



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 9, 2021 Government Records Council Meeting

David Weiner
Complainant

Complaint No. 2020-225

v.

County of Essex
Custodian of Record

At the November 9, 2021 public meeting, the Government Records Council (“Council”) considered the October 26, 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 Complainant’s request seeking “documents delineating” some form of agreement between a repair company and the County to fix furniture in a County-owned complex is invalid because it failed to identify a specific record and would require the Custodian to perform research. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546, 549 (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, 237 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian lawfully denied access to the subject 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 9th Day of November 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: November 15, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 9, 2021 Council Meeting**

**David Weiner¹
Complainant**

GRC Complaint No. 2020-225

v.

**County of Essex²
Custodial Agency**

Records Relevant to Complaint: Copies of “any documents delineating a contractual, or non-contractual, compact between the County of Essex [(“County”)] and a company whose name is as yet unknown . . . for [them] to repair the aged and decrepit furniture dangerously languishing within the County-owned 320-321 University Avenue, Newark buildings’ complex.”

Custodian of Record: Olivia Schumann
Request Received by Custodian: October 1, 2020
Response Made by Custodian: October 1, 2020
GRC Complaint Received: November 10, 2020

Background³

Request and Response:

On October 1, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the Custodian responded in writing stating that an extension of time to respond through October 22, 2020 was necessary due to the lack of in-office staff due to the ongoing public health emergency. On October 21, 2020, the Custodian responded in writing stating that an extension of time until November 11, 2020 was necessary due to the lack of in-office staff due to the ongoing public health emergency. On November 4, 2020, the Custodian responded in writing noting that the new extension date was November 12, 2020 because the County was closed on November 11, 2020 in observance of Veteran’s Day.

On November 9, 2020, the Custodian responded in writing denying the subject OPRA request as invalid because it failed to identify a specific OPRA request and would require research. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546, 549 (App. Div. 2005); Bent v.

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

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). The Custodian noted that the Complainant's request also failed to include a specific time frame or the name of the alleged "repair company."

Denial of Access Complaint:

On November 10, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant disputed the Custodian's denial of access but did not provide any additional arguments supporting his position.

Statement of Information:

On December 11, 2020, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on October 1, 2020. The Custodian certified that following a few extensions of time, she responded in writing on November 9, 2020 denying the subject request as invalid.

The Custodian argued that she lawfully denied access to the Complainant's request based on consistent New Jersey Court and GRC decisions holding that requests seeking non-specific records and requiring research were invalid. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders, 390 N.J. Super. 166. But see Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). The Custodian stated that the request at issue here sought general "documents delineating" an agreement for a repair company to fix furniture at a County-owned complex. The Custodian contended that the request failed to identify a specific type of record, did not contain a time frame, and included an identifier that could have generated numerous potentially responsive records. The Custodian further contended that the inclusion of the word "delineating" placed an unnecessary burden on her to deliberate on whether each result fell within that qualification.

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, 375 N.J. Super. at 546 (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;⁴ 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 generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” *Id.* at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. *See also* Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) *Id.* at 12-13.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

⁴ Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in [MAG], [Bent] and the Council's decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (February 2008).

[Id. See also Schulz v. N.J. State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking "all documents" was overly broad and thus invalid).]

Additionally, in Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 237 (App. Div. 2015), the court held that plaintiff's request was invalid because it required research. In reaching this conclusion, the court reasoned that:

The custodian in this case 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.]

In the matter before the Council, the Complainant's request sought generic "documents delineating" some form of agreement between a repair company and the County to fix furniture in a County-owned complex. As in Feiler-Jampel, GRC 2007-190 and Lagerkvist, 443 N.J. Super. 230, the subject request would clearly require research of the full universe of the County's records. Further, the Custodian would then be forced to deliberate on whether the "documents" located "delineat[ed]" any type of agreement with a repair company to fix office furniture in a County complex without time restraints. The request would thus require research that the Custodian is not required to perform under OPRA and prevailing case law. Thus, the Custodian's denial of access was clearly lawful here.

Accordingly, the Complainant's request seeking "documents delineating" some form of agreement between a repair company and the County to fix furniture in a County-owned complex is invalid because it failed to identify a specific record and would require the Custodian to perform 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 237; Schuler, GRC 2007-151. Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request seeking "documents delineating" some form of agreement between a repair company and the County to fix furniture in a County-owned complex is invalid because it failed to identify a specific record and would require the Custodian to perform research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546, 549 (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, 237 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

October 26, 2021