



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 28, 2020 Government Records Council Meeting

Eugen Tarnow
Complainant

Complaint No. 2018-296

v.

NJ Motor Vehicle Commission
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council (“Council”) considered the April 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 request is an invalid request that asks multiple questions and fails to seek identifiable 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); Schuler v. Borough of Bloomsbury (Hunterdon), GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant’s request. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Watt v. Borough of N. Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009).

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 28th Day of April 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: April 30, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2020 Council Meeting**

**Eugen Tarnow¹
Complainant**

GRC Complaint No. 2018-296

v.

**NJ Motor Vehicle Commission²
Custodial Agency**

Records Relevant to Complaint:

1. How many registrations renewal bills are sent out every month?
2. How many of those registration renewal bills are paid before the current registration expires?
3. How many of those registration renewal bills are paid after the current registration expired?
4. Do you have any estimate, more[] or less[] accurate, of how many people never received the registration renewal bills that are sent out?
5. Did you ever send out reminder[s]? If so, when did this happen and why did it stop?
6. What is the logistics of the sending out of the registration bills? How do they get to the post office? What is the postage paid for each one? What percent of them do the post office guarantee will arrive with the customer?
7. How many of the registration bills are returned by the post office? What do you do with a returned registration bill?
8. What results from use of the Automatic License Plate Reader (“ALPR”) do you track? Can you please send me a table of the offenses found and the number of each offense in the last year? How many of these were criminal?
9. Are the rate of accidents involving police cars with ALPR higher or lower than accidents involving police cars without ALPR?
10. What databases are used by the ALPR systems?

Custodian of Record: Joseph Bruno

Request Received by Custodian: October 30, 2018

Response Made by Custodian: November 1, 2018

GRC Complaint Received: November 29, 2018

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Vivek N. Mehta.

Background³

Request and Response:

On October 30, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 1, 2018, the Custodian responded in writing advising the Complainant his request was denied. The Custodian cited Gannett N.J. Partners, L.P. v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005); MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005), and Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 36-37 (App. Div. 2005) informing the Complainant that his request sought information rather than specific government records.

Denial of Access Complaint:

On November 29, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not submit any argument supporting his claim of an unlawful denial.

Statement of Information:

On February 8, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on October 30, 2018. The Custodian certified that he responded in writing on November 1, 2018 informing the Complainant his request was denied because it sought information rather than specific records. Gannett, 379 N.J. Super. at 212; MAG, 375 N.J. Super at 549; Bent, 381 N.J. Super. at 37.

The Custodian contended that the Complainant’s request sought only information in response the above-mentioned questions. The Custodian contended that the Complainant’s request required research to “self-identify” responsive documents and correlate the information or data to respond. The Custodian asserted that the Complainant’s request was properly denied as an invalid.

Additional Submissions:

On February 8, 2019, the Complainant e-mailed correspondence in response to the Custodian’s SOI. The Complainant asserted that he felt he was in a “Catch 22” because the answers sought in his request must exist in a record, but he was not able to ask what records contained the information requested.

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.

Analysis

Validity of Request

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 Superior Court 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. 534, 546 (App. Div. 2005) (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). See also Bent, 381 N.J. Super. at 37, 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 (Hunterdon), GRC Complaint No. 2007-151 (February 2009).

In LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant’s request was a request for information, holding that “. . . because request Item No. 2 of the Complainant’s June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG, supra] . . .” Id. at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). Additionally, in Watt v. Borough of N. Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the complainant’s September 13, 2007 OPRA request asked five (5) questions. The Council determined that the request was an invalid request failing to identify government records.

In the instant complaint, the Complainant’s OPRA request is comprised entirely of questions. Similar to the requests at issue in LaMantia, GRC 2008-140 and Watt, GRC 2007-246, this request asks questions, as opposed to seeking identifiable government records. The Complainant’s request would require the Custodian to conduct research to identify records, compile correlated information and manufacture a response. The Complainant failed to seek specific, identifiable government records bearing the information sought.

Therefore, the Complainant's request is an invalid request that asks multiple questions and fails to seek identifiable 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; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6; LaMantia, GRC 2008-140; Watt, GRC 2007-246.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request is an invalid request that asks multiple questions and fails to seek identifiable 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); Schuler v. Borough of Bloomsbury (Hunterdon), GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Watt v. Borough of N. Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009).

Prepared By: Brandon Garcia
Case Manager

April 21, 2020