



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 26, 2019 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2015-276

v.

NJ Office of the Governor
Custodian of Record

At the March 26, 2019 public meeting, the Government Records Council (“Council”) considered the March 19, 2019 Supplemental 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 November 13, 2018 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 a mistake, new evidence, extraordinary circumstances, or fraud. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant’s request for reconsideration amounted to a stream-of-consciousness set of allegations against multiple governmental agencies and individuals. 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 26th Day of March, 2019

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: March 29, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Council Staff
March 26, 2019 Council Meeting

Thomas Caggiano¹
Complainant

GRC Complaint No. 2015-276

v.

New Jersey Office of the Governor²
Custodial Agency

Records Relevant to Complaint: Electronic copies via compact disc (“CD”) of:

1. 130 e-mails referenced in Caggiano v. N.J. Office of the Gov., GRC Complaint No. 2014-166 (January 2015).
2. The job description for the individual tasked with responding to OPRA requests.
3. A roster of Office of the Governor (“Office”) employees from January 1, 2013 through March 17, 2015.
4. “The OPRA requests and findings of the GRC for Denial of Access complaints submitted by [the Complainant] v. Office of Gov during that period” and that “the response be certified by the record custodian and a copy also [hard] copy [of] this OPRA request be [included in] the [above] CD and hard copy”.
5. The letter from the Office to the New Jersey Department of Law & Public Safety (“LPS”) “to respond to the GRC with in Statements of Information under penalty of perjury.”
6. A copy of “the Annual C.E.P.A. from signed by the OPRA custodian for each OPRA request denied” from January 1, 2014 to January 20, 2015 “by the GRC on submittal by [the Complainant].”
7. “The mail noted in GRC complain t 2014-165 OPRA request to [the Office]”.

Custodian of Record: Heather Taylor
Request Received by Custodian: March 17, 2015
Response Made by Custodian: March 26, 2015
GRC Complaint Received: August 28, 2015

Background

November 13, 2018 Council Meeting:

At its November 13, 2018 public meeting, the Council considered the November 7, 2018 Findings and Recommendations of the Council Staff and all related documentation submitted by

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Valentina M. DiPippo.

the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

1. The portion of the Complainant's request item No. 4 seeking "OPRA requests and findings" and a certification was invalid. Not only did the item fail to provide ample identifiers, by way of date or range of dates, but also required her to create a certification. The Custodian was not required to perform research or creation of certification. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. 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); Morgano v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012). Further, request item No. 7 was invalid because it failed to contain the appropriate criteria. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Custodian has thus lawfully denied access to a majority of request item No. 4 and request item No. 7. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied the Complainant access to e-mails that he composed and sent to the Office responsive to OPRA request item No. 1 and that portion of OPRA request item No. 4 seeking a copy of the subject OPRA request. Simply put, disclosure of these records to the Complainant "[do] not advance the purpose of OPRA" Caggiano v. Office of the Gov., GRC Complaint No. 2014-408 (September 2015) (citing Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008)); N.J.S.A. 47:1A-6.
3. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item Nos. 2, 5, and 6. N.J.S.A. 47:1A-6. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
4. The Custodian bore her burden of proving that she provided the Complainant proper response to OPRA request item No. 3. N.J.S.A. 47:1A-6. Specifically, the Custodian provided the Complainant with a link to website where he could locate a roster of Office employees from 2013 to the date of the OPRA request. See Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014). Further, and most importantly, the Custodian provided detailed instructions on how to access this information.

Procedural History:

On November 15, 2018, the Council distributed its Final Decision to all parties. On December 10, 2018, the Complainant stated that he returned from vacation and received the Final Decision on that day. The Complainant stated that he was seeking reconsideration but did not include a copy of the required "Request for Reconsideration" form.³ On January 8, 2019, the Government Records Council ("GRC") sent a letter to the Complainant stating that it could not

³ The GRC received the Complainant's letter on December 17, 2018.

accept his correspondence as a valid request for reconsideration. The GRC noted that the Complainant was aware of the form requirement considering his prior “Request for Reconsideration” filings in past complaints.⁴ The GRC thus allowed the Complainant an additional ten (10) business days to submit a proper “Request for Reconsideration.”

On February 14, 2019, the Complainant filed a request for reconsideration of the Council’s November 13, 2018 Final Decision based on a mistake, new evidence, extraordinary circumstances, and fraud. The Complainant also alleged that he received the GRC’s January 8, 2019 letter upon returning from a month-long vacation on February 4, 2019.

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 of the Council’s November 13, 2018 Final Decision on February 14, 2019. This filing obviously occurred multiple months after the Council rendered its decision. Notwithstanding, the GRC is cognizant of the Complainant’s allegations of delayed receipt based on vacations, as well as the granted extension in its January 8, 2019 letter. Further, the GRC served the Complainant this decision via U.S. mail.⁵ Based on the GRC’s calculation of the extended ten (10) business day time frame, this filing is accepted as timely.

The GRC notes that it accepted the Complainant’s request for reconsideration here based on his allegations. However, the GRC reserves the right to deny future requests submitted without supporting documentation corroborating the Complainant’s allegations of when he received a Council decision.

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

⁴ See Caggiano v. Twp. of Mt. Olive (Morris), GRC Complaint No. 2012-250 (November 2013); Caggiano v. Twp. of Green (Sussex), GRC Complaint No. 2012-252 (January 2014); Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (September 2015); Caggiano v. Twp. of Wantage (Sussex), GRC Complaint No. 2016-115 (September 2018).

⁵ The Complainant is barred from communicating with the GRC via telephone, e-mail, or facsimile pursuant to a permanent restraining order issued on May 7, 2009.

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.

[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 a mistake, new evidence, extraordinary circumstances, or fraud. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. See D'Atria, 242 N.J. Super. at 401. Specifically, the Complainant's request for reconsideration amounted to a stream-of-consciousness set of allegations against multiple governmental agencies and individuals. 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 Council Staff respectfully recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council's November 13, 2018 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 a mistake, new evidence, extraordinary circumstances, or fraud. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant's request for reconsideration amounted to a stream-of-consciousness set of allegations against multiple governmental agencies and individuals. 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
Acting Executive Director

March 19, 2019



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
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LT. GOVERNOR SHEILA Y. OLIVER
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FINAL DECISION

November 13, 2018 Government Records Council Meeting

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At the November 13, 2018 public meeting, the Government Records Council (“Council”) considered the November 7, 2018 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 portion of the Complainant’s request item No. 4 seeking “OPRA requests and findings” and a certification was invalid. Not only did the item fail to provide ample identifiers, by way of date or range of dates, but also required her to create a certification. The Custodian was not required to perform research or creation of certification. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. 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); Morgano v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-69 (April 2012). Further, request item No. 7 was invalid because it failed to contain the appropriate criteria. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Custodian has thus lawfully denied access to a majority of request item No. 4 and request item No. 7. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied the Complainant access to e-mails that he composed and sent to the Office responsive to OPRA request item No. 1 and that portion of OPRA request item No. 4 seeking a copy of the subject OPRA request. Simply put, disclosure of these records to the Complainant “[do] not advance the purpose of OPRA . . .” Caggiano v. Office of the Gov., GRC Complaint No. 2014-408 (September 2015) (citing Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008)); N.J.S.A. 47:1A-6.
3. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item Nos. 2, 5, and 6. N.J.S.A. 47:1A-6. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no



responsive records exist. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

4. The Custodian bore her burden of proving that she provided the Complainant proper response to OPRA request item No. 3. N.J.S.A. 47:1A-6. Specifically, the Custodian provided the Complainant with a link to website where he could locate a roster of Office employees from 2013 to the date of the OPRA request. See Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014). Further, and most importantly, the Custodian provided detailed instructions on how to access this information.

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 13th Day of November, 2018

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: November 15, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
November 13, 2018 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2015-276

v.

**New Jersey Office of the Governor²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via compact disc (“CD”) of:

1. 130 e-mails referenced in Caggiano v. N.J. Office of the Gov., GRC Complaint No. 2014-166 (January 2015).
2. The job description for the individual tasked with responding to OPRA requests.
3. A roster of Office of the Governor (“Office”) employees from January 1, 2013 through March 17, 2015.
4. “The OPRA requests and findings of the GRC for Denial of Access complaints submitted by [the Complainant] v. Office of Gov during that period” and that “the response be certified by the record custodian and a copy also [hard] copy [of] this OPRA request be [included in] the [above] CD and hard copy”.
5. The letter from the Office to the New Jersey Department of Law & Public Safety (“LPS”) “to respond to the GRC with in Statements of Information under penalty of perjury.”
6. A copy of “the Annual C.E.P.A. from signed by the OPRA custodian for each OPRA request denied” from January 1, 2014 to January 20, 2015 “by the GRC on submittal by [the Complainant].”
7. “The mail noted in GRC complain t 2014-165 OPRA request to [the Office]”.

Custodian of Record: Heather Taylor

Request Received by Custodian: March 17, 2015

Response Made by Custodian: March 26, 2015

GRC Complaint Received: August 28, 2015

Background³

Request and Response:

On March 17, 2015, the Complainant submitted an Open Public Records Act (“OPRA”)

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Valentina M. DiPippo.

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

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request to the Custodian seeking the above-mentioned records.

On March 26, 2015, the Custodian responded in writing initially denying the Complainant's request on the basis that it was invalid. Gannett N.J. Partners, L.P. v. Cnty. of Middlesex, 379 N.J. Super. 205-212 (App. Div. 2005); MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). Further, the Custodian stated that OPRA did not require an agency to provide a requestor copies of records that he submitted. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008).

The Custodian further stated that notwithstanding her denial, she would attempt to assist the Complainant. Regarding item Nos. 1 and 4, the Custodian stated that the "parties are presently awaiting a decision on these issues" from the Government Records Council ("GRC"). Regarding item Nos. 2, 5, and 6, the Custodian stated that no records exist. Regarding item No. 3, the Custodian directed the Complainant to www.njyourmoney.nj.gov and provided detailed instructions on how to obtain information on all Office employees from 2013 forward. Regarding item No. 7, the Custodian reiterated that the Complainant's request was unclear.

Denial of Access Complaint:

On August 28, 2015, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant asserted that the Custodian's response was "willfully deceptive."⁴

Statement of Information:

On October 6, 2015, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on March 17, 2015. The Custodian certified that she responded in writing on March 26, 2015 denying the Complainant's request because it was overly broad and unclear. The Custodian noted that, in an effort to be responsive, she provided responses to each request item. The Custodian certified that no records responsive to item Nos. 2, 5, and 6 existed. The Custodian also affirmed that she provided detailed instructions on how to obtain Office employee information from the internet in response to item No. 3.

The Custodian argued that the remaining request item Nos. 1, 4, and 7 were essentially the same requests the Complainant previously submitted to the Office. The Custodian contended that the Council had already determined that these requests were invalid. Caggiano v. Office of the Gov., GRC Complaint No. 2014-263 (April 2015); Caggiano v. Office of the Gov., GRC Complaint No. 2014-272 (April 2015); Caggiano v. Office of the Gov., GRC Complaint No. 2014-408 (September 2015).

In addition, 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

⁴ The Complainant also included arguments regarding the "common law" portion of his OPRA request. However, the GRC has no jurisdiction over complaints concerning the common law right of access. N.J.S.A. 47:1A-7; Rowan v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013).

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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 item Nos. 1, 4, and 7 are similar to the requests in Caggiano, GRC 2014-263 and Caggiano, 2014-272 because they did not contain all Elcavage criteria.

Further, the Custodian argued that the Council has held that the Office was under no obligation to provide the Complainant with records he submitted. Caggiano, GRC 2014-408 at 6 (citing Bart, 403 N.J. Super. at 618); Blay v. Ocean Cnty. Health Dep't, GRC Complaint No. 2012-223 (June 2013). The Custodian asserted that here, the Complainant once again sought access to records he generated and submitted to the Office. The Custodian further asserted that the Complainant access to records related to his denial of access complaints that he either generated or received during the GRC's adjudication of them.

Finally, the Custodian contended that the Complainant had a history of submitting large volumes of records to the Office. Further, the Custodian argued that the Complainant has submitted repetitive requests to the Office. The Custodian noted that, by way of example, a portion of the request was nearly identical to the one in Caggiano, GRC 2014-166, while the portion seeking access to correspondence and OPRA requests he submitted was similar to the requests at issue in four (4) other complaints. See Caggiano, GRC 2014-263; Caggiano, GRC 2014-272; Caggiano, GRC 2014-408. The Custodian contended 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

Validity of Request

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. 534, 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. 30, 37;⁵ N.J. Builders Assoc. 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).

The GRC has established specific criteria deemed necessary under OPRA to request an e-mail communication. See Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid, such requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See Elcavage, GRC 2009-07; Sandoval v. N.J. 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 v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). The GRC notes that the Council has routinely determined that requests omitting the specific date or range of dates are invalid. See Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014).

Moreover, in Morgano v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-69 (April 2012), the complainant requested “. . . a certification clarifying . . .” facts about a certain issue. The custodian denied the complainant’s request as invalid and the Council agreed, reasoning that:

The Complainant’s request that the Custodian provide a certification . . . does not seek the Custodian’s disclosure of an existing identifiable government record but instead seeks that the Custodian perform the action of clarifying facts through the creation of a legal certification. The performance of such an action does not further the Legislative purpose of increasing public access to information contained in records. Moreover, the performance of such an action is not among the enumerated

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

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duties of a custodian set forth in OPRA. As such, the Complainant's request is invalid . . .

[Id. at 5.]

Here, a portion of the Complainant's OPRA request item No. 4 sought "OPRA requests and findings" relevant to Denial of Access Complaints filed by the Complainant against the Office "during that period." The item also sought a certification for the Custodian's response, presumably to this item. The Complainant's request item No. 7 sought "mail noted in GRC complain[t] 2014-165." For each item, the Custodian argued in the SOI that each was invalid.

Regarding "OPRA requests and findings," the Complainant did not identify individuals matters and only suggested a time frame with "during that period." This non-specific time frame could have referred to between two (2) and four (4) periods identified within the OPRA request depending on active adjudication periods for the complaints cited by the Complainant in his request. Thus, it is obvious that the Custodian did not have enough information to determine what records were responsive. Regarding the certification, the GRC's case law is clear that OPRA does not require a custodian to certify to their responses. As was the case in Morgano, this portion of the request is invalid because it sought to require the Custodian to create a legal certification.

Regarding item No. 7, the Complainant sought correspondence from a Denial of Access Complaint to which the Office was not a party.⁶ Further, the request item did not include all relevant Elcavage factors, such as a time frame or senders and/or recipients. It simply makes reference to possible correspondence submitted in relation to a complaint.

Therefore, the portion of the Complainant's request item No. 4 seeking "OPRA requests and findings" and a certification was invalid. Not only did the item fail to provide ample identifiers, by way of date or range of dates, but also required her to create a certification. The Custodian was not required to perform research or creation of certification. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Morgano, GRC 2011-69. Further, request item No. 7 was invalid because it failed to contain the appropriate criteria. Elcavage, GRC 2009-07. The Custodian has thus lawfully denied access to a majority of request item No. 4 and request item No. 7. N.J.S.A. 47:1A-6.

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.

⁶ The GRC notes that the cited complaint number referred to Foster v. State of N.J., Dep't of Treasury, GRC Complaint No. 2014-165 (April 2014) (Complaint Voluntarily Withdrawn). In N.J. Builders, 390 N.J. Super. 166, the court stated that "[t]he requestor must . . . submit the request with information that is essential to permit the custodian to comply with its obligations." Id. at 177. Here, even if the Complainant were to suggest that this citation was the result of a typo or other error on his part, a custodian would not be obligated to attempt to cure his mistake. Thomas Caggiano v. New Jersey Office of the Governor, 2015-276 – Findings and Recommendations of the Council Staff

OPRA Request Item No. 1 and 4

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 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 admitted that he was in possession of this record at the time of the OPRA request for the same record. Id.

In Caggiano, GRC 2014-408, the complainant sought access to e-mails he composed and sent to the Office. The Council, relying on Bart, 403 N.J. Super. 609, held that no unlawful denial of access occurred. In reaching its conclusion, the Council reasoned that

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.

[Id. (Final Decision dated July 28, 2015) at 6. See also 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 subsequently filed a request for reconsideration based on extraordinary circumstances, fraud, new evidence, change in circumstances, and illegality. Therein, the complainant argued that he actively deleted files and other “were destroyed in the last few months.” Id. (Final Decision dated September 29, 2015) at 2. The Council rejected this argument and denied reconsideration. The Council noted that the complainant failed to prove that disclosure of the e-mails would advance the purposes of OPRA. Further, the Council stated that “although public agencies are required to adhere to their retention schedules, OPRA was . . . not intended to allow

⁷ Reversing Bart v. City of Paterson Hous. Auth., GRC Complaint No. 2005-145 (May 2006).
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citizens to utilize public entities as taxpayer funded repositories for personal correspondence.” Id. at 4.

In the matter currently before the Council, the Complainant’s OPRA request item No. 1 sought 130 e-mails referenced in Caggiano, GRC 2014-166. These e-mails were composed by the Complainant and sent to the Office. See Caggiano, GRC 2014-166 at 2. Further, a portion of the Complainant’s OPRA request item No. 4 sought a “copy [of] this OPRA request.” The Custodian initially denied access arguing that the total request was invalid, but also noted that she was not required to disclose to a requestor copies of records he submitted (citing Bart, 403 N.J. Super. 609). In the SOI, the Custodian argued that Caggiano, GRC 2014-408 was exactly on point with the facts of this complaint.

As to the argument regarding the Custodian’s obligation to provide the Complainant e-mails that he submitted to the Office, the GRC is satisfied that this complaint is on point with Caggiano, GRC 2014-408. Disclosing to the Complainant correspondence 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. The GRC also stresses from Caggiano, GRC 2014-408 that 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.

The forgoing also applies to the Complainant’s attempts to require the Custodian to provide a copy of his OPRA request as part of her response. The Complainant appears to have submitted his request via OPRA Central, the State’s online OPRA request system. Thus, it is unimaginable that the Complainant would not have contemporaneously retained a copy of his own OPRA request. As such, requiring the Custodian to provide a copy of it in no way advances the purposes of OPRA.

Therefore, the Custodian lawfully denied the Complainant access to e-mails that he composed and sent to the Office responsive to OPRA request item No. 1 and that portion of OPRA request item No. 4 seeking a copy of the subject OPRA request. Simply put, disclosure of these records to the Complainant “[do] not advance the purpose of OPRA . . .” Caggiano, GRC 2014-408 (citing Bart, 403 N.J. Super. at 618); N.J.S.A. 47:1A-6.

OPRA Request Item Nos. 2, 5, and 6

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

Here, the Complainant’s OPRA request item No. 2 sought a job description for the person tasked with responding to OPRA requests. OPRA Item No. 5 requested a copy of a letter from LPS requiring the Custodian to respond to SOIs. OPRA Item No. 6 sought a “C.E.P.A.” letter signed by the Custodian for each OPRA request denial. The Custodian contended that request was invalid in its totality. However, the Custodian addressed the items individually, advising that no records responsive to item Nos. 2, 5, and 6 existed.

In the SOI, the Custodian certified that no records responsive to item Nos. 2, 5, and 6 existed. The GRC is persuaded that the Custodian's response is correct. For item No. 2, the GRC is unaware of any "job description" for the position of an OPRA custodian within a State agency. For item No. 5, the GRC believes the Complainant confused the GRC's letters sent to the Office requesting submission of an SOI. The GRC is unaware of any instance where LPS would send such a letter. Further, there is no evidence in this record to suggest that such a procedure is in place. For item No. 6, OPRA does not require custodians to sign "Annual C.E.P.A. statements" as part of each response. In fact, "C.E.P.A." (short for the "Conscientious Employee Protection Act") is an entirely different statute that has no applicability here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request item Nos. 2, 5, and 6. N.J.S.A. 47:1A-6. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. See Pusterhofer, GRC 2005-49.

OPRA Request Item No. 3

In Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014), the Council noted that:

[A]vailability of Internet, as well as technological capability in general, has greatly increased. Many New Jerseyans turn to the Internet to conduct business with government, including electronically filing taxes, renewing motor vehicle registrations, paying penalties for motor vehicle violations, and making OPRA requests. Indeed, the Legislature signified its awareness of this fact by passing a statute requiring "[a]ny State authority, board, or commission, regional authority, or environmental authority, board, or commission [to] develop and maintain either an Internet website or a webpage on the State's, municipality's, or county's Internet website . . . to provide increased public access to . . . operations and activities" N.J.S.A. 40:56A-4.1.

A reversal of the Council's past holdings that found referring requestors to records readily available on the Internet to be a violation of OPRA will not infringe on the statute's purpose of "maximiz[ing] public knowledge about public affairs in order to ensure an informed citizenry . . ." Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (citing Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law. Div. 2004)). Directing a requestor to the specific location of a government record on the Internet will save government, and thus taxpayers, time and money, while also providing an efficient and expedient way for a requestor to easily obtain and examine the responsive record as required under OPRA. N.J.S.A. 47:1A-1.

[Id. at 3.]

The Council further noted that "[t]he Legislature incorporated the notion of "reasonableness" into several sections of OPRA." Id. at 4 (citing N.J.S.A. 47:1A-1; N.J.S.A.

47:1A-5(c)-(d); N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-6, 7(f)). The Council thus set a reasonable policy by which a custodian may direct a requestor to records on the Internet:

[A] custodian shall direct a requestor, with reasonable clarity, to the specific location on the Internet where the responsive records reside. This shall include, if necessary, directions for accessing the responsive document that would be comprehensible to a reasonable person, including but not limited to providing a link to the exact location of the requested document. However, a custodian's ability to direct a requestor to the specific location of a government record on the Internet is contingent upon on the requestor's ability to electronically access the records. Thus, a custodian is not absolved from providing the record in hardcopy if the requestor is unable to obtain the information from the Internet and makes it known to the custodian within seven (7) business days after receipt of the custodian's response, in which case the custodian will have seven (7) business days from the date of such notice to disclose the record(s) in hardcopy.⁸

[Id. at 4.]

In the instant matter, the Complainant's OPRA request item No. 3 sought a roster of Office employees from January 1, 2013 through March 17, 2015. The Custodian responded directing the Complainant to www.njyourmoney.nj.gov and providing detailed instructions on how to access all employee information from 2013 to present. The GRC is satisfied that the Custodian's response to this request item was proper in accordance with Rodriguez, GRC 2013-69. Specifically, the Custodian provided a direct link to the place on the internet where the Complainant could obtain a roster. Further, because the information was not directly within the page linked, the Custodian provided detailed instructions on how to obtain the information sought. All actions conform with the GRC's recent policy change regarding directing requestors to the internet for responsive records posted thereon.

Therefore, the Custodian bore her burden of proving that she provided the Complainant proper response to OPRA request item No. 3. N.J.S.A. 47:1A-6. Specifically, the Custodian provided the Complainant with a link to website where he could locate a roster of Office employees from 2013 to the date of the OPRA request. See Rodriguez, GRC 2013-69. Further, and most importantly, the Custodian provided detailed instructions on how to access this information.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The portion of the Complainant's request item No. 4 seeking "OPRA requests and findings" and a certification was invalid. Not only did the item fail to provide ample identifiers, by way of date or range of dates, but also required her to create a certification. The Custodian was not required to perform research or creation of certification. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div.

⁸ If the request was submitted electronically or the records were requested to be disclosed electronically, there will be a presumption that the complainant has access to the Internet.

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- 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. 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); Morgano v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012). Further, request item No. 7 was invalid because it failed to contain the appropriate criteria. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Custodian has thus lawfully denied access to a majority of request item No. 4 and request item No. 7. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied the Complainant access to e-mails that he composed and sent to the Office responsive to OPRA request item No. 1 and that portion of OPRA request item No. 4 seeking a copy of the subject OPRA request. Simply put, disclosure of these records to the Complainant “[do] not advance the purpose of OPRA . . .” Caggiano v. Office of the Gov., GRC Complaint No. 2014-408 (September 2015) (citing Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008)); N.J.S.A. 47:1A-6.
 3. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item Nos. 2, 5, and 6. N.J.S.A. 47:1A-6. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
 4. The Custodian bore her burden of proving that she provided the Complainant proper response to OPRA request item No. 3. N.J.S.A. 47:1A-6. Specifically, the Custodian provided the Complainant with a link to website where he could locate a roster of Office employees from 2013 to the date of the OPRA request. See Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014). Further, and most importantly, the Custodian provided detailed instructions on how to access this information.

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