



## State of New Jersey

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

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lieutenant Governor*

KIMBERLY K. HOLMES  
*Acting Commissioner*

### FINAL DECISION

#### August 29, 2023 Government Records Council Meeting

Michael Gardenier  
Complainant

Complaint No. 2022-171

v.

Borough of Cliffside Park (Bergen)  
Custodian of Record

At the August 29, 2023 public meeting, the Government Records Council (“Council”) considered the August 22, 2023 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 is invalid under prevailing case law. Specifically, item Nos. 1, 3, and 5 sought generic “documents” related to approved or pending Zoning matters where a “legal challenge” was filed, representation 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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Serv., 2019 N.J. Super. Unpub LEXIS 2510 at \*9-10 (App. Div. Dec. 10, 2019); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Further, the Complainant request item No. 2 sought information and not an identifiable “government record.” LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Finally, request item No. 4 (and by extension item No. 6) did not include the requisite “date or range of dates” or a viable “content and/or subject”. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian lawfully denied access to the Complainant’s request because it was invalid. 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 29<sup>th</sup> Day of August 2023

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 5, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
August 29, 2023 Council Meeting**

**Michael Gardenier<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-171**

v.

**Borough of Cliffside Park (Bergen)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the following:

1. “Any and all documents” regarding “any and all Zoning and/or legal challenges initiated” by the Borough of Cliffside Park (“Borough”) for “any and all Zoning and/or Site Plan applications or other zoning matters currently pending and/or approved in the Borough of Edgewater.”
2. “The names of all attorneys or professionals” hired or retained by the Borough to represent their interests or individual members thereof for item No. 1 above.
3. All retainers and/or agreements and invoices for item Nos. 1 and 2 above.
4. “Any and all correspondence” including e-mails between all members of the Borough or professionals related to item Nos. 1, 2, and 3 above.
5. “Any and all resolutions approving” item Nos. 1, 2, 3, and 4 above.
6. “The meta data of Borough e-mails” for the Borough Administrator, Mayor, and Building Office for any or all of item Nos. 1, 2, 3, 4, and 5.

**Custodian of Record:** Sercan Zoklu

**Request Received by Custodian:** April 21, 2022

**Response Made by Custodian:** April 27, 2022

**GRC Complaint Received:** May 5, 2022

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

**Request and Response:**

On April 21, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 27, 2022, the Custodian responded in writing denying the subject OPRA request as overly broad and thus invalid. MAG

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

<sup>2</sup> Represented by Christine Gillen, Esq., of Diktas Gillen, P.C. (Cliffside Park, 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.

Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Gannett N.J. Partners v. Middlesex Cnty., 379 N.J. Super. 205, 212 (App. Div. 2005). The Custodian further requested that the Complainant clarify his request to seek specific identifiable government records and included additional guidance on how to submit a valid OPRA request for correspondence. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).

#### Denial of Access Complaint:

On May 5, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the denial of access and contended that his OPRA request was “precise and ‘simple’.” The Complainant also asserted that the request was covered by press in “the North Jersey newspaper.”

#### Statement of Information:

On May 25, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 21, 2022. The Custodian certified that he attempted a search but determined that the request was invalid because it actually required research: he would have to manually review every Borough file with no defined time frame to determine which pertained to zoning matters, determine whether they met the Complainant’s vague conditions, and then attempt to apply each to the compounded request items. The Custodian noted that Custodian’s Counsel confirmed his determination through legal advice. The Custodian certified that he responded in writing on April 27, 2022 denying the request on the basis that it was invalid and sought clarification. The Custodian certified that the Complainant, rather than submit clarification, filed this complaint.

The Custodian maintained his position that the subject request is invalid because it lacked specificity. MAG, 375, N.J. Super. at 546. See also N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236 (App. Div. 2015). The Custodian further argued that item No. 2 seeks information and is not proper under OPRA. The Custodian also argued that item Nos. 4 and 6 do not include a date or range of dates and subject/content, which is “information essential” to be considered valid. Elcavage, GRC 2009-07.

### Analysis

#### 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. at 546 (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, 381 N.J. Super. at 37;<sup>4</sup> N.J. Builders Ass’n, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. *See e.g. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders*, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. *See e.g. Naples v. N.J. Motor Vehicle Comm’n*, GRC Complaint No. 2008-97 (December 2008).

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. *See also Steinhauer-Kula v. Twp. of Downe (Cumberland)*, GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a

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<sup>4</sup> Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in [MAG], [Bent] and the Council’s decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (February 2008).

[Id. See also Schulz v. NJ State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking “all documents” was overly broad and thus invalid).]

Additionally, in Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court held that plaintiff’s request was invalid because it required research. In reaching this conclusion, the court reasoned that:

The custodian in this case would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 237.]

More recently, in Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. Dec. 10, 2019),<sup>5</sup> the complainant requested docketing records stemming from an appeal of an agency’s final decision pertaining to a specific statute. The GRC found the request to be invalid, as it would cause the custodian to conduct research. On appeal, the court found that the request lacked a case name, party name, or docket number. The court also found that the request required the custodian “to search through thousands of cases to identify documents relevant to the request.” Slip op. at \*9-10. The court further found that the custodian would have to review each file to determine whether it was applicable to the specific

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<sup>5</sup> Affirmed on appeal from Carter v. N.J. Dep’t of Cmty. Affairs, GRC Complaint No. 2016-262 (August 2018).

issue identified by the complainant. The court therefore held that the request was invalid under OPRA.

Also, 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 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).

Finally, regarding requests for communications, including e-mails, text messages, and written correspondence, the GRC has established criteria deemed necessary under OPRA to request them. 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 e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See also 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. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). The Council has also found that an OPRA request not containing a sender and/or recipient is invalid. See Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2015-276 (Final Decision dated November 13, 2018).

Here, the Complainant's request item No. 1 sought "any and all documents" for any legal challenges to Zoning or Site Plan applications either pending or previously approved. The Complainant's request goes on to seek multiple records associated with matters referred to in item No. 1, from names of attorneys or professionals hired by the Borough (item No. 2), retainers and agreements of those hired individuals (item No. 3), correspondence for any of the above (item No. 4), resolutions approved (item No. 5), to "meta data" from multiple Borough officials specific to all the above (item No. 6). The Custodian denied the request as invalid, and this complaint ensued: the Complainant contended that his OPRA request was "precise and 'simple'." The Complainant further asserted that press coverage was received, although he does not identify whether that coverage focused on the subject OPRA request or any matter for which he sought records. In the SOI, the Custodian maintained that the request was invalid and described the actions he would be required to undertake to respond the subject request. The Custodian noted that item No. 2 sought information and item Nos. 4 and 6 did not conform to Elcavage, GRC 2009-07.

Upon review, the GRC is compelled to find that the subject request is obviously invalid because it would require research, seeks information, and fails to contain requisite criteria to be a valid request for communications. Specifically, request item No. 1 would clearly require the type of research that both the Lagerkvist and Carter courts determined was not required under OPRA. The Custodian would be required to review every Zoning and Site Plan application received in the Borough's history, identify those approved or still pending, and then cross reference those matters with any subsequent "legal challenges." Once conducting this onerous process of elimination, the Custodian would then have to locate "any and all documents" associated therewith: this would

require the Custodian to review the Borough's entire universe of records to determine if any were associated with the above. To complicate matters, the Custodian would then have to apply each located matter to every other request item, and most important to this portion of the analysis, item Nos. 3 and 5. These three (3) request items are not "precise and 'simple'" as asserted by the Complainant, but instead are exactly the type of requests that are not contemplated under OPRA pursuant to MAG and its progeny.

Moreover, request No. 2 sought "names" of attorneys or professionals hired to assist the Borough in "legal challenges" initiated as a result of those applications. However, requests for information have routinely been determined to be invalid. LaMantia, GRC 2008-140. Finally, request item No. 4 contains no definitive time frame or a viable content or subject necessary to be considered valid under Elcavage, GRC 2009-07. The forgoing essentially derails request item No. 6 because the Custodian cannot be expected to provide "meta data" for e-mails he cannot locate in the first place.

Accordingly, the Complainant's request is invalid under prevailing case law. Specifically, item Nos. 1, 3, and 5 sought generic "documents" related to approved or pending Zoning matters where a "legal challenge" was filed, representation documents, and resolutions that required research and amounted to an "open-ended demand . . . ." MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Lagerkvist, 443 N.J. Super. at 236-37; Carter, slip op. at \*9-10; Feiler-Jampel, GRC 2007-190. Further, the Complainant request item No. 2 sought information and not an identifiable "government record." LaMantia, GRC 2008-140. Finally, request item No. 4 (and by extension item No. 6) did not include the requisite "date or range of dates" or a viable "content and/or subject". Elcavage, GRC 2009-07. Thus, the Custodian lawfully denied access to the Complainant's request because it was invalid. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under prevailing case law. Specifically, item Nos. 1, 3, and 5 sought generic "documents" related to approved or pending Zoning matters where a "legal challenge" was filed, representation 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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub LEXIS 2510 at \*9-10 (App. Div. Dec. 10, 2019); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Further, the Complainant request item No. 2 sought information and not an identifiable "government record." LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Finally, request item No. 4 (and by extension item No. 6) did not include the requisite "date or range of dates" or a viable "content and/or subject". Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian lawfully denied access to the Complainant's request because it was invalid. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

August 22, 2023