



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

August 30, 2022 Government Records Council Meeting

Ginevra Wilson
Complainant

Complaint No. 2020-241

v.

NJ Department of Community Affairs,
Division of Codes & Standards
Custodian of Record

At the August 30, 2022 public meeting, the Government Records Council (“Council”) considered the August 23, 2022 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 was invalid because it failed to provide sufficient identifiers for the Custodian to locate additional responsive records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-289 (July 2015). As such, the Custodian has not unlawfully denied access to any records beyond those she has already provided. 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 August 2022

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: September 1, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 30, 2022 Council Meeting**

**Ginevra Wilson¹
Complainant**

GRC Complaint No. 2020-241

v.

**New Jersey Department of Community Affairs,
Division of Codes & Standards²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

“[A]ll records pertaining to my complaints about 1111 River Road, Waterside Condominiums, and Apartment E6 at the address. I am requesting all internal communications regarding my complaints and all responses made to me by employees and agents at Community Affairs and Codes and Standards, and the Governor’s (sic) office (sic), and the Commissioner’s Office in Trenton, NJ. I am requesting all communication made in reference to me, Ginevra Wilson, by Sekas Law, Englewood Cliffs, NJ to any and all agents and employees of Community Affairs and Codes and Standards, and the Governor’s (sic) office (sic), and the Commissioner’s Office in Trenton, NJ.”

Custodian of Record: Thea Popko

Request Received by Custodian: October 3, 2020

Responses Made by Custodian: October 16, 2020 and October 28, 2020

GRC Complaint Received: December 23, 2020

Background³

Request and Responses:

On October 3, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 16, 2020, the Custodian responded in writing, informing the Complainant that she needed an extension of time until October 28, 2020, to further respond to the request. On that same date, the Complainant stated that October 28, 2020 was “. . . okay to respond with documents . . .”

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Craig S. Keiser.

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.

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On October 28, 2020, the Custodian responded via e-mail. The Custodian notified the Complainant that she had assigned agency tracking numbers for three (3) entities within the Department of Community Affairs from which the Complainant requested records. The Custodian assigned tracking number W164255 for the Division of Codes and Standards, tracking number W164256 for the Office of the Commissioner, and tracking number W164257 for the Office of Ethics.⁴ The Custodian informed the Complainant that the records responsive to the tracking numbers were contained within a single .pdf document attached to the e-mail response and that the tracking numbers were closed.

On December 4, 2020, the Complainant e-mailed the Custodian asking why the records ended in 2016. The Complainant stated that she should have records from “2014-2012” (sic). The Complainant further stated that the records for 2014 to 2016 were “drastically truncated” and she asked for records dated “2016-2020.”

On December 9, 2020, the Complainant e-mailed the Custodian and copied Geraldine Callahan. The Complainant stated that her December 4, 2020 e-mail should have referenced records dated “2014-2020.”

On December 11, 2020, the Custodian e-mailed the Complainant to inform her that that no additional records responsive to her request were located.

Denial of Access Complaint:

On December 23, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”).⁵ The Complainant asserted that she submitted her OPRA request to the Custodian on October 1, 2020. The Complainant stated that on October 28, 2020, the Custodian “filled my OPRA request but it was actually incomplete.” The Complainant also stated that the Custodian failed to reply to her December 4, 2020 e-mail. The Complainant further stated that neither the Custodian nor Ms. Callahan replied to her December 9, 2020 e-mail.

In the Records Denied List of the complaint the Complainant described the records denied as “2017-2020 for all records in DCA and Governor’s Office for my address 1111 River Road and Sekas Law.” The Complainant asserted that she received no response from the Custodian.

The Complainant attached to the complaint her OPRA request, the Custodian’s October 16, 2020 and October 28, 2020 responses, the Complainant’s December 4, 2020 and December 9, 2020 e-mails to the Custodian, and although the Complainant filed her complaint on December 10, 2020, an e-mail to the Custodian dated December 13, 2020. The December 13, 2020 e-mail informed the Custodian that she is “. . . requesting an investigation into records for 2019-2020 with DCA, Housing Inspection and Codes and Standards.” The Complainant attached to the e-mail an *Inspection Report And Orders Of The Commissioner* dated March 2, 2020 for 1111 River Road, Unit E-H, Edgewater Boro.

⁴ The Custodian certified in the Statement of Information that the Complainant submitted OPRA requests for the same records to the Office of the Commissioner and the Office of Ethics on October 3, 2020; however, those requests are not requests that formed the basis of this complaint.

⁵ The Complaint was verified by the Complainant and submitted to the GRC on December 10, 2020.

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Statement of Information:

On March 1, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA requests on October 3, 2020 and December 16, 2020.⁶ The Custodian certified that she responded in writing on October 28, 2020, January 14, 2021 and January 29, 2021.⁷

The Custodian certified that the Division of Codes and Standards oversees several Bureaus. The Custodian certified that she determined that the Bureau of Homeowner Protection may have the requested records because that Bureau handles complaints pertaining to condominium associations. The Custodian certified that because the Complainant submitted requests for identical records to the Commissioner’s Office and the Office of Ethics, she worked in concert with Geraldine Callahan because Ms. Callahan is the custodian of records for those two offices.

The Custodian certified that on October 16, 2020, she wrote to the Complainant seeking an extension of time until October 28, 2020, to which the Complainant agreed. The Custodian certified that on October 28, 2020, she delivered a .pdf document to the Complainant containing the responsive records from the Bureau of Homeowner Protection.⁸ The Custodian certified that on December 4, 2020, the Complainant contacted her asking why the records ended in 2016 because she should have received records “from 2014-2012.” The Custodian certified that on December 9, 2020, the Complainant e-mailed her to clarify that she meant records for “2014-2020.” The Custodian further certified that the Bureau of Homeowner Protection conducted another search but no additional responsive records were located. The Custodian certified that she “advised [the Complainant] that there were no additional responsive records on December 11, 2020.”⁹

Analysis

Validity of Request

The New Jersey Appellate Division has held that:

⁶ The December 16, 2020 OPRA request did not form the basis of this complaint.

⁷ The January 14, 2021 and January 29, 2021 responses were made to the December 16, 2020 OPRA request. The Custodian certified that the December 16, 2021 request (identified with agency tracking number W166989) “also clarified the first request.” The Custodian further certified that responsive records “were provided on a rolling basis to the requestor” on January 14, 2021 and January 29, 2021. The GRC notes that the December 16, 2020 OPRA request, even if it helped to clarify the Complainant’s October 3, 2020 request, was not a request that formed the basis of this complaint; therefore, records disclosed in response to the December 16, 2020 request are not relevant to the instant complaint.

⁸ In Item 9(C) of the SOI the Custodian listed one hundred fifty-five (155) pages of records that she disclosed to the Complainant. The Custodian did not include the date such records were provided; therefore, the GRC was unable to discern which records were disclosed on October 28, 2020, in response to the Complainant’s October 3, 2020 OPRA request.

⁹ The SOI contained additional statements and attachments related to the Complainant’s December 16, 2020 OPRA request; however, these materials will not be addressed by the GRC because they are not relevant to the request which formed the basis of this complaint.

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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);¹⁰ 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 GRC has established specific criteria deemed necessary under OPRA to request communications. In Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Council determined that for e-mail communications 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. 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). And the Council has routinely determined that requests 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).

¹⁰ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

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Interestingly, in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the court held that the defendant “performed a search and was able to locate records responsive . . .” which “. . . belied any assertion that the request was lacking in specificity or was overbroad.” Id. at 177. See also Gannett v. Cnty. of Middlesex, 379 N.J. Super. 205 (App. Div. 2005) (holding that “[s]uch a voluntary disclosure of most of the documents sought . . . constituted a waiver of whatever right the County may have had to deny Gannett’s entire OPRA request on the ground that it was improper.” Id. at 213). Likewise, in situations where a request was overly broad but the custodian nonetheless was able to locate records, the Council has generally determined that the requests contained sufficient information for record identification. Bond v. Borough of Washington (Warren), GRC Complaint No. 2009-324; Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2010-302 (Interim Order dated January 31, 2012).

However, there have been instances where, notwithstanding the custodian’s ability to locate certain records, the Council has determined that the request was nevertheless invalid. See Ciszewski v. Newton Police Dep’t (Sussex), GRC Complaint No. 2013-90 (October 2013) at 4-5; Gartner v. Borough of Middlesex (Middlesex), GRC Complaint No. 2014-203 (Interim Order dated February 24, 2015). And, in a fact pattern similar to that of the instant complaint, the complainant’s request in Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-289 (July 2015) sought, *inter alia*, certain communications. After the custodian advised the complainant that no communications existed, the complainant replied that he believed additional correspondence did exist. However, it was not until he filed the complaint that the complainant asserted responsive communications should have dated back to at least 2013. The Council subsequently determined that the complainant’s request was invalid because it failed to conform with Elcavage, GRC 2009-07 and Armenti, GRC 2009-154, by failing to provide a time frame.

Here, the Complainant is seeking *all records pertaining to* her complaints *about* a condominium complex, including *all communications* by employees within three (3) different government entities and *all communication made in reference to* the Complainant by and between a law firm and those same government entities. The Complainant’s request did not provide any dates or range of dates, or the identity of any senders and/or recipients of the requested communications. Moreover, by requesting “*internal communications*,” “*records pertaining to*” and “*communication made in reference to*” the Complainant is requiring the Custodian to conduct research. The Council, citing MAG, 375 N.J. Super. 534, has long held that “. . . the Custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request.” Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007). (Emphasis in original.)

Although the Custodian disclosed records that she believed were responsive to the request, the Complainant was dissatisfied with the disclosure. It was only then that the Complainant asked the Custodian for records from “2016-2020” (which she subsequently corrected to “2014-2020”). Thereafter, the Custodian again attempted, but was unable, to locate additional records responsive to the request.

Here, the Complainant’s OPRA request, even after clarification, was invalid. For the Custodian to effectively respond to such a request, she would have to search through a multitude of records to locate records potentially responsive to the request. Afterwards, the Custodian would

have to evaluate, sort out, and determine which of those records were responsive to the request. This is the type of open-ended search that the MAG court found unacceptable. As such, in the instant complaint, the Council's decision should depart from Burke, 429 N.J. Super. 169.

Accordingly, the Complainant's request was invalid because it failed to provide sufficient identifiers for the Custodian to locate additional responsive records. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Elcavage, GRC 2009-07; Armenti, GRC 2009-154; Verry, GRC 2014-289. The Custodian has thus lawfully denied access to any records beyond those she has already provided. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request was invalid because it failed to provide sufficient identifiers for the Custodian to locate additional responsive records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-289 (July 2015). As such, the Custodian has not unlawfully denied access to any records beyond those she has already provided. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart

August 23, 2022