



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

September 29, 2016 Government Records Council Meeting

Tammy Duffy
 Complainant

Complaint No. 2015-279

v.

Township of Hamilton (Mercer)
 Custodian of Record

At the September 29, 2016 public meeting, the Government Records Council (“Council”) considered the August 23, 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 because the Complainant’s request failed to identify specific government records, the request is invalid pursuant to MAG Entm’t, LLC v. Div. of Alcoholic 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 therefore 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 29th Day of September, 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: October 4, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2016 Council Meeting**

**Tammy Duffy¹
Complainant**

GRC Complaint No. 2015-279

v.

**Township of Hamilton (Mercer)²
Custodial Agency**

Records Relevant to Complaint: “All information pertaining to the development, building, financial spend, emails, documents . . . pertaining to the new gun range built by Hamilton Twp. on Electronics Rd. (off Basin Rd.). We want the emails of every Twp. employee, what was spent, and analysis on why it was built.”

Custodian of Record: Eileen Gore

Request Received by Custodian: August 25, 2015

Response Made by Custodian: August 27, 2015; August 29, 2015

GRC Complaint Received: September 1, 2015

Background³

Request and Response:

On August 11, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 25, 2015, the Complainant wrote to the Custodian, seeking a status update as to her request. That same day, the Custodian responded, “Sorry, we have no OPRA request on file as being received from you. When did you mail it?” The Complainant wrote back later that same day, noting that her request was mailed on August 11, 2015 and re-attaching it to her e-mail.

On August 27, 2015, the Custodian responded to the request in writing, noting that it was first received by the Township on August 25, 2015, and therefore her response was issued on the second business day. The Custodian advised the Complainant there is no “new” gun range on Electronics Drive and that the request sought information or asked questions and did not identify specific government records. The Custodian accordingly denied the request as invalid, pursuant to NJ Builders Assoc. v. NJ Council on Affordable Housing, 390 N.J. Super. 166, 180 (App.

¹ No legal representation listed on record.

² Represented by Bruce Darvas, Esq. (Hamilton, 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.

Div. 2007) and Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005).⁴ The Custodian noted that custodians “are not required to conduct research or create new records in response to an OPRA request.”

On August 29, 2015, the Complainant responded to the Custodian’s denial letter, stating that she found it “rather perplexing.” She asserted, “To say there is no gun range where there clearly on Electronics Drive is quite disturbing” (sic). She stated that she and several other residents had spoken to several Township employees “who spent the summer building a ‘park’ for the range.” The Complainant asserted that these employees “were driving through our neighborhood with lots of equipment this summer.” The Complainant made additional assertions about the activities of the gun range and noted that she attached photos of the entrance to the range. She asked, “Do you still have the stance that there is no firing range?”

Denial of Access Complaint:

On August 31, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant raised no other legal arguments, other than asserting a denial of access.

Statement of Information:

On October 13, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 25, 2015, after the Complainant e-mailed it. The Custodian certified that she responded in writing on August 27, 2015, denying the request as invalid because it failed to identify specific government records. She additionally argued that there are no records responsive to the request as “there is no ‘new’ gun range that was built this past summer.”

Analysis

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

⁴ Affirming Bent v. Stafford Police Dep't, GRC Case No. 2004-78 (October 2004).

records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.

MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) (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; NJ Builders, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Further, in Bent, 381 N.J. Super. 30, 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.” Id.

In the instant complaint, the Complainant’s OPRA request sought “all information” pertaining to a particular subject, including “emails of every” Township employee, “what was spent,” and “analysis.” Because the Complainant failed to identify specific government records, the Custodian would have been forced to conduct an open-ended search into the Township’s files to attempt to locate possibly responsive records. 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 identify specific government records, 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 therefore 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 because the Complainant's request failed to identify specific government records, the request is invalid pursuant to MAG Entm't, LLC v. Div. of Alcoholic 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 therefore lawfully denied access to Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: Husna Kazmir
Staff Attorney

August 23, 2016⁵

⁵ This complaint could not be adjudicated at the Council's August 30, 2016 meeting due to lack of a quorum.