



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

February 29, 2024 Government Records Council Meeting

Jeton Merko
Complainant

Complaint No. 2022-45

v.

Montville Township Board of Education (Morris)
Custodian of Record

At the February 29, 2024 public meeting, the Government Records Council (“Council”) considered the February 20, 2024 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 seeking specific information that might be culled from one or more policies or bonds specified in the request is invalid because it is seeking information, not records, and would require the Custodian to conduct research to fulfill the request, which she is not required to do. 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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015); LaMantia, GRC 2008-140. Thus, the Custodian lawfully denied the request. N.J.S.A. 47:1A-6.
2. The Custodian certified that she did not receive a records request from the Complainant dated January 28, 2022, seeking oaths of office. Additionally, the Complainant failed to provide any evidence to contradict the Custodian’s certification. Therefore, the part of this complaint alleging a request was submitted for oaths of office is without any reasonable factual basis to pursue and shall be dismissed. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-7(e). See Alexander v. Middlesex Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2021-17 (March 2021).

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 February 2024

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: March 4, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 27, 2024 Council Meeting**

**Jeton Merko¹
Complainant**

GRC Complaint No. 2022-45

v.

**Montville Township Board of Education (Morris)²
Custodial Agency**

Records Relevant to Complaint: Via e-mail “Please provide the detailed information regarding the public official personal liability policy (a.k.a (sic) the indemnity (sic) policy or surety bond or oath of office bond) for all the montville township board of education (sic) members. The B.O.E (sic) members include Rene T. Rovtar, Charles Grau, Michael J. Palma, Karen Cortellino, Joseph Daughtry, Christine Fano, David Modrak, Michael O’Brien, Michael Rappaport, and Michelle Zuckerman. The information should include the policy # and company providing the policy, the towns (sic) JIF’s designated liability claims representative (along with phone # and email) and the QBE claims administrator (phone # and email).”

Custodian of Record: Katine Slunt
Request Received by Custodian: January 28, 2022
Response Made by Custodian: February 7, 2022
GRC Complaint Received: March 2, 2022

Background³

Request and Response:

On January 28, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 7, 2022, the Custodian responded in writing denying the request as trade secrets and proprietary commercial or financial information pursuant to N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On March 2, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on January 28, 2022, he

¹ No legal representation listed on record.

² Represented by Margaret A. Miller, Esq., of Weiner Law Group, L.L.P. (Parsippany, 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.

submitted his OPRA request to the Custodian. The Complainant stated that the Custodian responded on February 7, 2022, denying the request as trade secrets and proprietary commercial or financial information pursuant to N.J.S.A. 47:1A-1.1. The Complainant stated that he was denied the Montville Township Board of Education (“Board”) members’ current oaths of office, as well as the Board members’ current “surety bond/insurance policy.”

Statement of Information:

On March 9, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 28, 2022, and denied the request on February 7, 2022.

The Custodian certified that upon receipt of the request she contacted the Board’s insurance broker to determine whether there were responsive records. The Custodian certified that the broker informed her that the request was not specific enough to formulate a response. The Custodian further certified that she subsequently consulted with legal counsel, and that the Custodian’s Counsel advised her that the documentation requested was exempt from access in its entirety as trade secrets and proprietary commercial or financial information pursuant to the Council’s decision in Martinez v. N.J. Dep’t of Human Serv., Div. of Med. Assistance and Health Serv., GRC Complaint No. 2012-156 (Interim Order July 23, 2013). The Custodian certified that she therefore denied the request in its entirety as trade secrets and proprietary commercial or financial information pursuant to N.J.S.A. 47:1A-1.1.

With respect to the Complainant’s assertion that he was unlawfully denied Board members’ current oaths of office, the Custodian certified that the request dated January 28, 2022, which was attached to the complaint as Item 6, does not seek oaths of office. The Custodian certified that the Complainant’s contention that he was unlawfully denied oaths of office is false.

Analysis

Validity of Request

The Custodian certified that she denied the Complainant’s request in its entirety because it sought trade secrets and proprietary commercial or financial information pursuant to N.J.S.A. 47:1A-1.1. The Custodian certified that, in denying the request, she relied upon the Council’s decision in Martinez, GRC 2012-156.

The GRC finds that the Custodian’s reliance upon Martinez, GRC 2012-156, as authority for denying the Complainant’s request is misplaced. In Martinez, the Council concluded that the requested records, third-party provider insurance coverage and contract information, were lawfully withheld from disclosure as trade secrets and proprietary commercial or financial information pursuant to N.J.S.A. 47:1A-1.1. The Council rendered such decision because the medical transportation broker, LogistiCare Solutions, satisfied the Council that disclosure of the requested records would, *inter alia*, disclose the network created by LogistiCare and how it conducts its business. In the instant matter, there was no argument asserted by the insurance

broker that intellectual property must be safeguarded as trade secret or proprietary information; therefore, Martinez is inapposite here.

However, the Council is permitted to affirm a denial of access for reasons not raised by a custodian pursuant to Paff v. Twp. of Plainsboro, Docket No. A-2122-05T2 (App. Div. 2007), *certif. denied* by Paff v. Twp. of Plainsboro, 193 N.J. 292 (2007).⁴ In Paff, the complainant challenged the GRC's authority to uphold a denial of access for reasons never raised by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian's cited basis for denial was lawful. The court held that:

[t]he GRC has an independent obligation to 'render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to' OPRA . . . The GRC is not limited to assessing the correctness of the reasons given for the custodian's initial determination; it is charged with determining if the initial decision was correct.

[Id.]

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 Alcoholic Beverage Control, 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).]

⁴ On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006). [unpublished]

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);⁵ 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).

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:

[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).

⁵ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

[Id. See also Schulz v. NJ 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, 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.]

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 January 28, 2022 OPRA request sought “information regarding” the personal liability policy, or indemnity policy, or surety bond, or oath of office bond for ten (10) named Board members. The Complainant stated that the information should include the policy number, the company providing the policy, the JIF-designated liability claims representative, the representative’s phone number, the representative’s email address, the QBE claims administrator, the administrator’s phone number and the administrator’s email address.

The Complainant’s OPRA request seeks information. Moreover, the information sought by the Complainant is alleged to be found in one or more policies or bonds specified in the request. The request lists the type of information sought by the Complainant for each of the Board members.

The GRC finds that the Complainant’s OPRA request is invalid because it seeks information, not records. The Complainant failed to specifically identify a government record. Rather, he mentioned several policies and/or bonds in which the specific information he is seeking may be found. MAG, 375 N.J. Super. 534; LaMantia, GRC 2008-140. Furthermore, the request would require research. Specifically, to fulfill the request, the Custodian would have to examine one or more policies or bonds for each named Board member to locate the requested information, then extract the information specified by the Complainant and fashion a response

accordingly. This type of research is not contemplated under OPRA. Lagerkvist, 443 N.J. Super. at 236-37.

Accordingly, the Complainant's OPRA request seeking specific information that might be culled from one or more policies or bonds specified in the request is invalid because it is seeking information, not records, and would require the Custodian to conduct research to fulfill the request, which she is not required to do. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. at 37; Lagerkvist, 443 N.J. Super. 230; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Thus, the Custodian lawfully denied the request. N.J.S.A. 47:1A-6.

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 (emphasis added). 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.

OPRA also provides that "[a] request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian." N.J.S.A. 47:1A- 5(g). OPRA further provides that "[t]he council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or *without any reasonable factual basis.*" N.J.S.A. 47:1A-7(e) (emphasis added).

The Complainant asserted in the Records Denied List of the complaint that the request sought the "[s]chool board members oaths of office (current/most up to date)," and that the Custodian unlawfully denied his request for those records. The Custodian certified that the request dated January 28, 2022, which was attached to the complaint as Item 6, did not seek oaths of office and that the Complainant's assertion that it did seek such records is false. The GRC carefully examined the OPRA request which formed the basis of this complaint and concurs with the Custodian's assertion that the request does not seek oaths of office.

In Alexander v. Middlesex Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2021-17 (March 2021), the custodian certified that she did not receive a records request from the complainant. The Council determined that the complainant failed to provide any evidence to contradict the custodian's certification, and dismissed the complaint, declaring that it was without any reasonable factual basis to pursue.

Here, the Custodian certified that the Complainant's January 28, 2022 OPRA request, which is the request which formed the basis of this complaint, does not seek oaths of office. As such, the Custodian certified that she did not unlawfully deny the Complainant's request for oaths of office.

Therefore, the Custodian certified that she did not receive a records request from the Complainant dated January 28, 2022, seeking oaths of office. Additionally, the Complainant failed to provide any evidence to contradict the Custodian's certification. Therefore, the part of this complaint alleging a request was submitted for oaths of office is without any reasonable factual basis to pursue and shall be dismissed. N.J.S.A. 47:1A- 5(g) and N.J.S.A. 47:1A-7(e). See Alexander, GRC 2021-17.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant's OPRA request seeking specific information that might be culled from one or more policies or bonds specified in the request is invalid because it is seeking information, not records, and would require the Custodian to conduct research to fulfill the request, which she is not required to do. 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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015); LaMantia, GRC 2008-140. Thus, the Custodian lawfully denied the request. N.J.S.A. 47:1A-6.
2. The Custodian certified that she did not receive a records request from the Complainant dated January 28, 2022, seeking oaths of office. Additionally, the Complainant failed to provide any evidence to contradict the Custodian's certification. Therefore, the part of this complaint alleging a request was submitted for oaths of office is without any reasonable factual basis to pursue and shall be dismissed. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-7(e). See Alexander v. Middlesex Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2021-17 (March 2021).

Prepared By: John E. Stewart

February 20, 2024