



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

February 26, 2019 Government Records Council Meeting

Robert C. Scutro
Complainant

Complaint No. 2016-317

v.

County of Union
Custodian of Record

At the February 26, 2019 public meeting, the Government Records Council (“Council”) considered the February 19, 2019 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 item Nos. 1-6 of the Complainant’s November 2, 2016 OPRA request were invalid because they asked questions and did not request specific government records. 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, 37 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, the Custodian lawfully denied access to the requested information. 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 26th Day of February, 2019

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: March 1, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
February 26, 2019 Council Meeting**

**Robert C. Scutro¹
Complainant**

GRC Complaint No. 2016-317

v.

**County of Union²
Custodial Agency**

Records Relevant to Complaint:

Clarification of OPRA request 628-2016³ submitted on October 18, 2016:

1. "All time sheets submitted are not approved by Diego A. Otero, Bureau Chief or Amy Wagner, Deputy Director. Can somebody explain why time sheets are submitted without approval?"
2. "The weeks of 6-13 & 6-20 are impossible to decipher, is this paid days or non paid days."
3. "There are numerous Blacked out days 58 to be exact some with times some without times, some say 1/2 , some 1/4. Again are these paid days off or non paid days."
4. "The week of September 19 and two additional days September 28, 29. He has marked Linden WOP. Please explain what Linden WOP means and again is this paid days off or non paid days off."
5. "Can March 25th also be explained to me, again paid or non paid day off."
6. "There are days marked as P, what does P mean? 11 P days in 9 mo. Some being partial, for example the week of March 16, 5 (1/4) P days in one week."
7. "Lastly Before he resigned on October 15, 2016. He had used 18 full vacation days / 16 (1/2 vacation days) & one (1/4) vacation day. For a total of 26.25 days. My questions were any vacations [sic] days added on his retirement date or any pay supplement. If so what was the total of days or pay supplement given to him. (Please break the pay down into days, if any was given)."

Custodian of Record: James Pellettiere⁴

Request Received by Custodian: November 2, 2016;

Response Made by Custodian: November 1, 2016; November 14, 2016

GRC Complaint Received: December 12, 2016

¹ No legal representation listed on record.

² Represented by April C. Bauknight, Esq., Assistant County Counsel (Elizabeth, NJ).

³ This OPRA request is the subject of Scutro v. Cnty. of Union, GRC Complaint No. 2016-315 and 2016-316.

⁴ The current Records Custodian is Joanne Rajoppi.

Background⁵

Request and Response:

On October 31, 2016, the Complainant submitted correspondence seeking the above-mentioned records he received in response to a previous Open Public Records Act (“OPRA”) request. On November 1, 2016, Marlena Russo (“Ms. Russo”), on behalf of the Custodian, provided the Complainant with a record indicating the salary of Derek Armstead (“Mr. Armstead”). On November 2, 2016, Ms. Russo e-mailed the Complainant again, stating that other than the salary record the Complainant received on November 1, she was unable to discern a request for any other records from his October 31 correspondence.

On November 2, 2016, the Complainant submitted an OPRA request to the Custodian requesting the above-mentioned records. On November 3, 2016, Ms. Russo responded in writing, stating that the issue with his October 31 correspondence was not that it wasn’t submitted on an OPRA form, but rather that it did not seek any records beyond salary and vacation information for Mr. Armstead.

On November 3, 2016, the Complainant responded to Ms. Russo, stating that his OPRA request form was provided as requested by Ms. Russo, and detailed what records he sought.

On November 14, 2016, Ms. Russo responded to the Complainant in writing, restating that item Nos. 1-6 of his OPRA request were requests for information, and not for records.

Denial of Access Complaint:

On December 12, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the time sheets he received pursuant to a separate OPRA request contained unexplainable dates and blacked out days. The Complainant stated that he sought clarification from the Custodian via this OPRA request.

The Complainant argued that Union County was intentionally denying access to records, and should be required to provide a signed, approved, and completed time sheet.

Statement of Information:

On January 4, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s correspondence seeking clarification on October 31, 2016. The Custodian certified that Ms. Russo asked the Complainant to specify the records he was looking for beyond what was already provided. The Custodian then certified that he received the Complainant’s OPRA request on November 2, 2016, seeking the same answers to the questions described in his October 31 correspondence.

⁵ 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.

The Custodian asserted that since the Complainant did not provide any clarifications, item Nos. 1-6 were denied. The Custodian argued that under Bart v. City of Paterson Housing Auth., 403 N.J. Super. 609 (App. Div. 2008), they are not required to provide records already produced. The Custodian also certified that Union County had no other records to provide in response to the Complainant's request.

Additional Submissions:

On January 5, 2017, the Complainant responded to the Custodian's SOI via e-mail, objecting to the reasons why his request was denied.

The Complainant asserted that the OPRA request was submitted to satisfy the clarifications requested by Ms. Russo. The Complainant contended that the time sheets provided to him had missing or redacted data and lacked the proper authorization signatures. The Complainant contended that the OPRA request sought clarifications and answers regarding the redacted or missing data.

Analysis

Validity of Request

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. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005),⁶ N.J. Builders Assoc. v. N.J. 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 validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato, GRC 2005-182. The second is those requests seeking information or asking questions. See e.g. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See e.g. Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

Regarding requests seeking information or asking questions, there are instances in OPRA specifically identifies pieces of information as a “government record” under OPRA. By way of example, in Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll record and length of service” was information specifically considered to be a “government record” under N.J.S.A. 47:1A-10. The Council thus held that the complainant’s March 25, 2009, request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. Id. at 5.

Notwithstanding, the GRC has routinely held that requests framed within the confines of a question were considered exempt from disclosure. For instance, in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the Council held that the complainant’s September 13, 2007, request seeking answers to five (5) questions regarding a property named the Villa Maria was invalid. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007233 (August 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); Dunleavy v. Jefferson Twp. Bd. of Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015).

In the current matter, item Nos. 1-6 of the Complainant’s OPRA request sought answers to questions regarding records he received in response to a previous OPRA request. None of the questions or information requested cohere with OPRA’s definition of a “government record.” Instead, the Complainant sought explanations for the data provided, or what certain abbreviations meant. For item no. 7, the Custodian construed the request as seeking salary and payroll information and provided same to the Complainant.

Therefore, item Nos. 1-6 of the Complainant’s November 2, 2016 OPRA request were invalid because they asked questions and did not request specific government records. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Lagerkvist,

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

443 N.J. Super. at 236-237; Watt, GRC 2007-24. Thus, the Custodian lawfully denied access to the requested information. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that item Nos. 1-6 of the Complainant's November 2, 2016 OPRA request were invalid because they asked questions and did not request specific government records. 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, 37 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, the Custodian lawfully denied access to the requested information. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado
Staff Attorney

February 19, 2019