



Lt. Governor Sheila Y. Oliver
Chairman

Charles A. Richman
Executive Director

September 3, 2020

Stephanie Gigliotti
Faegre Drinker Biddle

Via email: opra+request-16210-56baeb11@requests.opramachine.com

Re: OPRA Request: C162704

Dear Ms. Gigliotti:

The Agency received your Open Public Records Act (OPRA) request on August 25, 2020. The seven business day deadline to respond to your request would generally be September 3, 2020, but this deadline has been suspended during the current health emergency by P.L. 2020, c. 10. Your request was received as follows:

"Subject: Garden Court Apartments, Atlantic City, NJ 2016 Restructuring

Pursuant to the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1 et seq.), please provide me with any and all documents presented to NJHMFA Board regarding 2016 restructuring of Garden Court and all documents evidencing or related to NJHMA approval of the 2016 restructuring."

Please note the following with respect to your request:

- A. You have requested that the Agency's response be provided by email. Please note that due to the volume or number of documents responsive to your request, the response may require one or more subsequent emails. If the first email does not reflect all the documents referenced herein, please check for any follow-up emails. If not received, or if you are unable to open any attachment, please contact me immediately. Emails containing attachments totaling more than 5 MB may utilize a download link which will be generated and forwarded to you by LeapFILE, the Agency's file transfer service. If you receive a transfer confirmation from LeapFILE but do not receive the link or are unable to download the documents through the link, please contact me immediately.
- B. With respect to your request for "any and all documents presented to NJHMFA Board regarding 2016 restructuring of Garden Court," please see the following records:
 - 1. January 21 2016 Agenda (914 pp.); and
 - 2. January 21 Board Brief - Garden Court (1 page).
- C. With respect to your request for "all documents evidencing or related to NJHMA approval of the 2016 restructuring," such a request is ambiguous and overly broad under OPRA. If a request does

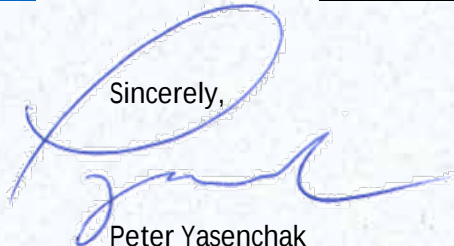
not name specifically identifiable records or is overly broad, a custodian may deny the request. Such requests seek information, require research, ask questions and/or do not identify specific government records. Additionally, this request contains broad and expansive language such as "evidencing" and "related to" which require interpretation and/or research. 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.

To enable a comprehensive records search, a new OPRA request would need to be filed with language clarifying the record parameters or identifying specific records. Nevertheless, based upon the information you provided the following record(s) provided herewith is reasonably believed to be responsive to your request:

1. Garden Court Second Amended and Restated First Mortgage Note (8 pp.).

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,



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