



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

September 25, 2012 Government Records Council Meeting

Anthony F. Pasquarelli
Complainant

Complaint No. 2011-94

v.

Burlington County Prosecutor's Office
Custodian of Record

At the September 25, 2012 public meeting, the Government Records Council ("Council") considered the September 18, 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 because the Complainant's request fails to identify specific government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant's request is overly broad and is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and 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 25th Day of September, 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: October 1, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 25, 2012 Council Meeting**

**Anthony F. Pasquarelli¹
Complainant**

GRC Complaint No. 2011-94

v.

**Burlington County Prosecutor's Office²
Custodian of Records**

Records Relevant to Complaint: Any and all letters, correspondence or affidavits from Attorney John S. Sitzler, Esq. ("Mr. Sitzler") or the Law Firm of Sitzler & Sitzler regarding the matter of State of New Jersey v. Anthony Pasquarelli.

Request Made: March 9, 2011
Response Made: March 14, 2011
Custodian: Glen Fillippone, Esq.
GRC Complaint Filed: April 4, 2011³

Background

March 9, 2011

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.

March 11, 2011

Letter from Mr. Joseph Threston, III, Custodian for Burlington County ("Mr. Threston") to the Complainant. Mr. Threston says that he is forwarding the Complainant's OPRA request to the Burlington County Prosecutor's Office ("Prosecutor's Office") for a response. Mr. Threston also states that the Prosecutor's Office handles their OPRA requests directly.

March 14, 2011

Custodian's response to the OPRA request. The Custodian responds in writing via letter on the second (2nd) business day following receipt of such request.⁴ The Custodian states that access to the requested records is denied because such records are considered criminal investigatory records. The Custodian also states that access to the responsive

¹ No legal representation listed on record.

² Represented by Robert Baxter, Esq., of Wardell Craig, Annin & Baxter, LLP (Haddonfield, NJ).

³ The Complainant signed the Denial of Access Complaint on said date.

⁴ The Custodian certifies in the SOI that she received the Complainant's OPRA request on March 10, 2011.
Anthony F. Pasquarelli v. Burlington County Prosecutor's Office, 2011-94 – Findings and Recommendations of the Executive Director

records is also denied pursuant to the Department of Law and Public Safety, firearms and weapons confidentiality exemption, found at *N.J.A.C. 13:54-1.15*.

April 4, 2011

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

- Complainant’s OPRA request dated March 9, 2011
- Letter from Mr. Threston to the Complainant dated March 10, 2011
- Custodian’s response to the Complainant’s OPRA request dated March 14, 2011.

The Complainant states that he spoke with the clerk from the Burlington County Freeholders Office on March 9, 2011, regarding a filing of an OPRA request and the clerk provided him with an OPRA request form to complete for the Prosecutor’s Office. The Complainant further states that he received a denial letter from the Custodian on March 15, 2011 denying him access to the responsive records because such records are considered criminal investigatory records.

The Complainant agrees to mediate this complaint.

April 7, 2011

Offer of Mediation sent to the Custodian.

April 13, 2011

The Custodian does not agree to mediate this complaint.

April 15, 2011

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

April 18, 2011

Letter from Custodian’s Counsel to the GRC. Counsel states that he is in receipt of the GRC’s request for the SOI dated April 15, 2011. Counsel also states that the Complainant seeks one record responsive from the Prosecutor’s Office, a letter from Mr. Sitzler to the Prosecutor’s Office, dated May 26, 2010. Counsel further states that the Complainant’s request was denied because such record is a criminal investigatory record. Counsel additionally states that this letter was actually provided to the Complainant when the Prosecutor’s Office filed a motion to revoke the Complainant’s firearms purchaser identification card and retired law enforcement officer’s permit to carry a handgun. Counsel states that this motion was filed on October 19, 2010 and the letter was attached to the motion as an exhibit.⁵ Counsel asserts that because the Complainant already had the letter requested, there was no need to file an OPRA request with the Prosecutor’s Office for that same letter.

⁵ Counsel attaches a copy of the Notice of Motion and Mr. Sitzler’s letter dated May 26, 2010 responsive to the Complainant’s request.

April 21, 2011

E-mail from the GRC to the Custodian. The GRC states that is it in receipt of Custodian's Counsel letter dated April 18, 2011. The GRC also states that the Custodian still needs to complete the SOI in order to properly adjudicate the Denial of Access Complaint. The GRC grants a five (5) business day extension until May 2, 2011 to complete the SOI no later than May 2, 2011.

April 28, 2011

Facsimile from the Complainant to Custodian's Counsel. The Complainant states that he is in receipt of the letter sent to the GRC on April 18, 2011. The Complainant also states that he is now in receipt of Mr. Sitzler's letter dated May 26, 2010 responsive to his OPRA request. The Complainant further states that Mr. Sitzler's letter lacks the legal substance and motive to file a motion to revoke the Complainant's firearms purchaser identification card and retired law enforcement officer's permit to carry a handgun. The Complainant contends that there must be other documentation, notes or conversations that were coupled with Mr. Sitzler's letter for the Prosecutor's Office to have even thought of filing a motion. The Complainant states that he is requesting all correspondence, whether on letterhead or notes, that came from the Law Firm of Sitzler & Sitzler relative to the Prosecutor's Office motion.

April 28, 2011

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated March 9, 2011
- Letter from the Custodian to the Complainant dated March 14, 2011.

The Custodian certifies that her search for the requested records included searching the Promis/Gavel system under the Complainant's name and such search revealed no file.⁶ The Custodian also certifies that she is aware of the Prosecutor's Office pending motion and requested the file from the assigned assistant prosecutor. The Custodian further certifies that a subsequent search of the Prosecutor's Office's InfoShare system revealed no other records responsive to the Complainant's request. The Custodian additionally certifies that because the Complainant's underlying criminal matter is still pending, there is no destruction date set for the records responsive to the request. Lastly, the Custodian certifies that the Complainant's file will be scheduled for destruction three (3) years after the final action, in accordance with the Records Destruction Schedule established and approved by Records Management Services.

The Custodian certifies that the Complainant filed his OPRA request with the Burlington County Records Custodian on March 9, 2011. The Custodian also certifies that more commonly, request for records from the Prosecutor's Office are filed directly

⁶ "The Promis/Gavel network is an automated Criminal case tracking system enhanced and supported by the Criminal Practice Division and the Information System Division of the Administrative Office of the Courts in response to the needs of the criminal justice community. It captures information concerning defendants who have been charged with indictable offenses and tracks the processing of those defendants from initial arrest through appellate review. This system provides the function of docketing, indexing, noticing, calendaring, statistical reporting, case management reporting, and so forth." <http://www.judiciary.state.nj.us/criminal/crpmgv1.htm>

with the Prosecutor's Office and not the County. The Custodian further certifies that Burlington County forwarded the request to the Custodian and she received it on March 10, 2011. The Custodian additionally certifies that she responded to the Complainant's request on March 14, 2011.

The Custodian certifies that upon searching the Complainant's gun permit file, she found a letter from Mr. Sitzler dated May 26, 2010 responsive to the Complainant's request. The Custodian argues that the letter dated May 26, 2010 responsive to the request is exempt from disclosure because it is a criminal investigatory record and the New Jersey Administrative Code prohibits the dissemination of background investigation documents for firearms permits, licenses, etc. The Custodian also argues that N.J.S.A. 47:1A-9.a. allows exemptions from disclosure contained in regulations promulgated under the authority of any statute. The Custodian additionally argues that N.J.S.A. 2C:58-2.1 authorizes the Superintendent of State Police, in consultation with the Attorney General to promulgate guidelines for law enforcement relating to firearms. Lastly, the Custodian argues that N.J.A.C. 13:54-1.15 provides that gun permit background investigations conducted by the Prosecutor's Office are not a matter of public record and such records shall not be disclosed, including to the applicant.

The Custodian certifies that the letter responsive to the Complainant's request was attached as an Exhibit (Pa1) to a Motion to revoke a firearms identification card and permit to carry a handgun filed by the Prosecutor's Office in the matter of State of New Jersey v. Anthony F. Pasquarelli. The Custodian also certifies that the motion papers were filed with the Honorable Michael J. Haas, J.S.C., on October 19, 2010 and the Prosecutor's Office provided the Complainant with copies of the motion papers and exhibits, including the letter date May 26, 2010.⁷ The Custodian further certifies that the Complainant was already in receipt of the letter responsive to his request at the time of his OPRA request.

Analysis

Whether the Complainant's request is valid 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*

⁷ The Custodian attaches a copy of cover sheet for the Notice of Motion and the May 26, 2010 letter responsive to the Complainant's request.

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 filed an OPRA request on March 9, 2011. The Custodian denied the Complainant access to the requested records via letter because such records are considered criminal investigatory records and such records are deemed confidential pursuant to the Department of Law and Public Safety, firearms and weapons confidentiality exemption, found at *N.J.A.C. 13:54-1.15*. In her SOI, the Custodian identified a letter responsive to the Complainant’s OPRA request, a letter from Mr. Sitzler to the Prosecutor’s Office dated May 26, 2010. The Custodian certifies that the Complainant was provided a copy of this letter on October 19, 2010, pursuant to a motion filed by the Prosecutor’s Office to revoke the Complainant’s firearms identification card and permit to carry a handgun and thus was already in receipt of this letter at the time of the Complainant’s OPRA request. Regardless, the Complainant’s OPRA request fails to specifically identify a government record 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),⁸ 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.”⁹

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.

Further, 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.

⁸ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁹ As stated in Bent, *supra*.

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.
- 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 # 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 requested "letters, correspondence or affidavits regarding the matter of State of New Jersey v. Anthony Pasquarelli." The Complainant's request for letters fails to identify a date range or a recipient. Further, the Complainant's request for affidavits also fails to identify who authored said affidavit. Lastly, the Complainant's request for correspondence is a general term and does not identify the specific type of government record the Complainant seeks. The Complainant's OPRA request would have the Custodian not only search, but research, every piece of correspondence regarding the State of New Jersey v. Anthony Pasquarelli matter to determine if said correspondence is responsive to the Complainant's request. Thus, the Complainant's request is invalid under OPRA.

Therefore, because the Complainant's request fails to identify specific government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant's request is overly broad and is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's request fails to identify specific government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant's request is overly broad and is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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

Approved By: Karyn Gordon, Esq.
Acting Executive Director

September 18, 2012