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MUNICIPAL MANAGER
MUNICIPAL CLERK

"The Queen City, Six Miles at Sea"
300 Engleside Avenue
Beach Haven, NJ 08008

February 28, 2024

VIA E-MAIL

JF

Re: OPRA Request

The Borough of Beach Haven ("Borough") records custodian received your Open Public Records Act ("OPRA") request dated January 18, 2024. The Borough requested an extension to respond to your request until February 28, 2024. As such, the Borough is timely responding to your request in accordance with New Jersey law. N.J.S.A. 47:1A-5.

Your OPRA request seeks the following records:

All documents, correspondences, i.e., letters, emails, etc. that apply or deal with community disaster loan forgiveness related to Superstorm Sandy; loan forgiveness for Federal Emergency Management Agency loans; waiver of recoupment of Superstorm Sandy funds; waiving or foregoing clawback of federal funds; loan forgiveness or no attempting to collect payments of grant funds by the Department of Community Affairs; waiver or loan forgiveness for reconstruction, rehabilitation, elevation and mitigation program.

As a threshold matter, please note to the extent this request seeks "all documents" regarding a specific subject, the request is overly broad. New Jersey Courts have consistently held that OPRA does not countenance open-ended searches of an agency's files. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); See New Jersey Builders Ass'n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div.), cert. denied, 190 N.J. 394 (2007). Consequently, a proper request under OPRA "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." See e.g., Spectraserv, Inc. v. Middlesex Cnty. Utilities Auth., 416 N.J. Super. 565, 576 (App. Div. 2010); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005).

OPRA is not intended to be used as a research tool used to force government officials to manually search, analyze, identify and siphon useful information. MAG Entertainment, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). Records custodians do not have a "legal duty to research" an agency's files for potentially responsive records. See Torian v. New Jersey State Parole Board, GRC Complaint No. 2013-245 (June 2014) (quoting Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (March 2008)); see also Burke v. Ocean Cty., 2013 WL 6169154 (App. Div. 2013) (holding that an OPRA request is not the equivalent of law suit discovery). Blanket requests are invalid as overbroad, even if the requestor has set forth temporal limitations on the records sought. O'Boyle v. Borough of Longport, 2016 WL 936981 (App. Div.), cert. denied, 227 N.J. 106 (2016).

Requests such as this one seeking all documents relating to a subject are typically held to be overly broad and unclear. Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 3 (App. Div. 2005) (holding that request for "any and all" records did not amount to a request for an identifiable government record); see also New Jersey Builders Ass'n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) (holding that request for "any and all documents and data used or considered...supporting, demonstrating, justifying or verifying" determinations relevant to COAH's determinations about fair-share housing was overly broad).

Further, to the extent this request seeks written correspondence, the request is overly broad. The GRC has upheld an established criteria deemed necessary to specifically identify and facilitate a search for responsive e-mails and other written communications. See Armenti v. Robbinsville Bd. of Educ., GRC Complaint No. 2009-154 (Interim Order May 24, 2011); see also Zahler v. Ocean Cty. College, GRC Complaint No. 2013-266 (Jan. 2016); Elcavage v. West Milford Twp., GRC Complaint No. 2009-07 and 2009-08 (April 2010).

In Elcavage v. West Milford Twp., GRC Complaint No. 2009-07 and 2009-08 (April 2010), the GRC determined that in accordance with legal precedent: "[I]n order to specifically identify an e-mail the OPRA request must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) identification of the sender and/or the recipient thereof." Here, the request fails to identify any specific sender and/or recipient, and also fails to identify any specific date or range of dates. Thus, to the extent your request is for written communications, it does not satisfy OPRA's specificity requirements, and would require the Borough's records custodian to conduct research in order to respond to these items of your request. See Lagerkvist v. Office of Governor of State, 443 N.J. Super. 230, 237 (App. Div. 2015). As a result, this request has failed to properly identify a government record.

Thus, the request in its present form does not satisfy OPRA's specificity requirements. Notwithstanding, the Borough identified the enclosed responsive record.

Thank you for your attention to this matter.

Very truly yours,
Sherry Mason