



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

February 25, 2009 Government Records Council Meeting

Anthony LaMantia
Complainant

Complaint No. 2008-140

v.

Jamesburg Public Library (Middlesex)
Custodian of Record

At the February 25, 2009 public meeting, the Government Records Council (“Council”) considered the February 18, 2009 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’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Based on N.J.S.A. 47:1A-9.b., which safeguards confidentiality established by other state statutes, and N.J.S.A. 18A:73-43.2., which grants confidentiality to library records which contain names or other personally identifying details regarding library users, the Custodian has borne her burden of proving a lawful denial of access to request Item No. 1 pursuant to N.J.S.A. 47:1A-6.
3. Although the Complainant’s amended OPRA request is seeking cardholder addresses with the redaction of names and house numbers, the unredacted material is still personally identifying information which is not subject to disclosure under N.J.S.A. 18A:73-43.2. Therefore, the Custodian did not unlawfully deny access to the requested record when she stated that the previously cited reasons for a denial of access to the requested records still applied to the amended OPRA request.
4. Because request Item No. 2 of the Complainant’s June 25, 2008 OPRA request seeks information rather than an identifiable government record, the



request is invalid 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). Nevertheless, the GRC notes that the Custodian disclosed this information in her July 10, 2008 response to the Complainant's OPRA request.

5. Although the Custodian failed to respond to the Complainant's June 25, 2008 OPRA request to the Custodian within the statutorily mandated seven (7) business day time frame required under OPRA, the Custodian did bear her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6, N.J.S.A. 47:1A-9.b. and N.J.S.A. 18A:73-43.2. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's "deemed" denial appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with 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 25th Day of February, 2009

Robin Berg Tabakin, Chair
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: March 9, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 25, 2009 Council Meeting**

**Anthony LaMantia¹
Complainant**

GRC Complaint No. 2008-140

v.

**Jamesburg Public Library (Middlesex)²
Custodian of Records**

Records Relevant to Complaint:

1. Addresses for each library cardholder.
2. Number of Jamesburg residents that hold library cards.

Request Made: June 25, 2008

Response Made: July 10, 2008

Custodian: Cynthia Yasher

GRC Complaint Filed: July 8, 2008³

Background

June 25, 2008

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter stating that it is a request pursuant to OPRA.

July 8, 2008

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching the Complainant's OPRA request dated June 25, 2008.

The Complainant states that he hand delivered an OPRA request to the Jamesburg Library on June 25, 2008. The Complainant states that the Custodian has failed to provide a response in any form within the statutorily mandated seven (7) business days pursuant to OPRA.

The Complainant did not agree to mediate this complaint.

July 10, 2008

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the tenth (10th) business day following receipt of

¹ No legal representation listed on record.

² Represented by Bertram E. Busch, Esq., of Busch and Busch, LLP (North Brunswick, NJ).

³ The GRC received the Denial of Access Complaint on said date.

such request. The Custodian acknowledges receipt of the Complainant's Denial of Access Complaint.⁴ The Custodian states that upon advice of Counsel, the records responsive to request Item No. 1 are denied pursuant to N.J.S.A. 47:1A-9 and the New Jersey Library Confidentiality Statute, N.J.S.A. 18A:73-43.2.

Additionally, the Custodian states that 1,512 patrons hold library cards: 887 adults and 625 children.

July 21, 2008

Request for the Statement of Information sent to the Custodian.

July 24, 2008

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

- Complainant's OPRA request dated June 25, 2008.
- Letter from the Custodian to the Complainant dated July 10, 2008.

The Custodian states that the library received the Complainant's OPRA request on June 25, 2008. The Custodian states that she responded in writing to the Complainant on July 10, 2008, stating that request Item No. 1 was denied pursuant to N.J.S.A. 47:1A-9 and N.J.S.A. 18A:73-43.2. The Custodian did provide the number of Jamesburg residents that are library card holders as requested in Item No. 2 of the Complainant's OPRA request.

The Custodian states that N.J.S.A. 18A:73-43.1 defines a library record as "any document or record, however maintained, the primary purpose of which is to provide for control of the circulation or other public use of library material." The Custodian contends that this definition would certainly apply to cardholder information.

Additionally, the Custodian states that N.J.S.A. 18A:73-43.2 provides that:

"[l]ibrary records which contain the names and or other personally identifying details regarding the users of libraries are confidential and shall not be disclosed except in the following circumstances:

- a. [t]he records are necessary for the proper operation of the library;
- b. [d]isclosure is requested by the user; or
- c. [d]isclosure is required pursuant to a subpoena issued by a court or court order."

The Custodian further argues that N.J.S.A. 47:1A-9.b provides that the provisions of OPRA "*shall not abrogate or erode any...grant of confidentiality heretofore established or recognized by...statute...*" (Emphasis added.) The Custodian contends that the Complainant has not provided sufficient evidence to prove that the records responsive to request Item No. 1 are necessary for the proper operation of the library, that

⁴The Custodian received the Complainant's Denial of Access Complaint prior to responding to the Complainant's OPRA request.
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disclosure was requested by the cardholders or that a subpoena for the records was issued.⁵

August 5, 2008

Complainant's amended OPRA request. The Custodian requests a list of all Jamestown Library cardholders including addresses, with the names and house numbers redacted.

August 8, 2008

Letter from Custodian's Counsel to the Complainant. Counsel states that the Complainant's August 5, 2008 amended OPRA request has been forwarded to Counsel for a response. Counsel states that the Custodian had previously denied the Complainant's request pursuant to N.J.S.A. 18A:73-43.2. and N.J.S.A. 47:1A-9. Counsel finally states that no records will be provided until the GRC has rendered a decision on this complaint.

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 ..." (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.

⁵ The Custodian also addresses the Complainant's possible motives for this records request; however, OPRA is silent as to the intended use of public records. Therefore, the Custodian's assertions in this regard are irrelevant to the adjudication of this complaint.
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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.

N.J.S.A. 47:1A-9.b. provides that OPRA:

“*shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.*” (Emphasis added.)

Moreover, N.J.S.A. 18A:73-43.1. defines a library record as:

“any document or record, however maintained, the primary purpose of which is to provide for control of the circulation or other public use of library material.”

N.J.S.A. 18A:73-43.2. provides that:

“[l]ibrary records which contain the names and or other personally identifying details regarding the users of libraries are confidential and shall not be disclosed except in the following circumstances:

- d. [t]he records are necessary for the proper operation of the library;
- e. [d]isclosure is requested by the user; or
- f. [d]isclosure is required pursuant to a subpoena issued by a court or court order.”

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 mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g. Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

In this complaint, the Custodian failed to respond in writing to the Complainant denying access to request Item No. 1 until the tenth (10th) business day after receipt of the Complainant's June 25, 2008 OPRA request.

Therefore, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

In this matter before the Council, the Custodian contends that the records requested in Item No. 1 are exempt from disclosure pursuant to N.J.S.A. 18A:73-43.2. and that the Complainant has failed to prove that the requested cardholder addresses should be provided based on one (1) of the three (3) exceptions provided in N.J.S.A. 18A:73-43.2. The Custodian avers that N.J.S.A. 47:1A-9.b. ensures that confidentiality clauses in other statutes may be used as a lawful denial of access to public records.

Pursuant to the definition of a library record found in N.J.S.A. 18A:73-43.1., the records requested in Item No. 1 (cardholder addresses) are contained in library records used to "control circulation...of library material." *Id.* Additionally, N.J.S.A. 18A:73-43.2. makes confidential library records "which contain names and or other personally identifying details regarding the users of the library." *Id.* There is also no evidence in the record to indicate that any of the three (3) statutory circumstances under which such records may be disclosed has occurred. N.J.S.A. 18A:73-43.2.

Therefore, based on N.J.S.A. 47:1A-9.b., which safeguards confidentiality established by other state statutes and N.J.S.A. 18A:73-43.2. which grants confidentiality to library records which contain names or other personally identifying details regarding library users, the Custodian has borne her burden of proving a lawful denial of access to request Item No. 1 pursuant to N.J.S.A. 47:1A-6.

Further, the Complainant submitted an amended OPRA request on August 5, 2008 requesting a list of library card holders including addresses, with the names and house numbers redacted. Counsel responded on August 8, 2008 stating that the request was previously denied pursuant to N.J.S.A. 18A:73-43.2. and N.J.S.A. 47:1A-9 and that

no records would be provided until the GRC rendered a decision regarding this complaint.

Although the Complainant's amended OPRA request is seeking cardholder addresses with the redaction of names and house numbers, the unredacted material is still personally identifying information which is not subject to disclosure under N.J.S.A. 18A:73-43.2. Therefore, the Custodian did not unlawfully deny access to the requested record when she stated that the previously cited reasons for a denial of access to the requested records still applied to the amended OPRA request.

The Complainant's request Item No. 2 seeks the number of library card holders. 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),⁶ 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."⁷

Therefore, because request Item No. 2 of the Complainant's June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid 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). Nevertheless, the GRC notes that the Custodian disclosed this information in her July 10, 2008 response to the Complainant's OPRA request.

Whether the Custodian's delay in access to the requested records rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ..." N.J.S.A. 47:1A-11.a.

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁷ As stated in Bent, *supra*.

OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states:

“... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7.e.

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170 at 185 (2001); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86 (App. Div. 1996) at 107).

Although the Custodian failed to respond to the Complainant’s June 25, 2008 OPRA request to the Custodian within the statutorily mandated seven (7) business day time frame required under OPRA, the Custodian did bear her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6, N.J.S.A. 47:1A-9.b. and N.J.S.A. 18A:73-43.2. Therefore, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian’s deemed denial appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Based on N.J.S.A. 47:1A-9.b., which safeguards confidentiality established by other state statutes, and N.J.S.A. 18A:73-43.2., which grants confidentiality to

library records which contain names or other personally identifying details regarding library users, the Custodian has borne her burden of proving a lawful denial of access to request Item No. 1 pursuant to N.J.S.A. 47:1A-6.

3. Although the Complainant's amended OPRA request is seeking cardholder addresses with the redaction of names and house numbers, the unredacted material is still personally identifying information which is not subject to disclosure under N.J.S.A. 18A:73-43.2. Therefore, the Custodian did not unlawfully deny access to the requested record when she stated that the previously cited reasons for a denial of access to the requested records still applied to the amended OPRA request.
4. Because request Item No. 2 of the Complainant's June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid 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). Nevertheless, the GRC notes that the Custodian disclosed this information in her July 10, 2008 response to the Complainant's OPRA request.
5. Although the Custodian failed to respond to the Complainant's June 25, 2008 OPRA request to the Custodian within the statutorily mandated seven (7) business day time frame required under OPRA, the Custodian did bear her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6, N.J.S.A. 47:1A-9.b. and N.J.S.A. 18A:73-43.2. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's "deemed" denial appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

February 15, 2009