



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**

**May 23, 2017 Government Records Council Meeting**

Elouise McDaniel  
Complainant

Complaint No. 2015-296

v.

Township of Irvington (Essex)  
Custodian of Record

At the May 23, 2017 public meeting, the Government Records Council (“Council”) considered the May 16, 2017 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 Executive Director respectfully recommends the Council find that the Complainant’s June 29, 2015 OPRA request is invalid because it sought information and fails to request specific government records. LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Therefore, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Additionally, because the Council finds that the Complainant’s OPRA request is invalid, it is unnecessary to address the Custodian’s claims that the requested information may or may not contain attorney-client privileged communications.

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 23<sup>rd</sup> Day of May, 2017

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 30, 2017**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 23, 2017 Council Meeting**

**Elouise McDaniel<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-296**

v.

**Township of Irvington (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “How much money has been paid to Michael Critchley and when was the last time he received payment?”

Has Lester Taylor the Mayor of East Orange been given a position here in Townhall? If so, how much is he being paid and what position does he hold?”

**Custodian of Record:** Harold E. Weiner<sup>3</sup>

**Request Received by Custodian:** June 29, 2015

**Response Made by Custodian:** July 30, 2015; August 5, 2015

**GRC Complaint Received:** September 18, 2015

**Background<sup>4</sup>**

**Request and Response:**

On June 29, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 30, 2015, twenty-two (22) business days later, the original Custodian responded in writing, stating that Lester Taylor “is not an employee of the Township of Irvington [“Township”] and has no position recognized by the Township.” (Internal quotations omitted). On August 5, 2015, one of the Custodian’s Counsels provided a supplemental response, stating that the Complainant’s OPRA request sought information and not a specific document. Furthermore, the Custodian’s Counsel stated that the information requested was not subject to disclosure as it “may or may not” be communication protected by attorney-client privilege under N.J.S.A. 47:1A-1.1.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Evelyn Akushi-Onyeani, Esq. (Irvington, NJ).

<sup>3</sup> At the time of the request, Musa A. Malik was the Records Custodian.

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

### Denial of Access Complaint:

On September 18, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that she is protesting the August 5, 2015 response to her OPRA request. She claimed that it was her understanding that Township hired Lester Taylor to represent them in a lawsuit.

### Statement of Information:

On November 2, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on or about June 29, 2015. The Custodian certified that his predecessor responded in writing on July 30, 2015, stating that Lester Taylor is not an employee of the Township and does not retain a position recognized by the Township. The Custodian additionally certified that the Custodian’s Counsel provided a supplemental response in writing on August 5, 2015, stating that the Complainant’s request sought information and not a document. The Custodian’s Counsel also stated that the information sought might contain attorney-client privileged communications.

In the Custodian’s SOI, he certified that both Michael Critchley and Lester Taylor were not employees but independent contractors for the Township. The Custodian further certified that the information sought by the Complainant may or may not contain attorney-client privileged communications.

## Analysis

### Validity of the 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 “[w]hile 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 Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added). The MAG 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. (emphasis added). *See also* Bent v. Twp. of Stafford Police Dept., Custodian of Records, 381 N.J. Super. 30, 37 (App. Div. 2005), N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The GRC has also consistently found that requests that ask questions instead of requesting specific documents are not valid OPRA requests pursuant to N.J.S.A. 47:1A-1 et seq. In LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant's request was a request for information, holding that "because request Item No. 2 of the Complainant's June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG, supra] . . ." *Id.* at 6. *See also* Ohlson v. Township of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). Additionally, in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the complainant's September 13, 2007 OPRA request asked five (5) questions. The Council determined that the request was an invalid request that failed to identify government records.

In the instant matter, the Complainant asked a number of questions pertaining to two (2) individuals whom she believed were hired by or paid by the Township for legal services. Although the Complainant's questions regarding Lester Taylor approach a valid request for personnel information under N.J.S.A. 47:1A-10, she failed to specifically request a government record regarding either individual. Nevertheless, the prior Custodian informed the Complainant on July 30, 2015 that Lester Taylor was not an employee and held no position with the Township. Additionally, the Complainant did not put forth any legal arguments in her Denial of Access Complaint, but she instead merely makes the contention that Lester Taylor was hired to represent the Township in a lawsuit.

Based on the foregoing, the Council finds that the Complainant's June 29, 2015 OPRA request is invalid because it sought information and fails to request specific government records. LaMantia, GRC 2008-14. Therefore, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Additionally, because the Council finds that the Complainant's OPRA request is invalid, it is unnecessary to address the Custodian's claims that the requested information may or may not contain attorney-client privileged communications.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant's June 29, 2015 OPRA request is invalid because it sought information and fails to request specific government records. LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Therefore, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Additionally, because the Council finds that the Complainant's OPRA request is invalid, it is unnecessary to address the Custodian's claims that the requested information may or may not contain attorney-client privileged communications.

Prepared By: Samuel A. Rosado  
Staff Attorney

May 16, 2017