



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 24, 2019 Government Records Council Meeting

David Gerson
Complainant

Complaint No. 2017-197

v.

Township of Springfield (Union)
Custodian of Record

At the September 24, 2019 public meeting, the Government Records Council (“Council”) considered the September 17, 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 request is invalid because item No. 1 is a request for information to justify an action and fails to identify a specific government record. 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); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Further, request item No. 2 was invalid because it asked a question and failed to identify a specific government record. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Vance v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2012-188 (June 2013). Thus, the Custodian did not unlawfully deny access to the Complainant’s request. N.J.S.A. 47:1A-6. Finally, the GRC declines to address whether the record provided was responsive to the request because same was invalid.

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 24th Day of September 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: September 27, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 24, 2019 Council Meeting**

**David Gerson¹
Complainant**

GRC Complaint No. 2017-197

v.

**Township of Springfield (Union)²
Custodial Agency**

Records Relevant to Complaint: Copies of records via e-mail containing:

1. “Details of the re-assessment of property tax on 571 Ashwood Road, 07081 including the breakdown of each of the factors that contributed to the re-assessment increase including the improvement details and the amount of dollars attributed to each.”
2. “Which of these factors were required to obtain permits, in order to comply to the [Township of Springfield (“Township”)] codes for proper building modifications or alterations?”

Custodian of Record: Linda Donnelly
Request Received by Custodian: September 26, 2017
Response Made by Custodian: September 26, 2017
GRC Complaint Received: October 12, 2017

Background³

Request and Response:

On September 26, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 26, 2017, the Custodian responded in writing providing the Complainant a copy of the Township Tax Assessor’s property card for the subject property.

Denial of Access Complaint:

On October 12, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted his OPRA request required

¹ No legal representation listed on record.

² Represented by Kraig Dowd, Esq., of Weber Dowd Law, LLC (Woodland Park, N.J.)

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.

justifications be provided for “\$20,000.00 in added improvements” and their “impact on the overall assessment of the property.” The Complainant contended he was provided a non-responsive record.

Statement of Information:

On November 22, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on September 26, 2017. The Custodian certified that she searched the Township’s records and determined that none responsive existed. The Custodian affirmed that she responded via email to the Complainant on September 26, 2017. The Custodian asserted the Complainant’s request “appears as though Complainant is seeking additional information in order to buttress a tax appeal.” The Custodian contended that the Complainant’s “inquiries and request for factors” were best formatted as part of discovery in a tax appeal. The Custodian argued further that the Township was not required to create said records.

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);⁴ 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.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. at 546; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). 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).

In LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant’s request was a request for information, holding that “. . . because request Item No. 2 of the Complainant’s June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to MAG Entm’t, 375 N.J. Super. 534 546 and Bent, 381 N.J. Super. 30 37 . . .” Id. at pg. 6. See also Ohlson v. Township of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009).

Finally, in Vance v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2012-188 (June 2013), the complainant sought an answer to the following question: “how many inmates received threatening notes and what actions were taken?” Id. at 3. Similar to the requests at issue in LaMantia, GRC 2008-140 and Watt, GRC 2007-246, the Council held that the request was invalid because it failed to seek identifiable government records. The Council noted that this was notwithstanding the custodian’s appropriate response that no records existed. Id.

In the instant complaint, the Complainant’s request item No. 1 sought documentation to explain the basis for a municipal tax assessor’s re-assessment of a property he owned. The Complainant’s request item No. 2 asked the question “[w]hich factors were required to obtain permits.” The Custodian responded to the request by supplying the property card for the subject property. The Complainant filed the instant complaint asserting his dissatisfaction with the response. The Complainant contended he was entitled to the information sought under OPRA. The Custodian certified in the SOI that the property card was the only record available in response to the request. Further, the Custodian suggested an alternative avenue for the Complainant to obtain the desired information. Finally, the Custodian argued that the Township was not required to create a record.

Notwithstanding the Custodian’s disclosure, the Complainant’s request is invalid. The Complainant request item No. 1 does not name any specific record to satisfy the request. Further,

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

request item No. 2 asks a question rather than seeking an identifiable record. Under OPRA, the Custodian was not required to conduct research to fulfill the Complainant's request. LaMantia, GRC 2008-140. Likewise, the onus is not on the Custodian to speculate as to what records the will answer the Complainant's questions. Finally, the Custodian was not required to answer a question. Vance, GRC 2012-188.

Accordingly, the Complainant's request is invalid because item No. 1 is a request for information to justify an action and fails to identify a specific government record. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. 30, 37; Donato, GRC 2005-182; LaMantia, GRC 2008-140. Further, request item No. 2 was invalid because it asked a question and failed to identify a specific government record. Rummel, GRC 2012-188; Watt, GRC 2007-246; Vance, GRC 2012-188. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6. Finally, the GRC declines to address whether the record provided was responsive to the request because same was invalid.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request is invalid because item No. 1 is a request for information to justify an action and fails to identify a specific government record. 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); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Further, request item No. 2 was invalid because it asked a question and failed to identify a specific government record. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Vance v. Sussex Cnty. Sheriff's Office, GRC Complaint No. 2012-188 (June 2013). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6. Finally, the GRC declines to address whether the record provided was responsive to the request because same was invalid.

Prepared By: Brandon Garcia
Case Manager

September 17, 2019