



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

FINAL DECISION

November 19, 2013 Government Records Council Meeting

Anthony Russomanno  
Complainant

Complaint No. 2012-307

v.

Township of Edison (Middlesex)  
Custodian of Record

At the November 19, 2013 public meeting, the Government Records Council (“Council”) considered the November 12, 2013 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. While the Custodian’s assertion that the Complainant sought “any and all” communications” is incorrect, the Complainant’s request for emails is impermissibly broad in that it fails to identify with sufficient “specificity or particularity the governmental records sought.” See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). Therefore, because the Complainant did not specify the content or subject of the emails sought, in addition to identifying particular dates and parties, the Custodian did not unlawfully deny access to the records. See Sandoval v. New Jersey State Parole Board, GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07.
2. The Custodian did not unlawfully deny access to the requested OEM Organizational Charts and EMP. N.J.S.A. 47:1A-6. The Custodian has shown that the documents requested by the Complainant are not considered “government records” under OPRA because such records contain security measures and emergency or security information or procedures that, if disclosed, would substantially interfere with the State’s ability to protect and defend the State and its citizens. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); Executive Order No. 21 (McGreevey 2002); Vasquez v. Burlington County, GRC Complaint No. 2005-193 (February 17, 2005); Mariano v. New Jersey Department of Environmental Protection, GRC Complaint No. 2003-140 (February 27, 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 19<sup>th</sup> Day of November, 2013

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: November 21, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 19, 2013 Council Meeting**

**Anthony Russomanno<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-307**

v.

**Township of Edison (Middlesex)<sup>2</sup>  
Custodial Agency**

**Record Relevant to Complaint:**

OPRA Request No. 1: All emails between Mayor Antonia Ricigliano, Middlesex Water Company, Public Service Enterprise Group (“PSE&G”), Bill Stephens, and Maureen Raudin for the period of October 22, 2012 to November 7, 2012;

OPRA Request No. 2: Edison Township’s (the “Township”) Office of Emergency Management (“OEM”) organizational chart for the years 2010, 2011, and 2012; and

OPRA Request No. 3: Edison Township’s Emergency Management Plan (“EMP”) for the years 2010, 2011, and 2012.

**Custodian of Record:** Michelle Kasperski

**Request Received by Custodian:** November 7, 2012

**Response Made by Custodian:** November 19, 2012

**GRC Complaint Received:** November 23, 2012

**Background<sup>3</sup>**

**Request and Response:**

On November 7, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 19, 2012, seven (7) business days later, the Custodian responded in writing denying the Complainant’s request.

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

<sup>2</sup> Represented by Karl P. Kemm, Esq. (New Brunswick).

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

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### Denial of Access Complaint:

On November 23, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that on November 19, 2012, the Custodian responded to the Complainant’s request for documents by forwarding to him a series of emails between the Township’s mayor and other Township employees. The Complainant asserts that asking for the OEM’s organizational chart does not jeopardize public safety, and that access to the EMP “is vital to all those who live in Edison” as “[r]esidents need to know how the local government will communicate” when an emergency occurs.

### Statement of Information:

On August 2, 2013, the Custodian filed a Statement of Information (“SOI”) consisting primarily of content incorporated by reference to a series of emails exchanged by Township administrators between November 7-8, 2012.<sup>4</sup> The Custodian certifies that she received the Complainant’s OPRA request on November 7, 2012, and replied, in writing, on November 19, 2012. The Custodian also certifies that she provided no records to the Complainant. The Custodian broadly asserts, by reference to a November 8, 2012 e-mail from an attorney to Township officials, that:

First, the request is for “any and all” communications and is overbroad and inappropriate under OPRA. Given the confidential nature of the OEM plans they are not public documents. [T]he Mayor’s office communication with Citizens are not public documents especially when they deal with issues that may affect security (for instance who has electricity and who does not) (*sic*) I will note that the “24 exemptions” under OPRA referred to is not exhaustive. As you can see, number 23 includes all those previous exemptions that have been established by case law or Executive Order. For the record I believe numbers 1, 6, 7, 8, 11, 16, and 23 apply. Finally, in light of the current state of emergency, the response to these request[s] will substantially disrupt Township operations.<sup>5</sup>

### Additional Party Submissions

On November 7, 2013, the Counsel for the Custodian (“Counsel”) submitted a supplemental letter brief in support of the Custodian’s SOI. Counsel states that the Complainant’s OPRA request was submitted in the midst of a State of Emergency and the Township’s efforts to respond to Hurricane Sandy.

Counsel contends that the Complainant’s request for emails was overbroad, as it covers a range of individuals over a significant period of time but is not limited to a specific topic or subject. *Citing* MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534,

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<sup>4</sup> The Custodian forwarded these emails to the Complainant as her initial response to the Complainant’s OPRA request.

<sup>5</sup> The emails attached by the Custodian to both the SOI and her initial response to the Complainant included this email, as well as a message from earlier on November 8, 2012 sent to the same parties by Township’s mayor . This email states that “[o]n advice of counsel OPRA requests are denied as we do not have the staff available to decide what may be confidential information.”

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546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 175 (App. Div. 2007).

Counsel further contends that the Complainant's requests for the Township's OEM Organizational Charts and EMP were lawfully denied on identical grounds. Counsel notes that the State Office of Emergency Management ("State OEM"), within the New Jersey State Police ("State Police"), administers and coordinates emergency management throughout New Jersey. *Citing* State Office of Emergency Management Directive ("Directive") No. 102 (March 15, 1990). Counsel additionally states that the State Police have directed the Township's Emergency Management Coordinator to not release the Organizational Charts or EMP to the public. Counsel further states that the State Police have interpreted OPRA as excluding EMPs from disclosure because the release of such documents would jeopardize emergency management operations and personnel while implicating security and privacy concerns. *Citing* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); Executive Order ("EO") No. 21 (McGreevey 2002).

### Analysis<sup>6</sup>

#### Unlawful Denial of Access

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.

It should be noted that the Complainant made his request on November 7, 2012, only ten (10) days after Hurricane Sandy made landfall in New Jersey. On October 27, 2012, the Governor declared a State of Emergency which, in conjunction with the widespread physical devastation inflicted by the storm, affected the operational capacities of nearly all state and local government agencies. The Custodian here provided a timely response to the Complainant. What was a reasonable response under the circumstances on November 19, 2012, however, was not necessarily so when the Custodian submitted her SOI on July 25, 2013. The inadequacy of the responses contained in the original SOI left significant questions as to which provisions of OPRA the Custodian was relying on to deny the Complainant's request.

#### Request for Emails

The New Jersey Appellate Division has held that:

While 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

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<sup>6</sup> There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

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records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.

MAG, 375 N.J. Super. at 546.

The Court reasoned that:

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. See also Bent, 381 N.J. Super. at 37; N.J. Builders Assoc., 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The GRC also established criteria deemed necessary under OPRA to specifically request an email communication in Elcavage v. W. Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid such requests must contain (1) the content and/or subject of the email, (2) the specific date or range of dates during which the email(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. *See Elcavage*, GRC 2009-07; Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007).

Here, the Complainant sought “[a]ll e-mails between Mayor Ricigliano, Middlesex Water, PSEG, Bill Stephens, and Maureen Ruane” between October 22, 2012 and November 7, 2012. The Complainant limited his request for emails to a range of dates and by the senders and recipients, but he did not specify the content of the e-mails he sought.

While the Custodian’s assertion that the Complainant sought “any and all communications” is incorrect, the Complainant’s request for emails is impermissibly broad in that it fails to identify with sufficient “specificity or particularity the governmental records sought.” *See MAG, 375 N.J. Super. at 546.* Therefore, because the Complainant did not specify the content or subject of the e-mails sought, in addition to identifying particular dates and parties, the Custodian did not unlawfully deny access to the records. *See Sandoval*, GRC 2006-167; Elcavage, GRC 2009-07.

#### Request for Edison Township’s OEM 2010-12 Organizational Charts and 2010-12 EMP

OPRA recognizes exemptions to disclosure found in any EO of the Governor, or any regulation promulgated under the authority of any EO of the Governor. *See N.J.S.A. 47:1A-9(a).*

As such, the following types of records are not considered government records and therefore need not be disclosed by a records custodian:

[a]ny government record where the inspection, examination or copying of that record would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.

EO No. 21 (McGreevey 2002).

Further, OPRA exempts both "emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein" and "security measures . . . which, if disclosed, would create a risk to the safety of persons, property, electronic data or software[.]" N.J.S.A. 47:1A-1.1.

In Vasquez v. Burlington Cnty., GRC Complaint No. 2005-193 (February 17, 2005), the GRC denied the complainant's request for the county's EMP based on EO No. 21. There, the custodian certified that a disclosure of the county's EMP would jeopardize the security of citizens of the state. Id. The custodian further certified that the release of the county's emergency evacuation procedures would expose citizens to acts of sabotage or terrorism. Id.

Likewise, in Mariano v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2003-140 (February 27, 2004), the GRC denied a complainant's request for a list of users of chlorine gas in New Jersey. The GRC found that:

Although the motives of the Requestor appear to be legitimately related to his business, once the requested information is released, there is no way of ensuring that such information would remain in the hands of parties who would use it for proper purposes.

Id.

Here, the Complainant requested the Township's OEM Organizational Charts and EMP for the years 2010, 2011, and 2012. Counsel noted that the State OEM exists within the State Police to administer and coordinate emergency management efforts. Counsel further stated that Municipal Emergency Management Coordinators, such as the Township's, are under the direction of the State OEM. *See* Directive No. 102. In light of this structure, Counsel asserts that the State Police told the Township's Emergency Management Coordinator to disclose neither the EMP nor OEM Organizational Charts because doing so would jeopardize emergency management operations and personnel while implicating additional security and privacy concerns, such as those listed in N.J.S.A. 47:1A-1.1 and EO No. 21 (McGreevey 2002).

Though the request in this instance is for a Township's EMP and OEM Organizational Charts, rather than a county's documents, this difference is not enough to make the GRC's finding in Vasquez inapposite. The State Police and State OEM have expressed specific concerns to the Township regarding the deleterious impact the disclosure of the requested EMP and OEM

documents would have on public safety. *See Vasquez*, GRC 2005-193. Similarly, while the Complainant appears to have a legitimate purpose in seeking the requested emergency information or procedures, there is “no way of ensuring that such information would remain in the hands of parties who would use it for proper purposes.” N.J.S.A. 47:1A-1.1; Mariano, GRC 2003-140.

Therefore, the Custodian did not unlawfully deny access to the requested OEM Organizational Charts and EMP. N.J.S.A. 47:1A-6. The Custodian has shown that the documents requested by the Complainant are not considered “government records” under OPRA because such records contain security measures and emergency or security information or procedures that, if disclosed, would substantially interfere with the State’s ability to protect and defend the State and its citizens. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); EO No. 21 (McGreevey 2002); Vasquez, GRC 2005-193; Mariano, GRC 2003-140.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. While the Custodian’s assertion that the Complainant sought “any and all’ communications” is incorrect, the Complainant’s request for emails is impermissibly broad in that it fails to identify with sufficient “specificity or particularity the governmental records sought.” *See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 549 (App. Div. 2005). Therefore, because the Complainant did not specify the content or subject of the emails sought, in addition to identifying particular dates and parties, the Custodian did not unlawfully deny access to the records. *See Sandoval v. New Jersey State Parole Board*, GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07.
2. The Custodian did not unlawfully deny access to the requested OEM Organizational Charts and EMP. N.J.S.A. 47:1A-6. The Custodian has shown that the documents requested by the Complainant are not considered “government records” under OPRA because such records contain security measures and emergency or security information or procedures that, if disclosed, would substantially interfere with the State’s ability to protect and defend the State and its citizens. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); Executive Order No. 21 (McGreevey 2002); Vasquez v. Burlington County, GRC Complaint No. 2005-193 (February 17, 2005); Mariano v. New Jersey Department of Environmental Protection, GRC Complaint No. 2003-140 (February 27, 2004).

Prepared By: Robert T. Sharkey, Esq.  
Staff Attorney

Approved By: Brandon D. Minde, Esq.  
Executive Director

November 12, 2013