



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**

Michael A. and Laila W. Collazo  
Complainant

Complaint No. 2018-11

v.

Hamilton Township Municipal Utilities Authority (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:

1. The Custodian did not unlawfully deny access to the Complainants’ January 2, 2018 OPRA request Item Nos. 1 and 5 seeking lists of data regarding commercial buildings and allocations fees. N.J.S.A. 47:1A-6. Specifically, the Custodian certified that no electronic database exists which contain the requested information and is not obligated to create a record in response to an OPRA request. See Paff v. Twp. of Galloway, 229 N.J. 340, 356 (2017); MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Fang v. Dep’t of Transp., GRC Complaint No. 2006-93 (May 2007).
2. The Complainants’ January 2, 2019 OPRA request Item Nos. 2-4 are invalid because they sought information and/or asked questions and did not request 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); 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). Thus, there was no unlawful denial of access. 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 12<sup>th</sup> 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**

**Michael A. and Laila W. Collazo<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-11**

v.

**Hamilton Township Municipal Utilities Authority (Atlantic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of:

“For the last 10 years all documentation associated with the following:

1. List of all Commercial buildings that had a change of use;
2. Confirmation that the corresponding Application for Commercial Water and Sewer System Approval for Change of Use was submitted and approved;
3. What Water and Sewer allocation fees were imposed;
4. Were the imposed Water and Sewer allocation fees paid in full;
5. List of all Water and Sewer allocation fees that have been challenged or appealed and whether the fees were removed or waived.”

**Custodian of Record:** Nancy Camey

**Request Received by Custodian:** January 2, 2018

**Response Made by Custodian:** January 10, 2018

**GRC Complaint Received:** January 24, 2018

**Background<sup>3</sup>**

**Request and Response:**

On January 2, 2018, the Complainants submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 10, 2018, the Custodian responded in writing stating that for Item No. 1, OPRA does not require the custodian to create a record in order to answer questions asking for information. The Custodian then stated that the Hamilton Township Municipal Utilities Authority (“HTMUA”) does not maintain a list of commercial properties that have sought a commercial change of use. The Custodian stated that therefore no responsive records exist for this part of the request. Regarding Item No. 5, the

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Randolph C. Lafferty, Esq. of Cooper Levenson Attorneys at Law (Atlantic City, NJ).

<sup>3</sup> 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.

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Custodian also stated that no responsive records exist as the HTMUA does not maintain a list of water and sewer allocation fees that have been challenged or appealed, and that OPRA does not require the custodian to create a record in response to a request for information.

Regarding Item Nos. 2-4, the Custodian asserted that they were not requests for public records and therefore could not be satisfied.

#### Denial of Access Complaint:

On January 24, 2018, the Complainants filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainants asserted that HTMUA’s failure to fulfill their OPRA request demonstrated a lack of transparency. The Complainants asserted that their business property has been inaccurately assessed water and sewer allocation fees, and that HTMUA does not have a process to challenge those fees. The Complainants contended that they were told by HTMUA Board that they had to retain counsel in order to challenge the allocation fees.

The Complainants asserted that before retaining counsel, they filed the instant OPRA request. The Complainants contended that there may have been other businesses that have not paid additional fees in years and are concerned that residents and business aren’t being treated fairly by the HTMUA. The Complainants argued that the requested records should available in the course of HTMUA doing business.

#### Statement of Information:

On February 14, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainants’ OPRA request on January 2, 2018. The Custodian certified that records maintained by the HTMUA were reviewed in response to the request. The Custodian certified that she responded in writing on January 10, 2018, denying access to the request items on various grounds.

The Custodian asserted that HTMUA does not maintain a list responsive to Item Nos. 1 and 5. The Custodian also contended that there was no electronic database from which to generate those lists as requested. The Custodian relied upon Paff v. Twp. of Galloway, 229 N.J. 340 (2017), and asserted that complying with Item No. 1 would require the HTMUA to manually review and analyze each application for a change of use to determine if it was responsive. The Custodian argued that compiling such information would substantially disrupt HTMUA operations. Lastly, the Custodian maintained that HTMUA did not consider Item Nos. 2-4 to be requests for 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 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. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>4</sup> 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. 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).

### Item Nos. 1 and 5

In Fang v. Dep’t of Transp., GRC Complaint No. 2006-93 (May 2007), the complainant sought disciplinary action records and specified the information that the records might contain.

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<sup>4</sup> Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

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The custodian certified that no records existed that contained a compilation of the information specified by the complainant in the request. The Council, relying upon the court's decision in MAG, 375 N.J. Super. at 534, held that "[b]ecause OPRA does not require custodians to research files to discern which records may be responsive to a request or compile records which do not otherwise exist, the Custodian has met his burden of proof that access to these records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. See [MAG]." Id. at 11.

More recently, in Paff, 229 N.J. at 348, the Court accepted the plaintiff's appeal from the Appellate Division's decision that the defendant municipality was not required to coalesce basic information into an e-mail log and disclose same. The Appellate Division reached its conclusion by determining that such an action was akin to creating a record, which OPRA did not require, notwithstanding that the e-mail log would have taken a few key strokes to create. Id. The Court reversed and remanded, holding that basic e-mail information stored electronically is a "government record" under OPRA, unless an exemption applies to that information. The Court reasoned that:

A document is nothing more than a compilation of information – discrete facts and data. By OPRA's language, information in electronic form, even if part of a larger document, is itself a government record. Thus, electronically stored information extracted from an email is not the creation of a new record or new information; it is a government record.

....

With respect to electronically stored information by a municipality or other public entity, we reject the Appellate Division's statement that "OPRA only allows requests for records, not requests for information." Paff, 444 N.J. Super. at 503, (quoting Bent, 381 N.J. Super. at 37). That position cannot be squared with OPRA's plain language or its objectives in dealing with electronically stored information.

[Id. at 353, 356.]

The facts in the instant matter are on point with Fang, 2006-93, and distinguishable from Paff. Like in Fang, the Custodian here asserted that providing responsive records to these items would require her to create records. However, unlike the custodian in Paff, the Custodian also certified that no electronic database exists from which to gather the responsive information and create a list therefrom. Additionally, the Custodian contended that any attempt to fulfill the request items would require a manual review and analysis of paper records to determine whether they contained the desired information.

Therefore, the Custodian did not unlawfully deny access to the Complainants' January 2, 2018 OPRA request Item Nos. 1 and 5 seeking lists of data regarding commercial buildings and allocations fees. N.J.S.A. 47:1A-6. Specifically, the Custodian certified that no electronic database exists which contain the requested information and is not obligated to create a record in response to an OPRA request. See Paff, 229 N.J. at 356; MAG, 375 N.J. Super. at 546; Fang, 2006-93.

### Item Nos. 2-4

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 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).

In the instant matter, the Complainants' OPRA request Item No. 2 requested information based upon the list of commercial properties identified in request Item No. 1. Additionally, Item Nos. 3 and 4 and asked questions on whether water and sewer allocation fees were imposed on those properties and whether they had been paid. In accordance with LaMantia, GRC 2008-140 and Watt, 2007-276, these requests are invalid under OPRA.

Therefore, the Complainants' January 2, 2019 OPRA request Item Nos. 2-4 are invalid because they sought information and/or asked questions and did not request 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; Lagerkvist, 443 N.J. Super. at 236-237; LaMantia, GRC 2008-140; Watt, GRC 2007-24. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the Complainants' January 2, 2018 OPRA request Item Nos. 1 and 5 seeking lists of data regarding commercial buildings and allocations fees. N.J.S.A. 47:1A-6. Specifically, the Custodian certified that no electronic database exists which contain the requested information and is not obligated to create a record in response to an OPRA request. See Paff v. Twp. of Galloway, 229 N.J. 340, 356 (2017); MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Fang v. Dep't of Transp., GRC Complaint No. 2006-93 (May 2007).
2. The Complainants' January 2, 2019 OPRA request Item Nos. 2-4 are invalid because they sought information and/or asked questions and did not request 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); 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). Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado  
Staff Attorney

October 30, 2019