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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4869-13T2
A-1272-14T1

KATALIN GORDON,

Complainant-Appellant,

v.

CITY OF ORANGE (ESSEX)
CUSTODIAN OF RECORD,

Respondent-Respondent.

Argued September 20, 2016 – Decided June 23, 2017

Before Judges Rothstadt and Sumners.

On appeal from the Government Records Council,
Complaint Nos. 2013-255 and 2013-256.

Katalin Gordon, appellant pro se.

Debra A. Allen, Deputy Attorney General,
argued the cause for respondent New Jersey
Government Council (Christopher S. Porrino,
Attorney General, attorney; Melissa H. Raksa,
Assistant Attorney General, of counsel; Ms.
Allen, on the brief).

Jeanette Calderon-Arnold, Assistant City
Attorney, argued the cause for respondent City
of Orange Township (Dan S. Smith, City
Attorney, attorney; Ms. Calderon-Arnold, on
the brief).

PER CURIAM

In these two appeals, calendared back-to-back and consolidated for purposes of a single opinion, appellant Katalin Gordon challenges final agency decisions by the New Jersey Government Records Council (GRC) regarding her requests for documents under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, from defendant City of Orange (City). Gordon's requests sought information related to her concerns over compensation paid to City Clerk Dwight Mitchell during his prolonged employment absence. In A-4869-13, the GRC denied Gordon's request for litigation records involving Mitchell. In A-1272-14, the GRC determined that the City's lack of responsiveness to Gordon's OPRA request for records of disability insurance payments made to Mitchell and Mitchell's accumulated sick leave was not willful and deliberate. For the reasons that follow, we affirm the GRC's decision in A-4869-13, but reverse and remand its decision in A-1272-14.

I.

A-1272-14

Gordon submitted an OPRA request to the City on June 25, 2013, seeking all records of disability insurance payments received and sick days accumulated by City Clerk Dwight Mitchell

from July 1, 2010 to June 25, 2013. The City denied her request on July 11, 2013, claiming that the records "involve issues regarding ongoing litigation." In turn, Gordon requested that the City provide the specific OPRA reference preventing it from releasing the sought-after records. The City advised Gordon that her initial request was closed, and since she did not ask for an OPRA reference in her initial request, she would have to submit a new OPRA request to the City's Law Department to provide the reference for the initial denial. Gordon replied that she did not have to submit a new OPRA request as it was the City's obligation to give detailed reasons for denying her request, and if the City choose not to do so, she would file a Denial of Access Complaint with the GRC. The following day, the City reiterated its position that her OPRA request was closed.

Gordon subsequently filed a complaint with the GRC asserting that the City was obligated to provide the legal justification for denying her request, and that it be compelled to release the sought-after records. She also demanded that, based upon the City's responses to her current and previous OPRA requests, the GRC should find that the current non-disclosure was intentional and deliberate.

On April 29, 2014, the GRC issued an interim order, adopting the findings and recommendations of the Executive Director, that the City "must disclose to [Gordon] for the period of January 1, 2010 to June 23, 2013, a record of City Clerk Dwight Mitchell's accumulated sick days and disability insurance payments received from the City" The GRC reasoned that due to the City's failure "to provide [Gordon] with a specific lawful basis for denying access to the requested records, [it thereby] failed to bear the burden of proving that the denial of access to said records is lawful." The GRC, however, deferred determining whether the City "knowingly and willfully violated OPRA and unreasonably denied access under the totality of circumstances" pending its compliance with the interim order.

On May 9, the City certified to the GRC that it complied with the interim order. In reply, Gordon disputed the responsiveness of the records she received, claiming that, based upon the City's ordinance and the City's responses to her past OPRA requests, Mitchell had neither been granted nor been receiving temporary disability benefits as the City claimed.

On September 30, the GRC issued a final determination, adopting the findings and recommendations of the Executive Director that the City complied with its interim order providing

Gordon all the documents she requested. The agency rejected Gordon's claim of unresponsiveness by reasoning that it is not within its jurisdiction to determine compliance with its order by interpreting and applying the City's municipal code to information received from past OPRA requests. Although the agency found that the City failed to timely respond to the request, failed to cite a specific legal basis for denying the request, and failed to prove that the denial was authorized by law, the GRC determined there was no evidence that the City's failings were due to "a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances."

A-4869-13

As a follow-up to her request regarding Mitchell's disability insurance payments and accumulated sick leave, Gordon submitted an OPRA request to the City on July 24, 2013, seeking "all records or parts thereof, from January 1, 2010 to [July 24, 2013,] which show ongoing and pending litigation involving [] Mitchell." The City responded that the document "request . . . would fall into one, or more categories[,]" that could be a reason to deny her request.¹ The City further "suggested that it may be helpful to

¹ The City listed the five categories as a basis for denial:

meet with [Gordon] . . . [to] discuss specific documents" pertaining to her request.

Rather than meeting with City officials, Gordon filed a Denial of Access Complaint with the GRC on September 10, 2013, asserting that that the City neither identified the records she sought nor explained how her request related to records that were inimical to the public interest. Gordon asked the "GRC to make a determination that [the City] withheld the fact there was ongoing and pending litigation involving [] Mitchell."

On April 29, 2014, the GRC rendered its final decision, adopting the entirety of the findings and recommendations of the Executive Director, denying Gordon's complaint. The agency ruled that the City's denial of the OPRA request by providing a list of possible exemptions that may be applicable was not a "specific

"Inter-agency or intra-agency advisory, or consultative or deliberative material[; r]ecords that are subject to attorney-client privilege[; i]nformation which is communication between a public agency and its insurance carrier[; i]nformation generated by or on behalf of public employers or public employees in connection with any grievance filed by or against an individual[; o]ngoing investigations – any records pertaining to an investigation in progress by any public agency if disclosure of such record or records shall be detrimental to the public interest.

[N.J.S.A. 47:1A-5(g).]

legal basis for denying the requested records[,]" but the "request is invalid because it fails to seek identifiable government records[,]" and therefore was not an unlawful denial of access to public records. Citing MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), the GRC noted that Gordon's request seeking "all records or parts thereof which show ongoing and pending litigation involving Mitchell[,]" was overly broad because the City "would have to conduct research to examine every record on file which might reflect the requested" information.

II.

Our review of a GRC decision "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. S. Brunswick Twp., 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. Although an agency's determination as to the applicability of OPRA is a

legal conclusion subject to plenary review, see O'Shea v. Township of West Milford, 410 N.J. Super. 371, 379 (App Div. 2009), "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). "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) (citation and internal quotation marks omitted).

OPRA expresses New Jersey's public policy favoring transparency in government and disclosure of government documents. See N.J.S.A. 47:1A-1. OPRA 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). To that end, the statute mandates that "government records shall be readily accessible for inspection, copying, or examination by citizens of this State, with certain exceptions, for the protection of the public interest, and any 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.

OPRA broadly defines "government record" to include

any paper . . . information stored or
maintained electronically . . . or any copy

thereof, that has been made, maintained or kept on file in the course of . . . official business by any . . . commission, agency or authority of the State or any political subdivision thereof

[N.J.S.A. 47:1A-1.1.]

An OPRA applicant "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. OPRA does not authorize unbridled searches of an agency's property." Bent v. Twp. of Stafford Police Dep't, Custodian of Records, 381 N.J. Super. 30, 37 (App. Div. 2005); see also Renna v. Cnty. of Union, 407 N.J. Super. 230, 245 (App. Div. 2009) ("The custodian must have before it sufficient information to make the threshold determination as to the nature of the request and whether it falls within the scope of OPRA."); Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005) ("OPRA requires a party requesting access to a public record to specifically describe the document sought."). OPRA was not created to allow "open-ended searches of an agency's files" and "is not intended as a research tool litigants may use to force government officials to identify and siphon useful information." MAG Entm't, supra, 375 N.J. Super. at 546-49. As such, requests for "'any and all' documents" on a specific subject are considered "overly

broad." Spectraserv, Inc. v. Middlesex Cty. Util. Auth., 416 N.J. Super. 565, 578 (App. Div. 2010). A custodian may reject a request that is overly broad or vague so as to prevent identification of the records sought. N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 181-82 (App. Div.), certif. denied, 190 N.J. 394 (2007).

In A-4869-13, Gordon contends that the GRC erred by finding that her OPRA request was overly broad because the litigation records she sought were confined to a specific subject matter and limited to a specific period. She contends her request is similar to that in Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012), where we held that an OPRA request seeking E-Z Pass benefits provided to Port Authority retirees was an accessible public record, because her narrow request covers specific dates for documents regarding litigation concerning Mitchell that are only accessible through OPRA. We are not persuaded.

We view Gordon's request as deficient under OPRA. Gordon's failure to specify the documents sought necessitated the deployment of City resources to sift through the City's files and identify, analyze and select potentially relevant and responsive public records pertaining to litigation in which Mitchell was involved. OPRA imposes no such obligation upon government

custodians. See MAG Entm't, supra, 375 N.J. Super. at 549-50. Relatedly, Gordon's request was also overbroad because it encompassed attorney-client records that were exempt from disclosure under OPRA, and which required further efforts by the City to cull, isolate, and evaluate. Spectraserv, Inc., supra, 416 N.J. Super. at 578. Based on the OPRA's clear and unambiguous language, and consistent with our previous interpretations of the statute, the GRC's final order denying Gordon's OPRA request was proper.

Turning to A-1272-14, Gordon contends the City's willful and knowing denial of her OPRA request was demonstrated by the GRC's issuance of an interim order due to the City's deficiencies in responding to her OPRA request seeking records of disability insurance payments to Mitchell, and the amount of his accumulated sick days. In particular, Gordon asserts that the City: was not involved in pending litigation with Mitchell as it misrepresented; refused to provide legal grounds for the denial of her request after she asked for them; failed to provide the GRC with a statement of information; and delayed her request for nearly a year. Gordon further argues that the City's willful denial of her request is evinced by its release of unresponsive documents and false clarifications that the City's code allows a city employee

to be paid full salary while on disability. This, she contends, contradicts the City's response to a separate and earlier OPRA request indicating that Mitchell was not approved for any disability claim.

It is clear that "[r]ecord custodians must grant or deny access to . . . [such] records 'as soon as possible, but not later than seven business days after receiving the request.'" Mason v. City of Hoboken, 196 N.J. 51, 65-66 (2008) (quoting N.J.S.A. 47:1A-5(i)). A custodian or any other public official or employee "who knowingly or willfully violates [OPRA] . . . and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty." N.J.S.A. 47:1A-11(a). If there is a knowing and willful OPRA violation by a public body or custodian of records, "and is found to have unreasonably denied access under the totality of the circumstances, the [GRC] may impose the penalties provided for in [OPRA]." N.J.S.A. 47:1A-7(e).

OPRA also provides that when any record or records "shall pertain to an investigation in progress by any public agency, the right of access - may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest[.]" N.J.S.A. 47:1A-3(a). See also N. Jersey

Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70, 107 (App. Div.) (noting that motor vehicle accident reports fall outside the exemption for criminal investigatory records because such documents "are required by law to be made available to the public[,]" under N.J.S.A. 39:4-131), leave to appeal granted, 223 N.J. 553 (2015).

Although we generally defer to the GRC's findings, we conclude there was insufficient evidence in the record to support its finding that the City's denial of Gordon's OPRA request was not willful and deliberate. In denying Gordon's request, the City claimed that the records could not be released because of an "ongoing and pending litigation. The records requested involve issues regarding the ongoing litigation." However, there was no litigation. The City now contends that there was an investigation involving Mitchell, which it mistakenly mischaracterized as litigation. We find this explanation unconvincing and belies the credibility of its denial.


Yet, even if there was an investigation, there was no indication by the City how the sought-after information was inimical to the public interest. N.J.S.A. 47:1A-3(a). Salary and payroll records of a city employee are considered a government record subject to public release. N.J.S.A. 47:1A-10.

The City's willful and deliberate denial of Gordon's request is further evinced by its meritless claim that her request was broad, and that it does not electronically maintain the information. The information request was clear and specific, and we envision no time-consuming burden in obtaining the information despite the fact that it is not preserved in the City's computers.

We affirm the GRC's decision in A-4869-13, and reverse and remand its decision in A-1272-14 for further proceedings regarding the imposition of appropriate penalties in accordance with OPRA.

Affirmed in part; reversed and remanded in part. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION