



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

December 22, 2009 Government Records Council Meeting

Philip Rich
Complainant

Complaint No. 2008-149

v.

Randolph Township (Morris)
Custodian of Record

At the December 22, 2009 public meeting, the Government Records Council (“Council”) considered the December 9, 2009 Supplemental 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 has failed to establish in his motion for reconsideration of the Council’s September 30, 2009 Findings and Recommendations that 1) the GRC’s decision is based upon a “palpably incorrect or irrational basis” or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in reaching its decision, said motion for reconsideration is 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 South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 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 22nd Day of December, 2009



Robin Berg Tabakin, Chair
Government Records Council

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

Harlynn A. Lack, Secretary
Government Records Council

Decision Distribution Date: December 30, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 22, 2009 Council Meeting**

**Philip Rich¹
Complainant**

GRC Complaint No. 2008-149

v.

**Randolph Township (Morris)²
Custodian of Records**

Records Relevant to Complaint:

1. Any correspondence about the expansion of the parking area and the placement and approval for payment and any documentation relating to notifying the New Jersey Department of Environmental Protection (“DEP”) about stream encroachment.
2. Any agreement reached with the municipal prosecutor and Andrew Hall (“Mr. Hall”).
3. All documents relating to the change of original language to the full use of three (3) apartments.
4. All correspondence, including draft correspondence, letters and e-mails, and Consent to Agreement to municipal prosecutors relating to such agreement with Mr. Hall.
5. All e-mails concerning Carol Smith (“Ms. Smith”) to or from Barrie Krause (“Mr. Krause”), Township Zoning Officer.
6. Any e-mails, documents or letters from John Lovell (“Mr. Lovell”) approving agreements between Mr. Hall and the prosecutors.

Request Made: July 2, 2008³

Response Made: July 14, 2008

Custodian: Donna Marie Luciani

GRC Complaint Filed: July 16, 2008⁴

Background

September 30, 2009

Government Records Council’s (“Council”) Findings and Recommendations. At its September 30, 2009 public meeting, the Council considered the September 23, 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

¹ No legal representation on record.

² Represented by Tiena M. Cofoni, Esq., of The Buzak Law Group, LLC (Montville, NJ).

³ The Complainant filed two (2) requests on the same day. The GRC has combined the two (2) requests for purposes of clarity.

⁴ The GRC received the Denial of Access Complaint on said date.

findings and recommendations. The Council, therefore, found that although the Complainant identified specific types of records in his OPRA request Items No. 1 through No. 6, the request items failed to specify dates and/or individuals; the Custodian is not required to conduct research in response to a request pursuant to Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). As such, the Complainant's OPRA request is invalid under OPRA 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, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-70 and 2008-71 (February 2009).

October 7, 2009

Council's Findings and Recommendations distributed to the parties.

October 9, 2009

Complainant's request for reconsideration of the Council's September 30, 2009 Findings and Recommendations. The Complainant asserts that the reasons supporting the Council's reconsideration of this matter include mistake, new evidence, fraud and illegality.

In support of the motion for reconsideration, the Complainant asserts that he is in litigation with the owner of a property regarding an illegal three-family dwelling. The Complainant asserts that the requested records are essential to prove his case. The Complainant contends that he has been trying to obtain information regarding the illegal expansion of the property for years but Randolph Township refuses to disclose the records either to Complainant or Complainant's attorney.

The Complainant submits evidence regarding the legal status of the alleged dwelling, as well as documentation regarding a settlement agreement between the Township and the property owner and various correspondence. The Complainant alleges various violations of Department of Environmental Protection statutes, as well as misconduct of Township of Randolph officials.⁵

October 27, 2009

Letter from Custodian's Counsel to the GRC. Custodian's Counsel responds to the Complainant's Motion for Reconsideration and asserts that there was no mistake, fraud or illegality in connection with the dismissal of the Complainant's Denial of Access Complaint and contends that the decision of the Council was appropriate and correct.

Custodian's Counsel states that the Complainant provided only one sentence as an explanation as to the mistake that was made by the Council in its determination that the Township did not violate the Open Public Records Act ("OPRA"). Custodian's Counsel asserts that it is unclear which, if any, of the attachments submitted by the Complainant

⁵ The Complainant attaches documentary evidence in support of these allegations.
Philip Rich v. Township of Randolph (Morris), 2008-149 – Supplemental Findings and Recommendations of the Executive Director

prove a mistake of fact by the GRC. Custodian's Counsel notes that, as was made clear in the Township's original submission to the GRC, clarifications were eventually provided in the form of additional requests submitted by the Complainant on July 16, 2008 and all records responsive to those requests were provided to the Complainant. Custodian's Counsel also notes that although the subject matter of the July 16, 2008 OPRA requests relate to the July 2, 2008 requests which are the subject of the instant matter, the July 16, 2008 requests and associated responses are not the subject of this instant matter. Custodian's Counsel therefore maintains that the GRC made no factual mistake in connection with its September 30, 2009 Final Order.

Custodian's Counsel states that although the Complainant has alleged fraud as a reason for the GRC to grant the Request for Reconsideration, the alleged fraud does not relate to the Township's response to his OPRA request but instead relates to the underlying actions about which the Complainant seeks information. Custodian's Counsel asserts that the Complainant's allegations of fraud relate to his perception that permits and certificates of occupancy were improperly issued to the past and present owners of a property in Randolph Township. Custodian's Counsel contends that the Township denies any wrongdoing in the issuance of such permits and certificates and, moreover, maintains that these issues do not relate to the Complaint before the GRC, which solely involves the Township's response to the Complainant's July 2, 2008 OPRA request. Custodian's Counsel asserts that the Complainant has failed to present any evidence supporting an allegation that there was fraud on the part of the Township in connection with the response to the Complainant's OPRA request and further asserts that the Township responded to the Complainant's OPRA request reasonably and in accordance with the statutory requirements and at no time committed fraud.

Custodian's Counsel further argues that the Complainant's allegations of illegality also relate solely to his claims regarding the underlying property issues about which the Complainant seeks information. Custodian's Counsel notes that the Complainant has presented no evidence that the Township acted illegally in connection with responding to the Complainant's OPRA requests.

Custodian's Counsel refutes the Complainant's assertion that new evidence requires the reconsideration of the Council's September 30, 2009 decision; Custodian's Counsel notes that no new evidence relating to the Township's response to the OPRA request at issue herein was provided with the Complainant's submission.

Finally, Custodian's Counsel notes that although the last paragraph of the Complainant's October 7, 2009 submission references the granting of a stay, such submission does not appear to be that of a request for a stay but is instead a Request for Reconsideration. Custodian's Counsel also argues that the Complainant's submission does not address the four factors as required pursuant to the GRC's September 30, 2009 decision. Accordingly, the Custodian states that the request for a stay cannot be granted.

October 29, 2009

Letter from the Complainant to the GRC.⁶ The Complainant responds to the Custodian's opposition to the Motion for Reconsideration of the Council's September 30, 2009 decision.

The Complainant states that he should be permitted to view all of the records pertaining to the time period set forth in his July 2, 2008 request. The Complainant alleges wrongdoing by Randolph Township officials in the designation of the subject property as a three-family dwelling and in the provision of records to him. The Complainant asserts that the Township and its officials have concealed records from him. The Complainant asserts that he has met the criteria for a stay in the following manner:

1. The clear likelihood of success on the appeal on the merits of the claim: "I have submitted documents referring to the "settlement agreement." I submitted the deed filed on August 8, 2002. It's very unlikely that no correspondence exists from Andrew Sposaro dated November 15, 2001 to the recording of the deed from Barrie Krause [to] the Township of Randolph.";
2. The danger of irreparable harm if the stay is not granted: "I submitted copies NOV from Mr. Hall regarding New Jersey Department of Environmental Protection ("NJDEP") issues. Also attached is the most recent letter from the NJDEP dated October 15, 2009.";
3. The absence of substantial injury to other parties if the stay is granted and the public interest: "The NJDEP problems are ongoing and individuals have either caused damage to the environment or have knowingly committed official misconduct."

Analysis

Whether the Complainant has met the required standard for reconsideration of the Council's September 30, 2009 Findings and Recommendations?

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)*.

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

⁶The Complainant attaches additional materials not relevant to the reconsideration of this matter. Philip Rich v. Township of Randolph (Morris), 2008-149 – Supplemental Findings and Recommendations of the Executive Director

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, supra, 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 South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

In support of his motion for reconsideration, the Complainant asserts that mistake, fraud, new evidence and illegality require the Council's reconsideration of its September 30, 2009 decision. Specifically, the Complainant contends that persons employed by Randolph Township improperly permitted a property to exist as a three-family dwelling. The Complainant submitted various documentary evidence in support of this claim. The Complainant also asserts that persons employed by Randolph Township have concealed records from him.

None of the Complainant's submissions to the Council in support of his Request for Reconsideration establish that the Council's September 30, 2009 decision was the result of mistake, fraud or illegality, nor did the Complainant submit any new evidence in support of his Request for Reconsideration which is relevant to the adjudication of his Denial of Access Complaint. The materials submitted by the Complainant do not establish that reconsideration is necessary of the Council's determination that the Complainant's July 2, 2008 request was overly broad and unclear because it failed to identify specific dates and/or individuals and because the request as written required the Custodian to conduct research. Indeed, the documentary evidence submitted by the Complainant in support of his Request for Reconsideration seem to relate to the zoning dispute referenced by the Complainant in his October 7, 2009 letter to the GRC. Such submissions, however, fail to support the Complainant's contention that reconsideration of the Council's September 30, 2009 decision is necessary. The Complainant has, moreover, failed to submit any evidence to support his assertion that Randolph Township officials have concealed records from the Complainant in connection with his July 2, 2009 request.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above; namely 1) that the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence. *See Cummings, supra*. The Complainant failed to do so. The Complainant has also failed to show that the GRC acted arbitrarily, capriciously or unreasonably in reaching its decision. *See D'Atria, supra*.

Therefore, because the Complainant has failed to establish in his motion for reconsideration of the Council's September 30, 2009 Decision and Findings and Recommendations that 1) the GRC's decision is based upon a "palpably incorrect or

irrational basis” or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in reaching its decision, said motion for reconsideration is 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 South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in his motion for reconsideration of the Council's September 30, 2009 Findings and Recommendations that 1) the GRC's decision is based upon a “palpably incorrect or irrational basis” or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in reaching its decision, said motion for reconsideration is 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 South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Karyn Gordon, Esq.
In House Counsel

Approved By: Catherine Starghill, Esq.
Executive Director

December 9, 2009



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

September 30, 2009 Government Records Council Meeting

Phillip Rich
Complainant

Complaint No. 2008-149

v.

Township of Randolph (Morris)
Custodian of Record

At the September 30, 2009 public meeting, the Government Records Council (“Council”) considered the September 23, 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 although the Complainant identified specific types of records in his OPRA request Items No. 1 through No. 6, the request items failed to specify dates and/or individuals; the Custodian is not required to conduct research in response to a request pursuant to Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). As such, the Complainant’s OPRA request is invalid under OPRA 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, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-70 and 2008-71 (February 2009).

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 30th Day of September, 2009

Robin Berg Tabakin, Chair
Government Records Council

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

Janice L. Kovach, Secretary
Government Records Council

Decision Distribution Date: October 7, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 30, 2009 Council Meeting**

**Philip Rich¹
Complainant**

GRC Complaint No. 2008-149

v.

**Township of Randolph (Morris)²
Custodian of Records**

Records Relevant to Complaint:

1. Any correspondence about the expansion of the parking area and the placement and approval for payment and any documentation relating to notifying the New Jersey Department of Environmental Protection (“DEP”) about stream encroachment.
2. Any agreement reached with the municipal prosecutor and Andrew Hall (“Mr. Hall”).
3. All documents relating to the change of original language to the full use of three (3) apartments.
4. All correspondence, including draft correspondence, letters and e-mails, and Consent to Agreement to municipal prosecutors relating to such agreement with Mr. Hall.
5. All e-mails concerning Carol Smith (“Ms. Smith”) to or from Barrie Krause (“Mr. Krause”), Township Zoning Officer.
6. Any e-mails, documents or letters from John Lovell (“Mr. Lovell”) approving agreements between Mr. Hall and the prosecutors.

Request Made: July 2, 2008³

Response Made: July 14, 2008

Custodian: Donna Marie Luciani

GRC Complaint Filed: July 16, 2008⁴

Background

July 2, 2008

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.⁵

¹ No legal representation listed on record.

² Represented by Tiena M. Cofoni Esq., of The Buzak Law Group, LLC (Montville, NJ).

³ The Complainant filed two (2) requests on the same day. The GRC has combined the two (2) requests for purposes of clarity.

⁴ The GRC received the Denial of Access Complaint on said date.

⁵ The Complainant attached additional documentation to his OPRA request that does not appear to be relevant to the instant complaint.

July 14, 2008

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the seventh (7th) business day following receipt of such request. The Custodian states that pursuant to Counsel's advice, the Complainant must clarify request Items No. 1, No. 3, No. 5 and No. 6. Additionally, the Custodian states that the Complainant should see the court for request Items No. 2 and No. 4.

July 16, 2008

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

- Complainant's OPRA request dated July 2, 2008.
- Letter from the Custodian to the Complainant dated July 14, 2008 attaching the Complainant's request with Counsel's notes thereon.

The Complainant states that he submitted an OPRA request to the Custodian on July 2, 2008. The Complainant states that the Custodian responded on July 2, 2008 stating that per advice of Counsel, the Complainant must clarify request Items No. 1, No. 3, No. 5 and No. 6 and should contact the court regarding request Items No. 2 and No. 4.

The Complainant does not agree to mediate this complaint.

August 21, 2008

Request for the Statement of Information ("SOI") sent to the Custodian.

August 28, 2008

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated July 2, 2008.
- Letter from the Custodian to the Complainant dated July 14, 2008 attaching the Complainant's request with Counsel's notes thereon.⁶

The Custodian certifies that she did not conduct a search for records because she was unable to determine which records would be responsive to the Complainant's July 2, 2008 OPRA request as it is overly broad.

The Custodian also certifies that no records were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM").

The Custodian states that each request item was handled in the following manner:

⁶ The Custodian also attaches four (4) OPRA requests from the Complainant dated July 16, 2008 and the Custodian's response thereto dated July 30, 2008. While these requests appear to be clarified versions of the Complainant's July 2, 2008 OPRA request, the Complainant does not identify the four (4) requests as relevant to the instant complaint.

Complainant's request Item No. 1:

The Custodian certifies that she responded in writing to the Complainant's OPRA request on July 14, 2008 stating that on advice of Counsel, the Complainant's request was too broad and that the Complainant should clarify his request.

The Custodian argues that the Complainant's request items for "any correspondence about the expansion of the parking area..." were broad and unclear because they did not specify a time period and did not identify specific individuals that took part in the correspondence the Complainant sought. The Custodian asserts that the Township would be forced to search all applicable files from the Township's incorporation until the date of the Complainant's request to determine whether any records responsive exist. Additionally, the Custodian argues that the Complainant failed to specify a date or individual regarding the request for documentation notifying the DEP about stream encroachment.

Complainant's request Items No. 2 through No. 6:

The Custodian certifies that she informed the Complainant in her written response that any records requested in Items No. 2 and No. 4 relating to the municipal prosecutor would be filed with the municipal court.

Additionally, the Custodian argues that the remaining request items were overly broad. The Custodian contends that the Complainant failed to identify any specific agreement or subject of such agreement, which is necessary information in order for the Custodian to locate any records responsive.

The Custodian certifies that although the Complainant's request for Items No. 1 through No. 6 was technically denied because it was overly broad, her written response included notes from Counsel thereon that suggested ways for the Complainant to clarify his request, such as by providing dates or names of specific individuals involved.

The Custodian argues that, in Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), the Appellate Division held that a valid OPRA request must reasonably identify a record rather than general data, information or statistics. The Custodian contends that the Complainant's request items do not identify with reasonable clarity the document or documents being sought. The Custodian asserts that for the above reasons, the Complainant's request items are overly broad and unclear; therefore, the Township sought clarification in its written response.

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 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 the instant complaint, the Complainant’s OPRA request Items No. 1 through No. 6 identify types of records (correspondence, agreements); however, said requests fail to specify dates and/or specific individuals and would therefore require the Custodian to research all of the Township’s records to determine which records, if any, are responsive to the Complainant’s OPRA request.

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),⁷ 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

⁷ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

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.”⁸

Additionally, in New Jersey Builders Association v. New Jersey Council on 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...”

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008), 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 Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007), the Council held that pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), a custodian is obligated to search his or her files to find identifiable government records listed in a requestor’s OPRA request. The Complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The Custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

“[p]ursuant to [MAG], the Custodian is obligated to *search* her files to *find* the identifiable government records listed in the Complainant’s OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word *search* is defined as ‘to go or look through carefully in order to find something missing or lost.’⁹ The word *research*, on the other hand, means ‘a close and careful study to find new facts or information.’¹⁰”

Therefore, although the Complainant identified specific types of records in his OPRA request Items No. 1 through No. 6, the request items failed to specify dates and/or individuals; the Custodian is not required to conduct research in response to a request pursuant to Donato, *supra*. As such, the Complainant’s OPRA request is invalid under OPRA and the Custodian has not unlawfully denied access to the requested records pursuant to MAG, *supra*, Bent, *supra*, NJ Builders, *supra*, and Schuler, *supra*. See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-70 and 2008-71 (February 2009).

⁸ As stated in Bent, *supra*.

⁹ “Search.” Dictionary.com Unabridged (v 1.1) Based on the Random House Unabridged Dictionary. Random House, Inc. 2006.

¹⁰ “Research.” Kerneman English Multilingual Dictionary (Beta Version), 2000-2006 K Dictionaries Ltd. Philip Rich v. Township of Randolph (Morris), 2008-149 – Findings and Recommendations of the Executive Director

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that although the Complainant identified specific types of records in his OPRA request Items No. 1 through No. 6, the request items failed to specify dates and/or individuals; the Custodian is not required to conduct research in response to a request pursuant to Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). As such, the Complainant's OPRA request is invalid under OPRA 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, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-70 and 2008-71 (February 2009).

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

September 23, 2009