



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 12, 2019 Government Records Council Meeting

Rafael Martinez
Complainant

Complaint No. 2017-244

v.

Middlesex County
Custodian of Record

At the November 12, 2019 public meeting, the Government Records Council (“Council”) considered the October 30, 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:

1. The Complainant’s request seeking access to his “all records . . . including but not limited to, [w]rit of execution and log book entr[ies]” involving four (4) parties, is invalid because it represented a blanket request that failed to identify the specific records sought and would have required research to adequately fulfill. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (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); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Lagerkvist v. Office of the Governor of N.J., 443 N.J. Super. 230, 236-237 (App. Div. 2015); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147 *et seq.* (July 2012). Thus, the Custodian lawfully denied access to this request. N.J.S.A. 47:1A-6.
2. The Custodian has borne his burden of proof that he lawfully denied access to the portion of the Complainant’s narrowed OPRA request. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

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 12th Day of November 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: November 15, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 12, 2019 Council Meeting**

**Rafael Martinez¹
Complainant**

GRC Complaint No. 2017-244

v.

**Middlesex County²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “all records,” including Writ of Execution and log book entry of bidder and purchaser, of foreclosed properties sold by the Middlesex County Sheriff’s Office (“MCSO”) at auctions from January 2014 to present to the following:

1. Main Street at Edison Realty, LLC.
2. Frank Zappia.
3. Anthony Zappia.
4. Graziella Zappia.

Custodian of Record: Kevin Harris
Request Received by Custodian: November 14, 2017
Response Made by Custodian: November 22, 2017
GRC Complaint Received: December 26, 2017

Background³

Request and Response:

On November 14, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 22, 2017, the Custodian responded in writing stating that the MCSO did not maintain any responsive records. The Custodian further stated that the Complainant could resubmit his request if he had a question about a specific property. On the same day, the Complainant asked the Custodian to identify who “keeps the records for Sheriff Sale Foreclosure including but not limited to Writ’s of Execution [and] log book entries”

¹ No legal representation listed on record.

² Represented by Alessandra Baldini, Esq. (New Brunswick, 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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

On November 27, 2017, the Custodian responded advising that the Complainant's request was invalid because it sought "all" records. The Custodian further stated that the MCSO did not maintain a record that identified all properties sold to a certain party; rather, the files were maintained by property address. The Custodian reiterated that the Complainant could submit a new OPRA request relating to a specific property, if he so chose. On the same day, the Complainant e-mailed the Custodian narrowing his OPRA request to seek the Sheriff Sale Foreclosure log book entries of bidder and purchaser used at Sheriff sales from January 2014 to present.

On November 29, and 30, 2017, the Complainant e-mailed the Custodian seeking receipt of his narrowed OPRA request and noted that the final response date was December 4, 2017. On December 5, 2017, the Complainant e-mailed Senior Deputy County Counsel Niki Athanasopoulos, Esq. stating that Middlesex County ("County") failed to respond to his narrowed OPRA request. On the same day, Ms. Athanasopoulos confirmed receipt of the narrowed OPRA request and advised that she would review all relevant correspondence to provide a response, "if necessary."

On December 7, 2017, Custodian's Counsel responded to the Complainant restating the Custodian's initial denial of access. Counsel further stated that the MCSO did not maintain a responsive log book. Counsel stated that the Complainant may utilize the County's Land Records Search to obtain specific properties or may submit a new OPRA request. On the same day, the Complainant e-mailed the County disputing its denial of access. The Complainant asked the County to identify records "ke[pt] on 'bidder and purchaser used at and after [MCSO] Sales[']".

On December 11, 2017, Ms. Athanasopoulos responded stating that the County could not disclose records that do not exist. Ms. Athanasopoulos further stated that the County reasonably provided a response to the Complainant's question in his December 7, 2017 e-mail. Ms. Athanasopoulos stated that the County could respond to an OPRA request identifying: 1) the foreclosed property address; 2) docket number; or 3) the foreclosure defendant's name. Ms. Athanasopoulos noted that without this information, the County could not cross-reference potentially responsive records.

Denial of Access Complaint:

On December 26, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant disputed the Custodian's response that no records responsive to either his original or narrowed request exist. The Complainant argued that several statutes required the County to maintain records "demonstrate[ing] legal transactions." Citing N.J.S.A. 2A:50-19, 36-37, 51, and 64. The Complainant contended that N.J. Court Rules, R. 4:65-6(a) also required the County to keep records of MSCO sales. The Complainant finally noted that the MCSO's own "Conditions of Sale" require it to keep "an accurate account of all funds."

Statement of Information:

On January 16, 2018, the Custodian filed a Statement of Information ("SOI") attaching a legal certification from Supervisor of Foreclosures Rosemarie Gentile. The Custodian certified

that he received the Complainant's OPRA request on November 14, 2017. The Custodian certified that he could not perform a search because the Complainant did not include in his OPRA request: 1) the foreclosed property address; 2) docket number; or 3) the foreclosure defendant's name. The Custodian certified that he, or County employees on his behalf, responded in writing on multiple dates between November 22, and December 11, 2017.

The Custodian argued that the Complainant's OPRA request was ultimately invalid. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). The Custodian argued that, like the request deemed invalid in MAG, the County would have had to conduct research of every foreclosure file to locate responsive records; OPRA did not require such actions. Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). The Custodian asserted that the MCSO keeps its files by property address, which it could cross-reference by docket number or defendant name. The Custodian argued that the Complainant's OPRA request would have required employees devoting weeks of time to conduct a manual search of over 20,000 files since 2014 to locate properties bought by specific buyers. Gentile Cert. ¶ 8-10. The Custodian argued that the County attempted to accommodate the Complainant by providing suggestions to identify properties and indicating the information it needed to perform a search. The Custodian averred that the Complainant failed avail himself of these options and instead filed the instant complaint.

The Custodian further certified that he could not disclose records responsive to the Complainant's narrowed OPRA request because none existed. The Custodian certified that the MCSO did not make or maintain a log book of bidders and purchasers from Sheriff Sales.

The Custodian noted that the Complainant previously submitted three (3) OPRA requests for foreclosure records in August and September 2017. The Custodian noted that he was able to disclose records in response to those requests because the Complainant included specific property addresses.

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, 375 N.J. Super. at 546 (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 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.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; 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).

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. See also Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

The Council also addressed the search/research question in Donato, GRC 2005-182. There, the Council held that pursuant to MAG, a custodian is obligated to search his or her files to find

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

identifiable government records listed in a requestor's OPRA request. The complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

Pursuant to [MAG], the Custodian is obligated to search her files to find the identifiable government records listed in the Complainant's OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to research her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word search is defined as "to go or look through carefully in order to find something missing or lost." The word research, on the other hand, means "a close and careful study to find new facts or information." (Footnotes omitted.)

[Id.]

However, the distinction between search and research can be a fact-specific issue. That is, there are instances where the very specificity of a request requires only a search, as would the case would be with OPRA requests for communications properly containing all three (3) criteria set forth in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-7 (April 2010). Conversely, there are instances where a request can be specific enough to induce research, thus rendering it invalid. For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147 *et seq.* (July 2012), the complainant submitted four (4) OPRA requests, seeking copies of minutes containing motions to approve other minutes to which the custodian had denied access as overly broad. The Council, citing to Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009), and Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010), determined that the complainant's requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the [Union County Board of Education] motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein seek minutes that refer to a topic and would require the Custodian to research the [Union County Board of Education's] meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant's requests . . . because the Complainant's four (4) requests for minutes "that include a motion made by the Union City Board of Education to approve the minutes . . ." from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant's requests are invalid under OPRA.

[Id. at 10.]

In Lagerkvist v. Office of the Governor of N.J., 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court’s rationale of what amounted to research supports the Council’s decision in Valdes. There, the court reasoned that plaintiff’s request:

. . . would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher . . .

[Id. at 237.]

In the instant complaint, the Complainant’s request sought access to “all records” including a writ of execution and logbook entries pertaining to foreclosure sales involving four (4) identified parties. The Custodian initially responded advising that no records were maintained but added that the Complainant could resubmit his OPRA request identifying a specific property. After the Custodian again denied the subject OPRA request on the basis that it was invalid, the Complainant narrowed his OPRA request to seek log book entries.⁵ The County again denied the request and advised the Complainant that it could only locate records if he provided: 1) the foreclosed property address; 2) docket number; or 3) the foreclosure defendant’s name. The County also directed the Complainant to use its Land Records Search for assistance in identifying applicable properties.

This complaint ensued, wherein the Complainant argued that multiple statutes, court rules, and MCSO’s “Conditions of Sale” required the County to create and maintain records regarding foreclosure sales. In the SOI, the Custodian argued that the Complainant’s request was invalid, citing MAG, 375 N.J. Super. at 549 and Feiler-Jampel, GRC 2007-190. The Custodian certified that with the property address, docket number, or defendant name, the MCSO would have to manually research over 20,000 files to locate potentially responsive records. The Custodian also noted that the County attempted to accommodate the Complainant, to no avail.

In reviewing all available case law above, the GRC is satisfied that the Complainant’s request was invalid, and that the Custodian lawfully denied access to it. The Complainant’s initial version of the request sought “all records” within a time frame and inclusive of a few potentially identifiable types of records (writs of execution and log book “entr[ies]”). However, the request also included a constraint that required research as contemplated in Valdes, GRC 2011-147, *et seq.* Specifically, the Custodian would have had to research over 20,000 individual property files to identify which were sold to the four (4) parties. The Custodian would have then been required to determine which records pertained to “including but not limited to” verbiage contained in the request above and beyond a “writ of execution” or “log book entry.” Such an action is not contemplated under OPRA, as the courts and GRC have both routinely determined. See *e.g.* Lagerkvist, 443 N.J. Super. 230. It should also be noted that the Custodian provided the Complainant with avenues to submit a valid OPRA request to no avail.

⁵ The GRC will address the narrowed OPRA request later hereafter.

The Complainant's Denial of Access Complainant arguments further support a finding that the subject request was invalid. Specifically, the Complainant identified multiple statutes that spoke to certain records the Sheriff's Office may maintain regarding "legal transactions." These perspective records included reports, writs of execution, and deeds. However, a few of the provisions pertained to records the courts must maintain or receive. Ultimately, the Complainant failed to identify what he sought as part of "all records" and his Denial of Access Complainant "clarification" was of no moment at the time he filed the OPRA request.

Accordingly, the Complainant's request seeking access to his "all records . . . including but not limited to, [w]rit of execution and log book entr[ies]" involving four (4) parties, is invalid because it represented a blanket request that failed to identify the specific records sought and would have required research to adequately fulfill. MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 37; N.J. Builders Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Lagerkvist, 443 N.J. Super. 230; Valdes, GRC 2011-147, *et seq.* Thus, the Custodian lawfully denied access to this request. N.J.S.A. 47:1A-6.

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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant's clarified OPRA request sought "log book entries of bidders and purchasers" at Sheriff's sales. Custodian's Counsel responded on behalf of the Custodian stating that the MCSO did not maintain a log book of bidders and purchasers at Sheriff Sales. The Custodian subsequently certified to this fact in the SOI. Additionally, there is no evidence in the record to suggest that the

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the portion of the Complainant's narrowed OPRA request. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant's request seeking access to his "all records . . . including but not limited to, [w]rit of execution and log book entr[ies]" involving four (4) parties, is invalid because it represented a blanket request that failed to identify the specific records sought and would have required research to adequately fulfill. MAG Entm't,

LLC v. Div. of ABC, 375 N.J. Super. 534 (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); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Lagerkvist v. Office of the Governor of N.J., 443 N.J. Super. 230, 236-237 (App. Div. 2015); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147 *et seq.* (July 2012). Thus, the Custodian lawfully denied access to this request. N.J.S.A. 47:1A-6.

2. The Custodian has borne his burden of proof that he lawfully denied access to the portion of the Complainant's narrowed OPRA request. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso
Executive Director

October 30, 2019