



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

March 30, 2021 Government Records Council Meeting

Merrick Wilson
Complainant

Complaint No. 2020-01

v.

City of Lambertville (Hunterdon)
Custodian of Record

At the March 30, 2021 public meeting, the Government Records Council (“Council”) considered the March 23, 2021 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 portion of the Complainant’s request seeking “correspondence” between Mayor Del Vecchio, the City of Lambertville, and the New Jersey Department of Environmental Protection regarding Academy Hill, Inc. properties being removed from sewer services is invalid because it fails to include a date or range of dates. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014). Further, the remaining portions of the Complainant’s request are invalid because they fail to identify a specific record and require research. 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); 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); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012). Thus, the Custodian lawfully denied access to the Complainant’s request because it was invalid in its totality. 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 30th Day of March 2021

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 1, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 30, 2021 Council Meeting**

**Merrick Wilson¹
Complainant**

GRC Complaint No. 2020-1

v.

**City of Lambertville (Hunterdon)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the following for “properties includ[ing] Block 1073 Lots 5-11, 33, and 33.01; Block 1090, Lots 4 and 5; and Block 1091, Lots 1, and 1.01:”

1. “All” correspondence, letters, e-mails, phone records, minutes of resolutions, meeting minutes, City of Lambertville (“City”) Council memorandums or communications between Mayor David Del Vecchio, City and New Jersey Department of Environmental Protection (“DEP”) related to properties owned by Academy Hill, Inc. and the City’s request “remove . . . properties from the sewer service area . . . included within the sewer service area.
2. “Any and all” communications, e-mails, letters, and records “of the City Council minutes attended by Mayor Del Vecchio,” wherein he voted on resolutions, communications, and ordinances to remove Academy Hill, Inc. properties from the sewer service areas.
3. “Any and all” communications Mayor Del Vecchio signed directing or requesting that DEP remove Academy Hill, Inc. properties from the City sewer service area.

Custodian of Record: Cynthia L. Ege

Request Received by Custodian: December 9, 2019

Response Made by Custodian: December 16, 2019

GRC Complaint Received: January 7, 2020

Background³

Request and Response:

On December 9, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 16, 2019, the Custodian responded in writing denying the subject OPRA request as invalid because it failed to

¹ No legal representation listed on record.

² Represented by William Opel, Esq., of McManimon, Scotland & Baumann, LLC. (Roseland, NJ).

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.

identify specific government records. N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian further stated that she was not required to conduct research or create records in response to an OPRA request.

Denial of Access Complaint:

On January 7, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on October 9, 2015, DEP advised him via e-mail that “removal of the undeveloped portions (of properties owned by Academy Hill, Inc. . . .)” were directed by the City. The Complainant stated that he subsequently submitted the subject OPRA request to verify DEP’s October 9, 2015 statement. The Complainant disagreed that his OPRA request was invalid.

Statement of Information:⁴

On July 15, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on December 9, 2019. The Custodian certified that she responded in writing on December 16, 2019 denying the request as invalid.

The Custodian argued that the subject request was invalid because it failed to identify specific, identifiable records and did not specify a time frame. The Custodian also noted that no records “seeking removal of Academy Hill from sewer service” exist. The Custodian stated that for additional background, Mayor Del Vecchio served in that position for twenty-one (21) years. The Custodian further stated that the City does not prepare or approve the “Wastewater Management Plan (“WMP”).” The Custodian stated that a WMP begins at Hunterdon County’s Planning Board and is adopted by DEP. The Custodian noted that the Executive Director of the Lambertville Municipal Utilities Authority advised that a WMP was adopted in 2011 and excluded three (3) properties, including Academy Hill.

The Custodian further noted that in 2017, the City adopted a resolution placing Academy Hill in the WMP: a copy of that resolution and correspondence to the State was provided to the Complainant in response to a January 6, 2020 request.

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.*

⁴ On January 22, 2020, this complaint was referred to mediation. On June 10, 2020, this complaint was referred back to the GRC for adjudication.

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, 390 N.J. Super. at 180; 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).

Regarding requests for communications, including e-mails, text messages, and written correspondence, the GRC has established criteria deemed necessary under OPRA to request them. In Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Council determined that to be valid, such requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011).

⁵ Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

The GRC notes that the Council has determined that requests seeking correspondence but omitting the specific date or range of dates are invalid. See Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014).

However, 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 No. 2011-147, *et seq.* (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, 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).]

In Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court's rationale 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. See also Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. Dec. 10, 2019) (affirming Carter, GRC Complaint No. 2016-262 (August 2018)).]

Here, portions of the Complainant's request sought several types of communications between Mayor Del Vecchio, the City and DEP regarding Academy Hill, Inc. properties being removed from sewer services. Additionally, the remaining portions of the Complainant's request sought "minutes of resolutions, meeting minutes" and "City Council minutes" attended by Mayor Del Vecchio and those "resolutions, communications, and ordinances" on which he voted regarding removing Academy Hill properties from sewer service. The Custodian responded denying access to the request as invalid. In the Denial of Access Complaint, the Complainant disagreed with the denial, but did not provide any further arguments as to why he disagreed with it. In the SOI, the Custodian maintained her position that the subject request was invalid, adding that it did not include a specific time period. The Custodian also noted that not only did Mayor Del Vecchio serve in that position for twenty-one (21) years, but that the City did not have any control over the WMP.

Upon review of the subject request compared to MAG and its progeny, the GRC is persuaded that the Custodian lawfully denied access because the request was invalid under OPRA. The portion of the request seeking correspondence fails to include all criteria necessary to be considered valid under Elcavage, GRC 2009-07. Specifically, the Complainant failed to include a date or range of dates. See also Tracey-Coll, GRC 2009-206; Kohn, GRC 2013-118. Further, the remaining portions of the request would have required the Custodian to review every record maintained by the City over an undefined time period to determine whether it pertained to Academy Hill, Inc.'s properties being removed from sewer service, or that Mayor Del Vecchio actively voted on that matter. Such actions clearly constitute research; the Custodian was not obligated to conduct same to satisfy the request. See Lagerkvist, 443 N.J. Super. at 236-237; Valdes, GRC 2011-147, *et seq.*

Accordingly, the portion of the Complainant's request seeking "correspondence" between Mayor Del Vecchio, the City, and DEP regarding Academy Hill, Inc. properties being removed from sewer services is invalid because it fails to include a date or range of dates. Elcavage, GRC 2009-07; Tracey-Coll, GRC 2009-206; Kohn, GRC 2013-118. Further, the remaining portions of the Complainant's request are invalid because they fail to identify a specific record and require research. 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; Valdes, GRC 2011-147, *et seq.* Thus, the Custodian lawfully denied access to the Complainant's request because it was invalid in its totality. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the portion of the Complainant's request seeking "correspondence" between Mayor Del Vecchio, the City of Lambertville, and the New Jersey Department of Environmental Protection regarding Academy Hill, Inc. properties being removed from sewer services is invalid because it fails to include a date or range of dates. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014). Further, the remaining portions of the Complainant's request are invalid because they fail to identify a specific record and require research. 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); 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); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012). Thus, the Custodian lawfully denied access to the Complainant's request because it was invalid in its totality. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

March 23, 2021