



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

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ROBIN BERG TABAKIN, Chair  
COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

**FINAL DECISION**

**June 25, 2008 Government Records Council Meeting**

Yehuda Shain  
Complainant

Complaint No. 2007-159

v.

Ocean County Board of Taxation  
Custodian of Record

At the June 25, 2008 public meeting, the Government Records Council (“Council”) considered the June 18, 2008 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 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 would have lawfully denied the Complainant access to the requested records pursuant to the Superior Court’s decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and met her burden of proof that access to the requested records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. However, the Custodian’s response to provide records when they were available due to the disruption to agency operations that would ensue if the records were provided before July 9, 2007 goes beyond what is required under the law.

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 25<sup>th</sup> Day of June, 2008



Robin Berg Tabakin, Chairman  
Government Records Council

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

David Fleisher, Secretary  
Government Records Council

**Decision Distribution Date: July 2, 2008**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 25, 2008 Council Meeting**

**Yehuda Shain<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-159**

v.

**Ocean County Board of Taxation<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

Information regarding Lakewood Township 2007 withdrawn tax appeals including taxpayers' names, addresses, block and lot numbers, date of withdrawal and the reason for withdrawal.

**Request Made:** June 4, 2007

**Response Made:** June 11, 2007

**Custodian:** Barbara Raney

**GRC Complaint Filed:** June 20, 2007

**Background**

**June 4, 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.<sup>3</sup>

**June 5, 2007**

E-mail from the Custodian to the Complainant. The Custodian requested the Complainant call her to discuss the Complainant's OPRA request.

**June 11, 2007**

Custodian's response to the Complainant's 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 20, 2007**

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

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<sup>1</sup> Represented by Larry Loigman, Esq. (Red Bank, NJ).

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

<sup>3</sup> This form was apparently the model OPRA form obtained from the GRC's website. The Ocean County Board of Taxation has a form customized for their agency.

- The Complainant’s OPRA records request dated June 4, 2007
- The Custodian’s response to the Complainant’s OPRA request dated June 11, 2007

The Complainant provided the GRC with little information concerning his denial of access to government records. The Complainant failed to comply with GRC directions concerning proper completion of the Denial of Access Complaint. Additionally, the Complainant did not include the Detail Summary (page four of the complaint) and on the Records Denied List he merely wrote: “OPRA request” and “response to request.”

**July 16, 2007**

Offer of Mediation sent to both parties.

**July 17, 2007**

Facsimile transmittal from the Custodian to the GRC. The Custodian agreed to mediation.

**July 24, 2007**

The Complainant did not respond to the offer of mediation by the required date and the GRC sent the request for the Statement of Information to the Custodian.

**July 31, 2007**

Custodian’s Statement of Information (“SOI”) with the following attachments:

- The Complainant’s OPRA records request dated June 4, 2007
- E-mail from the Custodian to the Complainant captioned “OPRA Request” dated June 5, 2007
- The Custodian’s response to the Complainant’s records request dated June 11, 2007

The records identified as being responsive to the Complainant’s request, and the legal basis for each redaction, are set forth by the Custodian in the following document redaction index:

<b>Title and Date of Each Document</b>	<b>Number of Pages Of Each Document</b>	<b>General Nature Description of Each Document</b>	<b>General Nature Description of Each Redaction Contained Therein</b>	<b>Claimed Statutory Exemption(s) and/or Privileges for Each Document and/or Redaction</b>	<b>Explanation Why the Claimed Exemption(s) and/or Privilege(s) Applies to Each Document and/or Each Redaction</b>
Index of Withdrawn Petitions of Appeal printed out on July 30,	1	Name, Address, Block, Lot, Qualifier of each Withdrawn Petition of Appeal	N/A	Entire document is available for inspection and copying per June 11, 2007	N/A

2007. File on CD in Excel format and hardcopy				correspondence	
Withdrawal letters submitted by petitioners, of varying dates, in 38 of 71 withdrawn petitions of appeal (33 petitions were withdrawn at the hearing without letters)	1	Letters from petitioners withdrawing Petition of Appeal	Telephone Numbers	<u>N.J.S.A.</u> 47:1A-1.1	Requester not requesting telephone numbers and telephone numbers are privileged
Judgments entered at various dates prior to July 1, 2007	1	Judgments dismissing withdrawn Petitions of Appeal	N/A	Entire document is available for inspection and copying per June 11, 2007 correspondence	N/A

The Custodian certifies that the records responsive to the Complainant's request have been made available to the Complainant since July 9, 2007, after they were no longer in use by the agency for hearing and determining tax appeals, and that the Complainant was so advised in writing promptly upon the Custodian's receipt of his OPRA request. The Custodian further certifies the records remain available for inspection and/or copying by the Complainant at his convenience; however, Complainant has neither contacted the agency to arrange for inspection of the records, nor requested that copies be made.

The Custodian asserts, however, that even though she has offered to disclose the records to the Complainant, the Complainant's OPRA request could have been lawfully denied because it seeks information rather than records and requires the Custodian to organize and collate data. The Custodian also asserts that the records were temporarily unavailable because they were in use by the agency while conducting the tax appeal process from April 2, 2007 until July 1, 2007 and that attempting to provide them to the Complainant while they were in use would have substantially disrupted agency operations pursuant to N.J.S.A. 47:1A-5g.

#### 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 places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

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

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. A custodian must also 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.

The Custodian in her Statement of Information asserts that the Complainant’s request is an invalid OPRA request because it improperly seeks information, not records. The Custodian relies upon the Superior Court’s decisions in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) as authority for this assertion.

The GRC agrees with the Custodian that the Complainant’s request was for information and not records. The Complainant in his June 4, 2007 OPRA request states “I am looking for information [regarding Lakewood Township 2007 withdrawn tax appeals].” Further, the Complainant in his OPRA request states that “[t]he information can be on a synopsis form...” This 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, supra, at 546. 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.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>4</sup> the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."<sup>5</sup>

Additionally, in New Jersey Builders Association, *supra* at 180, the court cited MAG by stating that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..." The court also quoted N.J.S.A. 47:1A-5.g in that "[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency." The court further stated that "...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency's need to...generate new records..."

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 would have lawfully denied the Complainant access to the requested records pursuant to the Superior Court's decisions in MAG, *supra*, Bent, *supra*, and New Jersey Builders Association, *supra*, and met her burden of proof that access to the requested records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. However, the Custodian's response to provide records when they were available due to the disruption to agency operations that would ensue if the records were provided before July 9, 2007 goes beyond what is required under the law.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that 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 would have lawfully denied the Complainant access to the requested records pursuant to the Superior Court's decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and met her burden of proof that access to the requested records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. However, the Custodian's response to provide records when they were available due to the disruption

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

<sup>5</sup> As stated in Bent, *supra*.

to agency operations that would ensue if the records were provided before July 9, 2007 goes beyond what is required under the law.

Prepared By:

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

Approved By:

Catherine Starghill, Esq.  
Executive Director

June 18, 2008