



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

September 25, 2018 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2016-115

v.

Township of Wantage (Sussex)
Custodian of Record

At the September 25, 2018 public meeting, the Government Records Council (“Council”) considered the September 18, 2018 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 July 31, 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 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 25th Day of September, 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: September 27, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
**Supplemental Findings and Recommendations of the Council Staff
September 25, 2018 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2016-115

v.

**Township of Wantage (Sussex)²
Custodial Agency**

Records Relevant to Complaint: Hard copies via U.S. mail of “285 e[-]mails stated in the memorandum of law in support to remand case to State Superior Court” on a compact disc (“CD”) prepared by Custodian’s Counsel. (Emphasis in original).

Custodian of Record: James R. Doherty³
Request Received by Custodian: January 17, 2016
Response Made by Custodian: January 22, 2016
GRC Complaint Received: April 15, 2016

Background

July 31, 2018 Council Meeting:

At its July 31, 2018 public meeting, the Council considered the July 24, 2018 Findings and Recommendations of the Council Staff and all related documentation submitted by the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

1. The Township erred by denying the Complainant’s OPRA request on the bases that he was an out-of-state requestor. Specifically, the Township could have reasonably relied on this denial at a time when the out-of-state requestor question was uncertain. However, the court’s published decision in Scheeler v. Atl. Cty. Mun. Joint Ins. Fund, ___ N.J. Super. ___ (App. Div. 2018), holding that out-of-state requestors have standing to use OPRA, has laid to rest the controversy.
2. The Custodian was not required to provide the responsive records to the Complainant because he sought e-mails that he, himself, composed and sent to the Township. Disclosure of those e-mails to Complainant simply “does not advance the purpose of

¹ No legal representation listed on record.

² Represented by Steven R. Tombalakian, Esq., of Weiner Law Group, LLP (Parsippany, NJ).

³ Mr. Doherty passed away on April 3, 2016

OPRA . . .” Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (September, 2015) (citing Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008)). For this reason, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.

3. There is no violation of OPRA regarding the Township’s office OPRA request. Specifically, the Township’s official OPRA request form contains all requisite information as prescribed in N.J.S.A. 47:1A-5(f). Further, contrary to Paff v. Gloucester City (Camden), GRC Complaint No. 2009-102 (Interim Order dated April 8, 2010) and Wolosky v. Borough of Mt. Arlington (Morris), GRC Complaint No. 2010-194 (Interim Order dated November 29, 2011), the form does not contain any misleading statements as to the availability of certain records.

Procedural History:

On August 3, 2018, the Council distributed its Final Decision (“Decision”) to all parties. On August 21, 2018, the Complainant filed a request for reconsideration of the Council’s Decision based on extraordinary circumstances and fraud.

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 Order July 31, 2018 Decision on August 21, 2018. Because the Complainant was served the Decision via U.S. mail,⁴ it is presumed that the Complainant’s filing was timely.

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 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

⁴ 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.

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 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 July 31, 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 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
Communications Specialist/Resource Manager

September 18, 2018



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
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FINAL DECISION

July 31, 2018 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2016-115

v.

Township of Wantage (Sussex)
Custodian of Record

At the July 31, 2018 public meeting, the Government Records Council (“Council”) considered the July 24, 2018 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. The Township erred by denying the Complainant’s OPRA request on the bases that he was an out-of-state requestor. Specifically, the Township could have reasonably relied on this denial at a time when the out-of-state requestor question was uncertain. However, the court’s published decision in Scheeler v. Atl. Cty. Mun. Joint Ins. Fund, ___ N.J. Super. ___ (App. Div. 2018), holding that out-of-state requestors have standing to use OPRA, has laid to rest the controversy.
2. The Custodian was not required to provide the responsive records to the Complainant because he sought e-mails that he, himself, composed and sent to the Township. Disclosure of those e-mails to Complainant simply “does not advance the purpose of OPRA . . .” Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (September, 2015) (citing Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008)). For this reason, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.
3. There is no violation of OPRA regarding the Township’s office OPRA request. Specifically, the Township’s official OPRA request form contains all requisite information as prescribed in N.J.S.A. 47:1A-5(f). Further, contrary to Paff v. Gloucester City (Camden), GRC Complaint No. 2009-102 (Interim Order dated April 8, 2010) and Wolosky v. Borough of Mt. Arlington (Morris), GRC Complaint No. 2010-194 (Interim Order dated November 29, 2011), the form does not contain any misleading statements as to the availability of certain records.

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 31st Day of July, 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: August 3, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 31, 2018 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2016-115

v.

**Township of Wantage (Sussex)²
Custodial Agency**

Records Relevant to Complaint: Hard copies via U.S. mail of “285 e[-]mails stated in the memorandum of law in support to remand case to State Superior Court” on a compact disc (“CD”) prepared by Custodian’s Counsel. (Emphasis in original).

Custodian of Record: James R. Doherty³
Request Received by Custodian: January 17, 2016
Response Made by Custodian: January 22, 2016
GRC Complaint Received: April 15, 2016

Background⁴

Request and Response:

On January 11, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 22, 2016, Custodian’s Counsel responded in writing on the Custodian’s behalf denying the Complainant’s OPRA request based on two (2) reasons. First, Counsel stated that the Complainant, as an out-of-state resident, was not eligible to use OPRA. Second, Counsel stated that disclosure of e-mails the Complainant sent to the Township of Wantage (“Township”) did “not advance the purpose of OPRA.” See Caggiano v. Office of the Gov., GRC Complaint No. 2014-408 (September 2015) (quoting Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008)).

Denial of Access Complaint:

On April 15, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that Township’s the denial of

¹ No legal representation listed on record.

² Represented by Steven R. Tombalakian, Esq., of Weiner Law Group, LLP (Parsippany, NJ).

³ Mr. Doherty passed away on April 3, 2016

⁴ 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.

access was unlawful. The Complainant also asserted that he did not retain thousands of e-mails because “in the State of [Nevada] even the government is not required to retain” them. The Complainant asserted that the Township stated that it maintained 285 of his e-mails; thus, the Custodian should have provided them to him. The Complainant also contended that the Township was using an official OPRA request form that did not “agree in format with the GRC OPRA guideline model.”

Statement of Information:

On May 6, 2016, the Custodian Counsel filed a Statement of Information (“SOI”) on behalf of the decedent Custodian. Therein, Counsel stated that the Township received the Complainant’s OPRA request on January 17, 2016. Counsel certified that, on the Custodian’s behalf, he responded in writing on January 22, 2016 denying the OPRA request. Counsel argued that he lawfully denied the Complainant’s OPRA request because: 1) the Complainant was not a citizen of New Jersey; and 2) the Complainant sought access to e-mails he sent to the Township.

Regarding the standing issue, Counsel argued that his response was proper pursuant to a “February 19, 2016 Order” and Lawyer’s Comm. v. Atlantic City Bd. of Educ., Docket No. ATL-L-832-15. See N.J.S.A. 47:1A-1.

Regarding the records, Counsel affirmed that the Complainant sought only e-mails he sent to the Township. Counsel noted that the GRC previously held that an agency did not have to disclose records in response to such a request. See Caggiano, GRC 2014-408 (quoting Bart, 403 N.J. Super. at 618). Further, Counsel asserted that the Complainant failed to adhere to the “Rules of Court” regarding such requests that were the subject of Twp. of Wantage v. Caggiano, Docket No. SSX-C-21-15, where the Township was seeking to prevent Complainant from abusing OPRA.

Additional Submissions:

On August 16, 2016, Custodian’s Counsel sent a letter to the GRC stating that the Honorable Stephan J. Hansbury, P.J.S.C., recently released an order in Twp. of Wantage, Docket No. SSX-C-21-15. Counsel stated that therein, Judge Hansbury held that the Complainant did not have standing under OPRA because he was not a citizen of the State. Counsel thus requested that the GRC dismiss this complaint because the Complainant had no standing to submit OPRA requests.

Analysis

Out-of-State Requestors

OPRA provides that “government records shall be readily accessible for inspection, copying, or examination *by the citizens of this State . . .*” N.J.S.A. 47:1A-1. The question of whether non-residents of New Jersey have standing to request records under OPRA was unsettled for several years until recently. The Appellate Division, in the published decision Scheeler v. Atl. Cty. Mun. Joint Ins. Fund, ___ N.J. Super. ___ (App. Div. 2018), held that “the right to request records under OPRA is not limited to ‘citizens’ of New Jersey.” Id. at 3.

Scheeler determined that “unlike the former Right To Know Law (“RTKL”), the absence of the term ‘citizen’ or a definitive definition in OPRA indicated the Legislature’s ‘intent to expand the public’s right of access to public records, beyond that permitted by the RTKL.’ Id. at 10. The court supported its conclusion by stating that “any doubts about the meaning of the phrase should be resolved in favor of public access, and hence in favor of construing the phrase as a generality rather than an intentional limit on standing. See Serrano v. South Brunswick Twp., 358 N.J. Super. 352, 366 (App. Div. 2003) (ambiguities in OPRA are to be resolved in favor of public access).” Id. at 10-11.

As previously noted, the out-of-state requestor issue had been in controversy for several years. In 2013, the United States Supreme Court in McBurney v. Young, 133 S.Ct. 1709, 1720 (2013) considered the issue in a suit brought to challenge Virginia’s Freedom of Information Act (“the Act”). The Act permitted only state residents to access government records. The Supreme Court determined that the Act did not violate the Privileges and Immunities Clause of the United States Constitution. As part of the rationale for the decision, the Court noted that several other States, including New Jersey, enacted freedom of information laws that were available only to their citizens.

Subsequent to McBurney, New Jersey courts, in 2016, began addressing the issue of whether OPRA permits non-citizens to submit OPRA requests. In Lawyers Committee, Docket No. ATL-L-832-15 (Law Div. Feb. 19, 2016), Scheeler v. City of Cape May, et al., Docket No. CPM-L-444-15 (Law Div. Feb. 19, 2016), and Twp. of Wantage, Docket No. SSX-C-21-15, the respective vicinages held that out-of-state requestors did not have standing to submit OPRA requests. However, in Scheeler v. Atlantic Cnty. Muni. Joint Ins. Fund, et al., Docket No. BUR-L-990-15 (Law Div. Oct. 2, 2015) and Scheeler v. Ocean Cnty. Prosecutor’s Office, et al., Docket No. OCN-L-3295-15 (Law Div. Apr. 14, 2016), the respective vicinages held that out-of-state requestors did have standing to submit OPRA requests.

Following these decisions, plaintiffs in Docket No. BUR-L-990-15, ATL-L-832-15, and CPM-L-444-15 appealed. The appeals were consolidated under Scheeler v. Atl. Cty. Mun. Joint Ins. Fund. During the pendency of the appeal, the GRC issued a final decision in Scheeler, Jr. v. Burlington Twp. (Burlington), GRC Complaint No. 2015-93 (Final Decision dated September 27, 2016) wherein the Council determined that out-of-state requestors did not have standing to submit OPRA requests based on a plain reading of N.J.S.A. 47:1A-1.

Here, the Complainant is an out-of-state requestor currently residing in Nevada. Upon receipt of his OPRA request, Custodian’s Counsel responded denying access on two (2) bases. The first, most relevant to this portion of the analysis, was that the Complainant was ineligible to use OPRA as an out-of-state requestor. Subsequent to the Township’s response and the filing of this Denial of Access Complaint, an August 1, 2016 order in Twp. of Wantage permanently enjoined the Complainant from filing OPRA requests due to his status as an out-of-state resident. The order also required the Complainant, should he become a New Jersey citizen subsequent to the order, to seek leave from the court prior to filing OPRA requests to the Township.

In the midst of such an uncertain question regarding the standing of out-of-state requestors, the Township’s response seemed reasonable. However, the Appellate Division’s decision in

Scheeler has laid the controversy to rest by definitively holding that OPRA permits out-of-state requestors to utilize the statute. Further, the court's decision in Scheeler, as a published Appellate Division decision, takes precedence over the trial court's order in Twp. of Wantage. For these reasons, the GRC must conclude that the Township erred by denying the Complainant's OPRA request because he was an out-of-state requestor.

Accordingly, the Township erred by denying the Complainant's OPRA request on the bases that he was an out-of-state requestor. Specifically, the Township could have reasonably relied on this denial at a time when the out-of-state requestor question was uncertain. However, the court's published decision in Scheeler, holding that out-of-state requestors have standing to use OPRA, has laid to rest the controversy.

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.

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. 609,⁵ 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 court 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).

In Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (Final Decision dated July 28, 2015), the complainant sought access to e-mails he composed and sent to the Office. The Council applied the court's decision in Bart and held that "the [c]ustodian lawfully denied the [c]omplainant access to the responsive records because he sought e-mails that he composed and sent to the Office and because disclosure of same to him 'does not advance the purpose of OPRA . . .'" Bart, 403 N.J. Super. at 618; N.J.S.A. 47:1A-6." Id. at 6. The Council reasoned that, per the court's intent in Bart, "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." Ibid. In denying the complainant's subsequent request for reconsideration, the Council further elaborated on its reasoning for this decision:

⁵ Reversing Bart v. City of Paterson Hous. Auth., GRC Complaint No. 2005-145 (May 2006).

The Complainant failed to prove that requiring the Office to disclose the records somehow advances the purposes of OPRA. Specifically, 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.

[Caggiano, GRC 2014-408 (Final Decision dated September 29, 2015) at 4.]

Here, the Complainant, who was the complainant in Caggiano, GRC 2014-408, has again sought multiple e-mails that he composed and sent to the Township. The GRC draws this conclusion based on the fact that the Complainant sought 285 e-mails referenced in Twp. of Wantage, Docket No. SSX-C-21-15 (“[a]t the time Plaintiff filed the Verified Complaint, Plaintiff’s Custodian . . . received approximately 285 e-mail messages from Defendant . . .”) (slip op. at 1)). Custodian’s Counsel responded denying access on two (2) bases. The second, most relevant to this portion of the analysis, was that the requested e-mails consisted entirely of the Complainant’s correspondence. Counsel further cited to Caggiano in stating that disclosing those records would not advance the purpose of OPRA. In the Denial of Access Complaint, the Complainant argued that he did not retain thousands of e-mails because “in the State of [Nevada] even the government is not required to retain” them. In the SOI, Custodian’s Counsel reiterated that the Council’s prior decision in Caggiano controlled here.

The GRC finds the facts of this complaint to fall on square with Caggiano. The Complainant here, as he has done with other agencies, continues to attempt to use the Township as a repository for his voluminous and extensive missives. Regardless of whether the States of New Jersey or Nevada are required to retain the Complainant’s communications is of no moment. The GRC also notes that while the Complainant alleged he did not retain a number of e-mails, he never stated whether he was referring to any of the 285 sought in his OPRA request. Ultimately, as was the case in Caggiano, disclosing any of the referenced e-mails to the Complainant in no way maximizes the public’s, or the Complainant’s, knowledge in government.

Accordingly, the Custodian was not required to provide the responsive records to the Complainant because he sought e-mails that he, himself, composed and sent to the Township. Disclosure of those e-mails to Complainant simply “does not advance the purpose of OPRA . . .” Caggiano, GRC 2014-408 (citing Bart, 403 N.J. Super. at 618). For this reason, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.

Official OPRA Request Form

OPRA provides that:

The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the

record will be available, and the fees to be charged. The form shall also include the following:

- (1) specific directions and procedures for requesting a record;
- (2) a statement as to whether prepayment of fees or a deposit is required;
- (3) the time period within which the public agency is required by [OPRA], to make the record available;
- (4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
- (5) space for the custodian to list reasons if a request is denied in whole or in part;
- (6) space for the requestor to sign and date the form;
- (7) space for the custodian to sign and date the form if the request is fulfilled or denied.

[N.J.S.A. 47:1A-5(f).]

In the past, the Council has addressed official OPRA request form issues raised by complainants. For example, the Council has found that an agency's OPRA request form containing misleading information did not conform with OPRA. In Paff v. Gloucester City (Camden), GRC Complaint No. 2009-102 (Interim Order dated April 8, 2010), the Council held that a blanket statement that "police investigatory information" was exempt under OPRA was misleading and akin to a denial of access. Further, in Wolosky v. Borough of Mt. Arlington (Morris), GRC Complaint No. 2010-194 (Interim Order dated November 29, 2011), the Council held that a previous version of the Borough's form did not comply with OPRA. However, the Council declined to order any action because the Borough began using the GRC's model request form prior to the filing of that complaint.

Here, the Complainant contended in the Denial of Access Complaint that the Township's OPRA request form did not "agree in format with the GRC OPRA guideline model." Custodian's Counsel did not respond to this allegation in the SOI. The GRC was nonetheless able to conduct an independent review of the Township's form. First, the Complainant included a copy of the form he used to submit the subject OPRA request. Second, the Township official OPRA request form is posted to its website.

In comparing the form attached to the Denial of Access Complaint, which encompasses only one (1) of two (2) pages, to the form posted to the Township's website,⁶ the GRC is satisfied that no violation of OPRA has occurred. First, it is unclear exactly what the Complainant meant by the form not agreeing with "the GRC OPRA guideline model." A basic review of the Township's Form and a plain reading of N.J.S.A. 47:1A-5(f) settles any question as to whether the form is valid under OPRA. Specifically, the current Township form appears to be based on a prior version of the GRC's model request form. However, the form contains all requisite information as prescribed in N.J.S.A. 47:1A-5(f). Further, it should be noted that there are no misleading

⁶ <http://www.wantagetwp.com/forms/OPRA%20-%20Request%20For%20Public%20Records.pdf> (accessed June 7, 2018).

statements as to the non-disclosability of records, as was the case in Paff, GRC 2009-102 and Wolosky, GRC 2010-194.

Accordingly, there is no violation of OPRA regarding the Township's office OPRA request. Specifically, the Township's official OPRA request form contains all requisite information as prescribed in N.J.S.A. 47:1A-5(f). Further, contrary to Paff, GRC 2009-102 and Wolosky, GRC 2010-194, the form does not contain any misleading statements as to the availability of certain records.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Township erred by denying the Complainant's OPRA request on the bases that he was an out-of-state requestor. Specifically, the Township could have reasonably relied on this denial at a time when the out-of-state requestor question was uncertain. However, the court's published decision in Scheeler v. Atl. Cty. Mun. Joint Ins. Fund, ___ N.J. Super. ___ (App. Div. 2018), holding that out-of-state requestors have standing to use OPRA, has laid to rest the controversy.
2. The Custodian was not required to provide the responsive records to the Complainant because he sought e-mails that he, himself, composed and sent to the Township. Disclosure of those e-mails to Complainant simply "does not advance the purpose of OPRA . . ." Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (September, 2015) (citing Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008)). For this reason, the Custodian lawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6.
3. There is no violation of OPRA regarding the Township's office OPRA request. Specifically, the Township's official OPRA request form contains all requisite information as prescribed in N.J.S.A. 47:1A-5(f). Further, contrary to Paff v. Gloucester City (Camden), GRC Complaint No. 2009-102 (Interim Order dated April 8, 2010) and Wolosky v. Borough of Mt. Arlington (Morris), GRC Complaint No. 2010-194 (Interim Order dated November 29, 2011), the form does not contain any misleading statements as to the availability of certain records.

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