



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

May 24, 2016 Government Records Council Meeting

Frank J. Caligiuri
Complainant

v.

Monroe Township Public Schools (Middlesex)
Custodian of Record

Complaint No. 2015-381

At the May 24, 2016 public meeting, the Government Records Council ("Council") considered the May 17, 2016 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 did not request identifiable government records and instead sought information and asked questions, the request is invalid under OPRA. Therefore, the Custodian lawfully denied access. 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, (App. Div. 2005); Vance v. Cnty. of Sussex Sheriff's Office, GRC Complaint No. 2012-188 (June 2013); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Lamantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (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 24th Day of May, 2016

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: May 27, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 24, 2015 Council Meeting**

**Frank J. Caligiuri¹
Complainant**

GRC Complaint No. 2015-381

v.

**Monroe Township Public Schools (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: For pick up:

“I am requesting a comparison [of test scores] by 1st grade classroom and instructor,” broken down by the following:

1. Population of each classroom;
2. Resources, specifically teacher’s aids [*sic*] assigned to each class;
3. Interactive white boards, power boards, etc., made available to each class;
4. Number of special needs students and students who did not complete Kindergarten;
5. MAP/RIT/SGO test scores or each class;
6. Number and nature of parental or other complaints/issues filed during relevant period;
7. Time and date that final standardized testing was conducted;
8. Credentials and hierarchy, specifically the name of the individual or authority who oversees the individuals who conducted relevant peer reviews;
9. Scoring protocol relevant to the aforementioned peer reviews;

Also, please confirm or deny whether:

1. “you are aware of an incident involving the Principal and a married teacher . . .”;
2. “you are aware” of an incident involving a teacher who allegedly struck or restrained a student and whether appropriate investigations have been conducted.

Custodian of Record: Charles Earling
Request Received by Custodian: October 30, 2015
Response Made by Custodian: November 5, 2015
GRC Complaint Received: November 27, 2015

¹ No legal representation listed on record.

² Represented by John J Armano, Jr., Trimble & Armano, Turnersville, NJ.

Background³

Request and Response:

On October 30, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 4, 2015, the Custodian responded in writing, stating that the request was denied as it sought information or asked questions and did not identify specific government records.

Denial of Access Complaint:

On November 27, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that his request was unlawfully denied. He stated that “[i]t would seem the information that I requested should be readily available . . . as part of routine reporting . . . related to teachers and their performance.”

Statement of Information:

On December 23, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on October 30, 2015. The Custodian certified that he responded in writing on November 5, 2015, and denied the requests, stating that items 1-5, 10, and 11 were invalid as they sought information or asked questions, and did not specify government records. The Custodian further stated that there were no records responsive to those requests. He argued that OPRA “only allows requests for records not requests for information. It does not require custodians to conduct research among its records and correlate data from various government records in the custodian’s possession”. *Citing MAG Entm’t, LLC v. Div. of ABC*, 375 N.J. Super. 534 (App. Div. 2005); *Bent v. Stafford Police Dep’t*, 381 N.J. Super. 534 (App. Div. 2005); *Citing also Livechhia v. Borough of Mr. Arlington*, 421 N.J. Super 24 (App Div. 2011). The Custodian also denied the requests 6-9 as vague or overbroad. The Custodian stated that each request sought general information by asking for a “comparison” between test scores and various factors, such as “teachers aids assigned to each class.” This, he argued, would require the Custodian to create comparative records and conduct research, owing to the vague and indefinite nature of all the requests. *Citing New Jersey Builder’s Ass’n v. NJ Council of Affordable Housing*, 390 N.J. Super 166, 180 (App Div. 2007).

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

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.

“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.*” (Emphasis added.) MAG, 375 N.J. Super. 534, 546. The Court reasoned that:

“[m]ost 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.” [Emphasis added]. *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.* See also Bent, 381 N.J. Super. 30, 37 New Jersey Builders Ass’n, 390 N.J. Super. 166, 180 and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC found that the complainant’s request was a request for information, holding that “because request Item No. 2 of the Complainant’s . . . OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG, *supra*] . . .” *Id.* at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). Additionally, in Watt v. Borough of N. Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the complainant’s OPRA request asked five (5) questions. The Council determined that the request was an invalid because it failed to identify government records.

In Vance v. Cnty. of Sussex Sheriff’s Office, GRC Complaint No. 2012-188 (June 2013), the Complainant sought answers to questions: “[h]ow many inmates received threatening notes and what actions were taken?” The GRC found the request invalid, as it sought “information that fails to seek identifiable government records.” Citing MAG, Bent, NJ Builders, and Schuler, *supra*.

In Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007), the Council held, pursuant to MAG, that a custodian is obligated to search his or her files to find identifiable government records listed in a requestor’s OPRA request. In Donato, the

complainant requested all motor vehicle accident reports from September 5, 2005, to September 15, 2005. The custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

Pursuant to MAG, the Custodian is obligated to *search* her files to *find* the identifiable government records listed in the Complainant's OPRA request (all motor vehicle accident reports for the period of September 5, 2005, through September 15, 2005). However, the Custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word *search* is defined as "to go or look through carefully in order to find something missing or lost." The word *research*, on the other hand, means "a close and careful study to find new facts or information."

Id. (emphasis added, citations omitted).

In the instant matter, the Complainant requested "a comparison [of test scores] by 1st grade classroom and instructor," broken down by various listed categories. Additionally, requested items 10 and 11 asked the Custodian whether she was "aware" of certain incidents. As to items 6-9, although the Custodian justified those denials as being vague and overbroad requests, those items would also have required the Custodian to conduct research.

Therefore, because the Complainant did not request identifiable government records and instead sought information and asked questions, the request is invalid under OPRA. Thus, the Custodian lawfully denied access. MAG, 375 N.J. Super. 534, 546; Bent, 381 N.J. Super. 30; Vance, GRC 2012-188; Donato, GRC 2005-182; Lamantia, GRC 2008-140.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant did not request identifiable government records and instead sought information and asked questions, the request is invalid under OPRA. Therefore, the Custodian lawfully denied access. 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, (App. Div. 2005); Vance v. Cnty. of Sussex Sheriff's Office, GRC Complaint No. 2012-188 (June 2013); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Lamantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

Prepared By: Ernest Bongiovanni
Staff Attorney

May 17, 2016