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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

February 18, 2025 Government Records Council Meeting

Edward H. Mazer, Esq.
Complainant

v.

Township of Millburn (Essex)
Custodian of Record

Complaint No. 2022-413 and 2023-180

At the February 18, 2025, public meeting, the Government Records Council (“Council”) considered the February 11, 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 has borne her burden of proof that no unlawful denial of access occurred regarding the Complainant’s February 22, 2022 OPRA request. Specifically, the Custodian, through Ms. Cruz, timely and reasonably requested clarification of the request in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Liebel v. Manalapan Englishtown Reg’l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order dated March 22, 2013).
2. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s June 9, 2023 OPRA request item No. 3. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no recordings responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
3. The Complainant’s March 28, 2022, and May 16, 2022, requests were invalid because they required substantive research. MAG Entm’t, LLC v. Div. of ABC, 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, 236-237 (App. Div. 2015); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012). Further, the Complainant’s June 9, 2023 request item Nos. 1 and 2 and the June 12, 2023 requests were invalid because they sought generic “documents” and failed to identify specific government records. Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to the subject requests because they were invalid. N.J.S.A. 47:1A-6.

4. The Complainant is not entitled to reasonable attorney's fees pursuant to OPRA because the courts have determined that the State's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, and not a *pro se* filer representing himself without legal representation. See Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2005-71 (April 2006).

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**

**Edward H. Mazer, Esq.¹
Complainant**

**GRC Complaint No. 2022-413
and 2023-180²**

v.

**Township of Millburn (Essex)³
Custodial Agency**

Records Relevant to Complaint:

February 22, 2022 OPRA request: Copies of “subsequent requests for information/documents” from the United States Department of Justice (“DOJ”) (following a March 22, 2013 letter seeking document production).⁴

March 28, 2022 and May 16, 2022 OPRA requests: Electronic copies of:

1. “[A]ll letters, e-mails, correspondence, memoranda, notes drafts, resolutions, agendas, audio and/or video recordings, transcripts, minutes, decisions, reports, studies, and other documents or recordings” pertaining to Article 6, Section 606.2 of Zoning Ordinance No. 2241-04(1)(e) proposing repeal of Section 606.2(d)(1), the 2004 proposed amendment barring houses of worship in the Township of Millburn (“Township”), and the 2006 proposed amendment that would change parking, buffers, and setback requirements for houses of worship.
2. “[A]ll applications, permits, letters, e-mails, correspondence, memoranda, notes, resolutions, agendas, audio and/or video recordings, transcripts, minutes, decisions, reports, studies, and other documents, or recordings” pertaining to Bogomilsky’s or Chai Center, its members, employees, leadership, variance applications and use of properties at four (4) addresses since 2002.
3. “[A]ll applications, letters, e-mails, correspondence, memoranda, notes, resolutions, agendas, audio and/or video recordings, transcripts, minutes, decisions, reports, studies, or other documents or recordings” regarding Concerned Neighborhood Association of Millburn Township, Inc. (“CNAMT”).
4. “[A]ll applications for building permits, variances, certificates of occupancy, conditional use permits, or other similar permits, variances, or exemptions or other similar applications to locate, build or expand in the Township” regarding a religious organization other than Chai Center since January 1, 1992; “a statement regarding whether each such application was approved or denied, the date of such approval or denial, and the zoning district where

¹ No legal representation listed on record.

² These complaints have been consolidated due to commonality of parties and issues.

³ Represented by Heather A. Pierce, Esq., of Maraziti Falcon, LLP (Cedar Knolls, NJ).

⁴ The Complainant sought an additional record that is not at issue in this complaint.

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the entity sought to locate, build or expand; and copies of any letters, e-mails, correspondence, memoranda, notes, resolutions, audio and/or video recordings, transcripts, minutes, decisions, reports, studies, or other documents or recordings” regarding those applications or decisions.

5. “[A]ll applications for building permits, variances, certificates of occupancy, conditional use permits, or other similar permits, variances, or exemptions or other similar applications to locate, build or expand in the Township” pertaining to any non-religious assembly uses (such as “assembly halls, clubs, museums, galleries, fraternal clubs, live theatre, schools, community centers, auditoriums, social and community facilities, lodges, stadiums, *etc.*.) since January 1, 2002; a statement regarding whether each such application was approved or denied, the date of such approval or denial, and the zoning district where the entity sought to locate, build or expand.”
6. Township Police Department (“MTPD”) incident reports or similar documents regarding Bogomilsky’s or the Chai Center, its members, employees, leadership, or properties at two (2) addresses since 1992.
7. MTPD incident reports or similar documents pertaining to any other religious entity since January 1, 1992.
8. Current list of all churches, synagogues, temples, mosques, and other houses of worship located in the Township, including each entity’s complete name, address, identification of the zoning district wherein located, number of acres of property, year of establishment, and number of onsite parking spots.

June 9, 2023 OPRA request: Electronic copies on “electronic disk” of:

1. “[E]ach of the documents provided by the Township to DOJ with transmittal letters dated April 18, 2021; June 10, 2013; June 24, 2013; June 28, 2013; August 16, 2013; and September 12, 2013.”
2. “[A]ll” letters, e-mails, and documents sent by the Township to the DOJ from October 29, 2013 through November 6, 2013.
3. Letter from DOJ to the Township dated November 6, 2013.

June 12, 2023 OPRA request: Electronic copies of:

1. “[A]ll documents transmitted” by the Township and or their counsel to DOJ between November 25, 2013 and December 31, 2013 in response to a November 25, 2013 letter.
2. “[A]ll documents conveyed” by the Township’s counsel to DOJ under cover of an April 14, 2014 letter.

Custodian of Record: Christine Gatti

Request Received by Custodian: February 22, 2022; March 28, 2022; May 16, 2022; June 9, 2023; June 12, 2023⁵

Response Made by Custodian: March 25, 2022; April 4, 2022; June 20, 2022; June 30, 2023

GRC Complaint Received: August 12, 2022; August 3, 2023

⁵ The February 22, 2022; March 28, 2022; and May 16, 2022 OPRA requests are the subject of GRC Complaint No. 2022-413. The June 9, 2023 and June 12, 2023 OPRA requests are the subject of GRC Complaint No. 2023-180. Edward H. Mazer, Esq. v. Township of Millburn (Essex), 2022-413 and 2023-180– Findings and Recommendations of the Executive Director

Background⁶

Request and Response:

On February 22, 2022, the Complainant submitted his first (1st) Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 25, 2022, Executive Assistant Jessica Almeida responded in writing on behalf of the Custodian seeking clarification as to the records sought.

On March 28, 2022, the Complainant submitted his second (2nd) OPRA request to the Custodian seeking the above-mentioned records. On April 4, 2022, Ms. Almeida responded in writing on behalf of the Custodian obtaining an extension of time through April 15, 2022, to respond to the OPRA request. On April 15, 2022, Ms. Almeida responded again obtaining an extension of time through April 26, 2022 to respond to the subject OPRA request.

On April 19, 2022, Ms. Almeida responded in writing denying the Complainant’s March 28, 2022 OPRA request as invalid because it was overly broad and voluminous. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Ms. Almeida noted that the items were part of a discovery request in 2013; however, the litigation ended, and all records were returned to their departments. Ms. Almeida noted that the Complainant may wish to resubmit an OPRA request specifying the records sought; she was available to assist in narrowing same is needed.

On April 20, 2022, the Complainant e-mailed Ms. Almeida disputing her response. The Complainant asserted that according to a “Vendor Activity Report” and detailed invoices from DTI, files were transferred to DOJ, including a “CD Master” charged on May 13, 2013. The Complainant thus asserted that he believed the Township, or its special counsel, maintained separate files containing all records sent to DOJ for their investigation. On April 26, 2022, Ms. Cruz (nee Almeida) e-mailed the Complainant stating that she would reach out to Custodian’s Counsel and special counsel for clarification on the “CD Master” issue. Ms. Cruz noted that CDs were initially located, but they turned out to not be responsive to the OPRA request. Ms. Cruz stated that the Township would respond by May 9, 2022. On April 27, 2022, the Complainant confirmed receipt of Ms. Cruz’s e-mail. The Complainant noted that there were several law firms engaged in document production and Ms. Cruz should contact each of them. The Complainant also demanded that he be given the CDs located unless otherwise exempt from disclosure.

On May 9, 2022, Ms. Cruz responded stating that the neither the Township, Counsel, nor special counsel could locate any “CD Master.” Ms. Cruz also reiterated that the CDs located were not responsive to the OPRA request; they contained mismatched data that was not linked to the Township’s DOJ production. Ms. Cruz further indicated that Counsel and special counsel also performed a search and did not locate any responsive records.

⁶ 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.

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On May 16, 2022, the Complainant submitted his third (3rd) OPRA request, a verbatim copy of his March 28, 2022 OPRA request, to the Custodian. The Complainant noted that special counsel and DTI should have retained separate files containing the requested records. On June 9, 2022, Ms. Cruz responded in writing on behalf of the Custodian denying the request because: 1) no records were located; 2) the request was invalid; and 3) litigation materials were returned to their respective departments. On July 25, 2022, the Complainant e-mailed Ms. Cruz demanding that she advise who conducted a search for the Township and the identity of the individual(s) who contacted special counsel and DTI, including the date contacted and identity of the individual claiming no records existed.

Denial of Access Complaint GRC 2022-413:

On August 12, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted he has repeatedly sought copies of documents sent to the DOJ in response to a letter sent by Steven H. Rosenbaum to the former Township Mayor on March 22, 2013. The Complainant contended that, rather than deny access under a specific lawful basis, the Township has simply claimed that all documents amassed were returned to their “respective departments” after the investigation ended. The Complainant further contended that the Township did not respond to multiple requests that it contact special counsel or DTI to obtain the responsive records.

Regarding the February 22, 2022 OPRA request, the Custodian asserted that Ms. Cruz disclosed a copy of the March 22, 2013 letter that he already possessed and sought clarification. Regarding the March 28, 2022 OPRA request, Ms. Cruz denied the request as invalid. The Complainant argued that he sent to Ms. Cruz multiple documents from DTI showing services for the creation of a “CD Master.” The Complainant argued that of import, a May 31, 2013 DTI invoice contains the terms “TIFF Conversion (page),” “Blowbacks B/W 8.5x11,” and “CD Master” proving that documents were converted into electronic files. The Complainant contended that the Township responded denying that the “CD Master” existed. Regarding the May 16, 2022 OPRA request, the Complainant contended that the Township again stated no records existed and that the request was invalid, but added that records were returned to their individual departments.

The Complainant stated that he believed special counsel and DTI maintained a separate file containing all documents sent to DOJ in response to the underlying matter. The Complainant argued that under OPRA, the Township had an obligation to contact both parties, obtain this separate file, and disclose same to him. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); O’Boyle v. Borough of Longport, 426 N.J. Super. 1 (App. Div. 2012); Owoh, Esq. (O.B.O. AADARI & Simmons) v. Borough of Washington (Warren), GRC Complaint No. 2018-281 (February 2021). The Complainant argued that to date, the Township has “*never* indicated that their representatives” contacted special counsel or DTI. (Emphasis in original). The Complainant thus requested that the GRC compel the Township to disclose the responsive records in the requested electronic format and award attorney’s fees.

Statement of Information GRC 2022-413:⁷

On February 9, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA requests on February 22, March 28, and May 16, 2022, respectively. The Custodian certified that no search was conducted for the February 22, 2022 OPRA request because Ms. Cruz sought clarification. The Custodian noted that the OPRA request was considered closed after the Complainant failed to provide the requested clarification. The Custodian certified that there was no search performed for the March 28, and May 16, 2022 OPRA requests because both would require research and were thus invalid. The Custodian certified that on her behalf, Ms. Cruz responded in writing on March 25, April 19, and June 9, 2022, respectively, seeking clarification of the first request and denying the second and third requests as invalid.

The Custodian stated that the Complainant’s OPRA requests stem from a DOJ investigation and document production request nine (9) years prior. The Custodian stated that all three (3) OPRA requests amounted to eighteen (18) separate request items, with seventeen (17) of them being at issue here. The Custodian contended that these requests seeking “‘any and all’ records in a file pertaining to any subject” are clearly invalid. The Custodian noted as an example that the Complainant’s March 28, 2022 OPRA request item No. 1 sought “‘copies of all letters, e-mails, correspondence, memoranda, notes, drafts, resolutions, agendas, audio and/or video recordings, transcripts . . .’ etc. ‘pertaining to Article 6, Section 606.2 of the Milburn Zoning Ordinance.’” The Custodian argued that this request item, a microcosm of all three (3) OPRA requests, obviously required research. See Shipyard Assocs., L.P. v. City of Hoboken, Docket No. L-566-14 (March 14, 2014) (aff’d in part Shipyard Assocs., L.P. v. City of Hoboken, 2015 N.J. Super. Unpub. LEXIS 2117 (App. Div. 2015)). The Custodian contended that all prevailing case law on the validity issue supports that the Complainant’s requests were invalid under OPRA. MAG Entm’t, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Gannett N.J. Partners, L.P. v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005); Schuler, GRC 2007-151. The Custodian further refuted the Complainant’s assertion that the Township did not provide a specific lawful basis for denying the OPRA requests: the basis provided for denial was that the requests were invalid.

The Custodian asserted that the Township has long worked with the Complainant to facilitate over 100 of his OPRA requests in the past seven (7) or eight (8) years. The Custodian noted that this is the reason the Township attempted to obtain clarification from the Complainant, which also indicates a desire to satisfy the request even if invalid. The Custodian further asserted that it is due to this relationship that the Township provided additional details that may seem extraneous; specifically, the fact that boxes of potentially responsive records were sent back to their departments after the investigation closed. The Custodian argued that, although the Complainant took issue with this statement, it was made to be helpful but was ultimately not required beyond an invalid request response.

The Custodian finally contends that the Complainant’s “Master CD” claims are erroneous. The Custodian noted that the Complainant did not seek a “Master CD”; this particular record came

⁷ On August 29, 2022, GRC 2022-413 was referred to mediation. On January 20, 2023, GRC 2022-413 was referred back to the GRC for adjudication.

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to light through correspondence between the parties after the March 28, 2022 OPRA request. The Custodian noted that this issue prompted the Township to reach out to special counsel, who confirmed that no such CD existed. The Custodian asserted that while the Township engaged in such a search, it was unclear whether such an action was required where same was not expressly requested. The Custodian asserted that this search further proves its good faith attempts to assist the Complainant. The Custodian noted that even if a “Master CD” existed, a request for same would not be considered valid under OPRA.

Request and Response (cont’d):

On June 9, 2023, the Complainant submitted his fourth (4th) OPRA request to the Custodian seeking the above-mentioned records. On June 12, 2023, the Complainant submitted his fifth (5th) OPRA request to the Custodian seeking the above-mentioned records.

On June 20, 2023, the Custodian responded in writing to the June 9, 2023 OPRA request extending the response time frame through June 30, 2023. On June 30, 2023, the Custodian responded in writing the Complainant’s June 9, 2023 OPRA request. The Custodian denied OPRA request item No. 1 as invalid. The Custodian noted that “each document provided . . . with transmittal letters” years ago was not sufficient to allow the Township to confidently identify all responsive records. The Custodian invited the Complainant to review the letters and specifically list those records sought. The Custodian also denied the portion of OPRA request item No. 2 seeking e-mails and asked the Complainant to provide both specific senders/recipients and the subject or content. The Custodian further noted that letters responsive to the item were previously provided on May 8, 2023. The Custodian finally noted that the portion of the request seeking “documents” was invalid and that the Complainant would have to identify actual the actual records sought. The Custodian finally stated that additional time until July 11, 2023, would be necessary to respond to OPRA request item No. 3.

On June 30, 2023, the Custodian responded in writing the Complainant’s June 12, 2023 OPRA request. The Custodian denied access to the OPRA request as invalid for the reasons substantially cited in her response to the June 9, 2023 OPRA request. The Custodian again asked the Complainant to provide clarification.

On July 5, 2023, the Complainant e-mailed the Custodian confirming receipt of her response to both OPRA requests. The Complainant noted that he could not provide further clarification of his OPRA request because he could not identify specific records he has not seen. The Complainant suggested that the Custodian contact special counsel for assistance and a specific lawful basis for denial if applicable. The Complainant also confirmed that he previously received records responsive to the June 9, 2023 OPRA request item No. 2 and that an extension for item No. 3 was in effect. On July 10, 2023, Ms. Cruz e-mailed the Complainant again seeking additional time to respond to OPRA request item No. 3 until July 14, 2023.

On July 14, 2023, the Custodian responded to the June 9, 2023 OPRA request advising that the Township attorney has confirmed with special counsel that they do not have any of the letter attachments responsive to OPRA request item No. 2 and further clarification is required. The Custodian also stated that no records responsive to OPRA request item No. 3 existed.

On the same day, the Custodian also responded to the June 12, 2023 OPRA request stating that same must be denied as invalid because it required research. Doe v. Rutgers, State Univ. of N.J., 466 N.J. Super. 14 (App. Div. 2021). The Custodian further stated that neither the Township nor special counsel kept copies of all documents attached to the letters on file.

Denial of Access Complaint GRC 2023-180:

On August 3, 2023, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant recounted the facts and arguments related to GRC 2022-413. The Complainant noted that he was able to obtain several letters from the Township in response to OPRA requests in February and March 2023. The Complainant stated that based on those records, he submitted the OPRA requests at issue here.

The Complainant reiterated that the Custodian had an obligation to search for identifiable government records including those held by third parties. Burnett, 415 N.J. Super. 506; O’Boyle, 426 N.J. Super. 1; Owoh, Esq., GRC 2018-281. The Complainant contended that both OPRA requests clearly identify those records sought and thus both were valid. The Complainant also reiterated that the Custodian has not asserted that any records are exempt from disclosure. The Complainant continued to assert that special counsel had separate files of “*all* of the non-privileged documents” sought, but the Custodian failed to explain why it took over a year to contact them. (Emphasis in original). The Complainant also contended that the Township failed to explain why it did not contact Epiq, the contractor that succeeded DTI, to determine if they maintained the requested records.

The Complainant additionally noted that, in response to a prior request, the Township asserted that records were damaged or destroyed in a “natural disaster,” which later turned out to be a broken pipe. The Complainant argued that the Township failed to identify which records were destroyed and why undamaged records have not been provided.

The Complainant finally argued that the Custodian’s citation to Doe is inapposite to the facts of this complaint. The Complainant contended that there, plaintiff sought “an extremely large number of documents” sent or received by “staff, administrators, contractors, of (sic) agents of the [U]niversity” mentioning him in anyway. The Complainant argued that his requests seek readily identifiable records kept on file by the Township, special counsel, and/or DTI or Epiq. The Complainant asserted that all that is required is a search as discussed in Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 20007).

The Complainant requested that the GRC consolidate GRC 2022-413 and 2023-180 because both relate to the same records. The Complainant also requested that the GRC award him attorney fees.

Statement of Information GRC 2023-180:

On September 6, 2023, the Custodian filed a SOI in GRC 2023-180. The Custodian certified that she received the Complainant’s OPRA requests on June 9, and 12, 2023 respectively. The Custodian certified that no search was conducted for the June 9, 2023 OPRA request item Nos. 1 and 2 because the requests were invalid. The Custodian certified that a search for the letter

responsive to the June 9, 2023 OPRA request item No. 3 included both her and the Township attorney reviewing electronic and paper files, as well as special counsel's previous search yielding no resulting letter. The Custodian further certified that no search was conducted for the June 12, 2023 OPRA request because it was invalid. The Custodian certified that she ultimately responded on July 14, 2023 denying both OPRA requests as invalid and noting that no record responsive to the June 9, 2023 OPRA request item No. 3 existed.

The Custodian contended the OPRA requests at issue in GRC 2023-180 are either a duplicate or closely relate to that subject to GRC 2022-413. The Custodian thus concurred that the complaints should be consolidated for economic and expediency purposes. The Custodian further contended that the evidence submitted demonstrated the Township's responsiveness to the Complainant in every OPRA request. The Custodian further averred that the evidence of record showed the Township's good faith effort to be responsive and conduct sufficient searches for potentially responsive records. The Custodian noted that, any time the Complainant actually identified specific records, same were located and disclosed; however, his OPRA requests continue to be overly broad. The Custodian also noted that she is aware that "boxes . . . contain[ing] these records were destroyed as a result of a flood in the basement of the offices of Special Counsel" during the COVID-19 pandemic.

The Custodian stated that with regard to the June 9, 2023 OPRA request item Nos. 2 and 3, as well as the June 12, 2023 OPRA request, she wished to reassert her validity argument already advanced in the SOI submitted for GRC 2022-413. The Custodian further noted that the Township has consistently asked the Complainant to identify specific records, as not even she could determine the individual names of multiple attorneys or offices that may have communicated about the underlying DOJ investigation held ten (10) years prior.

The Custodian further argued that contrary to the Complainant's assertions, the Township has contacted outside parties to try and obtain responsive records. The Custodian asserted that while OPRA does not require an agency to indicate the location of a particular record, the Township has commonly contacted third parties where applicable as is a well-known requirement. The Custodian further argued that OPRA did not require the Township to contact Epiq (previously DTI) ten (10) prior because it never contracted with same.

The Custodian ultimately contended that she has provided those records the Complainant identified and provided a lawful basis for denying the remaining requests. The Custodian further contended that the Township performed its due diligence in searching for responsive records where able.

Analysis

Unlawful Denial of Access⁸

OPRA provides that government records made, maintained, kept on file, or received by a

⁸ The GRC notes that it appears that a "deemed" denial of access occurred in relation to many of the subject OPRA requests at issue here. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the GRC will not address the issue because the Complainant did not raise it.

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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.

February 22, 2022 OPRA request

In Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order dated March 22, 2013), the Council determined that the custodian bore her burden of proving a lawful denial of access to the requested records because she sought clarification of the complainant’s request and received no response. See also Herron v. New Jersey Dep’t of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005). Important to the clarification issue is consideration as to whether a custodian’s request was reasonable. See e.g. Liebel v. Manalapan Englishtown Reg’l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); but see Archer v. Cnty. of Gloucester, GRC Complaint No. 2018-270 (Interim Order dated April 28, 2020) (holding that a “deemed” denial of access occurred where the custodian sought clarification when it was not necessary). Finally, the Council has held that when a custodian seeks clarification of a request, the time for the custodian to respond will begin anew once such clarification is received. See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 2012).

Here, the Complainant’s February 22, 2022 OPRA request sought “subsequent requests for information/documents” from DOJ for a time period spanning after a March 22, 2013 letter seeking document production. On March 25, 2022, Ms. Cruz responded seeking clarification of the request. On March 28, 2022, the Complainant submitted a new OPRA request. In the SOI, the Custodian argued that the request was invalid and no search for potentially responsive records occurred because Ms. Cruz sought clarification and never received a response. Based on the forgoing, the GRC finds compelling the reasonableness of seeking clarification of the subject OPRA request. See MAG Entm’t, 375 N.J. Super. at 546 (holding that “any and all,” requests seeking “records” generically, etc. are invalid because they require a custodian to conduct research); Liebel, GRC 2004-51. Notwithstanding the reasonable request for clarification, the Complainant failed to respond providing same.

Accordingly, the Custodian has borne her burden of proof that no unlawful denial of access occurred regarding the Complainant’s February 22, 2022 OPRA request. Specifically, the Custodian, through Ms. Cruz, timely and reasonably requested clarification of the request in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Liebel, GRC 2004-51; Schilling, GRC 2013-293.

June 9, 2023 OPRA request item No. 3

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant’s June 9, 2023 OPRA request item No. 3 sought a letter from DOJ to the Township dated November 6, 2013. The Custodian responded advising that no responsive records and she maintained her position in the SOI that no records existed. The Complainant has not provided any evidence to refute this position. The GRC is compelled to find that Pusterhofer applies to the facts presented here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's June 9, 2023 OPRA request item No. 3. Specifically, the Custodian certified in the SOI, and the record reflects, that no recordings responsive to the OPRA request exist. See N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

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); see also Bent, 381 N.J. Super. at 37;⁹ 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

⁹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004). Edward H. Mazer, Esq. v. Township of Millburn (Essex), 2022-413 and 2023-180– Findings and Recommendations of the Executive Director

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).

[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.]

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. 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.”

Conversely, there are instances where a request can be specific enough to require research, thus rendering it invalid. For example, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the UCBOE motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein *seek minutes that refer to a topic and would require the Custodian to research the UCBOE’s meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant’s requests . . .* because the Complainant’s four (4) requests for minutes “that include a motion made by the Union City Board of Education to approve the minutes” from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant’s requests are invalid under OPRA.

[Valdes, GRC 2011-147 *et seq.* (emphasis added) (*citing* N.J. Builders Ass’n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. at 37; MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182; *see also* Valdes v. Gov’t Records Council, GRC Complaint No. 2013-278 (September 2014).]

In the matter before the Council, the Complainant submitted identical OPRA requests on March 28, 2022 and May 16, 2022, seeking numerous records over an expansive time frame, in some instances as far back as 1992. The Complainant also submitted OPRA requests on June 9, and 12, 2023, seeking “documents” sent to DOJ in response to various demand letters. In each instance, the Custodian denied these requests as invalid. This consolidated complaint ensued wherein the parties disputed the validity of these requests.

Upon careful review of each of the requests and the arguments of the parties, the GRC is persuaded that the requests are invalid. Beginning with the March 28, 2022, and May 16, 2022, requests: they are carbon copies of a portion of the DOJ's March 22, 2013 production demand related to a 2013 investigation. That demand letter sought a broad cross section of various types of records, including "documents," related to specific actions, topics, processes, and entities both by name and broadly by affiliation. However, DOJ's demand letter received by the Township nine (9) years earlier, was not an OPRA request and thus was not required to conform with the statutory provisions thereof. Thus, it cannot be considered a litmus test on the validity of either the March 28 or May 16, 2022, requests. Under OPRA, each of the items in the subject requests would require the type of research that MAG and Valdes, GRC 2011-147, *et seq.* hold is not required thereunder. The GRC acknowledges that the Complainant contended the requests were valid because a "Master CD" existed and a contracted third party likely maintained a complete set of individual records provided to DOJ. However, the potential existence of the DOJ production in a single place does not cure the validity issue here.

Moving to the Complainants June 9, 2023 request item Nos. 1 and 2 and June 12, 2023 request, they fair no better when viewed in light of the above finding. These requests seek "documents" the Township sent to DOJ in response to multiple production demand letters in 2013 and 2014. These requests would require the Township to recollect each "document[]" retrieved and sent to the DOJ almost ten (10) years prior and disclose them here. Precedential case law clearly supports that such a request is invalid. Also as noted above, any connection to the DOJ production demand or potential that those "documents" are maintained in a single location does not convert these requests into valid OPRA requests.

Accordingly, the Complainant's March 28, 2022, and May 16, 2022, requests were invalid because they required substantive research. See MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Lagerkvist, 443 N.J. Super. at 236-37; Valdes, GRC 2011-147, *et seq.* Further, the Complainant's June 9, 2023 request item Nos. 1 and 2 and the June 12, 2023 requests were invalid because they sought generic "documents" and failed to identify specific government records. Feiler-Jampel, GRC 2007-190. Thus, the Custodian lawfully denied access to the subject requests because they were invalid. N.J.S.A. 47:1A-6.

Prevailing Party Attorney's Fees

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . . ; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[N.J.S.A. 47:1A-6.]

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Appellate Division held that a complainant is a "prevailing party" if he achieves the desired result because the complaint

brought about a change (voluntary or otherwise) in the custodian's conduct. Id. at 432. Additionally, the Court held that attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

The more complicated aspect of this issue is whether the Complainant would qualify for reasonable attorney's fees. According to the New Jersey Supreme Court, the New Jersey Legislature has promulgated a "substantial number of statutes authorizing an award of a reasonable counsel fee *to the attorney for the prevailing party.*" (emphasis added) New Jerseyans For A Death Penalty Moratorium v. N.J. Dep't of Corrections and Devon Brown, 182 N.J. 628 (2005)(decision without a published opinion)(quoting Rendine v. Pantzer, 141 N.J. 292 (1995)). Although the underlying purpose of those statutes may vary, they share a common rationale for incorporating a fee-shifting measure: to ensure "that plaintiffs with bona fide claims are able to find lawyers to represent them[,] . . . to attract competent counsel in cases involving statutory rights, . . . and to ensure justice for all citizens." New Jerseyans (quoting Coleman v. Fiore Bros., 113 N.J. 594, 598 (1989)). Thus, the courts of the State have determined that the state's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, not an attorney who is the plaintiff representing himself.

OPRA provides that a person who is denied access to a government record may either file a proceeding in Superior Court or file action with the GRC. N.J.S.A. 47:1A-6. Further, it is generally true that *pro se* litigants are not entitled to attorney's fees; this position has been uniformly applied to OPRA's fee shifting provision. See Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (App. Div. 2019). In Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2005-71 (April 2006), the Council denied the complainant's request for attorney's fees because he was a *pro se* litigant representing himself. In reaching this conclusion, the Council reasoned that "[t]he courts of the state have determined that the State's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff not the plaintiff representing himself." Id.

Here, the Complainant sought an award of attorney's fees; however, he filed this complaint *pro se* and did not hire an attorney to represent him. Thus, regardless of whether the Complainant prevailed here, he does not qualify to recoup costs under OPRA's fee-shifting provision. To wit, and consistent with Pitts, GRC 2005-71, the Complainant cannot obtain a prevailing party fee award because he acted in a *pro se* capacity and is not represented by a licensed attorney.

Therefore, the Complainant is not entitled to reasonable attorney's fees pursuant to OPRA because the courts have determined that the State's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, and not a *pro se* filer representing himself without legal representation. See id.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that no unlawful denial of access occurred regarding the Complainant's February 22, 2022 OPRA request. Specifically, the Custodian, through Ms. Cruz, timely and reasonably requested clarification of the

request in writing, and the Complainant failed to provide such clarification. N.J.S.A. 47:1A-6. See Liebel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2013-293 (Interim Order dated March 22, 2013).

2. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's June 9, 2023 OPRA request item No. 3. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no recordings responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
3. The Complainant's March 28, 2022, and May 16, 2022, requests were invalid because they required substantive research. MAG Entm't, LLC v. Div. of ABC, 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, 236-237 (App. Div. 2015); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012). Further, the Complainant's June 9, 2023 request item Nos. 1 and 2 and the June 12, 2023 requests were invalid because they sought generic "documents" and failed to identify specific government records. Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to the subject requests because they were invalid. N.J.S.A. 47:1A-6.
4. The Complainant is not entitled to reasonable attorney's fees pursuant to OPRA because the courts have determined that the State's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, and not a *pro se* filer representing himself without legal representation. See Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2005-71 (April 2006).

Prepared By: Frank F. Caruso
Executive Director

February 11, 2025