



Lt. Governor Sheila Y. Oliver
Chairman

Charles A. Richman
Executive Director

November 4, 2019

Mr. Cody Cook

Address not provided

Via email: opra+request-7785-cf13e104@requests.opramachine.com

Re: OPRA Request: W151976

Dear Mr. Cook:

The Agency received your Open Public Records Act (OPRA) request on October 28, 2019. The seven business day deadline to respond to your request will be November 7, 2019. Your request was received as follows:

"This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message.

Please electronically provide the following data on affordable housing units and their lotteries.

- Building address
- Unit number
- Unit size (i.e. number of bedrooms)
- Unit rent
- Income requirements
- Date posted online to solicit applications
- Date lottery ran [if filled via lottery]
- Date unit filled
- Number of applications [if available]

The data are similar to what is available through NJ Housing Resource Center and SocialServe for current affordable housing applications, but I am interested in historical data as far back as available.

If the exact unit number is unavailable -- e.g., if the data are only available at the building, but not unit, level -- please provide the number of units of each size and rent within the apartment building.

The data is for academic use, not commercial, but I can cover some fees. Please advise me if fees are likely to exceed \$250."

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

637 South Clinton Avenue ▲ P.O. Box 18550 ▲ Trenton, NJ 08650-2085

TELEPHONE: (609) 278-7400 ▲ WEB: www.njhousing.gov

Please note the following with respect to your request:

A. This request refers ambiguously to various items of data/information during an unlimited time period, without specifying particular records or documents and without identifying particular Agency projects. Such a request is overly broad, seeks information, requires research and/or does not identify specific government records. As such, the request is an invalid OPRA request and must be denied. Agencies are only obligated to disclose identifiable government records. See, MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), The statute "only allows requests for records, not requests for information." Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). A proper request "must identify with reasonable clarity those documents that are desired." *Ibid*. When a request is "complex" because it fails to specifically identify the documents sought, that request is not consistent with OPRA. See, New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). A valid OPRA request must identify with reasonable clarity those documents that are desired. See, Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). Custodians are not required to conduct research, anticipate what the requestor may be seeking, nor to create new records in response to an OPRA request.

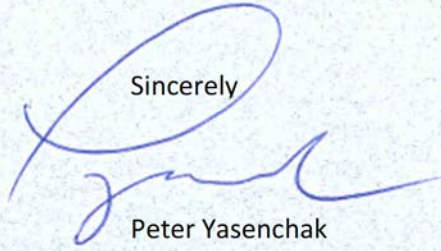
B. You have also requested access to the records under the common law. Determining a right to access under the common law requires the requestor to establish an interest in the subject matter of the material and a balancing of the requestor's right of access against the State's interest in preventing disclosure. See Loigman v. Kimmelman, 102 N.J. 98 (1986), and Keddie v. Rutgers, 148 N.J. 36, 50 (1997). Without additional information regarding your interest in the material, a common law analysis is not possible. Please note, however, that the document(s) referenced above are the only documents in the Agency's files that are responsive to your request.

C. Currently, your request fails to identify with reasonable clarity the specific government records sought, as is required by Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). At this time, the Agency requests clarification of your OPRA request. Please respond in writing and identify the specific government records sought so that we may process your request. Attached please find a copy of "A Citizen's Guide to the Open Public Records Act," which may be a helpful resource in clarifying your request. Please note that failure to provide written clarification of this request by November 18, 2019 will result in closure of this request.

The Agency reserves the right to raise any other grounds for denial not raised in this response. Failure of the Agency to assert an exemption or privilege does not act as a waiver of any grounds for denial. Furthermore, a reviewing Court or the Government Records Council ("GRC") may deem a denial of access to be authorized on grounds other than those advanced by a custodian. See Paff v. Twp. of Plainsboro, A-2122-05T2 (App. Div. 2007), affirming, Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (March 2006). If your request for access to a government record has been denied or unfilled within the seven business day period, you have a right to challenge the decision by the Agency to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint

Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc.

Sincerely

A handwritten signature in blue ink, appearing to read 'Peter Yasenchak', with a large, stylized initial 'P'.

Peter Yasenchak
OPRA Custodian
Division of Regulatory Affairs
609-278-8803
pyasenchak@njhmfa.gov