



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

October 28, 2014 Government Records Council Meeting

Jacob Michael Donnelly
Complainant

Complaint No. 2014-91

v.

NJ Office of the Governor
Custodian of Record

At the October 28, 2014 public meeting, the Government Records Council (“Council”) considered the October 21, 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 because the Complainant’s request sought “all documents” relating to a closure of a state motor vehicle office, and did not specify the documents’ type, time range, parties involved in the communication, nor give any other identifier, it is overbroad pursuant to MAG Entm’t LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546, (App. Div. 2005), Bent v. Stafford Police Dept., 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Ass’n v. New Jersey Council of Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). Thus, the request was invalid as it was not the type of record “encompassed by OPRA”. New Jersey Builder Ass’n v. New Jersey Council of Affordable Hous., 390 N.J. Super. 166, 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 28th Day of October, 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: October 30, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 28, 2014 Council Meeting**

**Jacob Michael Donnelly¹
Complainant**

GRC Complaint No. 2014-91

v.

**State of N.J. Office of the Governor²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via email of all records relating to the closure of the Elizabeth NJ motor vehicle office in 2010.

Custodian of Record: Ned Nurick

Request Received by Custodian: February 9, 2014

Response Made by Custodian: February 21, 2014

GRC Complaint Received: February 26, 2014

Background³

Request and Response:

On February 9, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-described records. On February 21, 2014, the seventh (7th) business day following the request, the Custodian responded in writing stating that the request was overbroad and therefore invalid. The Custodian also stated that the documents were not identified with reasonable clarity and the request would have required the Custodian to do research. The Custodian also argued that OPRA does require a custodian to make a record.

Denial of Access Complaint:

On February 26, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that his request described the documents with enough specificity to be clear as they were “contained to a specific office, time, range and event.” He also stated that the closure he referred to occurred in “late 2010.”

¹ No legal representation listed on record.

² Represented by Valentina M. DiPippo, Deputy Attorney General.

³ 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.

Statement of Information:

On April 8, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Complainant’s request was overbroad and thus invalid. Through Counsel, the Custodian denied the request because it did not specify with reasonable clarity the documents sought. Further, the Custodian argued that a party cannot satisfy the specificity requirement of OPRA by requesting all of the agency’s documents. The Custodian contended that a proper request for documents cannot be a wholesale request for general information nor a general demand for “every document a public agency has on file”, citing MAG Entm’t LLC, v Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005).

Analysis

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.

Additionally, OPRA provides 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

The New Jersey Superior Court Appellate Division 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 (App. Div. 2005). (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).

Further, in Bent v. Stafford Police Dept., 381 N.J. Super. 30, 37 (App. Div.2005),⁴ 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

⁴ Affirmed on Appeal regarding Bent v Stafford Police Department, GRC Case No. 2004-78 (October 2004).

documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.”⁵

Additionally, in New Jersey Builders Ass'n v. New Jersey Council of Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007), 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...”

Here, the Complainant’s OPRA request concerned the closure of the Elizabeth NJ motor vehicle office in 2010, and demanded all “documents” regarding same. While the request for “all documents” referenced 2010, and a subject matter, it was nevertheless overbroad because it failed to identify specific documents and to provide a time range.

Because the Complainant’s request sought “all documents” relating to a closure of a state motor vehicle office, and did not specify the documents’ type, time range, parties involved in the communication, nor give any other identifier, it is overbroad pursuant to MAG, 375 N.J. Super. at 546, Bent, 381 N.J. Super. at 37, New Jersey Builders, 390 N.J. Super. at 180. Thus, the request was invalid as it was not the type of record “encompassed by OPRA”. New Jersey Shore Builders, 390 N.J. Super. at 180

The GRC notes that in the Denial of Access Complaint, the Complainant asserted that his request sought “*Governor’s Office communications which mention closure*” (emphasis added). That attempt to narrow the scope of the demand of the OPRA request was a tacit admission that the request was overbroad. As noted by Counsel, even had the request been made more specific by itemizing types of communication, a proper OPRA request for such documents as correspondence includes the subject matter, the specific date or range of dates, and the names and senders of the recipients. Although the OPRA request stated a subject matter and a date, the Complainant did not provide the criteria with any specificity and there were no limits whatsoever as to the types of documents or who the parties were in the communications. *See Elcavage v. Twp. of West Milford*, GRC Complaint No. 2009-07 and 2009-08 (March 2010).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant’s request sought “all documents” relating to a closure of a state motor vehicle office, and did not specify the documents’ type, time range, parties involved in the communication, nor give any other identifier, it is overbroad pursuant to MAG Entm’t LLC v. Div. of Alcoholic Beverage Control., 375 N.J. Super. 534, 546, (App. Div. 2005), Bent v. Stafford Police Dept., 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Ass’n v. New Jersey Council of Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). Thus, the

⁵ As stated in Bent, supra.

request was invalid as it was not the type of record “encompassed by OPRA”. New Jersey Builder Ass’n v. New Jersey Council of Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007).

Prepared By: Ernest Bongiovanni, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

October 28, 2014