



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lieutenant Governor

KIMBERLY K. HOLMES
Acting Commissioner

FINAL DECISION

August 29, 2023 Government Records Council Meeting

Ronald Brown
Complainant

Complaint No. 2021-291

v.

East Brunswick Police Department (Middlesex)
Custodian of Record

At the August 29, 2023 public meeting, the Government Records Council (“Council”) considered the August 22, 2023 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:

1. The Complainant’s OPRA request items numbered 1 through 7 are invalid because they fail to identify a specific government record and require research. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005), and N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015). See also Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013). Additionally, request item number 2 seeks records outside the jurisdiction of the GRC. N.J.S.A. 47:1A-7(g). Thus, the Custodian lawfully denied said request items. N.J.S.A. 47:1A-6.
2. The Complainant’s request item number 8 is invalid because it fails to seek an identifiable government record. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007). See also Taylor v. Elizabeth Bd. of Educ. (Union), 2007-214 (April 2008). Thus, the Custodian lawfully denied this portion of the Complainant’s OPRA request. N.J.S.A. 47:1A-6.
3. Notwithstanding the validity of request item number 9, the Custodian did not unlawfully deny the Complainant access to the record because the Complainant provided proof that a copy of the requested record was in his possession at the time he filed the request for said record. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008).

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 29th Day of August 2023

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 5, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 29, 2023 Council Meeting**

**Ronald Brown¹
Complainant**

GRC Complaint No. 2021-291

v.

**East Brunswick Police Department (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of the following:

1. After referencing part of N.J.S.A. 2C:25-28a, the Complainant stated: “I am requesting any and all documentation showing that the Criminal (sic) filed by Ron Brown regarding a (Domestic Violence stalking event) relating to an ongoing series of crimes to the EBPD under case #20-38855 on the date of 7-6-2020, pursuant to this act was/were actually investigated. Please include the name and job title/position of the investigator(s).”
2. After referencing N.J.S.A. 2C:25-28c(1), the Complainant stated: “I am requesting any and all documentation showing that the clerk of the court, or other person designated by the court, assisted Ron Brown in completing any forms necessary for the filing of a summons, complaint, answer or other pleading, including the first and last name of the clerk of the court, or other person designated by the court that assisted Ron Brown, and official copies of the original complaints filed by Ron Brown via email to the East Brunswick Municipal Court dated: 9/3/2020, 9/4/2020, or 9/6/2020 resulting in the EBMC complaint case numbers of 1204 S 2020 (000467), (000468)[,] (000469), (000470), and (000487).”
3. After referencing N.J.S.A. 2C:25-28e, the Complainant stated: “I am requesting any and all documentation showing that as soon as the domestic violence complaint was filed by Ron Brown, both the victim and the abuser(s) were advised of any programs or services available for advice and counseling.”
4. After referencing N.J.S.A. 2C:25-28f, the Complainant stated: “I am requesting any and all documentation showing that the municipal court judge entered an ex parte order to protect the life, health, or well-being of Ron Brown, the victim on whose behalf the relief is sought.”
5. After referencing part of N.J.S.A. 2C:25-28j, the Complainant stated: “I am requesting any and all documentation showing that the Municipal Court has forbidden the defendant(s)

¹ No legal representation listed on record.

² Represented by Anthony C. Iacocca, Esq., of Hoagland, Longo, Moran, Dunst & Doukas, LLP (New Brunswick, NJ).

from returning to the scene of the domestic violence, forbidding the defendant(s) from possessing any firearm or other weapon enumerated in subsection r. of N.J.S. 2C:39-1, or ordering the search for and seizure of any such weapon at any location(s) where the judge had reasonable cause to believe the weapon(s) was/were located and the seizure of any firearms purchaser identification card or permit to purchase a handgun issued to the defendant(s) and any other appropriate relief.”

6. After referencing part of N.J.S.A. 2C:25-28l, the Complainant stated: “I am requesting any and all documentation showing that an order granting emergency relief, together with the complaint or complaints, was immediately be (sic) forwarded to the appropriate law enforcement agency for service on the defendant, and to the police of the municipality in which the plaintiff resides or is sheltered, and was immediately served upon the defendant(s) by the police, unless that an order issued during regular court hours was forwarded to the sheriff for immediate service upon the defendant in accordance with the Rules of Court.”
7. After referencing N.J.S.A. 2C:25-28n, the Complainant stated: “I am requesting any and all documentation showing that notice of temporary restraining orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.”
8. After referencing 18 U.S.C. §3771, the Complainant stated: “I am requesting any and all documentation showing that Crime victims’ rights were afforded to Plaintiff/Complainant, or the reasons for any decision denying relief under this chapter, as it shall be clearly stated on the record.”
9. “I am also requesting an official copy of this OPRA [request form] dated 10/11/21.”

Custodian of Record: Tamar Lawful³

Request Received by Custodian: October 11, 2021

Responses Made by Custodian: October 19, 2021

GRC Complaint Received: November 15, 2021

Background⁴

³ Tamar Lawful is the present custodian of records. However, the custodian of records during preparation of the response to the OPRA request and Statement of Information was Nennette Perry. Because Ms. Perry interacted with the GRC staff as the custodian of records during the course of this complaint, she is referred to as the “Custodian” herein.

⁴ 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.

Request and Responses:

On October 11, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 19, 2021, the sixth (6th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the request was denied as vague, overly broad, and lacking the specificity of a proper OPRA request.

Denial of Access Complaint:

On November 15, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he filed his request on October 11, 2021, and that the Custodian responded on October 19, 2021, denying his request. The Complainant stated that he sent the following correspondence to the Custodian:

- On October 12, 2021, the Complainant stated that he reminded the Custodian that the records he is seeking are usually made available within twenty-four (24) hours, and that her refusal to disclose the records will be violative of several federal laws.
- On October 14, 2021, the Complainant stated that he reminded the Custodian that if she denied him access to the records without noting reasons or justifications, she could be blamed for the actions or inactions of others.
- On October 16, 2021, the Complainant stated that he reminded the Custodian that police must respond to requests for information concerning complaints and summonses.
- On October 18, 2021, the Complainant stated that he reminded the Custodian that if he had requested records that do not exist because of law breakers, her response should reflect that fact.
- On October 20, 2021, the Complainant stated that he informed the Custodian that his request was sufficiently clear and not overly broad.
- On October 21, 2021, the Complainant stated that he informed the Custodian that her denials are unlawful and that her actions have shown a positive element of conscious wrongdoing.

The Complainant stated that (other than responding to his request) the Custodian failed to reply to any of his correspondence. The Complainant asserted that 18 U.S.C. §3 provides accessory after the fact violations for public officials.

Statement of Information:

On November 24, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 11, 2021, and that she responded to the request on October 19, 2021. The Custodian certified that she denied the request because it was vague, overly broad, and lacking the specificity of a proper OPRA request. In support of the denial, the Custodian cited MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534(App. Div. 2005), Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005), and N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

Analysis

Validity of Request

Request Items Numbered 1 through 7

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). See Bent, 381 N.J. Super. at 37, holding that “. . . a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents. Id. at 37.⁵ See also N.J. Builders Ass’n., 390 N.J. Super. at 180.

With respect to requests requiring research, the distinction between search and research is fact sensitive. That is, there are instances where the very specificity of a request requires only a search. As the Council determined in Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013), “. . . a valid OPRA request requires a search, not research . . . what will be sufficient to determine a proper search will depend on how detailed the OPRA request is, and will differ on a case-by-case basis.

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

What a custodian is not required to do, however, is to actually read through numerous [records] to determine if same is responsive: in other words, conduct research.”

Additionally, in Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (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.]

More recently, in 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),⁶ the complainant requested docketing records stemming from an appeal of an agency’s final decision pertaining to a specific statute. The GRC found the request to be invalid, as it would cause the custodian to conduct research. On appeal, the court found that the request lacked a case name, party name, or docket number. The court also found that the request required the custodian “to search through thousands of cases to identify documents relevant to the request.” Slip op. at *9-10. The court further found that the custodian would have to review each file to determine whether it was applicable to the specific issue identified by the complainant. The court therefore held that the request was invalid under OPRA.

Also, 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).

Here, the Complainant’s request fails to identify any specific records. Rather, the Complainant’s request sought “any and all documentation showing” that actions were or were not taken in accord were certain provisions of N.J.S.A. 2C:25-28. Such a request will require research that the Custodian is not required to undertake. Additionally, request item number 2 seeks documentation showing the “clerk of the court, or other person designated by the court” assisted the Complainant in completing forms, and that the Complainant is seeking “official copies of the original complaints filed by Ron Brown via email to the East Brunswick Municipal Court.” Per N.J.S.A. 47:1A-7(g), the GRC does not have jurisdiction over records requests made of the East

⁶ Affirmed on appeal from Carter v. N.J. Dep’t of Cmty. Affairs, GRC Complaint No. 2016-262 (August 2018).

Brunswick Municipal Court, as it falls under the Judicial Branch of government. See E.g., Tompkins v. Newark Municipal Court (Essex), GRC Complaint No. 2023-6 (February 2023).

Accordingly, the Complainant's request items numbered 1 through 7 are invalid because they fail to identify a specific government record and require research. MAG, 375 N.J. Super. at 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass'n, 390 N.J. Super. 166; Lagerkvist, 443 N.J. Super. 230. See also Verry, GRC 2013-43 and 2013-53. Additionally, request item number 2 seeks records outside the jurisdiction of the GRC. N.J.S.A. 47:1A-7(g). Thus, the Custodian lawfully denied said request items. N.J.S.A. 47:1A-6.

Request Item Number 8

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.

In this request item the Complainant sought documentation showing that crime victim rights pursuant to 18 U.S.C. §3771 were either granted or denied to him. The statute the Complainant cited provides for rights afforded to *federal* crime victims.

In Taylor v. Elizabeth Bd. of Educ. (Union), GRC Complaint No. 2007-214 (April 2008), the Council upheld as overly broad the custodian's denial of a request for records under several provisions of the Code of Federal Regulations, stating ". . . the fact that the Custodian would have to research the federal regulations cited by the Complainant to determine whether said regulations require that a record be created places an undue burden on the Custodian." Subsequently, in Avila v. N.J. Dep't of Corr., GRC Complaint No. 2010-36 (May 2011), the complainant requested, *inter alia*, copies of any and all federal court orders. The Council decided that such a request was not a valid OPRA request.

Here, the Complainant did not provide any evidence that he was a federal crime victim and/or that records related to 18 U.S.C. §3771 are otherwise maintained or kept on file in the course of the municipality's business. To the contrary, the Complainant stated that he was seeking records related to N.J.S.A. 2C:25-28. Moreover, other than citing the federal statute number, the Complainant did not provide any further information to specifically identify a government record.

Accordingly, the Complainant's request item number 8 is invalid because it fails to seek an identifiable government record. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; New Jersey Builders Ass'n, 390 N.J. Super. 166. See also Taylor, GRC 2007-214. Thus, the Custodian lawfully denied this portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6.

Request Item Number 9

This request item is not vague, overly broad, and lacking in specificity, as asserted by the Custodian. The request clearly identifies the OPRA request form which formed the basis of this complaint. To make sure the request was clear, the Complainant even included the date the form was prepared/submitted. As such, this request item contained sufficient identifying information

for the Custodian to conduct a search. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass’n, 390 N.J. Super. 166. However, the Custodian need not perform a search because the record is not subject to disclosure.

In Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008), the Appellate Division held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. With respect to this issue, the court noted:

...[i]t is undisputed that Bart at all times had within his possession a copy of the cover letter at issue; indeed, he attached a copy to the complaint he filed with the Council. He could not have been denied access to the document, however, if he already had the document he sought.

[Id. at 618.]

The court further noted that requiring a custodian to duplicate another copy of the requested record and send it to the complainant “. . . does not . . . advance the purpose of OPRA, which is to ensure an informed citizenry.” Id. (citations omitted).

Here, as in Bart, 403 N.J. Super. 609, the Complainant already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA because the document he sought was the OPRA request. Also, identical to the facts in Bart, 403 N.J. Super. 609, the Complainant in the instant matter attached a copy of the requested record to the complaint he filed with the GRC. As such, the Complainant could not have been denied access to request item number 9.

Therefore, notwithstanding the validity of request item number 9, the Custodian did not unlawfully deny the Complainant access to the record because the Complainant provided proof that a copy of the requested record was in his possession at the time he filed the request for said record. Bart, 403 N.J. Super. 609.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant’s OPRA request items numbered 1 through 7 are invalid because they fail to identify a specific government record and require research. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005), and N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015). See also Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013). Additionally, request item number 2 seeks records outside the jurisdiction of the GRC. N.J.S.A. 47:1A-7(g). Thus, the Custodian lawfully denied said request items. N.J.S.A. 47:1A-6.

2. The Complainant's request item number 8 is invalid because it fails to seek an identifiable government record. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007). See also Taylor v. Elizabeth Bd. of Educ. (Union), 2007-214 (April 2008). Thus, the Custodian lawfully denied this portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6.
3. Notwithstanding the validity of request item number 9, the Custodian did not unlawfully deny the Complainant access to the record because the Complainant provided proof that a copy of the requested record was in his possession at the time he filed the request for said record. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008).

Prepared By: John E. Stewart

August 22, 2023