



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

July 29, 2014 Government Records Council Meeting

Ira Mintz
Complainant

Complaint No. 2013-317

v.

NJ Civil Service Commission
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 22, 2014 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 Custodian has borne his burden of proof that he did not unlawfully deny access to the Complainant’s August 21, 2013 OPRA request. N.J.S.A. 47:1A-6. The request is invalid as overly broad, and requires the Custodian to conduct research beyond the scope of his responsibilities. *See* MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546, 549 (App. Div. 2005), and N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 177, 180 (App. Div. 2007).

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 29th Day of July, 2014

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: July 31, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 29, 2014 Council Meeting**

**Ira Mintz¹
Complainant**

GRC Complaint No. 2013-317

v.

**New Jersey Civil Service Commission²
Custodial Agency**

Records Relevant to Complaint: [Electronic] copies of notes of any meetings or telephone conversations between Commissioners or the staff of the Office of the Chair and members of the public, interested groups, or members of the Legislature, related to the Commission's Job Banding Proposal ("Proposal").³

Custodian of Record: Christopher Randazzo
Request Received by Custodian: August 21, 2013
Response Made by Custodian: September 16, 2013
GRC Complaint Received: October 15, 2013

Background⁴

Request and Response:

On August 21, 2013, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On August 29, 2013, six (6) business days later, the Custodian sought an extension of time to respond. The Custodian stated that he would provide a response on September 16, 2013. On September 16, 2013, the Custodian responded in writing, via email, denying the request as overly broad, for failing to identify specific government records, and for requiring the Custodian to conduct research.

On September 16, 2013, the Complainant asked the Custodian, via email, to reconsider his response. The Complainant clarified that he seeks "factual material about meetings or telephone conversations held between [New Jersey Civil Service] Commissioners or [New Jersey Civil Service] Commission staff and the public, interested groups or legislators." Additionally, the Complainant limited the scope of his request to "notes of Commissioners or

¹ No legal representation listed on record.

² Represented by Mathew B. Thompson, Esq., of Berry, Sahradnik, Kotzas, & Benson (Toms River, NJ).

³ The Complainant's OPRA request contained other items; however, they are not at issue in this matter.

⁴ 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.

staff of the Office of the Chair related to the job banding rulemaking proposal.” On September 19, 2013, the Custodian replied that he would treat the Complainant’s September 16, 2013 email as a new OPRA request. On September 26, 2013, the Custodian responded in writing, via email, denying the Complainant’s request again as overly broad and unclear.

Denial of Access Complaint:

On October 25, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that his request was neither overly broad nor unclear. The Complainant claimed that he sufficiently described his request for notes containing factual material about meetings or telephone conversations held between Commission members and/or staff and the public, interested groups or legislators regarding the Proposal.

Statement of Information:

On November 27, 2013, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that the Complainant’s OPRA request was invalid as overly broad and unclear, and failed to identify specific government records. Additionally, the Custodian argued that the Complainant’s request would require him to perform research beyond the scope of his responsibilities.

The Custodian then certified that even if the Complainant’s September 16, 2013 email intended to clarify his August 19, 2013 OPRA request, it did not resolve the request’s invalidity. The Custodian argued that the Complainant did not limit what third parties Commission staff conversed with on the Proposal, such as “members of the public” and “interested groups.” Additionally, the Custodian asserted that the Complainant’s request encompassed the Commission’s entire staff, including Commissioners. Furthermore, the Custodian certified that the Complainant did not provide a timeframe in which to conduct a search for records. The Custodian argued that since the Proposal has been an ongoing issue within the State of New Jersey, the request could involve meetings and telephone conversations amongst former Commissioners and staff spanning several years.

Analysis

Invalid OPRA Request

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

MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (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. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁵ Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Additionally, in N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 177 (App. Div. 2007), the court held that a requestor is required to “submit the request with information that is essential to permit the custodian to comply with its obligations.”

In the instant matter, the Complainant requested notes of any meetings or telephone conversations between Commissioners or the staff of the Office of the Chair and members of the public, interested groups, or members of the Legislature, related to the Commission’s Proposal. The Complainant’s request did not provide a specific timeframe for the Custodian to inquire Commissioners and staff on meetings or telephone conversations that may have taken place. Additionally, the Custodian certified that the Proposal has been an ongoing issue within the Commission; ergo, the Custodian’s search potentially comprises conversations and meetings amongst current and former Commissioners and staff over several years.

The Complainant’s request lacked information essential for the Custodian to comply with his obligations under OPRA. Without providing a specific timeframe, the Complainant’s request is overly broad, and requires the Custodian to perform research in violation of OPRA. See N.J.

⁵ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

Builder's Ass'n, 390 N.J. Super. at 177, 180; *see also* MAG, 375 N.J. Super. at 549 (OPRA does not countenance “[w]holesale requests for general information”).

Therefore, the Custodian has borne his burden of proof that he did not unlawfully deny access to the Complainant’s August 21, 2013 OPRA request. N.J.S.A. 47:1A-6. The request is invalid as overly broad, and requires the Custodian to conduct research beyond the scope of his responsibilities. *See* MAG, 375 N.J. Super. at 546, 549, and N.J. Builders Ass’n, 390 N.J. Super. at 177, 180.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he did not unlawfully deny access to the Complainant’s August 21, 2013 OPRA request. N.J.S.A. 47:1A-6. The request is invalid as overly broad, and requires the Custodian to conduct research beyond the scope of his responsibilities. *See* MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546, 549 (App. Div. 2005), and N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 177, 180 (App. Div. 2007)

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

Approved By: Dawn SanFilippo, Esq.
Acting Executive Director

July 22, 2014