



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**February 26, 2020 Government Records Council Meeting**

Scott Madlinger  
Complainant

Complaint No. 2018-285

v.

Township of Toms River (Ocean)  
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the January 21, 2020 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 OPRA request is invalid because it fails to seek identifiable government records and the Complainant failed to clarify 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. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). See also Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) and Leibel v. Manalapan Englishtown Reg’l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004). Thus, the Custodian did not unlawfully deny 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 26<sup>th</sup> Day of February 2020

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: March 3, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 26, 2020 Council Meeting**

**Scott Madlinger<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-285**

v.

**Township of Toms River (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “Please provide copies of form D.V.S.S.E. for block 1093.10 lot 11.”

**Custodian of Record:** Alison Carlisle  
**Request Received by Custodian:** October 29, 2018  
**Response Made by Custodian:** October 30, 2018  
**GRC Complaint Received:** November 21, 2018

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

**Request and Response:**

On October 29, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 30, 2018, the first (1<sup>st</sup>) business day following receipt of said request, Cathy Dier responded in writing on behalf the Custodian seeking clarification of the requested record by asking the Complainant to specify the actual document being sought. On October 30, 2018, the Complainant replied by stating “that is the official name of the document.” The Complainant also copied and pasted a link to a New Jersey State agency website.

**Denial of Access Complaint:**

On November 21, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on October 29, 2018, he submitted an OPRA request to the Custodian for copies of form D.V.S.S.E. for block 1093.10 lot 11. The Complainant further stated that on October 30, 2018, Ms. Dier asked him what the D.V.S.S.E. form was and asked him to name the actual document. The Complainant stated that

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

<sup>2</sup> Represented by Anthony Merlino, Esq. (Township of Toms River, 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.

on October 30, 2018, he replied by telling Ms. Dier “that is the official name, and linked to NJ website.”

The Complainant attached to the complaint a blank copy of a New Jersey Division of Taxation form titled: “Claim for Property Tax Exemption on Dwelling of Disabled Veteran or Surviving Spouse/Civil Union or Domestic Partner of Disabled Veteran or Serviceperson.” On the footer in very small print was typed “Form: D.V.S.S.E.” which someone had circled.

#### Statement of Information:

On December 4, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 29, 2018, and her staff responded in writing on October 30, 2018, requesting clarification. The Custodian certified that clarification was necessary because the Complainant had referred to the requested record by using only an abbreviation or acronym which was insufficient for her to determine whether a responsive record existed. The Custodian certified that, in reply to the request for clarification, the Complainant simply directed the clerk to a State website which shifted the burden to perform the required research to identify the requested record. The Custodian stated that she was not required to conduct research to locate the requested record. The Custodian cited MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005) in support of her certification.

The Custodian further certified that the sample form the Complainant attached to the Denial of Access Complaint was not provided with the OPRA request. The Custodian certified that if the Complainant provided the form with the request, she could have searched for, and perhaps located, the requested record. The Custodian also averred that the official name of the form is not “D.V.S.S.E.” but rather “Claim for Property Tax Exemption on Dwelling of Disabled Veteran or Surviving Spouse/Civil Union or Domestic Partner of Disabled Veteran or Serviceperson.”

### Analysis

#### 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 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). See also Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>4</sup> 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).

Additionally, in Leibel v. Manalapan Englishtown Reg’l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004), the custodian responded to the complainant’s overly broad request seeking clarification. Thereafter, the complainant filed a complaint asserting that the custodian unlawfully denied him access to the requested records. The Council held that:

The Custodian reasonably sought clarification . . . in order to fulfill the OPRA request . . . The Custodian is proper in requiring clarification when a request is too broad in scope and a reasonable basis exists to seek said clarification.

In the instant complaint, the Complainant, rather than specifically identifying the requested record, referred to it by its government agency form number. Although the Custodian requested clarification of the document sought, in reply the Complainant merely reiterated the form number and copied and pasted a link to a website. The Complainant’s response did not sufficiently clarify his request and thus the Custodian would have had to conduct research to locate records and make a determination on which of the records were responsive.

Therefore, the Complainant’s OPRA request is invalid because it fails to seek identifiable government records and the Complainant failed to clarify the request. MAG, 375 N.J. Super. 534 at 546; Bent, 381 N.J. Super. 30 at 37; N.J. Builders Ass’n, 390 N.J. Super. 166 at 180. See also

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

Schuler, GRC 2007-151 and Leibel, GRC 2004-51. Thus, the Custodian did not unlawfully deny 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 OPRA request is invalid because it fails to seek identifiable government records and the Complainant failed to clarify 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. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). See also Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) and Leibel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart  
Staff Attorney

January 21, 2020<sup>5</sup>

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<sup>5</sup> This complaint was prepared for adjudication at the Council's January 28, 2020 meeting, but could not be adjudicated due to lack of quorum.