



## State of New Jersey

GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET

PO BOX 819

TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

LORI GRIFA  
*Commissioner*

### FINAL DECISION

#### March 29, 2011 Government Records Council Meeting

Robert Petrelli  
Complainant

Complaint No. 2010-13

v.

Branchburg Board of Education (Somerset)  
Custodian of Record

At the March 29, 2011 public meeting, the Government Records Council (“Council”) considered the March 22, 2011 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 that because the Complainant’s request fails to seek specific identifiable government records, it is overly broad and therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council’s decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Accordingly, the Custodian has not unlawfully denied the Complainant access to the requested records.

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 29<sup>th</sup> Day of March, 2011

Robin Berg Tabakin, Chair  
Government Records Council



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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: April 1, 2011**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 29, 2011 Council Meeting**

**Robert Petrelli<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-13**

v.

**Branchburg Board of Education (Somerset)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Any and all correspondence, including District and personal e-mail, text messages, etc., having the phrase “petrelli” or “Petrelli” or “BP” or “Temple” or “Sholom” (sic) or “TS.”

**Request Made:** September 17, 2009

**Response Made:** September 18, 2009

**Custodian:** Katherine Attwood, Business Administrator<sup>3</sup>

**GRC Complaint Filed:** January 15, 2010<sup>4</sup>

**Background**

**September 17, 2009**

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.

**September 18, 2009**

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the first (1<sup>st</sup>) business day following receipt of such request. The Custodian informs the Complainant that the Technology Department is searching the archived e-mails to locate the records responsive to the Complainant’s request. The Custodian further informs the Complainant that the search will take longer than the time allowed under OPRA for disclosure of the records and asks the Complainant for a five (5) calendar day extension of time in order to fulfill the Complainant’s request.

**September 18, 2009**

E-mail from the Complainant to the Custodian. The Complainant states that he approves an extension of time for the Custodian to fulfill the Complainant’s request.

---

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

<sup>2</sup> Represented by David B. Rubin, Esq. (Metuchen, NJ).

<sup>3</sup> Nicholas Puleio was the original Custodian and received/responded to the Complainant’s OPRA request.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

**September 23, 2009**

E-mail from the Custodian to the Complainant. The Custodian informs the Complainant that the Technology Department was successful in retrieving the archived e-mails that may be responsive to the Complainant's request. The Custodian asks the Complainant if he can visit the Custodian to view the records and select those records that the Complainant wants to copy.

**October 9, 2009**

E-mail from the Custodian to the Complainant. The Custodian informs the Complainant that Technology Department personnel will be available on October 12, 2009.

**January 15, 2010**

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

- Copy of e-mail from Walter Oberwanowicz to Lisa Graber dated March 11, 2009
- Complainant's OPRA request dated September 17, 2009

The Complainant states that he provided his OPRA request to the Custodian on September 17, 2009 but never received a written response from the Custodian to his request.

The Complainant further states that the Custodian disclosed some District e-mails in response to his request; however, the Complainant asserts that a school administrator directed members of the public to contact school board members via their personal e-mail accounts. The Complainant alleges that the school administrator issued the directive to circumvent OPRA. The Complainant attaches a copy of an e-mail which he relies upon to support his position.

The Complainant does not agree to mediate this complaint.

**February 3, 2010**

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

**February 3, 2010**

Telephone call from the Custodian's Counsel to the GRC. The Custodian's Counsel requests an extension of time to February 25, 2010 for the Custodian to complete and return the SOI.

**February 5, 2010**

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension of time to February 25, 2010 to complete and return the SOI.

**February 24, 2010**

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated September 17, 2009
- Custodian's response to the OPRA request dated September 18, 2009
- E-mail from the Custodian to the Complainant dated September 23, 2009
- E-mail from the Custodian to the Complainant dated October 9, 2009

The Custodian certifies that the search for the requested records involved personnel from the Information Technology Department searching all e-mails on the District's system that contain the words "petrelli" or "Petrelli" or "BP" or "Temple" or "Sholom" or "TS." The e-mails matching said criteria were retrieved and saved into an e-mail folder that could subsequently be accessed with a specified username and password.

The Custodian also certifies that the last date upon which records that may have been responsive to the request could have been destroyed was September 17, 2006 for general correspondence and September 17, 2008 for internal correspondence in accordance with Records Destruction Schedule M700101-99 established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that the Complainant's OPRA request was received on September 17, 2009 and that the Custodian responded to the request in writing on September 23, 2009.<sup>5</sup>

The Custodian also certifies that a website link was disclosed to the Complainant that provided the Complainant with access to over 4,500 e-mails that were responsive to the Complainant's request. The Custodian further certifies that no records were redacted or deleted; however, the Custodian certifies that she did not know if any records were sent from a non-District owned computer.

### **February 26, 2010**

E-mail from the GRC to the Complainant. The GRC informs the Complainant that the GRC has received the Custodian's SOI. The GRC also informs the Complainant that the Custodian certified that over 4,500 e-mails were determined to be responsive to the Complainant's request and that all of said e-mails were disclosed to the Complainant. The GRC informs the Complainant that it is unclear to the GRC precisely which records the Complainant was denied and in order to adjudicate the complaint the GRC requires clarification of the records that the Complainant was actually denied. The GRC further informs the Complainant that he must list such records with specificity because OPRA requires that a complainant specifically identify the requested records.

### **February 26, 2010**

E-mail from the Complainant to the GRC. The Complainant states that he believes his record request was clear regarding which records he requested. The Complainant refers the GRC to page 4 of his complaint where he requested:

---

<sup>5</sup>Although a written response on September 23, 2009 would have been timely pursuant to OPRA, the evidence of record reveals that the Custodian actually responded to the Complainant in writing on September 18, 2009.

“Any and all correspondence, including District and personal e-mail, text messages, etc., having the phrase ‘petrelli’ or ‘Petrelli’ or ‘BP’ or ‘Temple’ or ‘Sholom’ (sic) or ‘TS.’”

The Complainant further states that no e-mails sent from an administrator’s non-District provided e-mail account have been provided to him by the Custodian. The Complainant states that the Custodian certified in her SOI that she did not know if any records were sent from non-District owned computers; however, the Complainant states that such certification by the Custodian is incorrect because the Complainant knows such e-mails were previously generated between Mr. Puleio and Mr. Ruben. The Complainant requests that the GRC direct that all personal e-mail accounts of the school board administrators be forwarded to the GRC and that the GRC secure all school board administrators’ work computers so that a comparison can be made between those computers and the District’s server for e-mail deletions.

**February 26, 2010**

E-mail from the Custodian’s Counsel to the GRC. Counsel informs the GRC that Mr. Puleio is no longer the Custodian and refers the GRC to Mr. Puleio’s replacement, Ms. Attwood.

**February 26, 2010**

E-mail from the GRC to the Custodian’s Counsel. The GRC informs Counsel that Ms. Attwood listed Mr. Puleio as the Custodian in her SOI. For this reason, the GRC informs Counsel that it needs either another certification from Ms. Attwood naming her as the Custodian or an amended SOI reflecting the change.

**March 1, 2010<sup>6</sup>**

Custodian’s amended SOI with the following attachments:

- Complainant’s OPRA request dated September 17, 2009
- Custodian’s response to the OPRA request dated September 18, 2009
- E-mail from the Custodian to the Complainant dated September 23, 2009
- E-mail from the Custodian to the Complainant dated October 9, 2009

The Custodian amends her SOI to change the present Custodian from Nicolas Puleio to Katherine Attwood. The Custodian also certifies that Mr. Puleio was the previous custodian and served in such capacity at the time the Complainant’s request was filed and a written response to the request was sent to the Complainant. The Custodian further certifies that Mr. Puleio informed her that he caused a search to be made of the e-mails to locate records that were responsive to the Complainant’s request and that no located records were redacted or deleted. The Custodian further certifies that Mr. Puleio informed her that he did not know if any records were sent from a non-District owned computer.

---

<sup>6</sup> Additional correspondence was submitted by the parties. However, said correspondence is either not relevant to this complaint or restates the facts/assertions already presented to the GRC.

The Custodian certifies that she reviewed the Complainant's request and conferred with the staff member responsible for information technology and that she is satisfied that the archiving system in place at the time of the Complainant's request could not uncover blind copies of e-mails in all circumstances.

### 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.

Although the Complainant asserts that the Custodian never responded to the Complainant's OPRA request, the evidence of record reveals that the Custodian did in fact respond to the Complainant's request in writing on September 18, 2009, which was the first (1<sup>st</sup>) business day after the request was received by the Custodian, and that the Complainant acknowledged said response on that same date.

The Custodian certified that a search was conducted and over 4,500 e-mails that were determined to be responsive to the Complainant's request were disclosed to the Complainant via a website link. The Custodian also certified that he did not know if any records were sent from a non-District owned computer. Although the Custodian disclosed several thousand records to the Complainant, the Custodian need not have done

so because the Complainant's request was overly broad and therefore not a valid request under OPRA.

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.

In determining that MAG Entertainment's request for "all documents or records" from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that:

"[m]ost significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." *Id.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>7</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>8</sup>

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..." 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

---

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

<sup>8</sup> As stated in Bent, *supra*.



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 (February 2009) the Council held that “[b]ecause the Complainant’s OPRA requests # 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).”

This matter is substantially different from the facts presented in Burnett v. County of Gloucester, 415 N.J.Super. 506 (App. Div. 2010). In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” *Id.* at 508. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. *Id.* at 515-16.

Here, the Complainant requested “[a]ny and all correspondence, including District and personal e-mail, text messages, etc...” for six (6) different keywords. Although the Complainant designated e-mails and text messages, he also requested other unspecified correspondence. The Complainant did not provide a date or dates for any of the correspondence he was seeking; he did not even provide a time frame during which the correspondence was generated. This type of request would require the Custodian to check virtually all of the correspondence ever made, maintained, kept on file or received in the municipality. In particular, it would not be uncommon for municipal correspondence to contain the word “Temple,” especially if the municipality had a Masonic lodge or synagogue(s) within its borders. As such, researching such records would be a daunting task for the Custodian and one that the Custodian is not required to perform.

Accordingly, because the Complainant’s request fails to seek specific identifiable government records, it is overly broad and therefore invalid under OPRA pursuant to MAG, *supra*, Bent, *supra*, New Jersey Builders, *supra*, and the Council’s decision in Schuler, *supra*. Accordingly, the Custodian has not unlawfully denied the Complainant access to the requested records.

Although here the request was broad and unclear and therefore was not a valid OPRA request, had the request been valid the Custodian would have had an obligation to ask all indicated school board officials for those specifically identified government records which were made, maintained or filed on the officials’ personal computer storage systems. *See* Meyers v. Borough of Fairlawn, GRC Complaint No. 2005-127 (May 2006), which provided that “...to the extent that records fall within the definition of

'government records' under OPRA and are maintained in [a government official's] personal e-mail account but have not been disclosed to the Complainant, these records should be released in accordance with the OPRA."

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant's request fails to seek specific identifiable government records, it is overly broad and therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Accordingly, the Custodian has not unlawfully denied the Complainant access to the requested records.

Prepared By: John E. Stewart, Esq.  
Mediator

Approved By: Catherine Starghill, Esq.  
Executive Director

March 22, 2011