



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

December 15, 2015 Government Records Council Meeting

Sean Vandy
Complainant

Complaint No. 2015-258

v.

Newfield Police Department (Gloucester)
Custodian of Record

At the December 15, 2015 public meeting, the Government Records Council (“Council”) considered the December 8, 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 portions of both OPRA requests that ask questions or seek information are invalid under OPRA because they neither identify nor request specific government records. MAG Entm’t LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Roundtree v. N.J. Dep’t of State Div. of Elections., GRC Complaint No. 2013-133 (February 2014).
2. For the portion of the OPRA Request No. 1, which arguably sought a specific record, namely, a “copy of [a] certification to work on fire equipment,” the Custodian certified that no responsive records existed because the truck in question never had any work performed on it. The Complainant presented no competent, credible evidence to contradict the Custodian’s determination. Therefore, there was no unlawful denial of access. Pusterhofer v. N.J. Dept. of Educ., GRC Complaint No. 2005-49 (July 2005).
3. OPRA Request No. 2 in part sought a record, namely, the Complainant’s “OPRA report from a couple of years ago that states Mike Carrol called Police to tell me not to burn in my outside fireplace” (*sic*). However, the Complainant provided insufficient identifiers to permit the Custodian to locate the record without having to conduct research. Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007). The request mentions a document from “a couple of years ago,” which does not adequately define a time frame to permit the Custodian to locate documents. Also, the request is most unclear as to what “my OPRA report” might be. The request is therefore invalid. The Custodian’s request for clarification, to which the Complainant never responded, was reasonable and proper in light of an overly broad request. See Leibel v. Manalapan Englishtown Reg’l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); Kelly v. Rockaway Twp. (Morris), GRC Complaint No. 2009-19 (November 2009).



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 15th Day of December, 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: December 17, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 15, 2015 Council Meeting**

**Sean Vandy¹
Complainant**

GRC Complaint No. 2015-258

v.

**Newfield Police Department (Gloucester)²
Custodial Agency**

Records Relevant to Complaint: Copies of:

OPRA Request No. 1: “Where is Brusite Truck? (fire truck) Is it being worked on has it been worked on because council took control of fire house. If worked on by who like a copy of there certification to work on fire equipment. Where are the trophies from firehouse? How far from Ed [Seibert] house to Newfield?” (*sic*)

OPRA Request No. 2: “Mileage from Seibert - Ed to Newfield. One way Mileage. Also I want my OPRA report from a couple of years ago that states Mike Carrol called Police to tell me not to burn in my outside fireplace” (*sic*).

Custodian of Record: Toni L. Van Camp
Request Received by Custodian: March 31, 2015
Response Made by Custodian: April 2 and April 6, 2015
GRC Complaint Received: July 27, 2015

Background³

Request and Response:

On March 31, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the records identified above as OPRA Request No. 1. On April 2, 2015, the Custodian responded in writing to deny the request, stating that there were no documents on file at her office. On the same day, the Complainant submitted another request to the Newfield Township Police Department, seeking the records identified as OPRA Request No. 2. On April 6, 2015, Officer J. Conway of the Newfield Police Department, Internal Affairs, responded in writing by stating, with respect to the first record sought, that the Department does

¹ No legal representation listed on record.

² Represented by John C. Eastlack, Jr. Esq. Weir & Partners, LLP (Cherry Hill, 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.

not keep records of Police Chief Seibert's daily commute and that no record therefore exists. With respect to the second record sought, Officer Conway responded by stating that there was insufficient information to identify the specific document that the Complainant had requested. He suggested that the Complainant provide clarifying information, such as the date or case number, in order to assist in identifying the document. However, the Complainant never responded to the request for more specific information.

Denial of Access Complaint:

On July 27, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). Although the Complainant verified, signed, and dated the Denial of Access Complaint form and identified the date he submitted his requests, he cited no basis for the Complaint. Furthermore, did not describe the OPRA requests and did not identify any documents to which he was allegedly denied access.

Statement of Information:

On August 28, 2015, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA Request No. 1 on March 31, 2015, and that that she responded in writing on April 2, 2015, stating that she had no records in response to the various items sought. She contended that all of the items requested, except one, constituted a series of questions rather than a request for records. She asserted that even if she were to interpret one of the questions as a request for documents — "If worked on by who like a copy of their certificate to work on fire equipment" (*sic*) — she had no responsive record because there had been no work done on the fire truck in question. With regard to OPRA Request No. 2, the Custodian argued that the request for the "OPRA report" was too vague and that the Complainant never responded to Officer Conway's request more clarification.

Analysis

Validity of Request

In MAG Entm't LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), the New Jersey Appellate Division 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).

In Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007), the Council held, pursuant to MAG, that a custodian is obligated to search his or her files to find identifiable government records listed in a requestor's OPRA request. In Donato, the complainant requested all motor vehicle accident reports from September 5, 2005, to September 15, 2005. The custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

Pursuant to MAG, the Custodian is obligated to *search* her files to *find* the identifiable government records listed in the Complainant's OPRA request (all motor vehicle accident reports for the period of September 5, 2005, through September 15, 2005). However, the Custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word *search* is defined as "to go or look through carefully in order to find something missing or lost." The word *research*, on the other hand, means "a close and careful study to find new facts or information."

Id. (emphasis added, citations omitted).

In Roundtree v. NJ Dep't of State Div. of Elections, GRC Complaint No. 2013-133 (February 2014), the GRC found that even though the Complainant framed some of the issues as a search for "documentation," the requests "very clearly ask a number of questions" and were thus invalid. Id. at 6. *See also* Dooley v. City of Newark (Essex), GRC Complaint No. 2011-257 (February 2013), where the GRC determined that questions, such as, "[i]n which portion of the City of Newark's budget is each employee's salary allocated?" were invalid as OPRA requests.

Additionally, the GRC has found that no denial of access occurs when a custodian demonstrates that no records responsive to a complainant's request exist. In Pusterhofer v. N.J. Dept. of Educ., GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a call made to him from the New Jersey Department of Education. The custodian responded, stating that there was no record of any telephone calls made to the complainant. Id. The custodian subsequently certified that no records responsive to the complainant's request existed, and the complainant submitted no evidence to refute said

certification. Id. The GRC held the custodian did not unlawfully deny access to the requested records because the custodian certified that no records responsive to the request existed. Id.

OPRA Request No. 1

Here, the portions of both OPRA Requests that ask questions or seek information are invalid under OPRA because they neither identify nor request specific government records. For example, in OPRA Request No. 1, the Complainant asked, “[w]here are the trophies from [the] firehouse?” That is a question, which does not identify a government record. MAG, 375 N.J. Super. 534; LaMantia, GRC 2008-140; Roundtree, GRC 2013-133.

Further, for the portion of the OPRA Request No. 1, which arguably sought a specific record, namely, a “copy of [a] certification to work on fire equipment,” the Custodian certified that no responsive records existed because the truck in question never had any work performed on it. The Complainant presented no competent, credible evidence to contradict the Custodian’s certification. Therefore, there was no unlawful denial of access. Pusterhofer, GRC 2005-49.

OPRA Request No. 2

OPRA Request No. 2 in part sought a record, namely, the Complainant’s “OPRA report from a couple of years ago that states Mike Carrol called Police to tell me not to burn in my outside fireplace” (*sic*). However, the Complainant provided insufficient identifiers to permit the Custodian to locate the record without having to conduct research. Donato, GRC 2005-182. The request mentions a document from “a couple of years ago,” which does not adequately define a time frame to permit the Custodian to locate documents. Also, the request is most unclear as to what “my OPRA report” might be. The request is therefore invalid. The Custodian’s request for clarification, to which the Complainant never responded, was reasonable and proper in light of an overly broad request. *See* Leibel v. Manalapan Englishtown Reg’l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); Kelly v. Rockaway Twp. (Morris), GRC Complaint No. 2009-19 (November 2009).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The portions of both OPRA requests that ask questions or seek information are invalid under OPRA because they neither identify nor request specific government records. MAG Entm’t LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Roundtree v. N.J. Dep’t of State Div. of Elections., GRC Complaint No. 2013-133 (February 2014).
2. For the portion of the OPRA Request No. 1, which arguably sought a specific record, namely, a “copy of [a] certification to work on fire equipment,” the Custodian certified that no responsive records existed because the truck in question never had any work performed on it. The Complainant presented no competent, credible evidence to contradict the Custodian’s determination. Therefore, there was no

unlawful denial of access. Pusterhofer v. N.J. Dept. of Educ., GRC Complaint No. 2005-49 (July 2005).

3. OPRA Request No. 2 in part sought a record, namely, the Complainant's "OPRA report from a couple of years ago that states Mike Carrol called Police to tell me not to burn in my outside fireplace" (*sic*). However, the Complainant provided insufficient identifiers to permit the Custodian to locate the record without having to conduct research. Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007). The request mentions a document from "a couple of years ago," which does not adequately define a time frame to permit the Custodian to locate documents. Also, the request is most unclear as to what "my OPRA report" might be. The request is therefore invalid. The Custodian's request for clarification, to which the Complainant never responded, was reasonable and proper in light of an overly broad request. See Leibel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); Kelly v. Rockaway Twp. (Morris), GRC Complaint No. 2009-19 (November 2009).

Prepared By: Ernest Bongiovanni
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

December 8, 2015