



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

May 24, 2011 Government Records Council Meeting

Robert Henderson
Complainant

Complaint No. 2010-139

v.

New Jersey Department of Law and Public Safety,
Division of Alcoholic Beverage Control
Custodian of Record

At the May 24, 2011 public meeting, the Government Records Council (“Council”) considered the April 20, 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:

1. Because the Complainant’s request for all records related to the investigation of Café Imperial in Bound Brook, New Jersey and its owner Rafael Rosario is overly broad and fails to identify specific government records sought, the Complainant’s request is invalid under OPRA. 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 of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
2. The requested records pertain to an ongoing investigation conducted by the Alcoholic Beverage Control, and disclosure of such records would be inimical to the public interest because such disclosure would jeopardize the state agency’s ability to conduct such investigation, thus, the Custodian lawfully denied access to such records pursuant to N.J.S.A. 47:1A-3.a.; N.J.S.A. 47:1A-6.
3. Because the Complainant seeks records that were received from the Somerset County Prosecutor’s Office as part of a criminal investigation, said records responsive are criminal investigatory records. Thus, the Custodian did not unlawfully deny access to the requested records pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-6 and Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

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 24th Day of May, 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: June 3, 2011

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 24, 2011 Council Meeting**

**Robert Henderson¹
Complainant**

GRC Complaint No. 2010-139

v.

**New Jersey Department of Law and Public Safety,
Division of Alcoholic Beverage Control²
Custodian of Records**

Records Relevant to Complaint: Copies of all records related to the investigation of Café Imperial in Bound Brook, New Jersey and its owner Rafael Rosario.

Request Made: June 18, 2010

Response Made: June 29, 2010

Custodian: Deborah Leckie

GRC Complaint Filed: July 7, 2010³

Background

June 18, 2010

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.

June 29, 2010

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 the cost for the violation search is \$1.50. Furthermore, the Custodian states that access to the requested records is denied because of the ongoing investigation of this licensee.

July 7, 2010

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

- Complainant's OPRA request dated June 18, 2010
- Letter from the Custodian to the Complainant dated June 29, 2010

¹ No legal representation listed on record.

² Represented by DAG Andrew Sapolnick, on behalf of the NJ Attorney General.

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

The Complainant states that he filed an OPRA request on June 18, 2010 to the ABC seeking all records relevant to this complaint. The Complainant further states that the Custodian responded in writing to the OPRA request on June 19, 2010. The Complainant states that the Custodian denied access to the requested records because of a pending investigation. The Complainant states that there is no pending investigation. Furthermore, the Complainant states that the investigation resulted in criminal charges being filed and the requested records should therefore be open to public access. The Complainant also states that the criminal charges are now entering the sixth (6th) year with no adjudication and all information related to these charges was put into the public domain when the charges were filed. Lastly, the Complainant asserts that the investigation has been completed and the records are part of public domain.

The Complainant agrees to mediate this complaint.

July 22, 2010

Offer of Mediation sent to the Custodian.

July 26, 2010

E-mail from the Custodian to the GRC. The Custodian requests a five (5) business day extension to respond to the offer of mediation.

July 26, 2010

E-mail from the GRC to the Custodian. The GRC grants the Custodian a five (5) business day extension to respond to the offer of mediation.

July 29, 2010

The Custodian agrees to mediate this complaint.⁴

December 15, 2010

The complaint is referred back to the GRC for adjudication.

December 16, 2010

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

December 22, 2010

Telephone call from David Bregenzer (“Mr. Bregenzer”), Assistant Attorney General, to the GRC. Mr. Bregenzer requests an extension to January 7, 2011 complete the SOI.

December 22, 2010

E-mail from Mr. Bregenzer to the GRC. Mr. Bregenzer confirms a telephone conversation with the GRC granting the Custodian an extension to January 7, 2011 to complete the SOI.

January 7, 2011

Custodian’s SOI with the following attachments:

⁴ The complaint was referred to mediation by the GRC on this date.
Robert Henderson v. New Jersey Department of Law and Public Safety, Division of Alcoholic Beverage Control, 2010-139 –
Findings and Recommendations of the Executive Director

- Complainant's OPRA request dated June 18, 2010
- Letter from the Custodian to the Complainant dated June 29, 2010

The Custodian provided the following document index:

List of all records responsive to Complainant's OPRA request.	List the records retention and disposition schedule for each record responsive.	List of all records provided to the Complainant in their entirety or with redactions.	If records were disclosed with redactions give a general nature description of the redactions	If records were denied in their entirety, give a general nature description of the record.	List the legal explanation and statutory citation for the denial of access to records in their entirety or with redactions.
Documents received from Somerset County Prosecutor's Office (Includes copies of criminal complaints filed in <u>State v. Henderson</u> and <u>State v. Rosario</u> , Affidavit of probable cause for Issuance of Arrest Warrant, October 19, 2004 and February 23, 2005 with copy of indictment, transcript of telephone calls between ABC and investigator	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.

and Bound Brook Police Department, (not 911 record), News Release from County Prosecutor's Office					
ABC November 15, 2004 Investigation Report	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
Somerset County Prosecutor's Office Request for Discovery dated 9/7/05 with attached letter from David W. Fassett, Esq.	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
Memo dated September 9, 2005 responding to 9/7/05 Request	Documents are part of open investigation, there is no schedule to destroy said	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal

	documents.				investigation/ exemption from disclosure of records from an open investigation of a public agency.
Evidence Voucher of Financial Records Seized	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
Evidence Voucher of Employee List Seized	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
Inquiry of Violation of History of License No. 1804-32-022	Information recorded on computer database	Not provided	N/A	N/A	Complainant advised printout to be provided upon payment of fee.

Café Imperial Employee List	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
Correspondence from Prosecutor's Office of Victim-Witness Advocacy and Division dated 6/23/10	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
License Transfer application for License No. 180-432-022-004 dated 6/8/04	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.

Correspondence from Steven Lieberman to ABC Investigator re: ABC request for records dated 11/4/04	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
Corporate ownership and officers of License No. 1804-32-022-004	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
Letter dated 3/15/04 from J. Wesley Geiselman, Esq. to Somerset Prosecutor Wayne Forrest re: Police Officer Employment with ABC handbook attachment	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.

Supplementary investigation report dated 10/21/04 from Prosecutor's Office.	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
Subpoena Duces Tecum dated 5/10/06 received by Division in <u>State v. Henderson</u>	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
Subpoena ad Testificandum dated 7/19/10 issued from ABC to Kenneth Henderson	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.

Subpoena ad Testificandum dated 7/19/10 issued to Rafael Rosario	Documents are part of open investigation, there is no schedule to destroy said documents.	Not provided	N/A	See Column A	<u>N.J.S.A.</u> 47:1A-3 - exemption from disclosure of records of a criminal investigation/ exemption from disclosure of records from an open investigation of a public agency.
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The Custodian certifies that her search for the requested records included making inquiries with relevant investigative and legal staff as to the existence and location of all records responsive to this request. The Custodian also certifies that she is not aware of any records being destroyed that would have been responsive to this request.

The Custodian argues that the GRC should uphold the ABC’s decision to deny the Complainant’s OPRA request. The Custodian certifies that the Complainant requested “all records pertaining to any ABC investigation of the Café Imperial in Bound Brook, NJ and its owner Rafael Rosario.” The Custodian argues that OPRA requires a party requesting access to a public record to specifically describe the record sought pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005). The Custodian argues that OPRA does not allow a party to make a general request for every record a public agency has in its possession, but rather a requestor must specify with reasonable clarity the records sought from the agency. The Custodian further argues that the Complainant has made a blanket request for all records pertaining to any investigation of both Café Imperial and its shareholder, Rafael Rosario. The Custodian asserts that the Complainant’s request is overly broad as to time and content and could be denied on this basis alone.

The Custodian further argues that she properly denied the request as the Complainant sought records that were part of an active investigation by the ABC and the requested records were also part of a criminal prosecution investigation pursuant to N.J.S.A. 47:1A-3.

In addition, the Custodian argues that the Complainant seeks records that ABC received from the Somerset County Prosecutor’s Office as part of a criminal investigation and prosecution. Furthermore, the Custodian argues that any request for those records should be submitted to the Somerset County Prosecutor’s Office to determine if disclosure is warranted. The Custodian also certifies that ABC’s administrative investigation of the license is on hold pending resolution of the criminal proceeding. The Custodian asserts that contrary to the Complainant’s position, the matter is presently

active and cannot effectively proceed until the criminal proceeding has concluded, thus the ABC has an interest in preserving the confidentiality and control over its own ongoing investigation.

The Custodian argues that that she should not be required to produce any records that would publicly identify the existence or non-existence of an ongoing investigation. The Custodian asserts that the ABC has an interest in confidentiality as to whether an investigation of a particular license is in progress because disclosure could jeopardize the ABC's ability to function if anyone, particularly the subject of an investigation, could learn of the ABC's investigation and receive access to what materials it possesses. Lastly, the Custodian certifies that the ABC has within its discretion deferred active investigation of this matter until resolution of the pending criminal matter to avoid any potential conflict or impact on that proceeding.

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 ..." *Criminal investigatory record*" means a record *which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.*" (Emphasis added.) N.J.S.A. 47:1A1.1.

OPRA also provides in pertinent part that:

"...where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in [OPRA] may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest[.]" N.J.S.A. 47:1A-3.a.

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.

The evidence of record indicates that the Complainant filed an OPRA request for copies of all records related to the investigation of Café Imperial in Bound Brook, New Jersey and its owner Rafael Rosario on June 18, 2010. The evidence of record further indicates that the Custodian denied access to the requested records within the seven (7) business days because of the ongoing investigation regarding this matter. The Complainant states that the investigation resulted in criminal charges being filed and therefore the records should be open to public access. The Custodian, however, asserts that the Complainant’s request is broad and unclear. Additionally, the Complainant argues that the requested records are exempt from disclosure because they were part of a criminal prosecution investigation.

The GRC will first address the issue of whether the Complainant’s request is valid under OPRA.

In the instant complaint, the Complainant’s OPRA request for all records related to the investigation of Café Imperial in Bound Brook, New Jersey and its owner Rafael Rosario fails to identify specific government records sought. The Complainant’s request does not state with reasonable clarity which specific records he is seeking; rather, the Complainant made a blanket request for all records relevant to said investigation.

The Complainant’s request is invalid 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),⁵ 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.”⁶

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 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).”

Therefore, because the Complainant’s request for all records related to the investigation of Café Imperial in Bound Brook, New Jersey and its owner Rafael Rosario is overly broad and fails to identify specific government records sought, the Complainant’s request is invalid under OPRA. 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 of Affordable Housing, 390 N.J. Super. 166 (App.

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

⁶ As stated in Bent, *supra*.

Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Although the Complainant's OPRA request is invalid under OPRA, the Custodian did identify records responsive to the Complainant's OPRA request in the Custodian's Document Index of the SOI. The Custodian argues that the responsive records are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-3.a. as records of an ongoing investigation.

OPRA provides that access may be denied to government records that pertain to an investigation in progress by any public agency where disclosure is inimical to the public interest. N.J.S.A. 47:1A-3.a.

In the instant complaint, the Custodian certified in the SOI that the records responsive to the Complainant's OPRA request are part of an open and ongoing investigation. The Custodian also certified in the SOI that the administrative investigation of this license is on hold pending resolution of the criminal proceedings. However, the Complainant asserts that the investigation is closed and resulted in criminal charges being filed. Furthermore, the Complainant asserts that the criminal charges are entering its sixth (6th) year with no adjudication. The Complainant's assertions, however, do not rise to the level of competent, credible evidence sufficient to overcome the Custodian's certification. Indeed, in making such assertions, the Complainant admits that the criminal charges have not yet been concluded.

Therefore, the requested records pertain to an ongoing investigation conducted by the ABC, and disclosure of such records would be inimical to the public interest because such disclosure would jeopardize the state agency's ability to conduct such investigation, thus, the Custodian lawfully denied access to such records pursuant to N.J.S.A. 47:1A-3.a.; N.J.S.A. 47:1A-6.

The Custodian also asserts that the responsive records are exempt from disclosure under OPRA as criminal investigatory records.

OPRA exempts criminal investigatory records from the definition of government records subject to disclosure. N.J.S.A. 47:1A-1.1.

The status of records purported to fall under the criminal investigatory records exemption pursuant to N.J.S.A. 47:1A-1.1 was examined by the GRC in Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), affirmed in an unpublished opinion of the Appellate Division of the New Jersey Superior Court in May 2004. The Council found that under OPRA, "criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed".

In the instant complaint, the Custodian argues that the Complainant seeks records responsive that were received from the Somerset County Prosecutor's Office. Additionally, the Custodian certifies in his SOI that the Somerset County Prosecutor's

Office is conducting its own criminal investigation. The Custodian also certifies that ABC's ongoing investigation of the relevant license is currently on hold pending the resolution of the criminal proceeding.

Therefore, because the Complainant seeks records that were received from the Somerset County Prosecutor's Office as part of a criminal investigation, said records responsive are criminal investigatory records. Thus, the Custodian did not unlawfully deny access to the requested records pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-6 and Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant's request for all records related to the investigation of Café Imperial in Bound Brook, New Jersey and its owner Rafael Rosario is overly broad and fails to identify specific government records sought, the Complainant's request is invalid under OPRA. 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 of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
2. The requested records pertain to an ongoing investigation conducted by the Alcoholic Beverage Control, and disclosure of such records would be inimical to the public interest because such disclosure would jeopardize the state agency's ability to conduct such investigation, thus, the Custodian lawfully denied access to such records pursuant to N.J.S.A. 47:1A-3.a.; N.J.S.A. 47:1A-6.
3. Because the Complainant seeks records that were received from the Somerset County Prosecutor's Office as part of a criminal investigation, said records responsive are criminal investigatory records. Thus, the Custodian did not unlawfully deny access to the requested records pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-6 and Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

Prepared By: Harlynn A. Lack, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

April 20, 2011