’s cause of action was not ripe at the time he verified his Denial of Access Complaint; to wit, the Custodian had not at that time denied the Complainant access to a government record, the complaint is materially defective and therefore should be dismissed.

Id.; *see also* Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).

Prior to making a determination as to whether the Custodian unlawfully denied access to any records, the GRC must review and determine whether the complaint is ripe for adjudication. Specifically, there is a question of whether the Complainant filed this complaint prior to the expiration of the statutorily-mandated response time.

In the instant matter, the Complainant argued that the Custodian violated OPRA by failing to respond as of 2:54 PM on June 15, 2015, the time at which the Complainant filed her Complaint with the GRC. The Complainant contended that she “ha[d] not heard anything from the Administrator.” In her Statement of Information, the Custodian averred that June 15, 2015, was the seventh (7th) day following receipt of the request and therefore the statutory deadline for response. The Custodian certified that the District e-mailed a response on that day, denying it as overly broad and thereby timely responding to the request. In response to a request for additional information by the GRC, on March 4, 2016, the Custodian sent to the GRC a copy of the original e-mail, dated June 15, 2015, the same day the Complainant submitted her Complaint. The time stamp of the Custodian’s response e-mail was 4:07 PM.

Accordingly, the Complainant’s cause of action was not ripe at the time she filed the Denial of Access Complaint at 2:54 PM on June 15, 2015: the Custodian had not technically

denied access to any records at the time of the Complaint's filing, because the statutorily mandated seven (7) business day time frame for the Custodian to respond had not yet expired. Moreover, the Custodian did ultimately reply in writing later that day, at 4:07 PM. Based on the foregoing, the instant complaint is materially defective and should therefore be dismissed. *See Sallie*, GRC 2007-226; N.J.S.A. 47:1A-5(i).

Finally, the GRC will briefly address the remaining issue raised by the Complainant.

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 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).

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),⁶ the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records “accessible.” “As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency’s documents.”⁷

The Council has previously addressed cases where the Complainant sought meeting minutes but failed to identify specific government records. In Valdes v. Union City Board of Education (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181, the complainant requested “the minutes that include the motion made by the Union City Board of Education (“UCBOE”) to approve the minutes . . .” from various previously held meetings. Upon review, the Council found the request invalid, holding that the requestor failed to identify the specific dates of the minutes sought and that the request would require the Custodian to conduct research in order to locate the responsive records. *See also* Taylor v. Cherry Hill Board of Education (Camden), GRC Complaint No. 2008-258 (August 2009).

In the instant complaint, the OPRA request sought a copy of minutes discussing a board decision regarding busing for children living along a particular road. Although the Complainant did cite the street name and geographical area, she did not identify a time period or date. As a result, the Custodian would be forced to conduct an open-ended search into the District’s files in order to locate that particular discussion. Such an open-ended search is impermissible under OPRA, which is not intended to be a research tool for litigants. N.J.S.A. 47:1A-1.

Therefore, because the Complainant’s request failed to specifically identify the minutes sought, the request is invalid pursuant to 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. 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:

1. The Complainant’s cause of action was not ripe at the time she filed the Denial of Access Complaint at 2:54 PM on June 15, 2015: the Custodian had not technically denied access to any records at the time of the Complaint’s filing, because the statutorily mandated seven (7) business day time frame for the Custodian to respond had not yet expired. Moreover, the Custodian did ultimately reply in writing later that day, at 4:07 PM. Based on the foregoing, the instant complaint is materially defective

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

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁷ As stated in Bent, *supra*.

and should therefore be dismissed. *See Sallie v. N.J. Dep't of Banking and Ins.*, GRC Complaint No. 2007-226 (April 2009); N.J.S.A. 47:1A-5(i).

2. Because the Complainant's request failed to specifically identify the minutes sought, the request is invalid pursuant to MAG Entertainment, LCC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 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). The Custodian has thus lawfully denied access to Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: Husna Kazmir
Staff Attorney

March 22, 2016⁸

⁸ This complaint could not be adjudicated at the Council's March 29, 2016 meeting due to lack of a quorum.