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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

March 25, 2025 Government Records Council Meeting

Daniel Melfi
Complainant

Complaint No. 2022-342

v.

Borough of Leonia (Bergen)
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 2025 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 request item Nos. 1 and 2 are invalid because they failed to contain the required criteria necessary to be considered valid under OPRA. See 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); Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (April 2010); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010).
2. The Custodian lawfully denied the Complainant access to item Nos. 3, and 4 as he sought records that were duplicative of the thirteen (13) pages of records provided in response to his identical January 24, 2022 OPRA request submitted days before because disclosure of same “does not advance the purpose of OPRA.” Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008). N.J.S.A. 47:1A-6; Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Reg’l Sch. Dist. (Mercer), GRC Complaint No. 2012-330 (Interim Order dated February 2013).

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 25th Day of March 2025

John A. Alexy, 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: March 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2025 Council Meeting**

**Daniel Melfi¹
Complainant**

GRC Complaint No. 2022-342

v.

**Borough of Leonia (Bergen)²
Custodial Agency**

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

1. “Copies of all e-mails from dmelfi@leonianj.gov for the past year.”
2. “Copies of any and all records, correspondence, written or electronic from any and all government officials appointed/elected and planning board members that have the words Dan Melfi, Daniel Melfi, Zoning official, Zoning officer.”
3. “Copies of all resolutions appointing Dan Melfi/Daniel Melfi.”
4. “Copy of my personal [sic] file & copies of all evaluation reports.”

Custodian of Record: Trina Lindsey
Request Received by Custodian: April 22, 2022
Response Made by Custodian: June 14, 2022
GRC Complaint Received: July 18, 2022

Background³

Request and Response:

On April 22, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 3, 2022, the seventh (7th) business day after receipt of the OPRA request, the Custodian responded in writing requesting an extension through June 14, 2022, to respond. On June 14, 2022, the Custodian responded in writing denying the request because it was identical to an OPRA request the Complainant submitted to the Borough of Leonia (“Borough”) on January 24, 2022. The Custodian stated that she was thus reiterating the Borough’s denial from the prior OPRA request and cited Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008), to support not reproducing records already in the Complainant’s possession.

¹ No legal representation listed on record.

² Represented by Bradley D. Tishman, Esq., of Cleary, Giacobbe, Alfieri, Jacobs, LLC (Oakland, 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.

Denial of Access Complaint:

On July 18, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted his request was denied by the Borough for being identical to a request he made on January 24, 2022.

Statement of Information:

On August 1, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on April 22, 2022. The Custodian certified that when responding to the Complainant’s January 2022 OPRA request, the Borough searched for and provided resolutions, a personnel file, and evaluations responsive to both that and the subject OPRA request. The Custodian certified that the Borough did not conduct a search for any other potentially responsive records because the remainder of the Complainant’s OPRA request was invalid. The Custodian certified that she responded to the Complainant’s January 24, 2022 OPRA request on April 1, 2022. The Custodian certified that she responded to the subject OPRA request in writing on June 14, 2022 denying the request pursuant to Bart, 403 N.J. Super. 609, because it was identical to the January 24, 2022 OPRA request.

The Custodian argued that, in addition, request item No. 1 was invalid because it failed to include a date or range of dates as required by Armenti v. Robbinsville Bd. of Educ., GRC Complaint No. 2009-154 (Interim Order May 24, 2011) and Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (April 2010). The Custodian also cited Brown v. Essex Cnty. Coll., GRC Complaint No. 2017-227 (July 2020), in further support of this position. The Custodian asserted that with respect to item No. 2, the request was invalid because it was overly broad and failed to identify with reasonable clarity any particular records sought, citing to MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, (App. Div. 2007) (cert. denied, 190 N.J. 394 (2007)). The Custodian noted that she denied the similar January 24, 2022 OPRA request items for the above reasons.

The Custodian argued that the Borough’s denial pursuant to Bart was lawful because the Complainant was already in possession of the documents he sought. The Custodian certified that on April 1, 2022, in response to the Complainant’s January 24, 2022 OPRA request, the Borough provided thirteen (13) pages of records without redactions responsive to item Nos. 3 and 4 thereof, which are identical to the subject OPRA 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.*

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. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁴ N.J. Builders Ass’n, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

An invalid 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. at 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).

With respect to requests for e-mails and correspondence, the GRC established specific criteria deemed necessary under OPRA to request such records in Elcavage, GRC 2009-07 (April 2010). The Council determined that to be valid, such requests must contain (1) the content and/or subject of the email, (2) the specific date or range of dates during which the email(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. Id.; see also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters and text messages. See e.g. Armenti, GRC 2009-154 (Interim Order dated May 24, 2011); Alt v. City of Vineland (Cumberland), GRC Complaint No. 2013-205 (June 2014).

⁴ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

In Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010), the complainant's OPRA request sought all e-mails to or from a particular e-mail account for a specific time period. The custodian's counsel responded, advising the complainant that his OPRA request was invalid because it represented an open-ended search of the Borough's files. The Council held that the complainant's request was invalid under Elcavage, GRC 2009-07, because it did not include a subject or content. Id. at 7.

Here, the Complainant's request item No. 1 sought e-mails that he sent (based on the e-mail address provided) from dmelfi@leonianj.gov for the past year. The Complainant's request item No. 2 sought "any and all records, correspondence, written or electronic from any and all government officials appointed/elected and planning board members that have the words Dan Melfi, Daniel Melfi, Zoning official, and Zoning officer." In the SOI, the Custodian asserted that item No. 1 was invalid because it was overbroad and failed to provide the subject or content for the e-mails sought. The Custodian further asserted that item No. 2 was invalid because it lacked a date or range of dates by which she could perform her search.

When applying Elcavage and Verry, the evidence of the record supports finding that item Nos. 1 and 2 are invalid. The GRC is thus satisfied that these items are invalid as the required criteria established under controlling case precedent was clearly omitted from the request.

Therefore, the Complainant's request item Nos. 1 and 2 are invalid because they failed to contain the required criteria necessary to be considered valid under OPRA. See 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; Elcavage, GRC 2009-07; Verry, GRC 2009-124.

Unlawful Denial of Access

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. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

New Jersey Courts have provided that "[t]he purpose of OPRA 'is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.'" Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). In Bart, 403 N.J. Super. 609,⁵ the Appellate Division looked to the Lafayette Yard case in determining whether a custodian knowingly and willfully violated OPRA by not providing to the complainant a record already in his possession. The Court 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. Id. at 617. The Appellate Division reasoned 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. at 618 (citing Lafayette Yard, 183 N.J. at 535).

⁵ Reversing Bart v. City of Paterson Hous. Auth., GRC Complaint No. 2005-145 (May 2006).

The Appellate Division's decision in Bart, however, turns upon the specific facts of that case. The Council's decision noted that the custodian certified that copies of the requested record were available at the Housing Authority's front desk upon simple verbal request by any member of the public. Bart, GRC 2005-145. Moreover, the complainant actually admitted that he was in possession of this record at the time of the OPRA request for the same record. Id.

Additionally, in Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Reg'l Sch. Dist. (Mercer), GRC Complaint No. 2012-330 (Interim Order dated February 2013), the complainant sought access to student discipline reports. The custodian's counsel responded, indicating that he provided the records in response to a prior OPRA request. The Council held that:

The Custodian did not unlawfully deny access to the records responsive to request item no. 8 because at the time of the Complainant's December 14, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to [Bart, 403 N.J. Super. 609].

[Id. at 13.]

In the matter currently before the Council, the Custodian certified that she previously provided the Complainant with thirteen (13) pages responsive records to OPRA request item Nos. 3 and 4 on April 1, 2022 in response to this Complainant's January 24, 2022 OPRA request, which is identical to the instant OPRA request. The Custodian contended that providing the Complainant with these records again "does not advance the purpose of OPRA." Bart, 403 N.J. Super. at 618.

Although the Complainant has not affirmatively established that he possessed the earlier provided records, the intent of the Court's decision in Bart can be applied to the facts of this complaint. Specifically, the records sought in request item Nos. 3 and 4 were disclosed within days of the subject OPRA request being submitted. The facts here are like those in Owoh, GRC 2012-330 in that the timing of the response to the prior OPRA request and submission of the new identical OPRA request were close together. Thus, the Custodian did not unlawfully deny access to the responsive records because, as the evidence of record supports, the Complainant had already been provided with electronic copies of thirteen (13) pages of responsive records days prior to submitting the instant OPRA request. Requiring the Custodian to again locate, reproduce, and disclose duplicative records does not advance the purposes of OPRA.

Therefore, the Custodian lawfully denied the Complainant access to item Nos. 3, and 4 as he sought records that were duplicative of the thirteen (13) pages of records provided in response to his identical January 24, 2022 OPRA request submitted days before because disclosure of same "does not advance the purpose of OPRA." N.J.S.A. 47:1A-6; Bart, 403 N.J. Super. at 618; Owoh, GRC 2012-330.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant's request item Nos. 1 and 2 are invalid because they failed to contain the required criteria necessary to be considered valid under OPRA. See 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); Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (April 2010); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010).
2. The Custodian lawfully denied the Complainant access to item Nos. 3, and 4 as he sought records that were duplicative of the thirteen (13) pages of records provided in response to his identical January 24, 2022 OPRA request submitted days before because disclosure of same "does not advance the purpose of OPRA." Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008). N.J.S.A. 47:1A-6; Owoh (on behalf of O.R.) v. West Windsor-Plainsboro Reg'l Sch. Dist. (Mercer), GRC Complaint No. 2012-330 (Interim Order dated February 2013).

Prepared By: Maria M. Rossi
Staff Attorney

March 18, 2025