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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 18, 2018 Government Records Council Meeting

Ranjeet Singh
Complainant

Complaint No. 2017-28

v.

Borough of Carteret (Middlesex)
Custodian of Record

At the December 18, 2018 public meeting, the Government Records Council (“Council”) considered the December 11, 2018 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 item Nos. 1 and 2 were invalid because they required research. The Custodian had no legal duty to research her files, or cause research, to locate records potentially responsive to the request. 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. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Further, the Complainant’s request item Nos. 3, 5, and 6 were invalid because they asked questions. See Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, the Custodian lawfully denied access to the subject request items. N.J.S.A. 47:1A-6.
2. The Custodian has borne his burden of proof that she lawfully denied access to the Complainant’s OPRA request item No. 4 seeking Ms. Bialowarczuk’s “inspector” licenses and other related licenses. 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 18th Day of December, 2018

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: December 20, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
December 18, 2018 Council Meeting**

**Ranjeet Singh¹
Complainant**

GRC Complaint No. 2017-28

v.

**Borough of Carteret (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. All summons, including dispositions and fines, written by Deborah Bialowarczuk from 2013 through present.
2. All building violation notices written by Ms. Bialowarczuk from 2013 through present.
3. “What is [Ms.] Bialowarczuk’s official title at Carteret Building Department?”
4. Ms. Bialowarczuk’s “Inspector” license from the New Jersey Department of Community Affairs (“DCA”) and any license authorizing her to conduct inspections and write summons.
5. “Does [Ms.] Bialowarczuk hold authority to act as a prosecutor at Carteret Municipal Court . . .?”
6. “Does [Ms.] Bialowarczuk hold authority to dictate the fines for building violation summons?”³

Custodian of Record: Kathleen M. Barney

Request Received by Custodian: January 27, 2017

Response Made by Custodian: February 7, 2017

GRC Complaint Received: February 8, 2017

Background⁴

Request and Response:

On January 27, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 7, 2017, the Custodian responded in writing denying OPRA request item Nos. 1 and 2 as overly broad, adding that any

¹ No legal representation listed on record.

² Represented by Robert J. Bergen, Esq. (Carteret, NJ).

³ The Complainant requested additional records not at issue in the instant complaint.

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

dispositions were maintained by the municipal court. The Custodian provided Ms. Bialowarczuk's title (Property Maintenance Inspector) "as a courtesy" in response to item No. 3. The Custodian denied the remainder of the request items as a "list of questions which are not covered under OPRA."

Denial of Access Complaint:

On February 8, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he was denied access to his OPRA request. The Complainant noted that the Custodian gave him Ms. Bialowarczuk's title but failed to provide an actual record containing that information.

Statement of Information:

On June 28, 2018, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on January 27, 2017. The Custodian certified that she responded in writing on February 7, 2017 denying a majority of the request as invalid and providing Ms. Bialowarczuk's title to the Complainant.

Regarding item Nos. 1 and 2, the Custodian argued that these items were invalid because they required research (citing Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005)). The Custodian averred that every property with the Borough of Carteret ("Borough"), over 5,000 in total, had its own paper file. The Custodian argued that the Borough would have had to review every file to locate "all" summons and violations issued by Ms. Bialowarczuk. The Custodian contended that such an "unbridled search" would substantially disrupt the Borough's operations and was not valid under OPRA. The Custodian also noted that she could not provide dispositions in response to item No. 1 because they were held by the municipal court: OPRA did not apply to Judiciary agencies.

Regarding item Nos. 3, 5, and 6, the Custodian argued that the Complainant merely asked questions and did not specifically "government records" as defined in N.J.S.A. 47:1A-1.1. The Custodian contended that these requests were invalid because they sought the exact type of information the Bent court determined was not a valid OPRA request. Id. at 37.

Regarding item No. 4, the Custodian certified that no responsive licenses existed. The Custodian noted that Ms. Bialowarczuk was not required to maintain a license per her Civil Service job title.

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 37,⁵ 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).

In Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007), the Council held that pursuant to MAG, a custodian is obligated to search his or her files to find 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.]

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

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 requiring research, the distinction between search and research can be fact-sensitive at times. 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). To that end, the Council has provided guidance on how requests containing the Elcavage criteria do not require research:

[A] valid OPRA request requires a search, not research. An OPRA request is thus only valid if the subject of the request can be readily identifiable based on the request. Whether a subject can be readily identifiable will need to be made on a case-by-case basis. When it comes to e-mails or documents stored on a computer, a simple keyword search may be sufficient to identify any records that may be responsive to a request. As to correspondence, a custodian may be required to search an appropriate file relevant to the subject. In both cases, e-mails and correspondence, a completed “subject” or “regarding” line may be sufficient to determine whether the record relates to the described subject. Again, what will be sufficient to determine a proper search will depend on how detailed the OPRA request is, and will differ on a case-by-case basis. What a custodian is not required to do, however, is to actually read through numerous e-mails and correspondence to determine if same is responsive: in other words, conduct research.

[Verry v. Borough of South Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013).]

Additionally, the court in Burnett, 415 N.J. Super. 506, evaluated a request for “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. The Appellate Division determined that the request was not overly broad because it sought a specific type of document, despite failing to specify a particular case to which such document pertained. Id. at 515-16. Likewise, the court in Burke, 429 N.J. Super. 169 found a request for communications regarding the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. Id. at 176.

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 Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC

Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the 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 UCBOE 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 UCBOE'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.

[Valdes, GRC 2011-147 *et seq.* (emphasis added) (citing N.J. Builders Ass'n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. 30 (App. Div. 2005); MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182. See also Valdes v. Gov't Records Council, GRC Complaint No. 2013-278 (September 2014).]

The Lagerkvist court's rational of what amounted to research supports the Council's decision in Valdes. There, the court reasoned that the 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.

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).

Here, request item Nos. 1 and 2 sought summons and associated documents, as well as building violation notices, composed by Ms. Bialowarczuk from 2013 to the date of the OPRA request. Further, item No. 3 asked a question regarding Ms. Bialowarczuk's title. Finally, request item Nos. 5 and 6 asked questions regarding Ms. Bialowarczuk's authority to perform certain alleged actions. The Custodian initially responded, and later argued in the SOI, that each request item was invalid because it required research or asked questions.

Regarding item Nos. 1 and 2, the GRC is satisfied that the Custodian lawfully determined that the request was invalid. Specifically, the request here is most similar to the requests at issue in Valdes, GRC 2011-147, *et seq.* in that the custodian there would have been required to research sets of minutes to find those inclusive of a particular subject. Here, the Custodian set forth the process required to locate summons and building violation notices Ms. Bialowarczuk composed. Those steps included reviewing every one of the more than 5,000 property files to see if Ms. Bialowarczuk issued and summons or violation notices over a four (4) year period. Such actions are clearly similar to both the process the GRC determined to be research in Valdes, as well as the process that the Lagerkvist court considered to be research.

Regarding item Nos. 3, 5, and 6, the Complainant clearly asked questions for which he expected an answer. The requests are clearly, on their face, invalid based on precedential case law. Further, to briefly address item No. 3, the GRC acknowledges that the root response of the question seeks a piece of information disclosable under N.J.S.A. 47:1A-10. While the Custodian ultimately provided an answer to the item, the item was nonetheless invalid because it was a question.

Accordingly, the Complainant's request item Nos. 1 and 2 were invalid because they required research. The Custodian had no legal duty to research her files, or cause research, to locate records potentially responsive to the request. 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; Schuler, GRC 2007-151; Donato, GRC 2005-182; Valdes, GRC 2011-147, *et seq.* Further, the Complainant's request item Nos. 3, 5, and 6 were invalid because they asked questions. See Watt, GRC 2007-246. Thus, the Custodian lawfully denied access to the subject request items. 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 OPRA request item No. 4 sought Ms. Bialowarczuk's "inspector" license from DCA and any other licenses authorizing her to perform her job duties. The Custodian denied access to the Complainant's OPRA request, certifying in the SOI that no responsive licenses existed. The Custodian further noted that Ms. Bialowarczuk was not required to maintain a license per her Civil Service job title. Additionally, there is no evidence in the record to refute that the Custodian did not possess the responsive records.

Accordingly, the Custodian has borne his burden of proof that she lawfully denied access to the Complainant's OPRA request item No. 4 seeking Ms. Bialowarczuk's "inspector" licenses and other related licenses. 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 Council Staff respectfully recommends the Council find that:

1. The Complainant's request item Nos. 1 and 2 were invalid because they required research. The Custodian had no legal duty to research her files, or cause research, to locate records potentially responsive to the request. 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. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Further, the Complainant's request item Nos. 3, 5, and 6 were invalid because they asked questions. See Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Thus, the Custodian lawfully denied access to the subject request items. N.J.S.A. 47:1A-6.
2. The Custodian has borne his burden of proof that she lawfully denied access to the Complainant's OPRA request item No. 4 seeking Ms. Bialowarczuk's "inspector" licenses and other related licenses. 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
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December 11, 2018