



State of New Jersey

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Commissioner

FINAL DECISION

March 25, 2025 Government Records Council Meeting

George Paschalis
Complainant

Complaint No. 2022-582

v.

Borough of Closter (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 Custodian’s response was insufficient because she failed to address each portion of the OPRA request. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. Of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to identify what part of the Complainant’s request was related to the provided records and what parts of the request were denied.
2. The portion of the Complainant’s OPRA request seeking “any records” is invalid because it fails to identify a specific record and would have required research. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Bent v. Stafford Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015). Thus, the Custodian lawfully denied access to this portion of the Complainant’s OPRA request. N.J.S.A. 47:1A-6.
3. The portion of the Complainant’s OPRA request seeking communications, e-mails, and/or memos from the Borough is invalid because it fails to include a date range. See MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Bent v. Stafford Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); 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 dated May 24, 2011); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010) Thus, the

Custodian lawfully denied access to this portion of the Complainant's OPRA 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 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**

**George Paschalis¹
Complainant**

GRC Complaint No. 2022-582

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of “[a]ny records related to the affordable housing redevelopment of the Village School (Block 1316, Lot 9) including the Memorandum of Understanding (“MOU”) with the Bergen County Housing Development Corporation, subsequent communications with the County of Bergen (“County”), any Borough of Closter (“Borough”) emails/memos covering this subject.

Custodian of Record: Stephanie Evans

Request Received by Custodian: August 23, 2022

Response Made by Custodian: September 20, 2022

GRC Complaint Received: October 20, 2022

Background³

Request and Response:

On August 22, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 1, 2022, the seventh (7th) business day after receipt of the OPRA request, the Custodian responded in writing requesting a twenty-one (21) day extension until September 20, 2022. On the same day, the Complainant responded questioning the length of the extension and asking if the Borough would disclose records readily available, such as the MOU and correspondence with the County. The Custodian responded advising that the relevant files, numerous in nature, are held by Borough Counsel and require review. The Complainant responded objecting to the extension for the MOU and asked if he should submit another OPRA request for that individual record.

¹ No legal representation listed on record.

² Represented by Maura O’Halloran Deegan, Esq. of Huntington Bailey, LLP (Westwood, NJ). Previously represented by Levi Kool, Esq. of Huntington Bailey, LLP (Westwood, 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.

On September 13, 2022, Borough Counsel William Bailey, Esq., e-mailed the Complainant advising that he was out of the office and would continue his review upon returning in the next few days. On September 20, 2022, the Custodian responded in writing through Borough Counsel providing five (5) records responsive to the subject request.

On September 23, 2022, the Complainant e-mailed the Custodian and Borough Counsel thanking them for the response. The Complainant noted that the Borough failed to disclose additional responsive “records” and communications and later asserted that he did not receive a resignation letter listed as “Exhibit A” in one of the disclosed records.

On September 27, 2022, the Complainant e-mailed the Custodian and Borough Counsel following up on his previous e-mail because he did not receive a response. The Complainant asked when the outstanding records would be available. The Complainant also asked who the Custodian for the Borough was and whether the Borough had a records management/e-mail retention policy that can be shared. On September 28, 2022, Borough Counsel e-mailed the Complainant an additional financial record.

On October 12, 2022, the Complainant again e-mailed the Custodian and Borough Counsel reminding them of his OPRA request and inquiring when he can expect the remaining records. The Complainant reiterated his inquiry regarding the Borough’s records management/e-mail retention policy and stated, if necessary, he would complete an additional OPRA request for same.

On October 14, 2022, Borough Administrator James Winters e-mailed the Complainant regarding the records/management e-mail retention policy, stating that the Borough is required to follow the State of New Jersey records retention laws and directing the Complainant to the state agency with those rules. On the same day, the Complainant e-mailed Mr. Winters stating that he appreciated the response and requesting clarity as to why the Custodian has not fulfilled his request or communicated with him about it. The Complainant noted that he had no alternative but to file the instant Denial of Access Complaint.

Denial of Access Complaint:

On October 20, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Borough unlawfully denied him access to e-mails and communications. The Complainant argued that the MOU, e-mails, and correspondence should be “readily accessible” for production. The Complainant stated that the Custodian responded in writing through counsel on September 20, 2022, which included a letter and four (4) attachments representing five (5) responsive records. The Complainant stated he followed up with the Custodian and Borough representatives on multiple days in September and October 2022 but did not receive a response. The Complainant noted that Mr. Winters did advise him on October 14, 2022 that the Borough follows New Jersey requirements for records retention, but this response did not address the status of any remaining records.

Statement of Information:

On November 15, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 23, 2022. The Custodian certified that her search included reviewing the Borough’s records and contacting third parties to obtain the responsive records. The Custodian certified that due to Borough Counsel’s passing, she could only conduct a manual search of hard copies of correspondence because she had no access to Borough Counsel’s electronic files at the time. The Custodian certified that Custodian’s Counsel has since obtained and reviewed the electronic versions of the records from Borough Counsel’s office for review in response to the subject OPRA request. The Custodian certified that she responded in writing through Borough Counsel on September 20, 2022, providing five (5) responsive records. The Custodian contends the Complainant did not mention his receipt of supplemental submission dated September 28, 2022 wherein the Borough produced an additional financial record.

The Custodian argued that the Borough provided all responsive records it could readily identify as being “related” to the affordable housing redevelopment. The Custodian contends that the remainder of the Complainant’s request is overly broad and did not identify what other documents, if any, would have been responsive. The Custodian contends that she would have had to conduct research to determine what if any records responsive to the request exist as this requestor did not seek a specific identifiable government record. The Custodian argued that pursuant to MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005) and N.J.S.A. 47:1A-1, the Borough was only required to disclose “identifiable” government records not otherwise exempt from disclosure.

The Custodian argued that the portion of the OPRA request for “any subsequent communications” is invalid because the Complainant did not provide specific date range or identify sender/recipient. The Custodian cited to Elcavage v. West Milford Twp., GRC Complaint No. 2009-07 (April 2010) and Armenti v. Robbinsville Bd. Of Educ., GRC Complaint No. 2009-154 (Interim Order May 24, 2011) in support of her argument. The Custodian contended that, due to the scope of this request, the Borough was unable to ascertain potentially responsive records without extensive and burdensome research.

Additional Submissions:

On November 16, 2022, the Complainant submitted a sur-reply to the SOI. The Complainant explained his issues with the Custodian’s search for responsive records, or lack thereof, namely the fact that he felt the search was insufficient because it did not appear the Custodian contacted anyone at the Zoning Board. The Complainant asserted that the Custodian did not deny his OPRA request as over broad or unclear and did not seek clarification of the OPRA request. The Complainant contended his request was not overbroad for failure to provide a date range but contained sufficient subject matter information including Block and Lot numbers.

Analysis

Sufficiency of Response

OPRA provides that if a “custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefor . . .* on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g) (emphasis added). In Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that “[t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Here, the Custodian responded to the Complainant’s OPRA request by providing five (5) responsive records through Borough Counsel and an additional financial record after the September 1, 2022 response. However, neither response identifies what part of the OPRA request they correspond to and fails to identify whether the Borough was denying access to portions of the Complainant’s request. The Custodian did not respond to the Complainant’s requests on September 27, October 12, and October 14, 2022 seeking updates on the disclosure of outstanding records.

Upon review, the GRC is satisfied that the Custodian provided an insufficient response. The Custodian failed to identify which records were responsive to which portion of the OPRA request and failed to provide a specific lawful basis for denial thereof. While the Custodian argued that “clearly each and every item sought in the Request was responded to,” the GRC does not agree as the evidence of record does not support this assertion. The facts here are on point with those in Paff; thus, it follows there was an insufficient response in the instant complaint.

Therefore, the Custodian’s response was insufficient because she failed to address each portion of the OPRA request. N.J.S.A. 47:1A-5(g); see Paff, GRC 2007-272; Lenchitz, GRC 2012-265. Specifically, the Custodian failed to identify what part of the Complainant’s request was related to the provided records and what parts of the request were denied.

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 Assoc. 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).

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. 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).

Portion of OPRA request for “Any Records”

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.

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

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.]

In the instant matter, a portion of the Complainant's OPRA request sought "any records related to the affordable housing redevelopment of the Village School (Block 1316, Lot 9)" The Custodian asserted in the SOI that the request is invalid as the Complainant did not identify a specific government record, which would require the Custodian to conduct research to determine what if any record responsive to the request exists. Precedential case law supports the Custodian's position that this portion of the request is invalid. Specifically, the Custodian would have to review the Borough's entire universe of records to locate any documents relating to the development. Such a broad, non-specific search is not contemplated under OPRA.

Accordingly, the portion of the Complainant's OPRA request seeking "any records" is invalid because it fails to identify a specific record and would have required research. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders Ass'n, 390 N.J. Super. at 180; Lagerkvist, 443 N.J. Super. at 236-37. Thus, the Custodian lawfully denied access to this portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6.

Portion of OPRA Request for Communications and E-mails/Memos

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. 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 2013-205 (June 2014).

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, a portion of the Complainant's OPRA request sought communications, e-mails, and memos between the County and Borough regarding the Village School redevelopment. In the SOI, the Custodian argued that this portion of the OPRA request was invalid as it did not specifically identify government records and failed to specify a date range. The Complainant's sur-reply asserted that the ORPA request "was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information" and therefore the request is not vague as the Custodian argued.

Applying Elcavage, Armenti, and Verry, it is clear the evidence of record supports finding that the portions of this OPRA request seeking communications, e-mails, and memos were invalid. Specifically, the Complainant did not include a range of dates; thus, the Custodian's search for communications, e-mails, or memos would necessarily be open-ended. The GRC is thus satisfied that this portion of the OPRA request was invalid, as the required criteria established under controlling case law was clearly omitted from the request.

Accordingly, the portion of the Complainant's OPRA request seeking communications, e-mails, and/or memos from the Borough is invalid because it fails to include a date range. See MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37, N.J. Builders Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Elcavage, GRC 2009-07; Armenti, GRC 2009-154; Verry, GRC 2009-124. Thus, the Custodian lawfully denied access to this portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's response was insufficient because she failed to address each portion of the OPRA request. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. Of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to identify what part of the Complainant's request was related to the provided records and what parts of the request were denied.
2. The portion of the Complainant's OPRA request seeking "any records" is invalid because it fails to identify a specific record and would have required research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Bent v. Stafford Twp. Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015). Thus, the Custodian lawfully denied access to this portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6.

3. The portion of the Complainant's OPRA request seeking communications, e-mails, and/or memos from the Borough is invalid because it fails to include a date range. See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Bent v. Stafford Twp. Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); 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 dated May 24, 2011); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010) Thus, the Custodian lawfully denied access to this portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6.

Prepared By: Maria M. Rossi
Staff Attorney

March 18, 2025