



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 26, 2019 Government Records Council Meeting

Rory Moore
Complainant

Complaint No. 2017-05

v.

Township of Nutley (Essex)
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 the Complainant’s January 6, 2017 OPRA request was invalid because it requested information and did not seek specific government records. MAG Entm’t, LLC v. Div. of ABC, 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**

**Rory Moore¹
Complainant**

GRC Complaint No. 2017-5

v.

**Township of Nutley (Essex)²
Custodial Agency**

Records Relevant to Complaint: “Reason for checks issued on December 20, 2016.”

Custodian of Record: Elani Pettas
Request Received by Custodian: January 6, 2017
Response Made by Custodian: January 6, 2017
GRC Complaint Received: January 9, 2017

Background³

Request and Response:

On January 6, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded in writing stating that the request is not a document kept or maintained in the course of official business and was therefore denied. The Custodian also pasted an excerpt from the OPRA statute.

Denial of Access Complaint:

On January 9, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he requested the reason for several checks on the billable pay list located on the Township of Nutley’s (“Township”) website. The Complainant asserted that he has received answers to this question before in previous requests.

¹ No legal representation listed on record.

² Represented by Alan Genitempo, Esq., of Piro, Zinna, Cifelli, Paris & Genitemp (Nutley, 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Statement of Information:⁴

On May 1, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 6, 2017 and responded that same day.

The Custodian certified that she informed the Complainant on numerous occasions that the Complainant’s request for a reason for the bills listed on the website was not a valid OPRA request. The Custodian certified that nevertheless the Complainant continued to request the reasons for the bills listed.

The Custodian argued that the complaint was filed frivolously and not in accordance with OPRA. The Custodian requested that the GRC dismiss this complaint.

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).]

⁴ The complaint was referred to mediation on February 14, 2017. The complaint was referred back from mediation on April 19, 2017.

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),⁵ 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, the Complainant’s OPRA request asked why certain bills were paid by the Township based upon information he reviewed on the Township’s website. Such a request for information does not cohere with OPRA’s definition of a “government record.” Rather, the Complainant sought further explanation for the data he found, and not for a specific government record.

Therefore, the Complainant’s January 6, 2017 OPRA request was invalid because it requested information and did not seek 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, 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.

⁵ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Complainant's January 6, 2017 OPRA request was invalid because it requested information and did not seek specific government records. MAG Entm't, LLC v. Div. of ABC, 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