



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

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**August 30, 2022 Government Records Council Meeting**

Anonymous  
Complainant

Complaint No. 2021-92

v.

Township of Medford  
Custodian of Record

At the August 30, 2022 public meeting, the Government Records Council (“Council”) considered the August 23, 2022 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 request seeking the “legal authority” for the Township’s policy seeks information and not specifically identifiable government records. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 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 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); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); and Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). The Custodian therefore lawfully denied access to the request. 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 30<sup>th</sup> Day of August 2022

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: September 1, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
August 30, 2022 Council Meeting**

**Anonymous<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-92**

**v.**

**Township of Medford (Burlington)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of: “At the Town Council meeting on April 6, 2021 a public commenter asked not to have her home address entered into the public record. However, the [Township of Medford (“Township”)] demanded the information claiming ‘it is part of the Public Comment Process’ and was ‘required.’ I am requesting a copy of the legal authority for the Township to make this a ‘requirement’ and to unmask anonymous commenters and post the information publicly in the published minutes against the wishes of the commenter.”

**Custodian of Record:** Katherine Burger  
**Request Received by Custodian:** N/A  
**Response Made by Custodian:** N/A  
**GRC Complaint Received:** April 26, 2021

**Background<sup>3</sup>**

**Request:**

On April 11, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

**Denial of Access Complaint:**

On April 26, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he never received a response to his OPRA request.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Timothy M. Prime, Esq., of Prime & Tuvel, LLC (Mount Laurel, NJ).

<sup>3</sup> 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.

Response:

On May 5, 2021, Custodian's Counsel responded to the Complainant, stating that under the Open Public Meetings Act ("OPMA"), N.J.S.A. 10:4-12, the Township Council was permitted to require a member of the public addressing same to provide their name and address for the record. Counsel stated that the requirement was within the Township Council's discretion by the provision of OPMA.

On May 6, 2021, the Complainant replied to Counsel, stating that no response was provided within the statutory period. The Complainant also disputed the claim that the Township had a longstanding policy of requiring members of the public provide their name and address during public comment at Township Council meetings.

Later that same day, Counsel replied to the Complainant stating that the Complainant's OPRA request did not seek public records. Counsel stated that the Township responded as a courtesy and was not required to reply under OPRA.

On May 10, 2021, the Complainant replied to Counsel stating that an OPRA request was submitted on April 11, 2021 and he received no response within the statutory period.

Statement of Information:

On May 19, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that the Township did not receive the Complainant's OPRA request. The Custodian certified that the Township nevertheless searched for responsive records and that none exist.

The Custodian maintained that no OPRA request was received by the Township. The Custodian asserted that because the request referenced the Township's "legal authority," Counsel responded directly to the Complainant explaining OPMA and the Township's history of requiring members of the public to provide their name and address when addressing the Township Council. The Custodian also provided a copy of a recent ordinance passed by the Township regulating public meetings and agendas.

The Custodian argued that notwithstanding Counsel's response, the complaint does not pertain to an OPRA request but instead a grievance against the Township's meeting policy. The Custodian asserted that had the Township received a request, a response would have been provided stating that no responsive records exist.

**Analysis**

**No Correspondence Received**

In Krzywda v. Barnegat Twp. Sch. Dist. (Ocean), GRC Complaint No. 2008-138 (February 25, 2009), the complainant submitted an OPRA request to the athletic director and subsequently filed this complaint after receiving no response. In the SOI, the custodian certified that he did not

receive the subject OPRA request prior to the filing of the complaint, but that no records responsive exist. The Council held that notwithstanding the fact that “. . . the Custodian was not given an adequate opportunity to respond . . .” prior to the filing of the denial of access complaint, “. . . the Custodian certified that no records . . . exist . . . [and] has borne his burden of proving a lawful denial of access.” *Id.* at 4. See also Bell v. Paterson Pub. Sch. (Passaic), GRC Complaint No. 2013-04 (Interim Order dated October 29, 2013).

Here, the GRC acknowledges that the Custodian similarly certified in the SOI that she never received the Complainant’s OPRA request. However, the Custodian subsequently responded to the Complainant’s OPRA request on the basis that she received it as part of the Denial of Access Complaint and GRC’s request for a completed SOI. Thus, notwithstanding the fact that the Custodian did not receive the Complainant’s OPRA request prior to the filing of this complaint, the GRC will consider this complaint based on the Custodian’s SOI response. Krzywda, GRC 2008-138.

It should be noted that had the Custodian simply certified that she never received the OPRA request, and the Complainant did not provide evidence refuting the Custodian’s certification, this complaint would have been administratively disposed of as no correspondence received. However, once the Custodian responded to each item of the OPRA request attached to the Denial of Access Complaint, she effectively placed the matter appropriately before the GRC for adjudication.

### **Validity of Request**

The Council is permitted to raise additional defenses regarding the disclosure of records pursuant to Paff v. Twp. of Plainsboro, 2007 N.J. Super. Unpub. LEXIS 2135 (App. Div.), certif. denied, 193 N.J. 292 (2007).<sup>4</sup> In Paff, the complainant challenged the GRC’s authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that OPMA prohibited the disclosure of the redacted portions to the requested executive session minutes. The Council affirmed the custodian’s denial to portions of the executive session minutes but for reasons other than those cited by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian’s cited basis for denial was lawful. The court held that:

The GRC has an independent obligation to “render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to’ OPRA . . . The GRC is not limited to assessing the correctness of the reasons given for the custodian’s initial determination; it is charged with determining if the initial decision was correct.”

The court further stated that:

Aside from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-

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<sup>4</sup> On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

30 (App. Div. 1998) (citing Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) (lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), certif. denied, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. Super. 110, 121 (App. Div. 1956) (question for reviewing court is propriety of action reviewed, not the reason for the action), aff'd, 24 N.J. 139 (1957).

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. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005)<sup>5</sup>; 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).

Regarding requests seeking information or asking questions, 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 deemed that the complainant’s request was a request for information, holding that “. . . because request Item No. 2

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

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).

Here, the Complainant's request sought the Township's "legal authority" requiring members of the public to provide their names and addresses when speaking with the Township Council at public meetings. Rather than seeking government records, the Complainant's request seeks information, and requires the Custodian to conduct research. LaMantia, GRC 2008-140; Ohlson, GRC 2007-233.

Accordingly, the Complainant's request seeking the "legal authority" for the Township's policy seeks information and not specifically identifiable government records. 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; LaMantia, GRC 2008-140; and Ohlson, GRC 2007-233. The Custodian therefore lawfully denied access to the request. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant's request seeking the "legal authority" for the Township's policy seeks information and not specifically identifiable government records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 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 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); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); and Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). The Custodian therefore lawfully denied access to the request. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado  
Staff Attorney

August 23, 2022