



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

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**FINAL DECISION**

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

Thomas Driscoll  
Complainant

Complaint No. 2007-301

v.

School District of the Chathams (Morris)  
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 the amended findings and recommendations. The Council, therefore, finds that the Custodian lawfully denied access to the Complainant’s request for “any and all information” without identifying any specific type of government record or a timeframe within which the records may have been created. Because the Custodian would have had to research all files and evaluate all records contained therein to determine whether such records related to correspondence between the school system or Board of Education and Joel Boroff, this request is invalid because it is overly broad pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).” The Custodian has borne his burden of proving that the denial of access was authorized by law 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 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**

**Thomas Driscoll<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-301**

v.

**School District of the Chathams (Morris)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Any and all correspondence, e-mails etc., between the school system or the Board of Education (“BOE”) and Joel Boroff or the group he represents.

**Request Made:** November 30, 2007

**Response Made:** November 30, 2007

**Custodian:** Ralph H. Goodwin

**GRC Complaint Filed:** December 6, 2007

**Background**

**November 30, 2007**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**November 30, 2007**

Custodian’s Response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the same business day as receipt of such request. The Custodian states that access to the requested record is denied because the request is not a request for specific records and indicates his response on the Complainant’s OPRA request form.

**December 6, 2007**

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching the Complainant’s OPRA request dated November 30, 2007 and the Custodian’s response noted thereon.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Nicholas Celso III, Esq., of Schwartz, Simon, Edelstein, Celso & Kessler, LLC (Morristown, NJ).

The Complainant states that he submitted an OPRA request to the Custodian on November 30, 2007. The Complainant states that the Custodian responded on the same day asserting that the request was not for specific records.

The Complainant did not agree to mediate this complaint.

**December 18, 2007**

Request for the Statement of Information sent to the Custodian.

**December 20, 2007**

E-mail from the Custodian's Counsel to the GRC. The Custodian's Counsel states that the BOE will be closed for the holidays beginning December 21, 2007 and requests a reasonable extension of time to submit the Statement of Information until January 8, 2008.<sup>3</sup>

**December 20, 2007**

E-mail from GRC to the Custodian's Counsel. The GRC grants the Custodian an extension until January 8, 2008 to file the Statement of Information.

**January 8, 2008**

Custodian's Statement of Information ("SOI") attaching the Complainant's OPRA request dated November 30, 2007 and the Custodian's response noted therein.

The Custodian certifies that no search was conducted upon receipt of the request due to the overly broad and non-specific nature of the request. The Custodian further certifies that upon receipt of this Denial of Access Complaint a preliminary search for the records responsive identified an unknown number of e-mails which may be responsive to this request.

The Custodian's Counsel states that the Custodian received the Complainant's OPRA request on November 30, 2007 and immediately responded by asserting that the request was not a request for specific records.

The Custodian's Counsel states that in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534, 546 (App. Div. 2005), the Court held that government entities are required to disclose only identifiable government records and that OPRA is not intended to be used as a research tool that a litigant may use to force government officials to identify and siphon useful information. The Custodian's Counsel further states that in Caggiano v. Borough of Stanhope, GRC Complaint No. 2005-211 (February 2006), the GRC, citing MAG, held that a request for "any and all" records was overly broad and the Custodian in that case was not required to respond to such a request.

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<sup>3</sup> The Custodian's Counsel requests an extensive amount of time because the Custodian must prepare Statements of Information for four (4) Denial of Access complaints filed by the Complainant. Those three (3) other complaints are being adjudicated separately as Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-300, Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-302 and Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-303.

The Custodian's Counsel also cites that in Vercammen v. Linden Police Department, GRC Complaint No. 2002-103 (December 2002), the GRC dismissed the complaint due to the Complainant's failure to provide a time period within which to search for the requested police complaints, summons and arrest reports. The Custodian's Counsel avers that the OPRA request relevant to this complaint starts with "any and all" and does not provide a specific time period within which to search for the records responsive and is therefore, an invalid request.

Additionally, the Custodian's Counsel asserts that the e-mails located by the Custodian are not government records under OPRA because they are exempt from disclosure as advisory, consultative and deliberative ("ACD") material. The Custodian's Counsel states that in Haemmerle v. Washington Township (Mercer), GRC Complaint No. 2006-106 (June 2007), the Complainant requested that the Mayor of Washington Township produce a draft e-mail that was sent to some township officials. The Custodian's Counsel states that the GRC held that the date and time of the e-mail and the recipients' e-mail addresses was a government record, but that the actual content of the letter was exempt from disclosure pursuant to the exemption for ACD. The Custodian's Counsel asserts that the e-mails responsive to this request are clearly pre-decisional and deliberative in nature because no decision regarding approval for lighting at Cougar Field or any other field has been made by the BOE.

The Custodian's Counsel further avers that the information contained in the e-mails satisfies a requirement set forth in In re Liquidation of Integrity Insurance Co., 165 N.J. 75 (2000) for determining whether a record is exempt under ACD.<sup>4</sup> The Custodian's Counsel also asserts that the contents of the e-mails, if disclosed, would inaccurately reflect and/or prematurely disclose an individual's personal viewpoint that could erroneously be construed as the BOE's position.

### 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.

Additionally, 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 ... The terms *shall not include inter-agency or intra-agency*

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<sup>4</sup> The requirement states that "[d]eliberative materials do not include purely factual materials."  
Thomas Driscoll v. School District of the Chathams (Morris), 2007-301 – Findings and Recommendations of the Executive Director

*advisory, consultative, or deliberative material.*” (Emphasis added.)  
N.J.S.A. 47:1A-1.1.

OPRA also provides that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5.g.

OPRA further provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

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. 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.

In this complaint, the Complainant requests “any and all correspondence, email etc.” between the school system or BOE and Joel Boroff. The Custodian contends that this request is similar to those requests which the GRC held to be broad and unclear in Caggiano, supra and Vercammen, supra.

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 (App. Div. 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.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005)<sup>5</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>6</sup>

Additionally, in New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) 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..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008), the Complainant requested "all maps, engineering documents and other documents" relating to the developments and modifications of several blocks and lots. The Council held that "[b]ecause the Complainant's OPRA requests No. 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005)."

In the complaint now before the Council, the Complainant's November 30, 2007 OPRA request for "any and all" correspondence between the school system or BOE and Joel Boroff fails to identify any specific type of government record or a timeframe within which the records may have been created. Because the Custodian would have had to research all files and evaluate all records contained therein to determine whether such records related to correspondence between the school system or BOE and Joel Boroff, this request is invalid because it is overly broad pursuant to MAG, *supra* and Bent, *supra*. Further, the Custodian has borne his burden of proving that the denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6. Additionally, the issue of whether the requested records are ACD is moot because the request was not for specific identifiable records.

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<sup>5</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>6</sup> As stated in Bent, *supra*.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant's request for "any and all information" without identifying any specific type of government record or a timeframe within which the records may have been created. Because the Custodian would have had to research all files and evaluate all records contained therein to determine whether such records related to correspondence between the school system or Board of Education and Joel Boroff, this request is invalid because it is overly broad pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005)." The Custodian has borne his burden of proving that the denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6.

Prepared By:

Frank F. Caruso  
Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

June 18, 2008