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July 12, 2022

**Via opramachine.com & Regular Mail**

Mr. Rory Moore  
111 Passaic Avenue, Unit B9  
Nutley, New Jersey 07110

**Re: Internal Review of OPRA Request 400-22**

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 correspondence of even date, submitted through the opramachine.com website, for an internal review of your request for access to government records pursuant to N.J.S.A. 47:1A-1, et seq. ("OPRA"), which the Township has identified as OPRA Request 400-22. Below is a detailed summary of my review and conclusion that the Township's response to OPRA Request 400-22 was complete and appropriate.

OPRA Request 400-22 sought "all the employment records for Thomas Sposato, salary, duties, what does he do? Where is his office? His work hours, location, salary, stipends, overtime, health care, and pension?" On June 29, 2022, Township Deputy Clerk Ceci Tramontana responded to OPRA Request 400-22 and produced a spreadsheet detailing Mr. Sposato's position, salary, overtime and pension.

On July 11, 2022, you sent an email to Ms. Tramontana via the opramachine.com website stating that "the request is incomplete. Please update the complete status of the original OPRA request". Although your request that Ms. Tramontana "update the complete status of the original OPRA request" was unclear, she responded by explaining that information regarding Mr. Sposato's health insurance plan and premium are protected from disclosure pursuant to the Health Insurance Portability and Accessibility Act of 1996 (HIPAA) and the associated Privacy Rule. You then responded to Ms. Tramontana requesting an internal review of the OPRA request. Specifically, you are seeking responses to certain questions, including "what does [Mr. Sposato] do? Where is his office and what are his hours?"

Pursuant to N.J.S.A. 47:1A-10, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access. However, "an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record". Id.

In response to OPRA Request 400-22, Ms. Tramontana produced a spreadsheet detailing the name, position, employment type, salary, overtime and pension of the employee named in the request. As Mr. Sposato is still employed with the Township, he has no date of separation or reason therefor. Accordingly, the Township's response to OPRA Request 400-22 discloses all personnel information to which you are entitled under N.J.S.A. 47:1A-10.

Under OPRA, agencies are required to disclose only "identifiable" governmental records not otherwise exempt; wholesale requests for information, to be analyzed, collated, and compiled by the responding government entity, are not encompassed by OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). However, where requested records either do not exist or are not in the custodian's possession, there is, of necessity, no denial at all. Bent v. Township of Stafford Police Dept., 381 N.J. Super. 30, 38 (App. Div. 2005). OPRA does not countenance "information to be analyzed, collated and compiled by the responding government entity or open-ended searches of an agency's files... a records request must be well defined so that the custodian knows precisely what records are sought." Paff v. Galloway Township, 229 N.J. 340, 355 (2017)

The open-ended questions set forth in OPRA Request 400-22, as well as your additional inquiries, are not lawful OPRA requests. Rather, broad inquiries such as "what does he do?" and "where is his office?" seek information, not identifiable government records, and would require the Custodian to perform research for information which is clearly outside of her legal obligations. See MAG Entertainment, LLC, supra, 375 N.J. Super. at 549. Your additional questions sent on July 11, 2022, including "what does he do? What are his responsibilities? Who reports to him?" are also requests for information and are, therefore, beyond the scope of OPRA. Nevertheless, Ms. Tramontana did cause a search of Township files to be performed which located no additional responsive records, as evidenced by her July 11, 2022 response "[a] search of Township files revealed no records responsive to the request for duties, office location and hours".

In light of the foregoing, it is clear that the Township fully and appropriately responded to OPRA Request 400-22. I trust that the foregoing is fully responsive to your inquiry.

Yours truly,



JUSTIN A. MARCHETTA

cc: (via Electronic Mail)  
Jonathan Bruno, Esq.