



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

December 18, 2008 Government Records Council Meeting

Gerard Naples
Complainant

Complaint No. 2008-97

v.

New Jersey Motor Vehicle Commission
Custodian of Record

At the December 18, 2008 public meeting, the Government Records Council ("Council") considered the December 10, 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:

1. The process of requesting Motor Vehicle Commission records under the Drivers' Privacy Protection Act does not fall under the authority of the GRC and is not governed by OPRA pursuant to N.J.S.A. 47:1A-7.b. See Richard G. Rader v. Township of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).
2. Because the Complainant's multiple records requests pursuant to Drivers' Privacy Protection Act were not valid OPRA requests, this complaint is without reasonable factual basis pursuant to N.J.S.A. 47:1A-5.f., N.J.S.A. 47:1A-5.g., Advisory Opinion 2006-01, and Megargal v. NJ Department of Military and Veterans Affairs, GRC Complaint No. 2007-250 (October 2007).

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 18th Day of December, 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: December 22, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 18, 2008 Council Meeting**

**Gerard S. Naples¹
Complainant**

GRC Complaint No. 2008-97

v.

**New Jersey Motor Vehicle Commission²
Custodian of Records**

Records Relevant to Complaint: Motor Vehicle Commission medical records pertaining to the Complainant.

Request Made: No date specified³

Response Made: None

Custodian: Joseph Bruno

GRC Complaint Filed: May 12, 2008⁴

Background

May 12, 2008

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching a letter from the Complainant’s Representative, Assemblyman Reed Gusciora, to the GRC.

Assemblyman Gusciora avers that the Complainant was denied access to records requested in an OPRA request by one of the employees of the New Jersey Motor Vehicle Commission (“MVC”).

July 14, 2008

E-mail from the GRC to the Assemblyman Gusciora. The GRC states that the Complainant failed to provide a copy of the relevant OPRA request submitted to the MVC. The GRC states that in a recent inquiry via telephone, an employee from Assemblyman Gusciora’s office asserted that a copy of the OPRA request would be obtained and provided to the GRC, if one existed. The GRC requests that Assemblyman Gusciora provide a copy of the relevant OPRA request.

¹ Represented by Deputy Majority Leader Reed Gusciora. It appears that Assemblyman Gusciora is not acting in the capacity as Counsel, but is interceding on behalf of the Complainant in this matter.

² Represented by Steven Robertson, Esq., MVC Legal, Legislative & Regulatory Affairs.

³ Complainant did not provide the GRC with a copy of an OPRA request or letter requesting records.

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

July 18, 2008

Letter from the GRC to the Custodian. The GRC requests that the Custodian certify to the following: Whether an official OPRA request form relevant to this complaint was received by the MVC?

The GRC requests that the Custodian provide this certification by close of business on July 23, 2008.

July 23, 2008

Legal certification from the Custodian to the GRC. The Custodian certifies that he is the Custodian of Record for the MVC. The Custodian certifies that he conducted a review of the OPRA requests made to the MVC and that no official OPRA request form relevant to this complaint was ever received from the Complainant.

July 24, 2008

E-mail from the GRC to the Custodian. The GRC requests an additional certification responding to the following: Whether any correspondence regarding the Complainant's request for MVC medical records was received asserting that the request was pursuant to OPRA and/or letter(s) that requested the records but failed to assert that the letter was a request pursuant to OPRA?

The GRC requests that the Custodian provide such correspondence, should any exist, along with the legal certification by close of business on July 28, 2008.

July 30, 2008

E-mail from the GRC to the Custodian. The GRC states that the Custodian's certification for additional information was due on July 28, 2008 and has not yet been received. The GRC requests that the Custodian advise as to the status of the certification.

July 30, 2008

E-mail from the Custodian's Counsel to the GRC. The Custodian's Counsel states that the Custodian has been out of the office but that a completed certification will be forwarded to the GRC upon the Custodian's return to the office.

July 31, 2008

E-mail from the Custodian to the GRC. The Custodian states that he believes the requested certification was sent by e-mail.

July 31, 2008

E-mail from the GRC to the Custodian. The GRC acknowledges receipt of the Custodian's e-mail.

July 31, 2008

E-mail from the Custodian to the GRC. The Custodian states that the MVC has, in the past, received dozens of requests for medical information from the Complainant. The Custodian states that the Complainant previously submitted to the MVC a form and fee, not associated with OPRA, at which time the requested records were provided to the Complainant. The Custodian states that on several occasions, the Complainant has

requested the same records over and over. The Custodian states that while he does recall one of the Complainant's requests referencing the Freedom of Information Act ("FOIA"), the Complainant has not submitted OPRA requests to the MVC. The Custodian avers that the initial certification should be sufficient proof that no OPRA request relevant to this complaint was ever received by the MVC.

August 7, 2008

Legal certification from the Custodian to the GRC. The Custodian certifies that he is the Custodian of Records for the MVC. The Custodian further certifies that he conducted a review of the requests made to the MVC by the Complainant and that no official OPRA request form or letter citing to OPRA relevant to this complaint was ever received from the Complainant.

The Custodian certifies that the Complainant has made numerous requests to the MVC on the MVC's Drivers' Privacy Protection Act ("DPPA") medical information request form.⁵ The Custodian further certifies that the Complainant also provided the requisite identification and fee for the production of medical information. The Custodian finally certifies that the Complainant was provided the requested records on every occasion that the MVC received the requisite DPPA form, fee and identification.⁶

Analysis

Whether the Complainant's request for records is a valid OPRA records request?

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.

⁵ N.J.S.A. 39:2-3.4 states that "[n]otwithstanding the provisions of [OPRA] or any other law to the contrary ... the Division of Motor Vehicles and any officer, employee or contractor thereof shall not knowingly disclose or otherwise make available to any person personal information about any individual obtained by the division in connection with a motor vehicle record." Personal information is defined in N.J.S.A. 39:2-3.3 as "an individual's photograph; social security number; driver identification number; name; address other than the five-digit zip code; telephone number; and medical or disability information." This statute does allow for a requestor to obtain their own personal records by providing identification and a written request form.

⁶ The Custodian attaches a copy of a form titled "Medical Information Request" that cites to N.J.S.A. 39-2-3.3 et seq. of DPPA.

OPRA also provides that:

“[a] request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian....If 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.” N.J.S.A. 47:1A-5.g.

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 further states that:

“[t]he Government Records Council shall ... receive, hear, review and adjudicate a complaint filed by any person concerning *a denial of access to a government record* by a records custodian...” (Emphasis added.) N.J.S.A. 47:1A-7.b.

N.J.S.A. 39:2-3.4 states that:

“[n]otwithstanding the provisions of [OPRA] or any other law to the contrary ... the Division of Motor Vehicles and any officer, employee or contractor thereof *shall not knowingly disclose or otherwise make available* to any person *personal information* about any individual obtained by the division in connection with a motor vehicle record.... [a] person *requesting a motor vehicle record including personal information* shall *produce proper identification and shall complete and submit a written request form provided by the director* for the division’s approval...” (Emphasis Added.) N.J.S.A. 39:2-3.4.

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, Assemblyman Gusciora asserts that the Complainant was denied access to an OPRA request by an employee of the MVC. However, the Custodian certifies that the Complainant has never submitted an OPRA request to the MVC. Additionally, the Complainant failed to provide any evidence that an OPRA request was ever submitted to the Custodian. The Custodian further certifies that although he

received requests from the Complainant on numerous occasions, none of those requests referenced OPRA, but rather were requests for MVC medical records pursuant to DPPA.

DPPA provides that a person requesting personal information (specifically, an individual's photograph, social security number, driver identification number, name, address other than the five-digit zip code, telephone number, and medical or disability information), must complete a form and provide identification.

The Custodian certifies that the only requests received by the MVC from the Complainant were those forms that were created for use under DPPA, which require a requestor to provide identification and the required form to obtain personal information.

Review of the OPRA statute and its legislative intent lead the Council to conclude that use of the request form is required for all requestors. The statute provides that the custodian "shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency." N.J.S.A. 47:1A-5.f. The statute specifically prescribes what must be on the form:

- (1) space for the name, address and phone number of the requestor and a brief description of the government record sought;
- (2) space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged;
- (3) specific directions and procedures for requesting a record;
- (4) a statement as to whether prepayment of fees for a deposit is required;
- (5) the time period in which the public agency is required by OPRA to make the record available;
- (6) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
- (7) space for the custodian to list reasons if a request is denied in whole or in part;
- (8) space for the requestor to sign and date the form;
- (9) space for the custodian to sign and date the form if the request is fulfilled or denied.

Id.

Although the statute does not expressly state that OPRA requests must be on the form adopted by the agency pursuant to N.J.S.A. 47:1A-5.f., principles of statutory construction show that the Legislature intended use of this form by all requestors to be mandatory. In interpreting a statute, it is axiomatic that "each part or section [of the statute] should be construed in connection with every other part or section so as to produce a harmonious whole." Matturi v. Bd. of Trustees of JRS, 173 N.J. 368, 383 (2002), quoting In re Passaic Cty. Utilities Auth., 164 N.J. 270, 300 (2000). In addition, a construction which renders statutory language meaningless must be avoided. Bergen Comm. Bank v. Sisler, 157 N.J. 188, 204 (1999). See also G.S. v. Dept. of Human Serv., 157 N.J. 161, 172 (1999). (a statute should be interpreted so as to give effect to all of its provisions, without rendering any language inoperative, superfluous, void, or insignificant).

As noted, N.J.S.A. 47:1A-5.f. requires that custodians adopt a request form, and sets forth a detailed list of what the form must contain. The next subsection of the statute provides:

If 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*. (Emphasis added.)
N.J.S.A. 47:1A-5.g.

The form to which N.J.S.A. 47:1A-5.g. refers is the form required by N.J.S.A. 47:1A-5.f. In providing, in §5.g., that the custodian “shall” sign and date the form, indicate the basis for denial on the form, and return the form to the requestor, the Legislature evidenced its clear intent that it is mandatory for the form to be used by requestors. *See Harvey v. Essex Cty. Bd. Of Freeholders*, 30 N.J. 381, 391-92 (1959) (the word “shall” in a statute is generally mandatory). The express requirement that the custodian use the request form in denying an OPRA request, construed together with the preceding statutory requirement that the custodian adopt a request form, demonstrates that the Legislature intended that this form would be used for all OPRA requests. If all requestors are not required to submit requests on the form prescribed by the statute, then the statutory provisions requiring the custodian to sign and date the form, and return it to the requestor, would be meaningless. Indeed, a custodian would be unable to fulfill these express requirements of N.J.S.A. 47:1A-5.g. if the requestor does not use the form in submitting his request.

Accordingly, nothing in OPRA suggests that some requestors may forgo using the official request form. In enacting the form requirement, the Legislature has expressed its policy that use of the form promotes clarity and efficiency in responding to OPRA requests, consistent with OPRA’s central purpose of making government records “readily accessible” to requestors. N.J.S.A. 47:1A-1.

The Appellate Division has indicated that the statute’s form requirement serves the additional purpose of prompting the legislative policy that a requestor must specifically describe identifiable records sought. *See Mag Entertainment LLC v. Div. of ABC*, 375 N.J. Super. 534, 546 (App. Div. 2005) (an open-ended request that fails to identify records with particularity is invalid). In *Bent v. Twp. of Stafford Police Dept.*, 381 N.J. Super. 30, 33 (App. Div. 2005), the Court held that the requestor’s general request for information violated this policy and was therefore invalid. In reaching this conclusion, the Court noted that OPRA mandates that the request form provide space for a “brief description” of the record request. *Id.* Similarly, in *Gannett New Jersey Partners L.P. v. County of Middlesex*, 379 N.J. Super. 205, 213 (App. Div. 2005), the Court specifically pointed to the same statutory request form requirement in determining that OPRA does not authorize requestors to make blanket requests for agency records.

In *Megargal v. NJ Department of Military and Veterans Affairs*, GRC Complaint No. 2007-250 (October 2007), the Custodian certified that she did not receive a records request from the Complainant. The GRC held that because the Custodian certified that

she did not receive an OPRA records request from the Complainant, the complaint was without a reasonable factual basis to pursue.

Similarly, in this complaint, the Custodian certifies that, although he received requests from the Complainant on numerous occasions, none of those requests referenced OPRA, but rather were requests for MVC medical records pursuant to DPPA. Additionally, because the Complainant has failed to refer to OPRA in any way or use the MVC official OPRA request form, the protections in OPRA have not been afforded pursuant to Advisory Opinion 2006-01 and Megargal, *supra*.

Accordingly, based on the language of the statute, as well as judicial recognition of the importance of the statutory request form, it is determined that the statute requires all requestors to submit OPRA requests on an agency's official OPRA records request form. OPRA's provisions come into play only where a request for records is submitted on an agency's official OPRA records request form.

The Complainant's multiple requests for medical records are requests for MVC records pursuant to DPPA's guidelines for obtaining personal information. The GRC's function, as set forth in N.J.S.A. 47:1A-7.b. does not afford the GRC the ability to regulate how Custodian's respond to requests for records made under other state statutes. Therefore, the process of requesting MVC records under DPPA does not fall under the authority of the GRC and is not governed by OPRA pursuant to N.J.S.A. 47:1A-7.b. See Richard G. Rader v. Township of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).

Therefore, because the Complainant's multiple records requests pursuant to DPPA were not valid OPRA requests, this complaint is without reasonable factual basis pursuant to N.J.S.A. 47:1A-5.f., N.J.S.A. 47:1A-5.g., Advisory Opinion 2006-01, and Megargal, *supra*.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The process of requesting Motor Vehicle Commission records under the Drivers' Privacy Protection Act does not fall under the authority of the GRC and is not governed by OPRA pursuant to N.J.S.A. 47:1A-7.b. See Richard G. Rader v. Township of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).
2. Because the Complainant's multiple records requests pursuant to Drivers' Privacy Protection Act were not valid OPRA requests, this complaint is without reasonable factual basis pursuant to N.J.S.A. 47:1A-5.f., N.J.S.A. 47:1A-5.g., Advisory Opinion 2006-01, and Megargal v. NJ Department of Military and Veterans Affairs, GRC Complaint No. 2007-250 (October 2007).

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

December 10, 2008