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DEPARTMENT OF COMMUNITY AFFAIRS
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

February 18, 2025 Government Records Council Meeting

Dewuane Jackson
Complainant

Complaint No. 2022-675

v.

Linden Police Department (Union)
Custodian of Record

At the February 18, 2025, public meeting, the Government Records Council (“Council”) considered the February 11, 2025, Supplemental 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 he Complainant’s OPRA request was invalid because it asked a question rather than seeking specific government records. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012), Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). For this reason, the Custodian did not unlawfully deny access to requested information because said request is invalid on its face. 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 18th Day of February 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: February 20, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 18, 2025 Council Meeting**

**Dewuane Jackson¹
Complainant**

GRC Complaint No. 2022-675

v.

**Linden Police Department (Union)²
Custodial Agency**

Records Relevant to Complaint: Copies of the following regarding the Linden Police Department (“LPD”): “I would simply like to know rather your Police Dept. obtain(s) any info. or was put on notice that the Prosecutor(s) Office out of Somerset County was conducting counter surveillance operation on [January 25th, 2020].”

Custodian of Record: Joseph C. Bodek

Request Received by Custodian: December 5, 2022

Response Made by Custodian: December 13, 2022

GRC Complaint Received: December 22, 2022

Background³

Request and Response:

On November 15, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 13, 2022, the Custodian responded in writing denying Complainant’s request on the basis that it was invalid because it “asks questions, or does not identify **specific** (too vague) government records.” (Emphasis in original). 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).

Denial of Access Complaint:

On December 22, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he submitted an OPRA request to the Custodian on November 15, 2022, and the Custodian denied his request on

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.

December 5, 2022. The Complainant argued that he wanted to find out whether Somerset County Prosecutor's Office notified LPD that they were conducting a counter surveillance operation. The Complainant contended that he had "no problem" obtaining information from other police departments.

Statement of Information:

On March 3, 2023, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on December 5, 2022. The Custodian certified that he responded in writing on December 13, 2022, denying Complainant's OPRA request.

The Custodian argued that the Complainant's request was invalid because it asked questions and failed to identify any searchable records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent, 381 N.J. Super. at 37; Smith v. City of Atlantic City (Atlantic), GRC Compliant No. 2017-247 (November 2019); Dunleavy v. Jefferson Twp. Bd. of Educ. (Morris), GRC Compliant No. 2014-372 (July 2015). The Custodian argued that, based on the foregoing, he lawfully denied access to the subject 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. (emphasis added). Bent, 381 N.J. Super. 30;⁴ N.J. Builders Ass’n, 390 N.J. Super. at 180; 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).

The GRC has routinely held that requests framed within the confines of a question are considered invalid under OPRA. For example, in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the complainant’s OPRA request sought answers to five (5) questions regarding a property named the Villa Maria. The Council held that the Complainant’s request was invalid because it failed to identify a specific government record. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007- 233 (August 2009); Dunleavy, GRC Complaint No. 2014-372 (July 2015) (finding that request that requires a yes or no response is invalid because it is merely a question and not a request for a government record).

Here, the Complainant’s request asked a direct question about the LPD’s knowledge of counter surveillance activities on a specific date. The Custodian denied this request on the basis that it was invalid because it asked a question and maintained this position in the SOI. The GRC finds this denial lawful based on longstanding precedent in Watt, GRC 2007-246 that requests asking questions are invalid under OPRA. See also Vance v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2012-188 (June 2013); Alexander v. N.J. Dep’t of Corr., GRC Complaint No. 2018-136 (June 2020).

Accordingly, the Complainant’s request was invalid because it asked a question rather than seeking specific government records. See MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Rummel, GRC 2012-188; Watt, GRC 2007-246. For this reason, the Custodian did not unlawfully deny access to requested information because said request is invalid on its face. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s OPRA request was invalid because it asked a question rather than seeking specific government records. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546

⁴ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

(App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012), Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). For this reason, the Custodian did not unlawfully deny access to requested information because said request is invalid on its face. N.J.S.A. 47:1A-6.

Prepared By: Jennifer C. Howell
Staff Attorney

February 11, 2025