



State of New Jersey

GOVERNMENT RECORDS COUNCIL

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

Toll Free: 866-850-0511
Fax: 609-633-6337
E-mail: grc@dca.state.nj.us
Web Address:
www.nj.gov/grc

VINCENT P. MALTESE, Chairman
ACTING COMMISSIONER JOSEPH V. DORIA, JR.
COMMISSIONER LUCILLE DAVY
ROBIN BERG TABAKIN
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

November 28, 2007 Government Records Council Meeting

Yehuda Shain
Complainant

Complaint No. 2007-127

v.

Ocean County Board of Taxation
Custodian of Record

At the November 28, 2007 public meeting, the Government Records Council (“Council”) considered the November 21, 2007 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 the Custodian did not unlawfully deny access to the records responsive to the Complainant’s request because the request was for information and not for specific identifiable records and agencies are required to disclose only identifiable government records not otherwise exempt pursuant to the Superior Court’s decision in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534; therefore the Custodian has met her burden of proof that access to the requested records was not unlawfully denied pursuant to 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 28th Day of November, 2007



Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Government Records Council

Decision Distribution Date: November 29, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 28, 2007 Council Meeting**

**Yehuda Shain¹
Complainant**

GRC Complaint No. 2007-127

v.

**Ocean County Board of Taxation²
Custodian of Records**

Records Relevant to Complaint:

A summary list of all of Lakewood Township's counter tax appeals (sic) filed for 2007 including defendant's name, property address, block and lot numbers and the amount requested on the cross appeal; however, if no amount is requested on the cross appeal, "no amount" is to be indicated and if any appeals were withdrawn, the date of withdrawal and the reason for withdrawal is to be indicated.

Request Made: May 18, 2007

Response Made: May 25, 2007

Custodian: Barbara Raney

GRC Complaint Filed: June 6, 2007

Background

May 9, 2007

Letter from the Complainant to the Ocean County Board of Taxation ("OCBOT"). The Complainant requested the president of the OCBOT provide him with a list of Lakewood Township counter appeals [sic].

May 11, 2007

Letter from the Custodian to the Complainant. The Custodian replied to the Complainant's May 9, 2007 letter by informing him that the information he requested may be available by the end of June because the OCBOT is currently scheduling tax appeals for hearings.

May 18, 2007

Complainant's Open Public Records Act ("OPRA") request. The Complainant made a request to inspect the records listed above on an official OPRA request form.

¹ Represented by Larry Loigman, Esq. (Red Bank).

² Represented by DAG Julian Gorelli, on behalf of the New Jersey Attorney General.

May 25, 2007

Custodian's response to the OPRA request. The Custodian responded to the Complainant's OPRA request in writing on the fifth (5th) business day following receipt of such request. The Custodian identified the records responsive to the request and informed the Complainant that the requested records will be available for inspection after July 9, 2007.

June 6, 2007

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Letter from the Complainant to the President of the Ocean County Tax Board dated May 9, 2007
- Complainant's OPRA records request dated May 18, 2007
- Letter from the Custodian to the Complainant dated May 25, 2007

June 12, 2007

Offer of Mediation sent to both parties.

June 14, 2007

The Complainant declines mediation.

June 14, 2007

Request for the Statement of Information sent to the Custodian.

June 21, 2007

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA records request dated May 18, 2007
- Letter from the Complainant to the President of the OCBOT dated May 9, 2007
- Letter from the Custodian to the Complainant dated May 11, 2007
- Blank OCBOT Government Records Request Form
- Letter from the Custodian to the Complainant dated May 25, 2007
- Complainant's OPRA records request dated June 4, 2007³
- E-mail from the Custodian to the Complainant dated June 5, 2007 and captioned "OPRA Request"⁴
- Letter from the Custodian to the Complainant dated June 11, 2007⁵

The Custodian sets forth several arguments to counter the allegations in the complaint. The Custodian asserts that the request is an invalid OPRA request because it

³ Not relevant to this complaint; see Yehuda Shain v. Ocean County Board of Taxation, GRC Complaint No. 2007-159.

⁴ Not relevant to this complaint; see Yehuda Shain v. Ocean County Board of Taxation, GRC Complaint No. 2007-159.

⁵ Not relevant to this complaint; see Yehuda Shain v. Ocean County Board of Taxation, GRC Complaint No. 2007-159.

seeks information rather than records and improperly attempts to compel the County Board to review several hundred cross appeals filed in Lakewood Township, to compile data from those documents and to generate a new document organizing and collating the data according to the Complainant's detailed specifications. The Custodian relies upon the Superior Court's decisions in New Jersey Builder's Ass'n v. N.J. Council on Affordable Housing, 390 N.J. Super. 166 (App.Div. 2007) and MAG Entertainment v. Div. of ABC, 375 N.J. Super. 534 (App.Div. 2005) as authority for this assertion.

The Custodian also asserts that the records are temporarily unavailable because they are in use, and that attempting to provide them to the Complainant while they are in use would substantially disrupt agency operations pursuant to N.J.S.A. 47:1A-5.g. The Custodian certifies that the records responsive to the request are temporarily unavailable because they are currently being used by the agency in conducting tax appeals from April 2, 2007 until July 1, 2007 pursuant to N.J.S.A. 54:3-21 et seq. The Custodian included as an attachment to her SOI a procedure outlining the mechanics of the tax appeal office process. The procedure indicates the tax appeal process is labor intensive and requires the office staff to physically handle documents, some of which comprise the records responsive to the Complainant's request. The Custodian certifies that locating and retrieving files containing the information sought by the Complainant, and compiling and collating data from those files in the manner directed by the Complainant, prior to the completion of appeals would disrupt the appeal process and jeopardize completion of appeals by the statutory deadline. The Custodian states that the period of time from July 1, 2007 until July 9, 2007 is needed for processing mail. This is a period encompassing four (4) business days. For the aforementioned reasons, the Custodian advised the Complainant that the records would be made available to him at a mutually agreeable date anytime after July 9, 2007.

July 1, 2007

Letter from the Complainant to the GRC. The Complainant argues that his OPRA request does seek specific records and that the records are available and a computer-generated printout could be produced without disrupting agency operations. The Complainant also states that there was no mutually agreeable date for inspection of the records.

July 6, 2007

Letter from the Custodian to the GRC. The Custodian states that the Complainant is wrong in his contention that fulfilling his request while the records are in use by the agency would not disrupt operations. The Custodian asserts that the operations would have to be disrupted because the records responsive to the request are being used and must be physically handled to process accurately. The Custodian further asserts that the records are not all contained as data files in a computer, and that to fulfill the Complainant's request, 309 cross petitions from 1,037 tax appeal files must be physically removed, manually compiled and collated. The Custodian believes that she has offered a reasonable accommodation to the Complainant by making the records available after July 9, 2007 and that the Complainant has not indicated in his submissions that receipt of the records after that date would prejudice him in any way.

July 20, 2007

Letter from the Complainant to the GRC. The Complainant states that the agency has sufficient personnel to accommodate his request before July 9, 2007 and that whether or not he would be prejudiced by not obtaining the records until after that date is of no consequence vis-à-vis fulfillment of his OPRA request.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

“.....government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added) N.J.S.A. 47:1A-1.1.

OPRA defines a government record as:

“ ... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file...or that has been received in the course of his or its official business ...” N.J.S.A. 47:1A-1.1.

OPRA also provides:

“ The public agency shall have the burden of proving that the denial of access is authorized by law.” N.J.S.A. 47:1A-6.

The Complainant asserts in his Denial of Access Complaint that he provided his OPRA request to the Custodian on May 9, 2007, then again via an OPRA request form on May 18, 2007. The Complainant attached copies of these requests to his complaint. Although there was a May 9, 2007 letter addressed to the president of the Ocean County Tax Board requesting “a complete list of the Lakewood Township counter appeals,” it is not clear that this was an OPRA request. The Complainant neither addresses the letter to the records custodian nor does he indicate anywhere on the letter that he is making a request pursuant to OPRA. Despite this invalid request, the Custodian replied in writing to the Complainant on May 11, 2007 informing him that the requested documentation would take some time to prepare because the agency was presently scheduling tax appeals for hearings. Thereafter, the Complainant made a request on a model OPRA request form⁶ dated May 18, 2007 wherein he requests “a summary list of all of Lakewood Township’s [cross] tax appeals filed for 2007” and went on to describe in detail precisely how the Custodian was to prepare the document he requested.

⁶ This form was apparently the model OPRA request form obtained from the GRC’s website. The Ocean County Board of Taxation has adopted a form customized for their agency.

The Custodian responded in writing to the Complainant's OPRA request in a timely manner and advised the Complainant that his list of cross appeals containing the specific information he requested could be made available for inspection after July 9, 2007. The Custodian also provided the Complainant with instructions he could follow to facilitate a mutually agreeable date and time for file inspection.

The Complainant in his complaint states that the Custodian's response to his OPRA request offering to make the records available after July 9, 2007 "basically denied" him access.

The GRC agrees with the Custodian's assertion that the Complainant's request was for information and not records. The Complainant in both the letter request for information and his OPRA request seeks a "list" of certain information, not specific identifiable records. Further, the Complainant specifies precisely how he wants the Custodian to prepare the record responsive to his request, which contemplates the creation of a new document rather than the production of an existing record.

The New Jersey Superior Court has held that "[w]hile 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." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534, 546 (March 2005). 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." (Emphasis added.) *Id.* at 549. Accordingly, the Custodian had no lawful duty to respond to the Complainant's invalid OPRA request by making the records available.

Because the Complainant's request was for information and not for specific identifiable records, and because agencies are required to disclose only identifiable government records not otherwise exempt, the Custodian has lawfully denied the Complainant access to the requested records pursuant to the Superior Court's decision in MAG, *supra*, and has met her burden of proof that access to the requested information was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. It is, therefore, unnecessary to further analyze the remainder of the Custodian's assertions for denying access to the records.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the records responsive to the Complainant's request because the request was for information and not for specific identifiable records and agencies are required to disclose only identifiable government records not otherwise exempt pursuant to the Superior Court's decision in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534; therefore the Custodian has met her

burden of proof that access to the requested records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6.

Prepared By:

John E. Stewart
Case Manager/*In Camera* Attorney

Approved By:

Catherine Starghill, Esq.
Executive Director

November 21, 2007