



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

January 28, 2014 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2012-252

v.

Township of Green (Sussex)
Custodian of Record

At the January 28, 2014 public meeting, the Government Records Council (“Council”) considered the January 21, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant has failed to establish in his request for reconsideration of the Council’s October 29, 2013 Final Decision that either 1) the Council’s decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on extraordinary circumstances, fraud, new evidence or illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant reasserts his Denial of Access Complaint arguments regarding prosecutor’s records. He does not provide any competent, credible evidence to refute the Council’s decision that no records responsive to request item Nos. 1, 2, 3, 6 and 7 exist and further does not address the Council’s conclusion that request item Nos. 4 and 5 are invalid. Simply put, the Complainant’s dissatisfaction with the Council’s decision is not a basis for reconsideration. Thus, the Complainant’s request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 28th Day of January, 2014

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: January 30, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
January 28, 2014 Council Meeting

Thomas Caggiano¹
Complainant

GRC Complaint No. 2012-252

v.

Township of Green (Sussex)²
Custodial Agency

Records Relevant to Complaint: Hardcopies via U.S. mail:

1. The Custodian Counsel's contract for professional services to serve as municipal prosecutor for the Joint Municipal Court ("JMC") for the Township of Green ("Township"), Township of Fredon, Hampton Township and Borough of Stanhope, and copies of his municipal prosecutor records for State of New Jersey v. Thomas Caggiano before Judge Craig Dana and Counsel for 2008 and 2009 and a copy of the required newspaper announcement for each contract pursuant to the Local Public Contracts Law.³
2. Counsel's billing records for prosecuting the Complainant in the JMC.
3. Each court order issued by Judge Dana in the case mentioned in request item No. 1 that Counsel reviewed, approved by letter or other manner and billed the Township from 2008 through 2009.
4. A compact disc ("CD") of all e-mails sent from thomascaggiano@gmail.com to lapclerk@greentwp.com from January 1, 2008 through August 18, 2012.
5. All OPRA requests the Complainant submitted by hardcopy or e-mail "... from the Township to the Township [Custodian] ..." from January 1, 2008 through August 18, 2012.
6. Invoices or copies of other receipts used in the Township's return of fines and other costs to the Complainant by Superior Court Judge N. Peter Conforti under municipal appeals Docket Nos. 13-04-09 and 19-05-09 and the court's order ordering same.
7. Municipal prosecutor records for the case mentioned in item No. 6 to be retained for fifteen (15) years as required by Records Management Services ("RMS").

Custodian of Record: Linda Peralta

Request Received by Custodian: August 19, 2012

Response Made by Custodian: August 21, 2012

GRC Complaint Filed: August 23, 2012

¹ No legal representation listed on record.

² Represented by William E. Hinkes, Esq. (Newton, NJ).

³ Custodian's Counsel is also the municipal prosecutor.

Background

October 29, 2013 Council Meeting:

At its October 29, 2013 public meeting, the Council considered the October 22, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

1. Since the Custodian initially responded that no records responsive exist and further certified in the Statement of Information that no records responsive to the Complainant's OPRA request item Nos. 1, 2, 3, 6 and 7 exist, and because the Complainant did not submit any evidence to refute the Custodian's certifications, the Custodian did not unlawfully deny access to the requested records. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Complainant's request item Nos. 4 and 5 are invalid because they failed to provide ample identifiers necessary for the Custodian to locate any responsive records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March 2010).

Procedural History:

On November 1, 2013, the Council distributed its Final Decision to all parties. On November 12, 2013, the GRC received the Complainant's request for reconsideration of the Council's Final Decision asserting extraordinary circumstances, fraud, new evidence and illegality. The Complainant contended that municipal prosecutor records are not court records and must be maintained by a municipality.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the GRC received the Complainant's request for reconsideration of the Council's October 29, 2013 Final Decision on November 12, 2013, seven (7) business days from the issuance of the Council's Order.

Applicable case law holds that:

"A party should not seek reconsideration merely based upon dissatisfaction with a decision." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401. "Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement." Ibid.

In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. *See Cummings*, 295 N.J. Super. at 384. The Complainant failed to establish that the complaint should be reconsidered based on extraordinary circumstances, fraud, new evidence or illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. *See D'Atria*, 242 N.J. Super. at 401. Specifically, the Complainant reasserts his Denial of Access Complaint arguments regarding prosecutor's records. He does not provide any competent, credible evidence to refute the Council's decision that no records responsive to request item Nos. 1, 2, 3, 6 and 7 exist and further does not address the Council's conclusion that request item Nos. 4 and 5 are invalid. Simply put, the Complainant's dissatisfaction with the Council's decision is not a basis for reconsideration. Thus, the Complainant's request for reconsideration should be denied. Cummings, 295 N.J. Super. at 384; D'Atria, 242 N.J. Super. at 401; Comcast, 2003 N.J. PUC at 5-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council's October 29, 2013 Final Decision that either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on extraordinary circumstances, fraud, new evidence or illegality. The

Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant reasserts his Denial of Access Complaint arguments regarding prosecutor's records. He does not provide any competent, credible evidence to refute the Council's decision that no records responsive to request item Nos. 1, 2, 3, 6 and 7 exist and further does not address the Council's conclusion that request item Nos. 4 and 5 are invalid. Simply put, the Complainant's dissatisfaction with the Council's decision is not a basis for reconsideration. Thus, the Complainant's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Dawn R. SanFilippo, Esq.
Senior Counsel

January 21, 2014



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

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FINAL DECISION

October 29, 2013 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2012-252

v.

Township of Green (Sussex)
Custodian of Record

At the October 29, 2013 public meeting, the Government Records Council (“Council”) considered the October 22, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Since the Custodian initially responded that no records responsive exist and further certified in the Statement of Information that no records responsive to the Complainant’s OPRA request item Nos. 1, 2, 3, 6 and 7 exist, and because the Complainant did not submit any evidence to refute the Custodian’s certifications, the Custodian did not unlawfully deny access to the requested records. *See Pusterhofer v. NJ Dep’t of Educ.*, GRC Complaint No. 2005-49 (July 2005).
2. The Complainant’s request item Nos. 4 and 5 are invalid because they failed to provide ample identifiers necessary for the Custodian to locate any responsive records. *MAG Entm’t, LLC v. Div. of ABC*, 375 N.J. Super. 534, 546 (App. Div. 2005); *Bent v. Stafford Police Dep’t*, 381 N.J. Super. 30, 37 (App. Div. 2005); *NJ Builders Assoc. v. NJ Council on Affordable Hous.*, 390 N.J. Super. 166, 180 (App. Div. 2007); *Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009); *Elcavage v. West Milford Twp.*, GRC Complaint Nos. 2009-07 and 2009-08 (March 2010).

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 October, 2013

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: November 1, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 29, 2013 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2012-252

v.

**Township of Green (Sussex)²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail:

1. The Custodian Counsel's contract for professional services to serve as municipal prosecutor for the Joint Municipal Court ("JMC") for the Township of Green ("Township"), Township of Fredon, Hampton Township and Borough of Stanhope, and copies of his municipal prosecutor records for State of New Jersey v. Thomas Caggiano before Judge Craig Dana and Counsel for 2008 and 2009 and a copy of the required newspaper announcement for each contract pursuant to the Local Public Contracts Law.³
2. Counsel's billing records for prosecuting the Complainant in the JMC.
3. Each court order issued by Judge Dana in the case mentioned in request item No. 1 that Counsel reviewed, approved by letter or other manner and billed the Township from 2008 through 2009.
4. A compact disc ("CD") of all e-mails sent from thomascaggiano@gmail.com to lapclerk@greentwp.com from January 1, 2008 through August 18, 2012.
5. All OPRA requests the Complainant submitted by hardcopy or e-mail "... from the Township to the Township [Custodian] ..." from January 1, 2008 through August 18, 2012.
6. Invoices or copies of other receipts used in the Township's return of fines and other costs to the Complainant by Superior Court Judge N. Peter Conforti under municipal appeals Docket Nos. 13-04-09 and 19-05-09 and the court's order ordering same.
7. Municipal prosecutor records for the case mentioned in item No. 6 to be retained for fifteen (15) years as required by Records Management Services ("RMS").

Custodian of Record: Linda Peralta

Request Received by Custodian: August 19, 2012

Response Made by Custodian: August 21, 2012

GRC Complaint Filed: August 23, 2012

¹ No legal representation listed on record.

² Represented by William E. Hinkes, Esq. (Newton, NJ).

³ Custodian's Counsel is also the municipal prosecutor.

Background⁴

Request and Response:

On August 19, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 21, 2012, the second (2nd) business day following receipt of such request, the Custodian responded in writing stating that access to the record responsive to request item No. 1 is denied because the Township previously replied to this request on several occasions. The Custodian further stated that there are no records responsive to request item Nos. 2, 3 and 6. The Custodian stated that copies of the Complainant’s own records responsive to request item Nos. 4 and 5 will not be provided. The Custodian also stated that records responsive to request item No. 7 are not filed with the Township Clerk’s office.

Denial of Access Complaint:

On August 23, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the Custodian’s response is false and constitutes a knowing and willful violation of OPRA. The Complainant contends that substantial court records, transcripts and complaints against judges responsive to item Nos. 2, 3 and 6 do exist. The Complainant further contends that a municipality is required to keep municipal prosecutor files responsive to item No. 7 for 15 years. RMS Record Series No. 0001-0000.

Statement of Information:

On September 18, 2012, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that the Township is the lead municipality for the four (4) municipalities participating in the JMC (including Fredon, Hampton and Andover). The Custodian certifies that the Complainant was charged with thirteen (13) counts of harassment and trespassing against members of the Borough of Stanhope (“Stanhope”) Council. The Custodian certifies that because the victims in that case were Stanhope municipal officials, the charges were transferred from the Stanhope Borough Municipal Court to the JMC. The Custodian certifies that the Complainant was subsequently found guilty on all charges by Judge Dana on December 3, 2008.

The Custodian certifies that since that time, she has been flooded with correspondence from the Complainant in the form of telephone calls, letters, facsimiles and e-mails. The Custodian certifies that she has received approximately 700 e-mails from the Complainant since September 11, 2009. The Custodian further certifies that the Complainant has used four (4) separate e-mail accounts to inundate her with e-mails. The Custodian certifies that some of the Complainant’s e-mails are addressed to her and others, such as the President, Governor, Federal Bureau of Investigation, Internal Revenue Service, United States Postal Service, Vice

⁴ 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.

Presidential Candidate Paul Ryan, County Prosecutor's Office, officials of other municipalities, judges, legislative staff, and State and Federal Attorney Generals.

The Custodian certifies that she has received a number of requests from the Complainant for information and documents and has tried to reply to same to the best of her ability. The Custodian certifies that her responses were often met with multiple replies and additional claims; thus, the Custodian has been narrowing her responses to be as brief as possible.

The Custodian certifies that she received the Complainant's OPRA request on August 19, 2012 and responded on August 21, 2012 as follows:

OPRA request item No. 1:

The Custodian certifies that request Item No. 1 is based on the Complainant's erroneous belief that there is a joint municipal court that includes the Stanhope. There is no contract responsive to the Complainant's request for the municipal prosecutor to represent a matter transferred from Stanhope. The Custodian further certifies that she previously provided the Complainant with records related to Counsel's appointment as JMC prosecutor for 2007, 2008 and 2009. The Custodian certifies that other requested records are municipal court records that are not in her possession. The Custodian certifies that Counsel has advised that municipal court records are not subject to disclosure under OPRA.

OPRA request item No. 2:

The Custodian certifies that no records responsive exist because while the Complainant's proceedings were taking place, Counsel was paid a monthly salary for his services as municipal prosecutor. The Custodian certifies that Counsel did not submit a bill specifically for prosecuting the Complainant in municipal court. The Custodian certifies that she previously advised the Complainant of this fact.

OPRA request item No. 3:

The Custodian argues that request Item No. 3 is almost incomprehensible. The Custodian certifies that, notwithstanding this fact, Counsel did not bill the Township for his services as municipal prosecutor and thus no responsive records exist.

OPRA request item No. 4:

The Custodian asserts that the Complainant's request item is invalid because it fails to identify the subject of his own e-mails sought. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010) at 5. The Custodian further contends that she is unable to isolate e-mails containing certain addresses specified in the request from several other addresses the Complainant uses: all communications fall under "Thomas Caggiano."

The Custodian certifies that most of the Complainant's e-mails are several pages in length and always include multiple attachments. The Custodian certifies that she has to read each

e-mail to determine if the e-mail is for her, or if she has been copied on e-mails to someone else. The Custodian further certifies that she spoke with Counsel and was advised that open-ended requests for copies of the Complainant's own uncategorized, extensive communications were not "specifically identifiable government records" and were invalid as overly broad, unclear and burdensome. The Custodian argues that Counsel further advised that based on the Custodian's previous attempts to accommodate the Complainant's invalid requests, it is obvious that the Complainant is submitting requests to harass and overburden the Custodian. *See Caggiano v. Sussex County Prosecutor's Office*, GRC Complaint No. 2010-211 (October 2010)(*quoting Caggiano v. Borough of Stanhope*, GRC Complaint Nos. 2007-20 et seq. (September 2007)) at 7.

OPRA request item No. 5:

The Custodian contends that the Complainant's request item is invalid. The Custodian certifies that there are no responsive OPRA requests "from the Township to the Township." The Custodian certifies that Counsel advised not to provide copies of the Complainant's own letters, faxes and e-mails. The Custodian certifies that she has replied to the Complainant's OPRA requests in the past but never received a request that can be categorized as one "from the Township to the Township."

OPRA request item No. 6:

The Custodian certifies that no records responsive exist. The Custodian certifies that although the Complainant's convictions were upheld on appeal, the higher court vacated the jail sentence and fines due to an error in the structure of the penalty and ordered the fines returned to the Complainant. The Custodian certifies that because the Township never collected the fines, no fines could be returned to the Complainant and thus no records exist.

OPRA request item No. 7:

The Custodian certifies that no records responsive exist. The Custodian certifies that the requested records are municipal court records that are not in her possession. The Custodian certifies that Counsel advised that municipal court records are not subject to disclosure under OPRA.

The Custodian's Counsel submitted a legal certification recounting his history with the Complainant through the JMC trial and sentencing process. Counsel certifies that he has advised the Custodian that court records generated during a municipal court proceeding are not accessible under OPRA. *N.J.S.A. 47:1A-7(g)*; *Tompkins v. Newark Municipal Court*, GRC Complaint No. 2010-332 (January 2011). Counsel further certifies that he advised her that he has reached the conclusion that the Complainant is utilizing OPRA to harass and overburden the Township. *See Caggiano*, GRC 2010-211.

Analysis⁵

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA request item Nos. 1, 2, 3, 6 and 7:

In Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the complainant sought a copy of a telephone bill from the custodian in an effort to obtain proof that a phone call was made to him by an official from the Department of Education. The custodian provided a certification in his submission to the GRC that certified that the requested record was nonexistent and the complainant submitted no evidence to refute the custodian’s certification. The Council subsequently determined that “[t]he Custodian has certified that the requested record does not exist. Therefore, the requested record cannot (sic) be released and there was no unlawful denial of access.”

Regarding OPRA request item No. 1, the Custodian responded that she previously responded to this request on several occasions. Regarding OPRA request item Nos. 2, 3, 6 and 7, the Custodian responded that no records exist or are not on file with the Custodian. The Complainant disputed the Custodian’s response arguing that substantial records do exist. However, the Custodian subsequently certified in the SOI that the responsive records did not exist or are not maintained by the Township.

Thus, since the Custodian initially responded that no records responsive exist and further certified in the SOI that no records responsive to the Complainant’s OPRA request item Nos. 1, 2, 3, 6 and 7 exist, and because the Complainant did not submit any evidence to refute the Custodian’s certifications, the Custodian did not unlawfully deny access to the requested records. *See Pusterhofer*, GRC 2005-49.

The GRC notes that the Custodian has correctly noted that records held by the judiciary are not subject to OPRA. N.J.S.A. 47:1A-7(g). Additionally, given the nature of the Complainant’s repeated requests for the same records at issue in item No. 1, the Custodian response that she previously responded to the Complainant on several occasions was appropriate here.

OPRA request item Nos. 4 and 5:

The New Jersey Appellate Division has held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not*

⁵ There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

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 ABC, 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).

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 v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005),⁶ NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Moreover, the test under MAG then is whether a requested record is a specifically identifiable government record. If it is, the record is disclosable barring any exemptions to disclosure contained in OPRA. The Council established criteria deemed necessary to specifically identify an e-mail communication in Sandoval v. NJ State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007). In Sandoval, the complainant requested “e-mail ... between [two individuals] from April 1, 2005 through June 23, 2006 [using seventeen (17) different keywords].” The custodian denied the request, claiming that it was overly broad. The Council held that:

The Complainant in the complaint now before the GRC requested specific e-mails *by recipient, by date range and by content.* Based on that information, the Custodian has identified [numerous] e-mails which fit the specific recipient and date range criteria Complainant requested.

Id. at 16 (emphasis added).

In Elcavage, GRC 2009-07, the Council examined what constitutes a valid request for e-mails under OPRA. The Council determined that:

⁶ Affirming Bent v. Stafford Police Dep't, GRC Case No. 2004-78 (October 2004).

In accord with MAG, supra, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof.

Id. at 5 (emphasis in original).

The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville BOE (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011).

Regarding OPRA request item Nos. 4 and 5, the Custodian responded advising that copies of the Complainant's own letters, e-mails and faxes would not be provided. In the SOI, the Custodian argued that both request items were invalid: item No. 4 did not contain a subject matter and item No. 5 did not seek identifiable government records.

The Complainant's item No. 4 sought e-mails from certain e-mail addresses over a specific time period but failed to identify the subject of those e-mails. Further, the Complainant's item No. 5 sought OPRA requests "... from the Township to the Township [Custodian] ...". Notwithstanding the inclusion of a time frame in both request items, the items on their face lack sufficient information allowing the Custodian to identify and provide any responsive records. Elcavage, GRC 2009-07; Bent, 381 N.J. Super. at 37 (holding that a proper request under OPRA must identify *with reasonable clarity* those documents that are desired). Additionally, the GRC notes that the OPRA request was part of an extensive e-mail addressing multiple topics that was copied to over 30 individuals at various levels of local and State government as well as members of the public and included attachments.

Therefore, the Complainant's request item Nos. 4 and 5 are invalid because they failed to provide ample identifiers necessary for the Custodian to locate any responsive records. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Elcavage, GRC 2009-07.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Since the Custodian initially responded that no records responsive exist and further certified in the Statement of Information that no records responsive to the Complainant's OPRA request item Nos. 1, 2, 3, 6 and 7 exist, and because the Complainant did not submit any evidence to refute the Custodian's certifications, the Custodian did not unlawfully deny access to the requested records. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Complainant's request item Nos. 4 and 5 are invalid because they failed to provide ample identifiers necessary for the Custodian to locate any responsive

records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March 2010).

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Approved By: Brandon D. Minde, Esq.
Executive Director

October 22, 2013⁷

⁷ This complaint was prepared for adjudication at the Council's September 24, 2013 meeting; however, the complaint could not be adjudicated due to lack of quorum.