



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

August 28, 2018 Government Records Council Meeting

Elie C. Jones
Complainant

Complaint No. 2016-290

v.

Township of Teaneck (Bergen)
Custodian of Record

At the August 28, 2018 public meeting, the Government Records Council (“Council”) considered the August 21, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because the Custodian certified that he did not receive OPRA request No. 3 and 4 from the Complainant, and because the Complainant has not provided any credible evidence to contradict said certification, the Custodian did not unlawfully deny access to said OPRA requests. See Ping v. Borough of Brielle (Monmouth), GRC Complaint No. 2009-132 (April 2010); McMillan v. City of Newark Hous. Auth. (Essex), GRC Complaint No. 2009-77 (February 2011).
2. The Custodian has borne his burden of proof that he timely responded to the Complainant’s OPRA request obtaining an extension of time to a date certain. N.J.S.A. 47:1A-6. Further, the Custodian bore his burden of proof that he responded in writing within the extended time frame. As such, there was no “deemed” denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Werner v. N.J Civil Serv. Comm’n, GRC Complaint No. 2011-151 (December 2012).
3. The Complainant’s request No. 1 represents an invalid request for information that fails to seek identifiable government records. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Further, the Complainant’s request No. 2 represents an invalid request seeking a broad cross section of unidentifiable correspondence “documents” and lacks all necessary criteria to be considered valid under OPRA. Caggiano v. State of N.J. Office of the Governor, GRC Complaint No. 2014-272 (April 2015). Thus, the Custodian did not unlawfully deny access to these requests. N.J.S.A. 47:1A-6; 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); N.J. Builders Assoc. 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).



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 August, 2018

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: August 30, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
August 28, 2018 Council Meeting**

**Elie C. Jones¹
Complainant**

GRC Complaint No. 2016-290

v.

**Township of Teaneck (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via pickup of:

1. All cost for litigation, settled and current, with the Complainant from 2000 through 2016.
2. All certified mail documents received by the Township of Teaneck (“Township”) sent by the Complainant “in records for any correspondence between the Township and [Complainant]” from 2000 through 2016.
3. Fax logs
4. Logs of incoming mail hand-delivered to the Township.

Custodian of Record: Issa Abbasi

Request Received by Custodian: September 13, 2016

Response Made by Custodian: September 22, 2016

GRC Complaint Received: November 10, 2016

Background³

Request and Response:

On September 13, 2016, the Complainant purportedly submitted four (4) Open Public Records Act (“OPRA”) requests⁴ to the Custodian seeking the above-mentioned records. On September 22, 2016, the seventh (7th) business day after receipt of the OPRA request, the Custodian responded in writing to OPRA requests No. 1 and 2 obtaining an extension until October 20, 2016.⁵ The Custodian noted that with respect to OPRA request No. 2, the Township did not “maintain files by certified mail” and were not required to perform research (citing MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005)).

¹ No legal representation listed on record.

² Represented by William Rupp, Esq., of Winne, Banta, Basralian & Kahn, P.C. (Hackensack, NJ).

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

⁴ The Complainant alleged that he submitted four (4) OPRA requests to the Custodian; however, and as later discussed, the Custodian only received two (2) OPRA requests.

⁵ The Custodian also extended the time frame on two (2) additional OPRA requests not at issue in this complaint.

On October 17, 2016, the Custodian responded in writing to the Complainant's OPRA request No. 1 denying access under MAG, 375 N.J. Super. 534. On the same day, the Custodian responded in writing to the Complainant's OPRA request No. 2 also denying access under MAG.

Denial of Access Complaint:

On November 10, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted the Custodian's denial of access was not timely. The Complainant also argued that the denials were unlawful and the GRC should order disclosure immediately. The Complainant alleged that the records sought were not for litigation and the denial was a retaliation move by the Township.

Statement of Information:

On January 23, 2017, the Custodian filed a Statement of Information ("SOP"). The Custodian certified that he received the Complainant's OPRA request Nos. 1 and 2 on September 13, 2016. The Custodian certified that after extending the time frame through October 20, 2016, he responded in writing on October 17, 2016 denying access to both requests under MAG, 375 N.J. Super. 534. The Custodian certified that as to OPRA request Nos. 3 and 4, he never received any such requests.

The Custodian initially argued that the GRC should dismiss this complaint due to multiple deficiencies in the filing. The Custodian noted that the Complainant failed to attach any of his OPRA requests and the September 22, 2016 response extending the time frame. The Custodian also argued that the Complainant failed to properly complete the "Detail Summary" section of the Denial of Access Complaint. The Custodian argued that, notwithstanding the complaint deficiencies, he properly acted under OPRA and no unlawful denial of access occurred.

Regarding the Complainant's timeliness allegation, the Custodian argued that the evidence proves he timely responded. The Custodian affirmed that he responded within seven (7) business days seeking an extension of time to a date certain per N.J.S.A. 47:1-5(i). The Custodian further affirmed that he responded denying access to the requests prior to the expiration of the extension. The Custodian also contended that the vagueness of OPRA request Nos. 1 and 2 allowed him to enlarge the time frame to respond. N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007).

Regarding OPRA request Nos. 1 and 2, the Custodian argued that both requests failed to identify specific records. The Custodian averred that for request No. 1, no single record exists containing all costs associated with litigation involving the Complainant. The Custodian asserted that he could have reviewed every bill over a sixteen (16) year period to reveal those costs; however, OPRA does not require research or creation of a record. MAG; Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian argued that request No. 2 would similarly have forced him to review every piece of correspondence in every file to identify "certified mail documents" sent by the Complainant. See also Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015).

Regarding OPRA request Nos. 3 and 4, the Custodian affirmed that he never received them. The Custodian certified that, notwithstanding that he never received these requests, no responsive records existed. The Custodian affirmed that the Township did not make or maintain “fax logs” or “[l]ogs of incoming mail hand-delivered.” The Custodian also argued that OPRA did not require him to create such a document in order to satisfy the requests (citing Paff v. Galloway Twp., 444 N.J. Super. 495, 505-06 (App. Div. 2016)).

Analysis

No Correspondence Received

As a threshold issue, the Custodian has certified in the SOI that the Township has no record of receiving the Complainant’s OPRA request Nos. 3 and 4. Prior to engaging in a further analysis of the complaint, the GRC will first address this issue.

In Ping v. Borough of Brielle (Monmouth), GRC Complaint No. 2009-132 (April 2010), the complainant filed a Denial of Access Complaint stating that he submitted four (4) OPRA requests for a site plan to which he received no response. In a letter to the GRC, the custodian stated that the Borough had no record of the four (4) OPRA requests. The GRC subsequently requested that the custodian certify to whether he received the four (4) requests at issue. The custodian legally certified on May 5, 2009 that none of the requests at issue were filed with his office, nor was the custodian aware that the requests were received by any other employees of the Borough. In the absence of any additional evidence to the contrary, the Council held that no unlawful denial of access occurred. Subsequently, the Council relied on its holding in Ping to similarly conclude in McMillan v. City of Newark Hous. Auth. (Essex), GRC Complaint No. 2009-77 (February 2011) that no denial of access occurred.

Here, the Complainant submitted his complaint challenging denials to four (4) OPRA requests. However, the Complainant only included as documentary evidence responses to OPRA request Nos. 1 and 2. The Complainant included no other indication that he submitted requests reflected in OPRA request Nos. 3 and 4. In the SOI, the Custodian certified that he never received OPRA request Nos. 3 and 4.⁶ In reviewing the evidence of record here, the GRC is persuaded that its prior decisions in Ping and McMillan apply. Thus, there was no unlawful denial of access to OPRA request Nos. 3 and 4

Accordingly, because the Custodian certified that he did not receive OPRA request No. 3 and 4 from the Complainant, and because the Complainant has not provided any credible evidence to contradict said certification, the Custodian did not unlawfully deny access to said OPRA requests. See Ping, GRC 2009-132; McMillan, GRC 2009-77.

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id.

⁶ The Custodian also certified in the SOI that the Township did not maintain a fax log or hand-delivered mail log.

Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁷ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

OPRA also provides that a custodian may have an extension of time to respond to a complainant's OPRA request, but the custodian must provide a date certain. N.J.S.A. 47:1A-5(i). For example, in Werner v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012), the custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date by which the requested records would be made available, the custodian properly requested the extension pursuant to OPRA

Here, the Complainant contended in the Denial of Access Complaint that the Custodian failed to timely respond to his OPRA requests. In the SOI, however, the Custodian certified that he initially responded to the Complainant's OPRA request Nos. 1 and 2 on the seventh (7th) business day obtaining an extension to a date certain.⁸ Further, the Custodian certified that he responded prior to the expiration of the extended time frame denying access to both requests. The Custodian also provided documentary evidence supporting this certification.

Accordingly, the Custodian has borne his burden of proof that he timely responded to the Complainant's OPRA request obtaining an extension of time to a date certain. N.J.S.A. 47:1A-6. Further, the Custodian bore his burden of proof that he responded in writing within the extended time frame. As such, there was no "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Werner, GRC 2011-151.

Validity of Request

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, 375 N.J. Super. 534, 546 (emphasis added).]

The Court reasoned that:

⁷ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

⁸ The GRC notes that it does not address OPRA request Nos. 3 and 4 because the Custodian never received said requests.

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). Bent, 381 N.J. Super. 30, 37 ;⁹ N.J. Builders, 390 N.J. Super. 166, 180; 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 held library cards. The GRC deemed that the complainant’s request was a request for information, holding that “. . . because request Item No. 2 of the Complainant’s June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG] . . .” Id. at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). Further, in Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015), the complainant sought, among other information, the “total number of applicants” interviewed or hired by race and gender. The Council held that the request was invalid because it sought information (citing Litchult, Jr. v. Borough of Waldwick Police Dep’t (Bergen), GRC Complaint No. 2010-159 (May 2011)).

Moreover, the GRC established criteria deemed necessary under OPRA to specifically request an email communication in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid, such requests must contain (1) the content and/or subject of the email, (2) the specific date or range of dates during which the email(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See Elcavage, GRC 2009-07; Sandoval v. NJ State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage, to other forms of correspondence, such as letters in Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011).

In Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010), the complainant’s OPRA request sought all e-mails to or from a particular e-mail account for a specific time period. The custodian’s counsel responded advising the complainant that his OPRA request was invalid because it represented an open-ended search of the Borough’s

⁹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

files. The Council held that the complainant's request was invalid under Elcavage, GRC 2009-07 because it did not include a subject or content. Id. at 7.

The Council subsequently looked to Verry, GRC 2009-124 in determining whether a request for materials mailed to an agency was valid. In Caggiano v. State of N.J. Office of the Governor, GRC Complaint No. 2014-272 (April 2015), the complainant submitted a request for multiple items, inclusive of "documents and CDs" sent to three (3) individuals over a certain time period. The Council, looking to MAG and its prior decision in Verry, determined that the request item was invalid. The Council reasoned that "[n]otwithstanding that the Complainant included some criteria . . . they still mirror the request in Verry . . . and are therefore invalid because [they failed] to include to subject or content . . ." Id. 4.

Here, the Complainant's request No. 1 sought "all costs for litigation" involving the Complainant for a sixteen (16) year period. For this request, the Custodian denied access to this request as invalid. The Custodian argued in the SOI that he would be required to search through every bill during the relevant time period and calculate the total costs based on that review. This request is similar to the request in LaMantia, GRC 2008-140 in that it seeks information. Specifically, request No. 1 would require the Custodian to add costs together for litigation costs attributed to the Complainant and provide that number to him. This is as opposed to providing a record already in existence that would contain that exact information. As such, the Council's decision in LaMantia is applicable herein.

Further, the Complainant's request No. 2 sought "all certified mail documents received by the Township sent by [the Complainant]" for a six (6) year period.¹⁰ The Custodian also denied access to this request as invalid. For this request, the Custodian argued in the SOI that he would have to review every document in the Township's possession to determine if it was responsive to the request. The GRC is persuaded that this request is similar to the request at issue in Caggiano, GRC 2014-272. Specifically, the Complainant sought all "documents" potentially sent by him via certified mail to the Township. While the request includes a date range, there is no subject/content. Further, the wording of the request begs the question whether the request encompasses additional "documents" created in response to those received from the Complainant. As such, the Council's decision in Caggiano is applicable here.

Accordingly, the Complainant's request No. 1 represents an invalid request for information that fails to seek identifiable government records. LaMantia, GRC 2008-140. Further, the Complainant's request No. 2 represents an invalid request seeking a broad cross section of unidentifiable correspondence "documents" and lacks all necessary criteria to be considered valid under OPRA. Verry, GRC 2009-124; Caggiano, GRC 2014-272. Thus, the Custodian did not unlawfully deny access to these requests. N.J.S.A. 47:1A-6; MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151.

¹⁰ To the extent that OPRA request No. 2 sought records the Complainant composed and sent to the Township, the GRC notes that Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (September 2015) (holding that a custodian was not required to comply with a request seeking e-mails submitted to the agency by the complainant) could control.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. Because the Custodian certified that he did not receive OPRA request No. 3 and 4 from the Complainant, and because the Complainant has not provided any credible evidence to contradict said certification, the Custodian did not unlawfully deny access to said OPRA requests. See Ping v. Borough of Brielle (Monmouth), GRC Complaint No. 2009-132 (April 2010); McMillan v. City of Newark Hous. Auth. (Essex), GRC Complaint No. 2009-77 (February 2011).
2. The Custodian has borne his burden of proof that he timely responded to the Complainant's OPRA request obtaining an extension of time to a date certain. N.J.S.A. 47:1A-6. Further, the Custodian bore his burden of proof that he responded in writing within the extended time frame. As such, there was no "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Werner v. N.J Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012).
3. The Complainant's request No. 1 represents an invalid request for information that fails to seek identifiable government records. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Further, the Complainant's request No. 2 represents an invalid request seeking a broad cross section of unidentifiable correspondence "documents" and lacks all necessary criteria to be considered valid under OPRA. Caggiano v. State of N.J. Office of the Governor, GRC Complaint No. 2014-272 (April 2015). Thus, the Custodian did not unlawfully deny access to these requests. N.J.S.A. 47:1A-6; 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); N.J. Builders Assoc. 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).

Prepared By: Frank F. Caruso
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August 21, 2018