



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

February 21, 2017 Government Records Council Meeting

Annette L. Steinhardt
Complainant

Complaint No. 2015-375

v.

Bernardsville Police Department (Somerset)
Custodian of Record

At the February 21, 2017 public meeting, the Government Records Council (“Council”) considered the February 14, 2017 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 the Custodian has borne his burden of proof that he did not unlawfully deny access to the Complainant’s October 24, 2015 request. N.J.S.A. 47:1A-6. The request is invalid because it seeks a broad range of unidentified documents instead of specifically identifiable government records. *See* MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 177 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 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 21st Day of February, 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: February 23, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 21, 2017 Council Meeting**

**Annette L. Steinhardt¹
Complainant**

GRC Complaint No. 2015-375

v.

**Bernardsville Police Department (Somerset)²
Custodial Agency**

Records Relevant to Complaint: Copies of “all documents obtained by Paul Kelley in his background check of me.”

Custodian of Record: Chief Kevin J. Valentine
Request Received by Custodian: October 24, 2015
Response Made by Custodian: October 27, 2015
GRC Complaint Received: November 20, 2015

Background³

Request and Response:

On October 22, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 27, 2015, the Custodian responded in writing, advising that the Police Department had no records responsive to the request.

Denial of Access Complaint:

On November 20, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Bernardsville Police Department (“Department”) had “abused their power, processed an unlawful search and investigation, and shredded evidence to cover it up” and additionally did not respond. She made no additional legal arguments. The Complainant listed the records denied as: (1) original/natural birth certificate, “sealed by a judge” and (2) her personal records from the Division of Youth and Family Services, “sealed by a judge.”

¹ No legal representation listed on record.

² Represented by John R. Pidgeon, Esq. (Princeton, 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.

Statement of Information:

On December 16, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request “on or about” October 24, 2015. The Custodian certified that he responded in writing on October 25, 2015, and sent the correspondence to the Complainant via certified mail on October 27, 2015. The Custodian attached copies of the certified mail documents and noted that the envelope containing his response was marked “return to sender, unclaimed, unable to forward,” after three additional attempts were made to deliver it on October 29, November 3, and November 13, 2015. He noted that during this time period the Complainant had submitted multiple OPRA requests to the Department by e-mail, including corresponding with the Custodian and Custodian’s Counsel, and did not mention that she received no response to the request at issue in the present complaint.

The Custodian argued that the Complainant’s request was vague and unclear. He additionally noted that, it “appear[ed]” that no records responsive to the request exist. The Custodian also certified that the records denied listed in the Complainant’s Denial of Access Complaint did not appear on the completed OPRA request form that the Department (“BPD”) received.

Analysis

Invalid OPRA 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 Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (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 v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁴ Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Additionally, in N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 177 (App. Div. 2007), the court held that a requestor is required to “submit the request with information that is essential to permit the custodian to comply with its obligations.”

The GRC has repeatedly found that blanket requests are not valid OPRA requests. For instance, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the relevant part of the complainant’s request sought:

2. Item No. 2: “From the Borough Engineer’s files: all engineering documents for all developments or modifications to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
3. Item No. 3: From the Borough Engineer’s files: all engineering documents for all developments or modifications to North St., to the south and east of Wilson St.
4. Item No. 4: From the Borough Attorney’s files: all documents related to the development or modification to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
5. Item No. 5: From the Borough Attorney’s files: all documents related to the development or modification to North Street, to the south and east of Wilson St.”

In reviewing the request in Schuler, the Council relied on MAG and found that “[b]ecause the complainant’s OPRA requests #2-5 are not requests for identifiable government records, the requests are invalid and the custodian has not unlawfully denied access to the requested records pursuant to MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 549 (App. Div. 2005) and Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005).”

In Bent, the court referenced MAG, noting that a requestor must specifically describe the document sought, because OPRA operates to make identifiable government records “accessible.” 381 N.J. Super. at 37. “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.

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

In the instant matter, the Complainant requested “all documents obtained” in connection with a background investigation. Similar to the facts in Schuler, the Complainant here failed to provide the Custodian with adequate identifiers, such as authors, dates, titles, or topics, to allow the Custodian to locate responsive documents.

Therefore, the Custodian has borne his burden of proof that he did not unlawfully deny access to the Complainant’s October 24, 2015 request. N.J.S.A. 47:1A-6. The request is invalid because it seeks a broad range of unidentified documents instead of specifically identifiable government records. *See* MAG, 375 N.J. Super. at 546, 549; Bent, 381 N.J. Super. 30; N.J. Builders Ass’n, 390 N.J. Super. at 177, 180; and Schuler, GRC 2007-151.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he did not unlawfully deny access to the Complainant’s October 24, 2015 request. N.J.S.A. 47:1A-6. The request is invalid because it seeks a broad range of unidentified documents instead of specifically identifiable government records. *See* MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 177 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Prepared By: Husna Kazmir
Staff Attorney

February 14, 2017