



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

John Smith
Complainant

Complaint No. 2017-247

v.

City of Atlantic City (Atlantic)
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 the Complainant’s November 30, 2017 OPRA request asking questions and seeking information pertaining to the Atlantic City Fire Department over several years is invalid. See LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009); and Dunleavy v. Jefferson Twp. Bd. of Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015). Thus, the Custodian lawfully denied access to the Complainant’s request. 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 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**

**John Smith¹
Complainant**

GRC Complaint No. 2017-247

v.

**City of Atlantic City (Atlantic)²
Custodial Agency**

Records Relevant to Complaint:³ Electronic copies of the following information:

1. What is/was the total number of firefighters employed in the Atlantic City Fire Department (“ACFD”) in the following years? This number shall include fire personnel in all ranks: 2013-2017.
2. How many fire companies are currently serving Atlantic City? Specifically, Engine Companies, Ladder Companies, Rescue Companies, Other?
3. How many fire companies have permanently closed in: 2013-2017?
4. How many times have fire companies been temporarily closed due to insufficient manpower in: 2013-2017?
5. If the work schedule has changed in the past two (2) years, what was the ACFD work schedule?
6. Please provide the total number of firefighter injuries for the following years: 2013-2017.

Custodian of Record: Paula Geletei

Request Received by Custodian: November 30, 2017

Response Made by Custodian: December 26, 2017

GRC Complaint Received: December 27, 2017

Background⁴

Request and Response:

On November 30, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 26, 2017, Debbie Minichuk, on behalf of the Custodian, responded in writing stating that each item in the request was denied as either overbroad or sought information rather than readily identifiable

¹ No legal representation listed on record.

² Represented by Karl Timbers, Asst. City Solicitor (Atlantic City, NJ).

³ The Complainant’s OPRA request sought additional records that are not at issue in this matter.

⁴ 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.

records. Ms. Minichuk further stated that OPRA “is not intended as a research tool . . . to force government officials to identify and siphon useful information.” Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005) (quoting MAG Enm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546-49 (App. Div. 2005).

Denial of Access Complaint:

On December 27, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was concerned with the safety of the individual firefighters as well as residents of Atlantic City. The Complainant argued that the requested information was within OPRA legalities, and as a taxpayer he wished to know how money was being spent. The Complainant argued that he did not ask for anything out of the ordinary and that he has a right to know what he was paying for and the degree of fire protection being provided. The Complainant contended that the request was not overbearing and did not match the cited caselaw.

Statement of Information:⁵

On September 19, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 30, 2017. The Custodian certified that Ms. Minichuk responded in writing on her behalf on December 26, 2017, denying the request.

The Custodian maintained that the request was properly denied as overbroad or seeking information rather than specifically identifiable records. See Bent, 381 N.J. Super. at 37; MAG, 375 N.J. Super. at 546-49.

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:

⁵ The Complaint was referred to mediation on January 25, 2018. The Complaint was referred back from mediation on April 25, 2018.

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.* at 549 (emphasis added). *Bent*, 381 N.J. Super. at 37;⁶ *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).

Regarding requests seeking information, in *LaMantia v. Jamesburg Public Library (Middlesex)*, GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that held library cards. The GRC determined that the complainant’s request was not for an identifiable government record, but for information. *Id.* As such, the request was deemed invalid pursuant to *MAG. Id.*; *see also Ohlson v. Twp. of Edison (Middlesex)*, GRC Complaint No. 2007-233 (August 2009).

Additionally, 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 OPRA 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); *Dunleavy v. Jefferson Twp. Bd. of Educ. (Morris)*, GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015).

In the instant complaint, the Complainant’s November 30, 2017 OPRA request asked several questions and sought data pertaining to the ACFD spanning several years. Like the requests

⁶ Affirming *Bent v. Stafford Police Dep’t*, GRC Complaint No. 2004-78 (October 2004).

in MAG, Bent, LaMantia, GRC 2008-140, and Watt, GRC 2007-246, the questions do not identify specific pieces of information deemed “government records” under OPRA, such as those under N.J.S.A. 47:1A-10. Therefore, the GRC is satisfied that no unlawful denial of access occurred.

Accordingly, the Complainant’s November 30, 2017 OPRA request asking questions and seeking information pertaining to the ACFD over several years is invalid. See LaMantia, GRC 2008-140; Watt, GRC 2007-246; Rummel, GRC 2011-168; Ohlson, GRC 2007-233; and Dunleavy, GRC 2014-372. Thus, the Custodian lawfully denied access to the Complainant’s request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s November 30, 2017 OPRA request asking questions and seeking information pertaining to the Atlantic City Fire Department over several years is invalid. See LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009); and Dunleavy v. Jefferson Twp. Bd. of Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015). Thus, the Custodian lawfully denied access to the Complainant’s request. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado
Staff Attorney

October 30, 2019