



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**

**November 19, 2013 Government Records Council Meeting**

John Ciszewski  
Complainant

Complaint No.  
2013- 127

v.

NJ Department of Law & Public Safety,  
Division of Consumer Affairs, Office Board of Medical Examiners  
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. The first portion of the Complainant’s request seeking “... all records ...” concerning the BME’s complaint process is invalid because it failed to seek specific, identifiable government records; the Custodian is not required to research every record in his possession to determine whether same refers to the process. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
2. Since the Custodian initially responded to the Complainant and subsequently certified in the Statement of Information that no records responsive to the subparts of the Complainant’s OPRA request exist, and because the Complainant did not submit any evidence to refute the Custodian’s certifications, the Custodian did not unlawfully deny access to the requested records. See Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

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**

**John Ciszewski<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-127**

v.

**New Jersey Department of Law & Public Safety,  
Division of Consumer Affairs, Office Board of Medical Examiners<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of all records concerning the complaint process for the Board of Medical Examiners (“BME”) including but not limited to:

1. Statistical records prepared for the BME of all complaints of physicians registered.
2. Statistical records prepared for the BME of all complaints of physicians that are screened out from reaching the Screening Committee.
3. All records of correspondence between the person responsible for logging complaints and a complainant when the intake employee rejects the complaint.
4. Records of rejection guidelines provided to the intake complaint person that governs the judgment of this person when rejecting complaints.

**Custodian of Record:** Robert J. Campanelli  
**Request Received by Custodian:** April 12, 2013  
**Response Made by Custodian:** April 23, 2013  
**GRC Complaint Received:** May 3, 2013

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

**Request and Response:**

On April 12, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 23, 2013, the Custodian responded in writing advising that no records responsive to the Complainant’s OPRA request exist. On April 27, 2013, the Custodian advised the Complainant that his OPRA request was also invalid because it failed to seek identifiable government records. MAG Entm’t, LLC v. Div. of

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

<sup>2</sup> Represented by Deputy Attorney General Steven Flanzman.

<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.

John Ciszewski v. New Jersey Department of Law & Public Safety, Division of Consumer Affairs, Office Board of Medical Examiners, 2013-127 – Findings and Recommendations of the Executive Director

ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>4</sup> Gannet v. Cnty. Of Middlesex, 379 N.J. Super. 205 (App. Div. 2005).

On April 29, 2013, the Complainant submitted an e-mail between himself and Christina Smith, Patient Advocate, noting that the e-mail is an example of a record responsive to item No. 3 of his OPRA request. The Complainant further questioned whether the Custodian conducted an adequate search. On April 30, 2013, the Complainant asked, regarding OPRA request item Nos. 1 and 2, whether the Custodian performed a search for records as described in N.J.S.A. 45:9-19.10. On May 1, 2013, the Complainant asked whether the Custodian contacted the Executive Director (“ED”) of the BME regarding item No. 4 seeking rejection guidelines. The Complainant asserted that it is likely the ED possesses these guidelines.

On May 2, 2013, the Custodian responded advising the Complainant that BME does not maintain statistical records. The Custodian further stated that the Complainant could submit a new OPRA request identifying specific complaints and the Custodian would respond accordingly.

#### Denial of Access Complaint:

On May 3, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argues that the Custodian failed to address the Complainant’s concerns posed in e-mails dated April 29, April 30, and May 1, 2013.

#### Statement of Information:

On June 28, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s OPRA request on April 12, 2013 and responded in writing on April 23, April 27 and May 2, 2013.

The Custodian states that the first portion of the request sought “all records concerning the complaint process for the [BME] ...” The Custodian contends that this portion fails to seek identifiable government records and could be interpreted to encompass any document relating to BME’s complaint process. The Custodian asserts that this would necessarily include a voluminous amount of records that would be impossible to identify.

The Custodian certifies that no records responsive to the four (4) subparts exist. The Custodian notes that the Complainant subsequently submitted an e-mail between himself and Ms. Smith as an example of a record responsive to item No. 3. The Custodian certifies that he reviewed the e-mail and determined it was not a responsive record because the e-mail was not a rejection of a formal complaint. The Custodian states that to the contrary, Ms. Smith’s e-mail welcomed the Complainant to submit a “specific complaint” with “specific details.”

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<sup>4</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).  
John Ciszewski v. New Jersey Department of Law & Public Safety, Division of Consumer Affairs, Office Board of Medical Examiners,  
2013-127 – Findings and Recommendations of the Executive Director

## Analysis<sup>5</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.

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.” MAG, 375 N.J. Super. at 546 (emphasis added). 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 (emphasis added).

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.” Id. (emphasis added). *See also Bent*, 381 N.J. Super. at 37 (App. Div. 2005), NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The first (1<sup>st</sup>) portion of the Complainant’s request sought “... all records concerning the complaint process for the [BME] ...” On its face, the request clearly seeks a broad cross-section of records that might apply to the BME’s complaint process, real and/or imagined. The Custodian is not obligated to research every record in his possession to determine whether it refers to the complaint process.

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<sup>5</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.

John Ciszewski v. New Jersey Department of Law & Public Safety, Division of Consumer Affairs, Office Board of Medical Examiners, 2013-127 – Findings and Recommendations of the Executive Director

Therefore, the first portion of the Complainant's request seeking "... all records ..." concerning the BME's complaint process is invalid because it failed to seek specific, identifiable government records; the Custodian is not required to research every record in his possession to determine whether same refers to the process. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151.

Moreover, in Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the complainant sought a copy of a telephone bill from the custodian in an effort to obtain proof that a phone call was made to him by an official from the Department of Education. The custodian provided a certification in his submission to the GRC that certified that the requested record was nonexistent and the complainant submitted no evidence to refute the custodian's certification. The Council subsequently determined that "[t]he Custodian has certified that the requested record does not exist. Therefore, the requested record cannot (sic) be released and there was no unlawful denial of access."

Regarding the subparts of the Complainant's request, the Complainant narrowed the first portion of the request to seek "... statistical records ... correspondence ... when the intake employee rejects the complaint ... [and] records of rejection guidelines ..." Notwithstanding the fact that these subparts are overly broad on their face as well, the Custodian initially responded denying access to same advising the Complainant that no responsive records exist. The Custodian subsequently certified to this fact in the SOI.

The Complainant later provided an e-mail exchange between himself and Ms. Smith that he asserted was responsive to item No. 3. However, following the Custodian's review of the e-mail, he certified in the SOI that same did not appear to be responsive to the request but was an invitation for the Complainant to submit a formal complaint. The GRC has also reviewed this e-mail exchange and agrees that the record does not appear to be responsive to request item No. 3. Thus, the e-mail exchange does not constitute evidence to refute the Custodian's SOI certification.

Therefore, since the Custodian initially responded to the Complainant and subsequently certified in the SOI that no records responsive to the subparts of the Complainant's OPRA request exist, and because the Complainant did not submit any evidence to refute the Custodian's certifications, the Custodian did not unlawfully deny access to the requested records. *See Pusterhofer*, GRC 2005-49.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The first portion of the Complainant's request seeking "... all records ..." concerning the BME's complaint process is invalid because it failed to seek specific, identifiable government records; the Custodian is not required to research every record in his possession to determine whether same refers to the process. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on

Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

2. Since the Custodian initially responded to the Complainant and subsequently certified in the Statement of Information that no records responsive to the subparts of the Complainant's OPRA request exist, and because the Complainant did not submit any evidence to refute the Custodian's certifications, the Custodian did not unlawfully deny access to the requested records. *See* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso  
Senior Case Manager

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

November 12, 2013