



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**April 27, 2021 Government Records Council Meeting**

Rory Moore  
Complainant

Complaint No. 2020-52

v.

Township of Nutley (Essex)  
Custodian of Record

At the April 27, 2021 public meeting, the Government Records Council (“Council”) considered the April 20, 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 information regarding “training schedules” is invalid because it seeks information and not an identifiable “government record.” 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, GRC Complaint No. 2007-151 (February 2009); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). The Custodian has thus 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 27<sup>th</sup> Day of April 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 29, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 27, 2021 Council Meeting**

**Rory Moore<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-52**

v.

**Township of Nutley (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of “all required training schedules for all [Township of Nutley (“Township”)] employees” not including police and fire personnel.

**Custodian of Record:** Eleni Pettas

**Request Received by Custodian:** February 3, 2020

**Response Made by Custodian:** February 12, 2020

**GRC Complaint Received:** February 25, 2020

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

**Request and Response:**

On February 1, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant noted that the Township previously stated to him that it was not responsible for any classes for recertification; thus, he sought “all titles and all required training” for multiple titles.

On February 12, 2020, Clerk’s Office employee Ceci Tramontana responded in writing on behalf of the Custodian seeking clarification of the term “training schedules. The Complainant responded stating that the “request is simple:” he sought “the required training requirements, per title.”

On February 13, 2020, Ms. Tramontana responded in writing denying the subject OPRA request as invalid. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 209 (App. Div. 2005). Ms. Tramontana stated that the Complainant’s OPRA request sought general information concerning training requirements of

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

<sup>2</sup> Represented by Justin A. Marchetta, Esq., of Inglesino, Webster, Wyciskala & Taylor, LLC. (Parsippany, 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.

Rory Moore v. Township of Nutley (Essex), 2020-52 – Findings and Recommendations of the Executive Director

various Township job titles. Ms. Tramontana further stated that although the request did not specify a “government record,” a search failed to yield any responsive records.

Denial of Access Complaint:

On February 25, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted while he realized the subject OPRA request may be “difficult,” he did not agree with the Custodian’s denial of access. The Complainant argued that he was seeking “what, if any,” training schedules apply to the title of “clerk 1.”

Statement of Information:

On May 12, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 3, 2020. The Custodian certified that her search included looking through personnel records and reviewing job descriptions, which did not yield any responsive records. The Custodian certified that after Ms. Tramontana made a failed attempt to obtain clarification, she responded in writing on the Custodian’s behalf on February 13, 2020 denying the subject request as invalid.

The Custodian first argued that she lawfully denied access to the subject request because it sought information and not identifiable government records. MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 37. The Custodian argued that although she could have denied the request outright, the Township nonetheless made a good-faith attempt to obtain clarification and conduct a search. The Custodian also noted that the Complainant’s response to the request for clarification showed “no interest” in engaging in a cooperative balance as contemplated by OPRA.

The Custodian contended that notwithstanding her attempts to obtain clarification, it is “entirely logical” that she was unable to locate responsive records based on the wording of the original request. The Custodian also argued that the Township is not a licensing or certification body, nor does it provide training to its employees. The Custodian argued that instead, and as stated to the Complainant multiple times, the Township does not retain training records for employees; the individual employees are responsible for maintaining their own licenses and certifications. The Custodian thus argued that the evidence of record supports that she did not knowingly and willfully violate OPRA. N.J.S.A. 47:1A-11.

The Custodian finally contended that the Complainant engaged in an “inappropriate campaign to harass” her. The Custodian noted that the Complainant recently sent a letter to the Essex County Civil Division on May 4, 2020 implying conspiracy and criminal allegations against her and others. The Custodian asserted that this “rambl[ing]” letter evidences a consistent lack of clarity and highlights the Township’s difficulty in responding to his “numerous and often repetitive [OPRA] requests.” The Custodian further asserted that the letter evidences the Complainant’s “far-reaching personal vendetta against” her. The Custodian thus argued that the letter provides further proof of the Complainant’s bad-faith actions, which are counter to OPRA’s cooperative spirit.

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

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<sup>4</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004). Rory Moore v. Township of Nutley (Essex), 2020-52 – Findings and Recommendations of the Executive Director

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] . . ." Id. at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

In the matter before the Council, the Complainant's request sought "training schedules" for a range of titles within the Township. After trying to obtain clarification, Ms. Tramontana responded on behalf of the Custodian denying the subject request as invalid because it failed to seek identifiable "government records." MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 37; Gannett, 379 N.J. Super. at 209. In the Denial of Access Complaint, the Complainant noted that his request may have been "difficult" and that he ultimately sought "what, if any, is the required training schedule" for "clerk 1." In the SOI, the Custodian maintained her position that the request itself was invalid. However, the Custodian did note that the Township attempted a search that yielded no responsive records.

Upon review, the GRC is persuaded that the request is invalid because it sought information and not an identifiable "government record." As stated, it is difficult to quantify a particular record or records that may include a "training schedule" or "required training" for a public employee. This position is congruent with the Township's attempt to clarify the request because it could not locate records "under that description." See Ms. Tramontana's February 13, 2020 e-mail to the Complainant. Ultimately, the Complainant is seeking those training requirements for the positions identified in his request and even notes in his complaint that the request is "difficult." Thus, said request seeks *per se* information which is not contemplated under OPRA. LaMantia, GRC 2008-140.

Accordingly, the Complainant's request seeking information regarding "training schedules" is invalid because it seeks information and not an identifiable "government record." MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; LaMantia, GRC 2008-140. The Custodian has thus 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 information regarding "training schedules" is invalid because it seeks information and not an identifiable "government record." 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, GRC Complaint No. 2007-151 (February 2009); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). The Custodian has thus lawfully denied access to the subject request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

April 20, 2021