



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**August 28, 2012 Government Records Council Meeting**

Vesselin Dittrich  
Complainant

Complaint No. 2011-68

v.

Township of Weehawkin (Hudson)  
Custodian of Record

At the August 28, 2012 public meeting, the Government Records Council (“Council”) considered the August 21, 2012 *Reconsideration* 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 Council’s June 26, 2012 Final Decision 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 determining that the Complainant’s request was invalid, and failed to submit any evidence proving that his request was not broad and unclear. 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 28<sup>th</sup> Day of August, 2012

Robin Berg Tabakin, Chair  
Government Records Council



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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: September 5, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***Reconsideration***  
**Supplemental Findings and Recommendations of the Executive Director**  
**August 28, 2012 Council Meeting**

**Vesselin Dittrich<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2011-68**

v.

**Township of Weehawken (Hudson)<sup>2</sup>**  
**Custodian of Records**

**Records Relevant to Complaint:** Copy of the list of property owners to whom Mr. Jorge Chemas (“Mr. Chemas”), Secretary of the Rent Leveling Board, sent letters regarding registration with the Rent Control Board (“RCB”).

**Request Made:** December 13, 2010

**Response Made:** December 20, 2010

**Custodian:** Rola Dahboul

**GRC Complaint Filed:** March 14, 2011<sup>3</sup>

**Background**

**June 26, 2012**

Government Records Council’s (“Council”) Interim Order. At its June 26, 2012 public meeting, the Council considered the June 19, 2012 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, found that:

“... the totality of the competent, credible evidence in the case herein supports a conclusion that the Complainant failed to “submit the request with information that is essential to permit the custodian to comply with its obligations.” New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 177 (App. Div. 2007). Therefore, the Complainant’s OPRA request is invalid under OPRA because it failed to identify an applicable time frame and further failed to specifically identify the record the Complainant sought 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); NJ Builders, *supra*; Schuler v.

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

<sup>2</sup> Represented by Joseph A Rutigliano, Esq. (Weehawken, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).”

**June 27, 2012**

Council’s Final Decision distributed to the parties.

**July 8, 2012<sup>4</sup>**

Complainant’s request for reconsideration with no attachments. The Complainant requests that the Council reconsider its June 26, 2012 Final Decision based on a mistake.

The Complainant states that reconsideration is reserved for 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 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.” 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). The Complainant contends that it is obvious that the GRC did not consider, or failed to appreciate, the significance of probative, competent evidence. *See* Fusco v. Bd. Of Education of City of Newark, 349 N.J. Super. 455 (App. Div. 2002), *cert. denied* 174 N.J. 544 (2002).

The Complainant states that in the Custodian’s Statement of Information, the Custodian stated that the Complainant was “alluding” in his March 10, 2011 letter to the violators of the rent control filing requirements. The Complainant contends that this is evidence that the Custodian knew his March 10, 2011 submission referred to the responsive 2011 records; however, the Custodian still denied access to same. The Complainant thus contends that the GRC’s determination that the Complainant “... failed to identify an applicable time frame and further failed to specifically identify the record the Complainant sought ...” is palpably incorrect and fails to appreciate the significance of probative, competent evidence.

The Complainant contends that by the same logic, the Custodian knew the request at issue herein sought records for 2010, but denied access to same. The Complainant asserts that this fact is clear from the Custodian Counsel’s August 24, 2011 letter where he talks about several pertinent dates without including a year; i.e. “Complainant’s August 24<sup>th</sup> response is ...” and “[a]ll of the letters referenced herein were included as part of complainant’s March 10 complaint.” The Complainant notes that it is clear that Counsel was referring to 2011 dates even though he did not explicitly identify them as such.

The Complainant contends that by accepting the Custodian’s submissions without reference to the year while invalidating the Complainant’s request for the same reason,

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<sup>4</sup> July 8, 2012 was a Sunday. The GRC received the Complainant’s request for reconsideration on July 9, 2012.

the GRC acted arbitrary and capricious and in a prejudice manner against the Complainant. The Complainant thus requests that the GRC reverse its holding.

### **July 12, 2012**

Custodian's objections to the request for reconsideration with no attachments. On behalf of the Custodian, the Custodian's Counsel asserts that the Township of Weehawken ("Township") has no intention of rearguing this complaint.

Counsel asserts that the GRC reviewed all submissions and made extensive references to each in its Final Decision. Counsel asserts that the GRC then made a determination based upon the totality of the circumstances: the Complainant's request was invalid because it failed to identify an applicable time frame and further failed to identify the record sought. *See* MAG, *supra*; Bent, *supra*; NJ Builders, *supra*; Schuler, *supra*.

Counsel contends that there is no disputing that the Complainant failed to identify the applicable timeframe and record sought. Counsel states that the Complainant has now attempted to equate the Township's failure to refer to the year (2011) regarding various submissions to his own failure to include a time frame in the relevant OPRA request. Counsel contends that the Complainant is essentially arguing that the Township's failure in its August 24, 2011 letter to refer to the year 2011 renders the Complainant's request sufficient under the law. Counsel contends that the Complainant's assertion is in error because the Township was under no legal obligation to refer to a specific year in its brief. Additionally, Counsel argues that the date references were obvious because they referred to submissions made by the parties in this complaint and were not made in connection with an OPRA request.

Counsel contends that the Complainant's request was invalid for the reasons set forth by both the Township and the Council's Final Decision. Counsel states that the Township thus objects to any reconsideration of this matter.

### **Analysis**

#### **Whether the Complainant has met the required standard for reconsideration of the Council's June 26, 2012 Final Decision?**

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)*.

In the matter before the Council, the Complainant filed the request for reconsideration of the Council's Final Decision dated June 26, 2012 on July 9, 2012, seven (7) days from the issuance of the Council's Order.

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 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 argued that it was clear he was referring to 2010 records in his original OPRA request; however, he states that it was also clear that he was referring to 2011 records in his March 10, 2011 letter. The Complainant further argued that because Counsel failed to reference the year of submissions in his August 24, 2011 letter to the GRC, the Council acted arbitrarily and capriciously and in a prejudiced manner against the Complainant.

Counsel submitted an objection to the Complainant’s request for reconsideration, arguing that the GRC clearly referred to all submissions and made its determination based on the totality of same. Counsel further argued that the Township’s omission of the year in date entries is wholly different from the Complainant’s failure to specify a time frame for records sought in his OPRA request. Counsel thus urged that the GRC not reconsider this complaint.

The Council first notes that the Complainant submitted the request at issue herein to the Custodian on December 13, 2010. The Custodian responded to said request, providing access to a record on December 20, 2010. The Complainant then argued that the record provided was not the record he requested. Thus, the Council was tasked with determining whether the Custodian unlawfully denied access to the record sought in the Complainant’s December 13, 2010 OPRA request. Based on the evidence and submissions of the parties, the GRC determined that the Complainant’s request failed to identify the specific record sought. Moreover, the Council noted that the Complainant’s argument regarding which records were responsive included a significant time discrepancy: the Complainant initially asserted that it was “obvious” he was seeking 2010 records, then asserted it was “obvious” he was now seeking 2011 records.

The Complainant’s request for reconsideration further establishes that the request is deficient. The Complainant again argued, as he did in his August 25, 2011 letter, that

his March 10, 2011 letter proves that he sought a list of violators of the rent-control ordinance for 2011. The evidence of record, however, indicates that the Complainant submitted the OPRA request at issue herein in December 2010 and such request did not include any reference to violations or violators. The Custodian provided to the Complainant a record she thought to be responsive; however, the Complainant argued that it was not. The ensuing complaint has only proven that the Complainant's December 13, 2010 request did not provide a sufficient description that would have allowed the Custodian to locate and provide the actual record the Complainant was seeking. *See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 546 (App. Div. 2005) (“*OPRA simply operates to make identifiable government records ‘readily accessible ...’*”) and *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 37 (App. Div. 2005) (“... a proper request under OPRA must identify with reasonable clarity those documents that are desired ...”). Thus, the Council determined that the preponderance of the evidence indicated that the Complainant's request was invalid under OPRA due to the failure to specifically identify the records or time period sought. The Complainant has failed to provide any competent, credible evidence to the contrary; thus, the Complainant's request for reconsideration is declined.

The Council further notes that the Complainant's other argument, that the Custodian's Counsel did not identify the year of correspondence submitted as part of this complaint, is irrelevant. As noted by Counsel, the requirement of identifying a specific identifiable government record including the time frame falls on a requestor when submitting an OPRA request. The Complainant's argument that Counsel had the same obligation when referring to submissions sent to the GRC as part of this complaint is erroneous and does not rise to the level of competent, credible evidence that the Council's decision was either arbitrary or capricious.

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 determining that the Complainant's request was invalid. *See D'Atria, supra*. Notably, the Complainant's request for reconsideration further adds to the evidence that the Complainant did not clearly articulate the actual records sought. Further, the Complainant failed to present any evidence that was not available at the time of the Council's adjudication that would change the substance of the Council's decision.

Therefore, because the Complainant has failed to establish in his request for reconsideration of the Council's June 26, 2012 Final Decision 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 determining that the Complainant's request was invalid, and failed to submit any evidence proving that his request was not broad and unclear. Thus, the Complainant's request for reconsideration is denied. *Cummings, supra; D'Atria, supra; Comcast, supra*.

### **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 Council's June 26, 2012 Final Decision 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 determining that the Complainant's request was invalid, and failed to submit any evidence proving that his request was not broad and unclear. 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: Frank F. Caruso  
Senior Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

August 21, 2012





State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

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Commissioner

**FINAL DECISION**

**June 26, 2012 Government Records Council Meeting**

Vesselin Dittrich  
Complainant

Complaint No. 2011-68

v.

Township of Weehawken (Hudson)  
Custodian of Record

At the June 26, 2012 public meeting, the Government Records Council (“Council”) considered the June 19, 2012 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 the totality of the competent, credible evidence in the case herein supports a conclusion that the Complainant failed to “submit the request with information that is essential to permit the custodian to comply with its obligations.” New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 177 (App. Div. 2007). Therefore, the Complainant’s OPRA request is invalid under OPRA because it failed to identify an applicable time frame and further failed to specifically identify the record the Complainant sought 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); NJ Builders, *supra*; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (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 26<sup>th</sup> Day of June, 2012

Steven F. Ritardi, Esq., Acting Chair  
Government Records Council



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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: June 27, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 26, 2012 Council Meeting**

**Vesselin Dittrich<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-68**

v.

**Township of Weehawken (Hudson)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copy of the list of property owners to whom Mr. Jorge Chemas (“Mr. Chemas”), Secretary of the Rent Leveling Board, sent letters regarding registration with the Rent Control Board (“RCB”).

**Request Made:** December 13, 2010

**Response Made:** December 20, 2010

**Custodian:** Rola Dahboul

**GRC Complaint Filed:** March 14, 2011<sup>3</sup>

**Background**

**December 13, 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.

**December 20, 2010**

Custodian’s response to the OPRA request. The Custodian responds in writing via letter to the Complainant’s OPRA request on the fifth (5<sup>th</sup>) business day following receipt of such request. The Custodian states that the responsive records, totaling eight (8) pages, are available for pickup. The Custodian states that the copying cost associated with the responsive records is \$0.40.

**February 14, 2011**

Letter from the Complainant to the Custodian. The Complainant states that pursuant to an earlier telephone conversation, the Custodian has not provided him with the records responsive to his OPRA request. The Complainant states that he is seeking the list of property owners that Mr. Chemas used to send form letters regarding registration with the RCB. The Complainant states that Mr. Chemas sent these letters because the property owners had not registered with the RCB and were in violation of the applicable ordinance.

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

<sup>2</sup> Represented by Joseph A Rutigliano, Esq. (Weehawken, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

The Complainant states that he received a list of property owners already registered with the RCB; thus, said list is not responsive to his OPRA request. The Complainant requests that, in addition to providing the actual record responsive via facsimile, the Custodian also send the title or cover page for the list that the Custodian previously provided.

### **February 24, 2011**

Letter from the Custodian to the Complainant. The Custodian states that she is in receipt of the Complainant's February 14, 2011 letter. The Custodian states that the Complainant's OPRA request is unclear as to the records he seeks. The Custodian states that the Township properly satisfied the Complainant's OPRA request.

The Custodian requests that the Complainant submit a new OPRA request so that the Township may comply accordingly.

### **March 10, 2011**

Letter from the Complainant to the Custodian. The Complainant states that he submitted an OPRA request for the list of property owners to whom Mr. Chemas sent form letters regarding registration with the RCB. The Complainant states that the Custodian provided him with a list that was not responsive to his OPRA request. The Complainant states that he notified the Custodian of this fact on February 14, 2011.

The Complainant states that Mr. Chemas confirmed that he keeps a list of property owners who are required to register with the RCB but have not done so. The Complainant further states that Mr. Chemas set deadlines for registration in January.<sup>4</sup> The Complainant states that the Custodian verbally advised him on February 14, 2011 that the Complainant's OPRA request was unclear. The Complainant states that the Custodian was supposed to send a letter requesting clarification; however, the Complainant never received this letter. The Complainant states that he is filing a Denial of Access Complaint.

### **March 14, 2011**

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

- Complainant's OPRA request dated December 13, 2010.
- Letter from the Custodian to the Complainant dated December 20, 2010.
- List of Township of Weehawken ("Township") properties (1 page).
- Letter from the Complainant to the Custodian dated February 14, 2011.
- Letter from the Complainant to the Custodian dated March 10, 2011.

The Complainant states that he submitted an OPRA request to the Township of Weehawken ("Township") on December 13, 2010. The Complainant states that the Custodian responded in writing on December 20, 2010 providing access to a list that was not responsive to the Complainant's OPRA request. The Complainant states that he advised the Custodian of this fact in a letter to the Custodian on February 14, 2011. The

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<sup>4</sup> The Complainant does not identify the year in which Mr. Chemas set the deadline.  
Vesselin Dittrich v. Township of Weehawken (Hudson), 2011-68 – Findings and Recommendations of the Executive Director

Complainant states that he received no follow-up correspondence from the Custodian and thus informed the Custodian on March 10, 2011 that he was filing a Denial of Access Complaint with the GRC.

**April 15, 2011**

Offer of Mediation sent to both parties.

**April 15, 2011**

The Complainant agrees to mediate this complaint.<sup>5</sup>

**May 17, 2011**

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

**May 24, 2011**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated December 13, 2010.
- Letter from the Custodian to the Complainant dated December 20, 2010 (with attachments).
- Letter from the Complainant to the Custodian dated February 14, 2011.
- Letter from the Custodian to the Complainant dated February 24, 2011.
- Letter from the Complainant to the Custodian dated March 10, 2011.

The Custodian certifies that her search for the requested records included retrieving the responsive list from her files and providing same to the Complainant.

The Custodian also certifies that the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management is not applicable.

The Custodian certifies that she received the Complainant’s OPRA request on December 13, 2010. The Custodian certifies that she responded in writing to the Complainant on December 20, 2010 providing to the Complainant a list of all property owners whose properties are subject to the Township’s rent control ordinance and the address of the rent-controlled property.

The Custodian certifies that in a letter dated February 14, 2011, the Complainant advised her that the list was not responsive to his OPRA request. The Custodian certifies that the Complainant further explained that he was seeking a copy of the list of property owners to whom Mr. Chemas sent letters regarding registration with the RCB because they were not yet registered and were in violation with an applicable ordinance. The Custodian asserts that this was not clearly stated in the Complainant’s December 13, 2010 OPRA request.

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<sup>5</sup> The Custodian did not respond to the Offer of Mediation.

The Custodian certifies that she advised the Complainant on February 24, 2010 to submit a new OPRA request seeking the list of property owners in violation for failure to register with the RCB. The Custodian contends that the Complainant refused to submit a new OPRA request and instead filed this complaint.

The Custodian states that a valid request under OPRA must seek specific, identifiable government records. The Custodian contends that the Complainant sought an identifiable record, a list of property owners to whom Mr. Chemas sent letters regarding registration with the RCB, which she provided to the Complainant in a timely manner. The Custodian contends that the Complainant failed to indicate that he was seeking a list of violators: the Complainant's OPRA request did not include the term "violators" or "violations." The Custodian asserts that instead the Complainant sought a list of property owners to whom Mr. Chemas sent letters.

The Custodian further certifies that as of December 13, 2010, there were no violators of the 2011 rent control filing requirement, to which the Complainant alludes in his March 10, 2011 letter. The Custodian certifies that the Township's deadline for registration is January 15, 2011 and that follow-up letters were sent out on February 27, 2011. The Custodian certifies that had the Complainant requested a list of individuals who violated the ordinance, no records responsive would have existed at that time. The Custodian notes that OPRA provides for access to government records that exist at the time a requestor submits an OPRA request and not for records created later.

The Custodian asserts that the evidence supports that she did not deny access to any records. The Custodian asserts that the Township properly responded to the Complainant's OPRA request providing the responsive list. The Custodian asserts that the Complainant is welcome to submit a new OPRA request for the list of violators and has been invited to do so.

#### **June 9, 2011**

Letter from the Complainant to the GRC attaching:

- Letter from the Custodian to the Complainant dated November 12, 2010.
- Registration No. 0911.
- "Notice To Landlords Subject to the Rent Leveling Ordinance" for the year 2011 (undated).

The Complainant contends that the Custodian tried to complicate the issues in this matter by fabricating a new name for the record she provided. The Complainant states that the Custodian noted in her December 20, 2010 response to the OPRA request that the responsive record was a "list of properties which are registered under the [RCB]." The Complainant contends that the Custodian changed her position in the SOI and stated that the record provided was a "list of all property owners whose properties are subject to ... rent control ..."

The Complainant states that the clear distinction between the record provided and the record he sought is based on the following background information. The Complainant states that in response to an unrelated OPRA request in November 2010, the Custodian

advised that no responsive records existed in the rent control department for properties at 109 Oak Street and 117 Oak Street. The Complainant states that he discovered that the property owner lives in another municipality. *See* Registration No. 0911. The Complainant notes that the registration form indicates that the property is rent controlled. The Complainant notes that 117 Oak Street was not included on the list of properties that the Custodian provided to him on December 20, 2010.

The Complainant further states that he previously reviewed a list in the presence of Mr. Chemas. The Complainant states that at that time, Mr. Chemas confirmed that 117 Oak Street is subject to rent control and that he keeps a separate list for the property owners that fail to register with the RCB. The Complainant further states that Mr. Chemas advised that the Complainant would have to file another OPRA request in order to review this list. The Complainant states that he thus submitted the OPRA request at issue herein. The Complainant states that instead of receiving the list of property owners not in compliance with the rent control ordinance, he received the list he previously reviewed in front of Mr. Chemas.

The Complainant contends that he even sent clarification to the Custodian in his February 14, 2011 letter. The Complainant asserts that his letter clearly indicated that the Complainant was seeking a list of violators. The Complainant asserts that he cannot understand why the Custodian did not accept the Complainant's clarification and provide the responsive list instead of asking the Complainant to file a new OPRA request. The Complainant further contends that his clarification was no different from his initial OPRA request because Mr. Chemas sends out form letters to those property owners who are subject to the ordinance but have not registered with the RCB, which is a violation of the ordinance.

The Complainant thus contends that the Custodian knowingly and willfully denied access to the actual list or part of the list that was responsive to his OPRA request.

The Complainant further contends that the Custodian's argument regarding violators of the ordinance for 2011 is erroneous. The Complainant notes that he submitted his request in December 2010 and does not include a year. The Complainant asserts that his request sought the list of violators available at the time.

### **June 16, 2011**

Letter from the Custodian to the GRC, attaching a redacted copy of a registration form. The Custodian states that the Township stands by its position but wishes to clarify one point raised by the Complainant.

The Custodian states that the Complainant attempts to use Registration No. 0911 to demonstrate that the Custodian's response was erroneous. The Complainant states that "Rent Control" is not a determination but a category or field. The Custodian states that the category must be modified with a "Y" for "yes" or left blank, which means "no." The Custodian states that the difference between Registration No. 0911 and the attached registration is that Registration No. 0911 lacks the "Y" modification because the RCB did not know that 117 Oak Street is a rent-controlled property. The Custodian states that this fact was made clear to the Complainant in a letter dated November 12, 2010. The

Custodian contends that the reason why 117 Oak Street is not classified as a rent-controlled unit is of no relevance here.

The Custodian states that a valid OPRA request must seek specific, identifiable government records and does not ask questions or seek information that requires the custodian to perform research or create new records. The Custodian contends that the Township does not maintain a list of properties owned by non-Township residents that may be subject to the RCB. The Custodian further contends that the Township does not maintain a list of properties that may be subject to rent control but for which the owner has failed to register. The Custodian further asserts that the Complainant's request did not seek this type of list.

### **August 16, 2011**

Letter from the Complainant to the GRC, attaching the preamble for the Township's rent control ordinance. The Complainant contends that the Custodian's initial response and subsequent SOI prove that she failed to bear her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6 and knowingly and willfully violated OPRA by denying access to the responsive list.

The Complainant contends that the preamble of the rent control ordinance directly refutes the Custodian's argument that 117 Oak Street is not known as a property subject to rent control. The Complainant asserts that regardless of whether the "category" is marked with a "Y," a person living in another municipality owns the property and thus the property is subject to the provisions of the rent control ordinance. The Complainant asserts that Mr. Chemas knew 117 Oak Street was subject to rent control and confirmed as much on December 14, 2010. The Complainant contends that there is no disputing that Mr. Chemas sent the form letter attached to the Complainant's June 16, 2011 submission to the owner of that property and added the property to a list.

The Complainant disputes the Custodian's characterization in the SOI of his February 14, 2011 clarification letter. The Complainant contends that he simply reiterated his request and added no additional information that would alter his original request. The Complainant argues that a review of his February 14, 2011 letter reveals that he never stated that he "actually [sought] ... a list of property owners to whom [Mr.] Chemas sent form letters because they had not registered with the [RCB] in violation [of] the applicable ordinance." The Complainant contends that the Custodian's allegation is erroneous.

The Complainant further asserts that the Custodian erroneously argued in the SOI that he requested information. The Complainant asserts that a list is not information. The Complainant further contends that the Custodian argued in the SOI that the Complainant failed to include the term "violators" or "violations" in his OPRA request. The Complainant contends that the Custodian omitted the facts that his request included "letters regarding registration with the [RCB]." The Complainant asserts that the Custodian purposely omitted this part of the OPRA request from her argument in the SOI in order to make the Complainant's OPRA request appear unclear. The Complainant contends that the Custodian sought clarification of the request in her February 24, 2011 letter which was attached to the SOI, but failed to send the Complainant a follow-up letter



specifically indicating those parts of the request that needed clarification. The Complainant contends that this shows that the Custodian acted in bad faith by using the request for clarification as a means to deny access to the actual responsive list.

The Complainant further contends that it is not disputed that Mr. Chemas sent a form letter regarding registration with the RCB to violators of the applicable ordinance. The Complainant contends that the Custodian also does not allege otherwise. The Complainant contends that a review of the form letter shows that it is also addressed to “violators” because the letter footnotes that a property owner is subject to fines and prosecution if not in compliance with the ordinance. The Complainant asserts that the letter further shows that all owners of rental properties must register by January 15 of each year. The Complainant contends that this is in direct opposition to the Custodian’s assertion in the SOI that the Complainant sought a record that did not exist, because she maintained a list for January 2010 and February 2010. The Complainant contends that the Custodian further failed to provide a lawful basis for not providing the responsive lists for 2010.

#### **August 19, 2011**

E-mail from the Custodian’s Counsel to the GRC. Counsel states that the Township objects to further submissions by the Complainant. Counsel states that it is his understanding that the GRC’s adjudication process does not allow for continuous submissions. Counsel further states that the GRC’s website states that:

“[t]he Executive Director is authorized to solicit legal memorandums, response to specific questions, or other submissions of positions or analysis of the participants or other parties with interest in the matter. When the staff investigation is complete, the Executive Director will issue a Findings and Recommendations ...”  
<http://www.state.nj.us/grc/register/inquiries/>.

Counsel asserts that this explanation of the process does not appear to include any leeway for continuous submissions. Counsel further states that New Jersey Court Rules governing similar administrative proceedings only allow for a motion, an objection and a response.

Counsel asserts that the Complainant has submitted letters containing numerous accusations based on his own interpretation of law and municipal procedure and personal opinions. Counsel reiterates that although he does not believe the Township should engage in a constant back and forth with the Complainant, he will review the Complainant’s submissions and respond unless otherwise advised by the GRC.

#### **August 23, 2011**

E-mail from the Custodian’s Counsel to the GRC. Counsel states that he will submit a response to the Complainant’s most recent submission but has been unable to locate any guidelines on providing submissions to the GRC. Counsel thus requests that the GRC inform him of the appropriate time frame within which he may submit his response.

**August 24, 2011**

E-mail from the GRC to the Custodian's Counsel. The GRC states that its regulations at *N.J.A.C. 5:105-2* set forth the complaint process, including which submissions a party must provide. The GRC states that although *N.J.A.C. 5:105-2* does not expressly permit submissions following the SOI, and is silent as to whether any additional submissions are prohibited, as a matter of practice the GRC will, in its sole discretion, consider additional submissions which provide new information or evidence.

The GRC thus advised Counsel that if he wishes to submit a rebuttal to the Complainant's submission, he may do so at this time.

**August 24, 2011**

E-mail from the Custodian's Counsel to the GRC. Counsel states that the Complainant has sent multiple submissions to the GRC that neither raise any novel points nor present any new evidence. Counsel states that the Complainant argued that Mr. Chemas made certain statements that prove the Township is attempting to conceal a list of violators. Counsel notes that the Custodian has invited the Complainant to submit a new OPRA request for the exact record he seeks; however, the Complainant chose to pursue this complaint instead.

In response to the Complainant's August 16, 2011 submissions, Counsel states that OPRA is clear. Counsel states that a valid OPRA request must seek specific, identifiable government records and does not seek information, ask questions or require research or creation of a record: a custodian is only obligated to search his or her files to locate identifiable government records. Counsel states that a custodian also may seek clarification of a broad or unclear request. Counsel states that OPRA does not require a custodian to articulate the specific parts of a request that are unclear.

Counsel states that the Complainant's OPRA request sought a "copy of the list of property owners to whom [Mr.] Chemas sent letters regarding registration with [the RCB]." Counsel states that the Custodian provided the Complainant with a list of owners' names and the building addresses of all rent-controlled properties in the Township. Counsel asserts that this list was the list of property owners to whom Mr. Chemas sent letters regarding registration with the RCB. Counsel asserts that this list was responsive to the Complainant's OPRA request.

Counsel contends that in his February 14, 2011 letter, the Complainant changed his request to a "copy of the list of property owners to whom [Mr.] Chemas sent letters regarding registration with the RCB." Counsel contends that this request is not valid. Counsel reiterates that the Custodian repeatedly advised the Complainant to submit a new OPRA request, but the Complainant has refused and instead filed this complaint.

Counsel further objects to the Complainant's repeated submissions made after April 21, 2011 pursuant to *N.J.A.C. 5:105-2.3(h)(2)*. Counsel states that this includes all submissions, responses, comments and objections filed by the Complainant beyond his original complaint. Counsel states that *N.J.A.C. 5:105-2.3(h)(2)* provides that "[a]dditional amendments or supplements to a complaint submitted beyond the 30-business-day amendment period shall only be accepted for consideration in the

adjudication of a complaint when such acceptance is authorized by the Executive Director.” *Id.* Counsel contends that the Complainant submitted only the Denial of Access Complaint and nothing else within the 30 business-day period, or by April 21, 2011, and the Executive Director has not authorized any other submissions. Counsel states that the Township thus objects to the consideration of any submissions, responses or objections filed by the Complainant beyond the original complaint.

#### **August 24, 2011**

Letter from the Complainant to the GRC. The Complainant contends that Counsel erroneously argued that *N.J.A.C.* 5:105-2.3(h)(2) is applicable to this complaint. The Custodian contends that this rule does not apply because the Complainant never amended his complaint. The Complainant contends that the applicable GRC regulation is *N.J.A.C.* 5:105-2.7(b), and accordingly the Complainant has filed all submissions in a timely manner.

The Complainant further disputes Counsel’s argument that the Complainant failed to submit new evidence in any of his submissions. The Complainant contends that the ordinance preamble attached to his August 16, 2011 submission constitutes new evidence. The Complainant also disputes Counsel’s assertion that the Custodian and Mr. Chemas have no reason to conceal records. The Complainant contends that concealing the list of property owners in violation of the rent control ordinance protects those owners who have failed to comply with the ordinance.

The Complainant finally disputes Counsel’s assertion that the Complainant changed his original OPRA request in his February 14, 2011 letter to the Custodian. The Complainant notes that Counsel reiterated the request exactly in his submission; thus, the Complainant clearly did not alter the request.

#### **August 24, 2011**

E-mail from the Custodian’s Counsel to the GRC. Counsel states that he wishes to clarify the difference between the Complainant’s initial and “second” OPRA request due to a misstatement on his part. Counsel states that a review of his earlier letter of August 24, 2011 showed that he stated that the Complainant’s OPRA request was exact in both the initial request and subsequent February 14, 2011 letter. Counsel asserts that he mistakenly included the text of the Complainant’s initial request twice; however, the Complainant’s assertion that he did not change the nature of his initial OPRA request is entirely false.

Counsel states that the Complainant’s “second” request sought a list of property owners to whom Mr. Chemas had sent form letters “because they had not registered with the [RCB] in violation with the applicable ordinance.” Counsel notes that the Complainant states this assertion in both his February 14, 2011 and March 10, 2011 letters. Counsel argues that this is the perfect picture of an invalid request. Counsel argues that this “second” request further indicates that the Complainant was not sure exactly what he sought in his December 13, 2010 OPRA request. Counsel notes that after receiving the Custodian’s December 20, 2010 response, the Complainant changed his request to include the requirement that a form letter was sent to a property owner for a certain reason. Counsel contends that this was clearly a “second” and improper OPRA

request. Counsel asserts that the Custodian did not deny access to any records and specifically directed the Complainant to submit a new OPRA request.

#### **August 25, 2011**

Letter from the Complainant to the GRC. The Complainant contends that Custodian Counsel's August 24, 2011 submission fails to show how *N.J.A.C. 5:105-2.3(h)(2)* applies herein. The Complainant further notes that the GRC accepted submissions from Counsel in its August 24, 2011 e-mail; thus, the GRC should also accept the Complainant's prior submissions as proper and timely.

The Complainant disputes Counsel's assertion that his February 14, 2011 letter to the Custodian constituted a "second" or different request separate from the December 13, 2010 OPRA request. The Complainant further disputes Counsel's assertion that this "second" request was improper and thus allowed the Custodian to advise the Complainant to file a new OPRA request.

The Complainant states that in *Renna v. County of Union*, 407 N.J. Super. 230, 235-246 (App. Div. 2009), the Appellate Division held that an OPRA request need not be submitted on an agency's official OPRA request form so long as the request contains the requisite information as prescribed in N.J.S.A. 47:1A-5.f. The Complainant contends that here, as admitted by Counsel, the Complainant submitted a "second" OPRA request in his letters dated February 14, 2011 and March 10, 2011. The Complainant contends that the request met the requirements of *Renna* and is therefore valid and proper. The Complainant argues that the Custodian thus violated OPRA by requiring the Complainant to resubmit his clarification, or "second" request as Counsel referred to it, on the Township's official OPRA request form.

The Complainant further argues that the Custodian clearly was in possession of a violator list for January 2011 at that time of his March 10, 2011 letter because the January 15, 2011 deadline to register passed and follow-up letters were sent on February 27, 2011. The Complainant thus contends that the Custodian failed and refused to provide same and unlawfully denied access to said record.

#### **August 26, 2011**

E-mail from the Custodian's Counsel to the GRC. Counsel states that the GRC is well aware of the Appellate Division's decision in *Renna*. Counsel contends the GRC must now decide whether the Complainant's February 14, 2011 and March 10, 2011 letters are actual OPRA requests or letters recapitulating the history of his December 13, 2010 OPRA request.

Counsel reiterates that a custodian may seek clarification if necessary. Counsel further states that if a custodian seeks clarification, the response time period freezes until the custodian receives clarification. Counsel asserts that the Custodian requested clarification on February 24, 2011 and received none in the Complainant's March 10, 2011 letter.

Counsel reiterates that the Township stands by the position that the Complainant's requests were invalid. Counsel notes that the Complainant's December 13, 2010 OPRA

request did not contain a date range within which the letters were sent. Counsel further reiterates that a custodian is only required to search for identifiable government records pursuant to long standing case law. MAG, Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004) and Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 2010). Moreover, Counsel states that in Asarnow v. Dept. of Labor & Workforce Development, GRC Complaint No. 2006-24 (May 2006), the complainant requested “all delinquent reports notices” compiled over a 13-month period. Counsel states that the GRC found that the custodian properly denied access to the records because the complainant’s request did not meet the standard for a proper OPRA request “... the documents ... are not readily identifiable and his request is of the nature of a blanket request for a class of various documents.” Counsel contends that the Complainant’s request at issue herein is similarly overly broad.

Counsel further argues that there is no evidence that the Custodian knowingly and willfully violated OPRA.

### Analysis

#### **Whether the Complainant’s OPRA request is invalid under OPRA?**

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.

The Complainant's OPRA request sought a copy of "the list of property owners to whom [Mr. Chemas] sent letters regarding registration with the [RCB]." In response to said request, the Custodian timely responded providing to the Complainant a list of property owners whose properties are subject to the Township's rent control ordinance. However, in a letter to the Custodian on February 14, 2011, the Complainant disputed that this record was the record he sought. The Complainant stated that he sought a list of property owners to whom Mr. Chemas sent letters because they were in violation of the Township's rent control ordinance.

The Complainant subsequently filed this complaint arguing that the Custodian violated OPRA by failing to provide him with the record he requested. The Custodian argued in the SOI that the record she provided was the record the Complainant's OPRA request sought and that at no point prior to providing said record did the Complainant indicate that he sought a list of owners in violation of the ordinance. The Custodian further argued that based on the Township's deadline of January 15, 2011 to register a property, no record would have existed at the time of the Complainant's OPRA request. Therefore, the Complainant's OPRA request is invalid under OPRA because it failed to identify an applicable time frame and further failed to specifically identify the record the Complainant sought.

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). As the Court noted in invalidating MAG's request under OPRA:

"Most 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.* at 549.

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.*

In addition, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>6</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>7</sup>

Moreover, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the Court enumerated the responsibilities of a custodian and a requestor as follows:

“OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require "extraordinary expenditure of time and effort" and warrant assessment of a "service charge," and, when unable to comply with a request, "indicate the specific basis." N.J.S.A. 47:1A-5(a)-(j). The requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), (i). *Research is not among the custodian's responsibilities.*” (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

Moreover, 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...” Accordingly, the test under MAG then, is whether a requested record is a ***specifically identifiable*** government record.

Under such rationale, the GRC has repeatedly found that blanket requests are not valid OPRA requests. In the matter of Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the relevant part of the Complainant’s request sought:

- Item No. 2: “From the Borough Engineer’s files: all engineering documents for all developments or modifications to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.

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

<sup>7</sup> As stated in Bent, *supra*.

- Item No. 3: From the Borough Engineer’s files: all engineering documents for all developments or modifications to North St., to the south and east of Wilson St.
- Item No. 4: From the Borough Attorney’s files: all documents related to the development or modification to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
- Item No. 5: From the Borough Attorney’s files: all documents related to the development or modification to North Street, to the south and east of Wilson St.”

In reviewing the complainant’s request, the Council found that “[b]ecause the Complainant’s OPRA requests [Items 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 the instant complaint, the Complainant’s request sought a list of property owners to whom Mr. Chemas sent letters over an undefined time frame. The Custodian argued in the SOI that no record listing property owners in violation of the rent control ordinance for 2011 would have existed the time of the Complainant’s request because the first deadline in 2011 to register was not until January 15, 2011. The Complainant disputed the Custodian’s argument, noting that his request was dated December 13, 2010, thus the responsive record was a list from 2010. However, the Complainant later argued that the Custodian should have provided him with the list from 2011 in response to his March 10, 2011 letter. The evidence of record further indicates that the Complainant’s request did not clearly articulate the actual record sought.

It is important to note that the Complainant’s request sought “the list of property owners to whom [Mr. Chemas] sent letters regarding registration with the [RCB].” The Custodian thus provided the record she believed to be responsive to the Complainant’s request. However, the Complainant advised the Custodian in his February 14, 2011 letter that the record provided was not the responsive record: he contended that his request sought a list of property owners who received letters because they were “... in violation [of] the applicable ordinance.” Although the Complainant repeatedly contended that the initial request sought a list of violators, the Complainant’s subsequent addition of the qualifier “violation” and the Complainant’s own assertion that the Custodian did not provide the correct list in response to his initial request support the conclusion that said request was unclear.

Thus, the totality of the competent, credible evidence in the case herein supports a conclusion that the Complainant failed to “submit the request with information that is essential to permit the custodian to comply with its obligations.” NJ Builders at 177. Therefore, the Complainant’s OPRA request is invalid under OPRA because it failed to identify an applicable time frame and further failed to specifically identify the record the Complainant sought pursuant to MAG, *supra*; Bent, *supra*; NJ Builders, *supra*; Schuler, *supra*.



### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the totality of the competent, credible evidence in the case herein supports a conclusion that the Complainant failed to “submit the request with information that is essential to permit the custodian to comply with its obligations.” New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 177 (App. Div. 2007). Therefore, the Complainant’s OPRA request is invalid under OPRA because it failed to identify an applicable time frame and further failed to specifically identify the record the Complainant sought 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); NJ Builders, supra; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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June 19, 2012