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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4726-14T1

JEFF CARTER,

Appellant,

v.

FRANKLIN FIRE DISTRICT
NO. 2 (Somerset) Custodian
of Records,

Respondent.

Argued October 5, 2017 – Decided November 22, 2017

Before Judges Simonelli, Rothstadt and Gooden
Brown.

On appeal from New Jersey Government Records
Council, Docket No. 2012-05.

Walter M. Luers argued the cause for
appellant.

Dominic P. DiYanni argued the cause for
respondent Franklin Fire District No. 2 (Eric
M. Bernstein & Associates, LLC, attorneys; Mr.
DiYanni, of counsel and on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent Government Records
Council (Debra A. Allen, Deputy Attorney
General, on the brief).

Alexi M. Velez argued the cause for amicus curiae American Civil Liberties Union of New Jersey Foundation (American Civil Liberties Union of New Jersey Foundation, attorneys; Edward L. Barocas, Jeanne LoCicero, Alexander Shalom and Iris Bromberg, on the brief).

PER CURIAM

Complainant, Jeff Carter, appeals from the Government Records Council's (GRC) Final Decision, finding his request to the Custodian of Public Records for the Franklin Fire District No. 2 (District), under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, was invalid because it was overly broad and failed to specifically identify the records sought. He also appeals from the GRC's determination that he was not entitled to reasonable attorney's fees under N.J.S.A. 47:1A-6. Carter's primary claims on appeal are that the GRC committed reversible error when it found that his request was invalid, even though the records custodian never replied to his original complaint, and when it determined that he was not entitled to reasonable attorney's fees as a "catalyst." He also argues the GRC should have referred the matter to the Office of Administrative Law (OAL) to determine whether the custodian knowingly and willfully violated OPRA. We disagree and affirm.

The facts found by the GRC are not disputed and are summarized as follows. On December 18, 2011, Carter submitted an OPRA request

to the District for all purchase orders, vouchers, purchase order vouchers and warrants, including invoices/attachments for each record regarding "[f]inancial software used by the District to process its monetary disbursements (including any reasonably construed variation thereof)." His request did not include any limiting information, such as a date range or names of any individuals or entities. The District did not respond to Carter's request.

When the District failed to respond, Carter filed a denial of access complaint with the GRC on January 9, 2012. The next day, the GRC sent a request for a Statement of Information (SOI) to the District's records custodian so that he could present the District's reasons for not responding to Carter. The District's records custodian did not respond to the request. The GRC sent a letter to the custodian advising the custodian that if an SOI was not submitted, Carter's complaint would "proceed to adjudication based only on the information submitted in the [d]enial of [a]ccess [c]omplaint." The custodian did not respond.

The GRC reviewed Carter's complaint and determined that under OPRA, the District's failure to respond to Carter's request was deemed a denial of the request and could result in a violation of OPRA. However, the GRC found that Carter's request was invalid because the:

OPRA request [was] overly broad and failed to specifically identify the records sought, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the custodian would have no legal duty to conduct research to locate records potentially responsive to [Carter's] request.

It concluded that because Carter was not a prevailing party under OPRA, he was not entitled to an award of attorney's fees as provided for in N.J.S.A. 47:1A-6.¹

The GRC sent its Final Decision to all parties on June 28, 2012. Carter filed a motion for reconsideration that the GRC denied.

Carter filed an appeal from the GRC's Final Decision. In response, the GRC sought remand, which we granted. On remand, the GRC issued an interim order directing "the current [c]ustodian [to] provide additional facts regarding his ability to respond to [Carter's] OPRA request." The GRC also decided that it would re-evaluate whether Carter was the prevailing party, and whether the custodian knowingly and willfully violated OPRA when it received the custodian's response. The District's records custodian responded by filing an SOI, in which he asserted Carter's request was invalid because it "failed to include a date or range of dates,

¹ N.J.S.A. 47:1A-6 states in pertinent part: "A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee."

clear subject matter, and identifiable parties." Carter responded to the custodian's SOI, contending that the GRC's decision invalidating his OPRA request was improper and not in accordance with our opinion in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012).

After considering the parties' submissions, on May 28, 2015, the GRC issued a Final Decision, in which it agreed with the reasons provided in the District's records custodian's SOI, and it re-adopted its earlier findings set forth in its original Final Decision. This appeal followed.

We begin our review of the GRC's decision by acknowledging that it "is governed by the same standards as review of a decision by any other state agency," Fisher v. Division of Law, 400 N.J. Super. 61, 70 (App. Div. 2008) (citing Serrano v. South Brunswick Township, 358 N.J. Super. 352, 362 (App. Div. 2003)), and is therefore limited. In re Stallworth, 208 N.J. 182, 194 (2011). We "will not overturn an agency's decision unless it violates express or implied legislative policies, is based on factual findings that are not supported by substantial credible evidence, or is arbitrary, capricious or unreasonable." Fisher, supra, 400 N.J. Super. at 70 (citing Aqua Beach Condo. Ass'n v. Dep't of Cmty. Affairs, 186 N.J. 5, 15-16 (2006)).

"We exercise plenary review over" the GRC's interpretation of OPRA. Carter v. Doe (In re N.J. Firemen's Ass'n Obligation), 230 N.J. 258, 273 (2017) (citing State v. Williams, 218 N.J. 576, 586 (2014)); see also Asbury Park Press v. Cty. of Monmouth, 406 N.J. Super. 1, 6 (App. Div. 2009), aff'd o.b., 201 N.J. 5 (2010). "[D]eterminations about the applicability of OPRA and its exemptions are legal conclusions, and are therefore subject to de novo review." Carter, supra, 230 N.J. at 273-74 (citations omitted); see also O'Shea v. Twp. of W. Milford, 410 N.J. Super. 371, 379 (App. Div. 2009). However, "under our deferential standard of review, we give weight to the GRC's interpretation of OPRA." McGee v. Twp. of E. Amwell, 416 N.J. Super. 602, 616 (App. Div. 2010) (citing Blecker v. State, 323 N.J. Super. 434, 442 (1999)). "We do not, however, simply rubber stamp the agency's decision." Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008) (quoting Paff v. N.J. Dep't of Labor, 392 N.J. Super. 334, 340 (App. Div. 2007)), certif. denied, 198 N.J. 316 (2009).

In our review, we are mindful of the public policy in these matters. "Any analysis of OPRA must begin with the recognition that the Legislature created OPRA intending to make government records 'readily accessible' to the state's citizens 'with certain exceptions[] for the protection of the public interest.'" Gilleran

v. Bloomfield, 227 N.J. 159, 170 (2016) (alteration in original) (quoting N.J.S.A. 47:1A-1). OPRA expresses New Jersey's public policy favoring transparency in government and disclosure of government documents. See N.J.S.A. 47:1A-1. It endeavors to "maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (citation omitted). "[A]ny limitations on the right of access . . . shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1.

Despite that public policy, OPRA does not "'authorize a party to make a blanket request for every document' a public agency has on file. Rather, a party requesting access to a public record under OPRA must specifically describe the document sought." Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005) (citations omitted). "While OPRA provides [a] . . . 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." Lagerkvist v. Office of Governor of State, 443 N.J. Super. 230, 236 (App. Div. 2015) (alterations in original) (quoting MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005)). A valid request "must identify

with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents." Bent, supra, 381 N.J. Super. at 37; see also Burke, supra, 429 N.J. Super. at 176.

Requests for "particularized identifiable government records . . . rather than information generally" are permissible. Burke, supra, 429 N.J. Super. at 176. Requests that identify a specific subject matter with sufficient identifying information are not overly broad, even where a custodian is required to search and locate records according to a specific topic area. See, e.g., Burnett v. Cty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010).

Applying these guiding principles, we conclude from our review that the GRC correctly determined Carter's OPRA request failed to include necessary identifying information, such as date ranges, clear subject matter, and recognizable parties. Although Carter specified the type of document he was seeking, without including these other identifiers, his request amounted to a blanket request for access to records over an unlimited period of time. Without a specified date range, or vendor name, the request would require the custodian to decipher purchasing records surrounding the financial software, updates to the software, prior software versions, and any other products related to the software.

By including a request for not only "all" documents, but also "any reasonably construed variation thereof," a response would require the custodian to conduct research to uncover all years of invoices, vouchers and checks to find anything related to financial software used by the District. As such, it was an improper request. See Bent, supra, 381 N.J. Super. at 37 (holding that a party requesting access to a public record under OPRA must specifically describe the document sought); see also Spectraserv, Inc. v. Middlesex Cty. Utils. Auth., 416 N.J. Super. 565, 578 (App. Div. 2010) (holding that a denial is justified where compliance was overly cumbersome and time consuming). Carter's arguments to the contrary are without any merit.

We similarly find Carter's argument that the GRC arbitrarily shifted the burden of proof from the custodian to him in violation of N.J.S.A. 47:1A-6,² and his due process rights, to be "without sufficient merit to warrant discussion in a written opinion." R. 2:11-3(e)(1)(E). We only observe that the GRC acted in accordance with OPRA when it deemed Carter's request denied, N.J.S.A. 47:1A-

² The statute addresses the burden of proof by stating: "The public agency shall have the burden of proving that the denial of access is authorized by law." N.J.S.A. 47:1A-6.

5(i),³ because the District's records custodian failed to respond, but still found a "defense[]" pertaining to [Carter's] complaint" in accordance with N.J.A.C. 5:105-2.1(h).⁴ Moreover, on remand, the District's records custodian raised the same defense that the GRC found in the first instance.

Finally, we also reject Carter's argument that despite the GRC's determination, he was still entitled to an award of counsel fees because he was a "catalyst" whose actions resulted in relief being granted in accordance with his complaint. Contrary to Carter's contention, the GRC's interim order directing the custodian to respond to Carter's complaint with an SOI did not make him a "prevailing" party under OPRA, N.J.S.A. 47:1A-6, or a "catalyst" to the GRC awarding him any relief. See Teeters v. Div. of Youth and Family Serv., 387 N.J. Super. 423, 432 (App. Div. 2006) (determining that the plaintiff in an OPRA action was

³ The statute in pertinent part states: "In the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request." N.J.S.A. 47:1A-5(i).

⁴ N.J.A.C. 5:105-2.1(h) authorizes the GRC


[i]n response to the complaint before it, [to] raise issues and defenses pertaining to that complaint on a sua sponte basis if it deems such action appropriate or necessary and if said action on behalf of the [GRC] would be in the interest of furthering the provisions and intent of [OPRA].

entitled to fees after settling his claim under a "catalyst theory," where plaintiff's complaint brought about an alteration in the defendant's position, and plaintiff received a favorable result).

Because we agree with the GRC's determination that Carter's request was overbroad, we need not address his remaining argument about the GRC's failure to refer his complaint to the OAL for a hearing on whether the District's records custodian "knowingly and willfully violate[d]" OPRA. N.J.S.A. 47:1A-11.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION