



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

April 25, 2017 Government Records Council Meeting

Susan M. Fernola-Overpeck
Complainant

Complaint No. 2016-124

v.

Sterling High School (Camden)
Custodian of Record

At the April 25, 2017 public meeting, the Government Records Council (“Council”) considered the April 18, 2017 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 Complainant’s OPRA requests are invalid because they fail to seek identifiable government records. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant’s requests. N.J.S.A. 47:1A-6.

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 25th Day of April, 2017

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: April 27, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 18, 2017 Council Meeting**

**Susan M. Fernola-Overpeck¹
Complainant**

GRC Complaint No. 2016-124

v.

**Sterling High School (Camden)²
Custodial Agency**

Records Relevant to Complaint:³ Electronic copies via e-mail of:

Request Number 1: “Information regarding the December 17, 2015 Board minutes – Approve settlement with . . . Amount paid out for the settlement with Joseph Giambri?”

Request Number 2: “Information regarding the December 17, 2015 Board minutes – Approve settlement with . . . Amount paid out for the settlement with PSISJS, PSUG-NJ William Isard & Sharon Lehman Isard?”

Request Number 3: “Information regarding the December 17, 2015 Board minutes – Approve settlement with...Amount paid out for the settlement with Advanced Computer Solutions Group (ACSG) Justin Jackson?”

Custodian of Record: Elizabeth Giambrone

Requests Received by Custodian: February 26, 2016

Responses Made by Custodian: March 7, 2016

GRC Complaint Received: April 22, 2016

Background⁴

Request and Response:

On February 26, 2016, the Complainant submitted three Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned information. On March 7, 2016, the sixth (6th) business day following receipt of said requests, the Custodian responded in

¹ No legal representation listed on record.

² Represented by Kyle Allen, Esq., of Comegno Law Group, P.C. (Moorestown, NJ).

³ The Complainant submitted three (3) separate OPRA requests, all dated February 26, 2016.

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.

writing, acknowledging the three (3) OPRA requests and informing the Complainant that the requests are denied because they do not seek specifically identifiable records.

Denial of Access Complaint:

On April 22, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that she filed three (3) requests on February 26, 2016, and that the Custodian subsequently denied the requests on March 7, 2016. The Complainant asserts that she has previously filed OPRA requests with the Custodian for the same information and has been denied on each occasion.⁵ The Complainant asks the GRC if she has to file her requests in another language. The Complainant refers the GRC to the Custodian’s March 7, 2016 response for any further information concerning the complaint.

Statement of Information:

On May 16, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s three (3) requests on February 26, 2016, and responded in writing to the requests on March 7, 2016.

The Custodian certifies that the Complainant’s requests not only “ask for ‘information,’ but . . . as written are unclear and nonsensical.” The Custodian further certifies that the requests are overly broad and failed to identify specific government records. As such, the Custodian argues that she was unable to conduct a reasonable search for the requested records.

The Custodian argues that a proper request must identify with reasonable clarity those documents that are desired, and that agencies are required to disclose only identifiable records not otherwise exempt. The Custodian cites Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, App. Div. 2005), among other legal authority, in support of her argument. The Custodian contends that in denying the request she did not violate OPRA.

The Custodian states that the complaint is frivolous, without merit, and was filed in bad-faith. The Custodian seeks prevailing party attorney fees.⁶

⁵ The Complainant attached to the complaint a copy of two pages identified only as “Regular Meeting Minutes, December 17, 2015.” The documents have the aforementioned heading: Giambri settlement, PSISJS settlement, and ACSG settlement circled. The minutes reference a “[m]otion by BARIKIAN . . . to approve the settlement” for each of the latter three circled items. The Complainant states that she referenced these documents in an OPRA request that predates the requests that formed the basis of the instant complaint. The Complainant did not label these documents with exhibit numbers or otherwise indicate that they have relevance to this complaint. So, the GRC can only assume that they are also intended to relate to the instant complaint.

⁶ The GRC notes that OPRA’s fee shifting provision only applies to complainants. N.J.S.A. 47:1A-6. As such, the GRC does not address any alleged counterclaims for tortious conduct, sanctionable litigation practices, or other claims that do not arise out of OPRA.

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.

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.” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (citing N.J.S.A. 47:1A-1) (quotations omitted). 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.

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 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, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Further, in LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that held library cards. The GRC determined that the complainant’s request was not for an identifiable government record but for information. Id. As such, the request was deemed invalid pursuant to MAG. Id.; *see also Ohlson v. Twp. of Edison (Middlesex)*, GRC Complaint No. 2007-233 (August 2009). Similarly, in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the complainant made an OPRA request in the form of several questions regarding when a property was added to the “tax rolls,” how much tax was

owed, and why there was any delay in adding the property to the tax roll. The Council determined that the request was invalid because it failed to identify government records. Id.

Here, the Complainant readily admits in the requests that she is seeking “information.” It appears that the Complainant is seeking the amounts paid by the agency in various settlements; however, the Complainant does not specifically identify any government records.

Therefore, the Complainant’s OPRA requests are invalid because they fail to seek identifiable government records. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass’n, 390 N.J. Super. 166; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to the Complainant’s requests. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s OPRA requests are invalid because they fail to seek identifiable government records. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant’s requests. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart

April 18, 2017