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Admitted in NJ, NY, TX & DC

February 23, 2021

Via Email (rmoore2929@gmail.com) & Regular Mail

Mr. Rory Moore
462 Chestnut Street
Nutley, New Jersey 07110

Re: Request for Internal Review of OPRA Request 91-21

Dear Mr. Moore,

As you know, I serve as Special Counsel to the Township of Nutley (the “Township”). I am in receipt of your email dated February 22, 2021 seeking an internal review of the above-referenced OPRA request (the “Internal Review Request”). In your email, you state that “I did not ask for research. I asked for the existing documents”. However, as is explained more fully below, none of your original requests contain sufficient information which would allow the Custodian to identify any documents that could be searched or produced, and each such request was appropriately denied.

Your first request states, “I seek all related documents to the following?? [sic] The name of the Joint Insurance fund Nutley Township belongs to?” Despite the inclusion of the word “documents,” this is not a valid OPRA request. While OPRA provides a means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool that may use to force government officials to identify and siphon information that may be useful. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). “[T]he custodian is obligated to search her files to find the identifiable government records listed in the [OPRA request] . . . However, the Custodian is not required to research her files to figure out which records, if any, might be responsive”. Donato v. Twp. of Union, GRC Complaint No. 2005–182 (Jan. 31, 2007).

The “name of the joint insurance fund” is not a document. Requesting that the Custodian provide documents “related” to the name of a joint insurance fund is a request for research that is clearly outside the scope of OPRA. “OPRA requires a party requesting access to a public record to specifically describe the document sought,” Gannett N.J. Partners L.P. v. County of Middlesex, 379 N.J. Super. 205, 212 (App. Div.2005), so that the records may be readily and reasonably identified within the short time frame within which government custodians must respond. Bent v. Stafford Twp. Police Dep’t., 381 N.J. Super. 30, 36-37 (App. Div.2005). “As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired”. Ibid; Spectraserv, Inc. v. Middlesex Co. Util. Auth., 416 N.J. Super. 565, (App. Div. 2010). Like each of the requests that follow it, this request does not identify any specific government record. Accordingly, this request was properly denied.

Your second request simply states, “The director of the JIF?” The name or identity of an individual is not a document that can be searched out or produced by the Custodian. Moreover, the director of a joint insurance fund is not related to the Township. Because this request failed to “specifically describe the document sought,” pursuant to Gannett, supra, it was properly denied.

Your third request states, “All members and and [sic] Nutley Township employees on the JIF?” Again, the names or identities of individuals are not documents that can be searched out or produced by the Custodian. This request does not describe a document or provide any information which may assist the Custodian in locating a document. Rather, the Custodian would be required to conduct research in order to determine the names of such individuals, and then conduct further research to see whether any documents in the Township’s custody or control contained such names. Moreover, our courts have held that “requests that require a custodian to exercise his discretion, survey employees or undertake research to determine whether a record is responsive are overly broad and not encompassed by OPRA”. Shipyard Associates, L.P. v. City of Hoboken, 2015 WL 10352982 (App. Div., Sept. 1, 2015). As such research is clearly outside the scope of OPRA, this request was appropriately denied.

Your fourth request states, “All public meeting notice for 2021 and 2022?” This request is ambiguous as it does not specify the agency or body for which public meeting notice is requested. As the Custodian stated in her response, “Nutley Township is not the custodian of records for any joint insurance fund and, as such, does not make, keep or maintain any public meeting notices for such an entity”. This statement is accurate. If you are seeking public meeting notice for an entity, board or body other than a joint insurance fund, your request did not so specify. Accordingly, this request was properly denied.

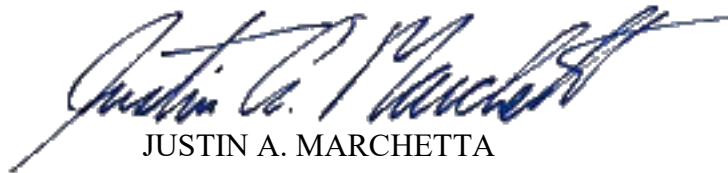
With respect to the Internal Review Request Since itself, it is unfortunate that you continue to threaten the Custodian and Township with frivolous litigation in an attempt to secure access to information that is outside the scope of OPRA, and to which you are not otherwise

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entitled. Your threat to “mediate this in 4 days” does not in any way alter the Townships legal obligations or defenses under OPRA or the common-law right of access. I note that nowhere in your Internal Review Request or threat to mediate did you provide any legal authority or precedent which would entitle you, under OPRA or otherwise, to the information sought without sufficiently identifying any documents. In fact, no such authority exists and your OPRA request is improper as a matter of law.

I trust that the foregoing is fully responsive to your Internal Review Request. Please be guided accordingly.

Yours truly,

A handwritten signature in blue ink, appearing to read "Justin A. Marchetta", with a long horizontal flourish extending to the right.

JUSTIN A. MARCHETTA

cc: (via Electronic Mail)
Alan Genitempo, Esq.