



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

July 30, 2019 Government Records Council Meeting

Scott Siegel
Complainant

Complaint No. 2017-153

v.

Township of Franklin (Somerset)
Custodian of Record

At the July 30, 2019 public meeting, the Government Records Council (“Council”) considered the July 23, 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 Custodian lawfully denied access to the Complainant’s July 10, 2017 OPRA request. N.J.S.A. 47:1A-6. Item Nos. 1 and 2 of the request asked questions and failed to 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 Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); and Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Additionally, Item No. 3 sought communications but failed to identify a date or range of dates as well as a subject or content matter. MAG, 375 N.J. Super. at 549; Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); and Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007).

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 30th Day of July 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: August 2, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
July 30, 2019 Council Meeting**

**Scott Siegel¹
Complainant**

GRC Complaint No. 2017-153

v.

**Township of Franklin (Somerset)²
Custodial Agency**

Records Relevant to Complaint: In reference to several contracts awarded and referenced in various Township of Franklin (“Township”) resolutions:

1. “How are the firms chosen?”
2. Who makes the decision to recommend items to the [Township] council?
3. Copies of types of communication between [the Township] and the vendors.”

Custodian of Record: Ann Marie McCarthy

Request Received by Custodian: July 10, 2017

Response Made by Custodian: July 14, 2017

GRC Complaint Received: July 21, 2017

Background³

Request and Response:

On July 10, 2017 the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 14, 2017, the Custodian responded in writing stating that the first two (2) items of the request were invalid as requests for information and not government records. The Custodian also stated that Item No. 3 failed to identify the specific government records sought pursuant to Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005).⁴ The Custodian requested clarification from the Complainant, seeking a specific time period, specific Township officials, specific type of record and subject matter of the record.

¹ No legal representation listed on record.

² Represented by Louis N. Rainone, Esq., of Rainone Coughlin Minchello (Woodbridge, 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.

⁴ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004).

Denial of Access Complaint:

On July 21, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that over the last few years, the Township has awarded several no-bid contracts. The Complainant contended that each winning vendor was a contributor to an Assemblyman’s campaign, which lead to filing his request.

The Complainant argued that the Township has refused to honor his request and has not provided any answers to his questions.

Statement of Information:

On August 8, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 10, 2017. The Custodian certified that she responded in writing on July 14, 2017.

The Custodian argued that she did not deny the request, but noted that the first two (2) items asked questions and did not seek a specific government record. The Custodian also asserted that she sought clarification regarding Item No. 3 but did not receive a reply from the Complainant prior to receiving the complaint. The Custodian asserted that she did not have an issue with providing records, but just needed clarification from the Complainant.

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 ABC, 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, 381 N.J. Super. at 37, N.J. Builders Ass’n 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. at 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, 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. 2007-233 (August 2009); Rummel, GRC 2011-168; Dunleavy v. Jefferson Twp. Bd. of Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015).

Here, Item Nos. 1 and 2 of the Complainant’s OPRA request asked how vendors are chosen when awarding contracts, and who makes the decision to recommend items to the Township Council. Both requests for information do not cohere with OPRA’s definition of a “government record.” Rather, the Complainant sought explanation surrounding the winning bids for several contracts awarded by the Township, and not for specific government records.

Additionally, regarding requests for e-mails and correspondence, the GRC has established specific criteria deemed necessary under OPRA to request such records in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid, such requests must contain (1) the content and/or subject of the email, (2) the specific date or range of dates during which the email(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. Id.; see also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007). In Ciszewski v. Sparta Police Dep’t (Sussex), GRC Complaint No. 2013-79 (October 2013), the complainant sought in part correspondence he submitted to the custodian since January 2010, and any correspondence generated in response thereto. The GRC held that such request was invalid as it failed to identify a subject matter in accordance with Elcavage, GRC 2009-07.

In the instant matter, the Complainant sought “communication between [the Township] and the vendors.” Even if it could be discerned that the aforementioned vendors refer to those who were awarded the specified contracts, the Complainant failed to specify a date or range of dates, as well as a specific subject matter in accordance with Elcavage, GRC 2009-07.

Therefore, the Custodian lawfully denied access to the Complainant’s July 10, 2017 OPRA request. N.J.S.A. 47:1A-6. Item Nos. 1 and 2 of the request asked questions and failed to seek specific government records. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders Ass’n, 390 N.J. Super. at 180; and Watt, GRC 2007-24. Additionally, Item No. 3 sought communications but failed to identify a date or range of dates as well as a subject or content matter. MAG, 375 N.J. Super. at 549; Elcavage, GRC 2009-09; and Sandoval, GRC 2006-167.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant’s July 10, 2017 OPRA request. N.J.S.A. 47:1A-6. Item Nos. 1 and 2 of the request asked questions and failed to 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 Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); and Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Additionally, Item No. 3 sought communications but failed to identify a date or range of dates as well as a subject or content matter. MAG, 375 N.J. Super. at 549; Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); and Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007).

Prepared By: Samuel A. Rosado
Staff Attorney

July 23, 2019