



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

November 15, 2016 Government Records Council Meeting

Woo Jin Hwang
Complainant

Complaint No. 2015-305

v.

Ridgewood Police Department (Bergen)
Custodian of Record

At the November 15, 2016 public meeting, the Government Records Council (“Council”) considered the November 9, 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. 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.
2. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s request for a “list,” because she certified that no responsive records were located, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep’t of Educ. (GRC Complaint No. 2005-49) (July 2005).

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 November, 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: November 17, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 15, 2016 Council Meeting**

**Woo Jin Hwang¹
Complainant**

GRC Complaint No. 2015-305

v.

**Ridgewood Police Department (Bergen)²
Custodial Agency**

Records Relevant to Complaint:

July 8, 2015 OPRA Request: “A copy of any and all manuals, handbooks, directives, policies, procedures, and police manuals that were applicable to police officers employed by the Ridgewood Police Department between September 1 and September 30 of 2010.”

August 18, 2015 OPRA Request: “A list of all existing manuals, handbooks, policies, procedures, and police manuals that pertains to the above, and the number of pages, so I can narrow down my request to be more ‘specific.’ The title of the record, and the number of pages, will do for now.”

Custodian of Record: Captain Jacqueline Luthcke

Request Received by Custodian: July 9, 2015; August 18, 2015

Response Made by Custodian: July 16, 2015; August 19, 2015

GRC Complaint Received: September 25, 2015

Background³

Request and Response:

On July 8, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian, seeking the above-mentioned records. The Custodian responded in writing on July 16, 2015, seeking clarification as to the specific government records sought, pursuant to Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian explained that the Ridgewood Police Department (“Department”) and its officers rely on hundreds of directives, manuals, and orders for daily operation. The Custodian advised that she would close the request if the Complainant did not provide written clarification.

¹ No legal representation listed on record.

² Represented by Matthew Rogers, Esq. (Ridgewood, 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.

The Complainant responded to the Custodian by letter, which the Custodian received on August 18, 2015.⁴ In that correspondence, the Complainant did not provide clarification but instead requested the following: “A list of all existing manuals, handbooks, policies, procedures, and police manuals that pertains to the above, and the number of pages, so I can narrow down my request to be more ‘specific.’ The title of the record, and the number of pages, will do for now” (sic).

On August 19, 2015, the Custodian responded to the Complainant’s request, stating that the Department was unable to fulfill the request because the requested documentation does not exist. The Custodian stated that she was under no obligation to create a record in response to the Complainant’s OPRA request, pursuant to Librizzi v. Township of Verona Police Dep’t, GRC Complaint No. 2009-213 (August 2010).

On August 21, 2015, the Complainant wrote to the Custodian, disputing that he had asked her to create a new record and noting that he had requested a “list of the list of titles for the records I originally sought.” He questioned how he could narrow his first request without knowing the titles of the existing manuals.

On August 28, 2015, the Custodian responded to the Complainant’s August 21, 2015 letter. The Custodian explained that, in order to respond to the Complainant’s OPRA request, the Department would have to research its files, the County Prosecutor’s files, and the state Attorney General’s files, going back five years, to “determine each and every” policy, manual, handbook, and procedure to which Department staff were subject during the specified time period. The Custodian added that only after such research could a list be created. She additionally noted that such a list has never existed, does not exist, and extensive time and effort would have to be spent in order to research and create such a list. She stated that such a list has never been required to be created or maintained and that the Department is not required to research and create such a list pursuant to Librizzi, GRC 2009-213.

Denial of Access Complaint:

On September 25, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant made no additional legal arguments, other than asserting that the denial of access was improper. He stated that he could not narrow his request per the Custodian’s request because he required a list of existing records.

Statement of Information:

On October 12, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 9, 2015, and subsequent follow-up letters on August 18, 2015, and August 27, 2015. The Custodian certified that she reviewed the initial request numerous times in an attempt to understand the nature of the request. She also reviewed the Department’s accreditation standards to determine what, if any, records could be identified in the overall operation of the Department. The Custodian further

⁴ The Complainant did not date the letter.

reviewed the records retention requirements for both the Department and the Municipality. She additionally averred that she reviewed the tenure of all officers of the department employed from September 1, 2010, to September 30, 2010, in order to determine the range of manuals, handbooks, directives, policies, procedures, and police manuals that those individuals might have reviewed during the period.

The Custodian certified that she responded in writing on July 16, 2015, seeking clarification because the Complainant's OPRA request was overly broad. She averred that she then wrote to the Complainant on August 19, 2015, and August 28, 2015, advising that no records existed in response to his request for a "list."

The Custodian cited to MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), noting that a custodian may deny access if a request does not specifically name identifiable records. She additionally argued that Librizzi provides that the Records Custodian is under no obligation to create a record in response to the Complainant's OPRA request: the Complainant's follow-up correspondence requested a "list" of responsive records, which is a record that does not exist. She contended that the Department had made a good faith effort to respond to the Complainant's request and performed an extensive search of the Department records and requirements.

Additional Party Submissions

On October 19, 2015, the Complainant wrote to the GRC in response to the Custodian's SOI. The Complainant disputed the Custodian's contention that his request was overly broad and argued that the Custodian was required, pursuant to N.J.S.A. 40A:14-181, to establish "standard operating procedures" for a police agency. The Complainant alleged that he had requested those standard operating procedures and stated that his request for a "list" was an attempt to narrow his request. He stated that his request for a "list" was not a request for the creation of a new document but rather a request for "disclosure of the titles of the responsive documents."

Analysis

July 8, 2015 OPRA Request:

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 v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005)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, the Superior Court in Bent⁶ 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

In the instant complaint, the Complainant's July OPRA request sought “any and all manuals, handbooks, directives, policies, procedures, and police manuals that were applicable,” pertaining to “all police officers” employed during a specific one month period in 2010. In her response to the OPRA request, the Custodian explained that the Department and its officers “rely on hundreds” of directives, manuals, and orders for daily operation. In her SOI, the Custodian added that she reviewed the Department's accreditation standards to determine what, if any, records could be identified in the overall operation of the Department. In addition, the Custodian reviewed the tenure of all officers of the Department employed from September 1, 2010, to September 30, 2010, in order to determine the range of manuals, handbooks, directives, policies,

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*.

procedures, and police manuals that those individuals might have reviewed during that period. Because the Complainant failed to identify specific government records, the Custodian would have been forced to conduct an open-ended search into the Department'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.

August 18, 2015 OPRA Request:

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.

With respect to the Complainant's second request, which sought a "list" of the responsive records, the Custodian's August 28, 2015 response explained that providing such a "list" would require the Department to research its files, the County Prosecutor's files, and the state Attorney General's files, going back five years, to "determine each and every" policy, manual, handbook, and procedure to which the Department's staff were subject during the specified time period. The Custodian added that only after such research could a list be created. She additionally noted that such a list has never existed, does not exist, and extensive time and effort would have to be spent in order to research and create such a list.

The Council has previously found that, in light of a custodian's certification that no records responsive to the request exist, and where no evidence exists in the record to refute the custodian's certification, no unlawful denial of access occurred. *See Pusterhofer v. NJ Dep't of Educ.* (GRC Complaint No. 2005-49) (July 2005). Here, the Custodian certified that a list, as requested by the Complainant, has never existed, does not exist, and time and research would have to be extended in order to create such a list.

Therefore, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's request for a "list," because she certified that no responsive records were located, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. 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.
2. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's request for a "list," because she certified that no responsive records were located, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ. (GRC Complaint No. 2005-49) (July 2005).

Prepared By: Husna Kazmir
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November 9, 2016