

Borough of Neptune City
106 West Sylvania Avenue
Neptune City, New Jersey 07753

June 17, 2022

Via E-Mail

Nchallc

opra+request-32213-5fab4151@requests.opramachine.com

Re: Open Public Records Act Request

Dear Nchallc:

The Borough of Neptune City ("Borough") is in receipt of your Open Public Records Act ("OPRA") request, on May 26, 2022. The seven (7) business day deadline to respond to your OPRA request is June 7, 2022. A request for extension was requested to June 17, 2022. As such, the Borough is timely responding to your OPRA request in accordance with New Jersey Law.

Your OPRA request seeks the following:

Dear Neptune City Borough,

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.

Records requested:

Please submit the zoning map for Neptune City that shows that Nylabone/TFH/Central Garden and Pet at 75/85 W Sylvania Ave (Blocks 16/17) were zoned industrial/manufacturing prior to the zoning being changed to R/C and then C. What was the date when that zoning change was made from industrial to commercial, and was this granted by the land use board?

When did TFH receive its Non-conforming use determination/exception? A nonconforming use (also known as a grandfather clause) arises when there is a change to the zoning, but an existing use is still permitted to continue. So when did TFH get grandfathered in as a result of being in an industrial zone which then changed to a commercial zone? Was this approved by the town council?

Please provide all maps, documents, emails, minutes, and determinations related to this request."

Yours faithfully,

Nchallc

At the outset, please note that OPRA operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. § 47:1A-1; MAG Entertainment, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). MAG Entertainment, LLC held, "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information." Id. at 547. "Under OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt. Wholesale requests for general information to be analyzed, collated and compiled by the responding government entity are not encompassed therein." Id. at 549; see also Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005) (holding that OPRA only allows requests for records as contrasted from information, and to qualify under OPRA a request must reasonably identify a record and not generally data, information or statistics). The Appellate Division repeated these principles in holding:

[A]gencies are only obligated to disclose identifiable government records. The statute "only allows requests for records, not requests for information." A proper request "must identify with reasonable clarity those documents that are desired." "Wholesale requests for general information to be analyzed, collated and compiled" by the agency are outside OPRA's scope.

Burke v. Brandes, 429 N.J. Super. 169, 174 (App. Div. 2012) (citations omitted); see also Lagerkvist v. Office of Governor of State, 443 N.J. Super. 230, 237 (App. Div. 2015) (holding that OPRA does not convert a custodian into a researcher, which would have been the effect of the request).

Additionally, a valid OPRA request must specifically identify any particular records sought. See New Jersey Builders Ass'n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 178 (App. Div.), certif. denied, 190 N.J. 394 (2007) (holding that it is the requestor's obligation to specifically describe the document sought). New Jersey courts have consistently held that "OPRA does not countenance open-ended searches of an agency's files." See MAG Entertainment, LLC v. Div. of Alcoholic Beverage Control, 275 N.J. Super. 534, 549 (App. Div. 2005). 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 Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005).

Here, your request clearly constitutes requests for information that are outside of the scope of OPRA. Specifically, your request would require the Borough to "analyze, collate, and compile" information and provide "answers" to questions. As such, the request is legally deficient and the Borough cannot respond to your request in its present form. Lastly, to the extent that your request seeks a specifically identifiable government record, there are no records responsive to your request.

Your OPRA request is now deemed answered and closed. Thank you for your attention to this matter.

Very truly yours,


Corinne DiCorcia Williams