



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

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CATHERINE STARGHILL Esq., Executive Director

**FINAL DECISION**

**February 25, 2009 Government Records Council Meeting**

Michael Brown  
Complainant

Complaint No. 2007-191

v.

NJ Department of Corrections  
Custodian of Record

At the February 25, 2009 public meeting, the Government Records Council (“Council”) considered the February 18, 2009 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because the Custodian herein certified that no records exist that are responsive to Item No. 1, the Custodian did not unlawfully deny access to the requested record. *See Pusterhofer v. NJ Department of Education*, GRC Complaint No. 2005-49 (July 2005) (stating that the Custodian did not unlawfully deny access because the Custodian certified that the requested records did not exist).
2. Because Items No. 2, No. 3 and No. 4 require the Custodian to conduct research in order to determine the records responsive to the request, and fail to specify identifiable government records, the Complainant’s OPRA request for these items is invalid. *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534 (App. Div. 2005), *Bent v. Stafford Police Department*, 381 N.J. Super. 30 (App. Div. 2005), and *New Jersey Builders Association v. New Jersey Council on Affordable Housing*, 390 N.J. Super. 166, 180 (App. Div. 2007).
3. Item No. 5 requests records evaluating the visitation program under N.J.A.C. 10A: 18-6.6. The Custodian certifies that this request fails to specify the record requested. Because this request fails to specifically identify the documents sought, it is not ‘encompassed’ by OPRA and therefore is invalid. *Bent v. Stafford Police Department*, 381 N.J. Super. 30 (App. Div. 2005).



4. Based upon the foregoing, the Custodian has borne her burden of proof that the denial of access to the requested records was authorized by law pursuant to N.J.S.A. 47:1A-6.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 25<sup>th</sup> Day of February, 2009

Robin Berg Tabakin, Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

David Fleisher, Secretary  
Government Records Council

**Decision Distribution Date: March 6, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 25, 2009 Council Meeting**

**Michael Brown<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-191**

v.

**NJ Department of Corrections<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Records of any internal policies and/or internal management procedures related to any past, proposed or existing program for visitation between immediate family members who are incarcerated at different facilities (including physical visits, telephone calls, and video or televideoconferencing).
2. Records identifying the number of requests for visits under the authority of N.J.A.C. 10A:18 -6.6 and the date each request was approved or denied.
3. Accounting records from the Office of Financial Management indicating the costs actually charged to prisoners for visits under N.J.A.C. 10A:18-6.6(a)(3). These records may include journal entries, ledger accounts, ledger entries or billing invoices/receipts.
4. Records memorializing any disciplinary infractions or incidents involving prisoners who participated in the visitation program under N.J.A.C. 10A:18-6.6, including records relating to any special reports/investigations initiated or received by the Special Investigations Division. These records should reflect the date and description of the incident.
5. Records evaluating the visitation program under N.J.A.C. 10A:18-6.6 including those originating in the Policy and Planning Unit, the Advisory Council, the Chief of Staff, or the Office of the Assistant Commissioner, Division of Programs.

**Request Made:** February 6, 2007

**Response Made:** February 20, 2007

**Custodian:** Michelle Hammel

**GRC Complaint Filed:** August 24, 2007

**Background**

**February 6, 2007**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in an attachment to an official OPRA request form.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by DAG Ellen Hale, on behalf of the NJ Attorney General.

### **February 20, 2007**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the third (3<sup>rd</sup>) business day following receipt<sup>3</sup> of such request. The Custodian denies access to the requested records stating that the request is overly broad and does not identify the specific records Complainant is seeking. Custodian contends that pursuant to MAG Entertainment v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), a request is invalid when it requires a custodian to conduct research and correlate data from various records. Custodian advises Complainant to clearly identify records and provide a description if he wants to request specific records.

### **March 24, 2007<sup>4</sup>**

Letter from the Complainant to the GRC. The Complainant states he is "moving to appeal" Custodian's denial of access.

### **May 3, 2007**

Letter from the Complainant to the Department of Corrections, Central Office Headquarters. The Complainant inquires as to the status of his March 24, 2007 appeal.<sup>5</sup>

### **August 24, 2007<sup>6</sup>**

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Complainant's OPRA request dated February 6, 2007.
- Letter from the Custodian to the Complainant dated February 20, 2007.
- Letter from the Complainant to the GRC dated March 24, 2007.
- Letter from the Complainant to the Department of Corrections, Central Office Headquarters dated May 3, 2007.
- Memorandum of Complainant's legal assertions dated August 13, 2007.

Complainant disputes the Custodian's claim that the requests were overly broad and failed to adequately identify the records he was seeking. Complainant contends that there is no indication that his request was sent to any Department of Corrections personnel who could make a determination as to whether any responsive records existed. Further, Complainant asserts that responses to requests by other prisoners all use the same language, making it appear that the Department of Corrections has a policy of denying all requests by prisoners. Distinguishing his request from the requests in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), Complainant argues that he is not asking the Custodian to cull records for information but is merely requesting that the Custodian locate and copy the records requested. Complainant denies that his request is overly broad because he has not asked for all internal policies and/or management policies. Rather, Complainant asserts that his

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<sup>3</sup> The Custodian certifies that she received the Complainant's OPRA request on February 14, 2007.

<sup>4</sup> The GRC's records do not indicate that this letter was ever received but a copy was included with the Complainant's Denial of Access Complaint

<sup>5</sup> This letter was improperly addressed to the Department of Corrections, not the GRC.

<sup>6</sup> The Department of Corrections received and forwarded the Denial of Access Complaint to the GRC on August 24, 2007.

request was narrowly tailored to policies or procedures related to any program for visitation between immediate family members who are incarcerated at different facilities. Complainant declares that his request clearly meets the brief description requirement of OPRA because he provided enough information for the Custodian to know where to direct his request.

Finally, Complainant asserts that he believes he is entitled to access to the requested records under the common law, as well as public policy.

**September 4, 2007**

Offer of Mediation sent to both parties.

**September 10, 2007**

The Complainant agreed to mediation. The Custodian did not agree to mediate this complaint.

**September 13, 2007**

Request for the Statement of Information sent to the Custodian.

**September 20, 2007<sup>7</sup>**

Letter from the Custodian's Counsel to the GRC. The Custodian's Counsel requests an extension of time until September 27, 2007 to file the SOI because the Custodian is out of the office for the week.

**September 28, 2007<sup>8</sup>**

Letter from the Custodian's Counsel to the GRC requesting a further extension of time until October 4, 2007 to file the SOI.

**October 4, 2007**

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA request dated February 6, 2007.
- Custodian's response to the Complainant's OPRA request dated February 20, 2007.

In the SOI document index table, Custodian certifies that no records exist which are responsive to Item No. 1. As to Items No. 2, 3, and 4, Custodian certifies information is not maintained in a central file; rather, information is maintained in individual inmate's classification file and would require research and collation. The Custodian certifies that Item No. 5 fails to specify the record requested.

In a letter brief, Custodian's Counsel repeats the statements and claims made by the Custodian in her February 20, 2007 denial letter to Complainant. Counsel asserts that no records exist regarding internal policies or management procedures because the visitation program is administered pursuant to the Code.<sup>9</sup> Counsel asserts that requests for

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<sup>7</sup> The GRC has no record of its response to this request.

<sup>8</sup> The GRC has no record of its response to this request.

<sup>9</sup> N.J.A.C. 10A: 18-6.6.

records regarding the number of visits, accounting records or disciplinary infractions are not kept in a central location. Counsel contends that each inmate's visit request, any bill of costs imposed and disciplinary charges are maintained in individual files; the Custodian would be required to go through thousands of inmate classification files in order to determine whether any of the requested information was contained therein. Custodian's Counsel quotes and cites MAG Entertainment v. Division of ABC, 375 N.J. Super. 534 (App. Div. 2005) in support of her argument that a custodian is not required to research or collate information in order to respond to an OPRA request. Lastly, Counsel asserts that the Complainant's request for records evaluating the visitation program does not identify a specific record and that pursuant to MAG Entertainment, only identifiable government records are required to be disclosed. Counsel contends that the listing of various units within the Department of Corrections does not make the request valid because it still fails to identify specific records sought.

### **October 15, 2007**

Complainant's response to Custodian's SOI. The Complainant disputes Custodian's claim that there are no policy or internal management procedures relating to the visitation program and attaches a document entitled "NJ DOC Appm, Policy and Internal Management Procedures, Table of Contents" dated August 21, 2007. On page five (5) under "Inmate Management" there is a listing for "Inmate Visit Programs MGO, Effective Date April 1, 2004, Revised Date November 1, 2006," and "Special Visits, Effective Date April 1, 2004, Revised Date June 7, 2006."

Complainant asserts that it is only partly true that tele-video and inter-institutional visiting records are only maintained in individual classification files. Complainant details the steps involved when a prisoner requests a tele-video or inter-institutional visit and indicates that said requests and responses are entered into a computer database and therefore have a central location. The Complainant includes Attachment No. 2 as an example of one of Complainant's requests for an inter-institutional visit,<sup>10</sup> and a copy of a Division of Operations, Level 1, Internal Management Procedure titled "Administrative Remedy/Grievance Procedure." Complainant contends that Section IV. Procedures, D. Coordinator for Administrative Remedy Processing, describes the tracking system for prisoner requests for visits.

Additionally, Complainant asserts that a memo authorizing a tele-video visit is usually sent to the Tele-Video Visit Coordinator who maintains a computer database and log of all tele-video visits by inmate name, date and time. Complainant asserts that likewise, an authorizing memo is sent to, and a computer database and log of all prisoners transported for inter-institutional visits is maintained by the Department of Corrections' Central Transportation Unit. The Complaint asserts that these memos and logs are at least partially responsive to Complainant's request for Item No. 2.

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<sup>10</sup> The request is on a Request System & Remedy Form which provides an Inmate's Request or Complaint Area and allows space for a Routine Inmate Request, or Interview Request, or Administrative Remedy.

**July 7, 2008**

E-mail from the GRC to the Custodian. The GRC requests further information from the Custodian. The Custodian is asked to respond to the Complainant's claims that there are internal management policies and procedures related to visitation between incarcerated family members and centralized computer databases which contain prisoner requests for tele-video and inter-institutional visits and transportation for inter-institutional visits.

**July 16, 2008**

Letter from the Custodian to the GRC. The Custodian replies to the GRC's request for further information. The Custodian certifies that the two policies cited by the Complainant relate to visitation in general and do not specifically address visitation between immediate family members incarcerated at separate institutions. In support of her certification, the Custodian attaches copies of Policy Number IMM.007.000, Inmate Visit Programs: Mission, Goals and Objectives, and Policy Number IMM.007.002, Special Visits.

The Custodian references an attached Certification of Frank Gonzalez, Supervisor of the Criminal Justice Interagency Unit, Office of Policy & Planning of the New Jersey Department of Corrections. Mr. Gonzalez certifies that information regarding an inmate's name, date and time is tracked for purposes of institutional movement, scheduling and monthly statistics. Mr. Gonzalez certifies that the Department of Corrections conducts over 2,900 video-conferences a month and has conducted over 185,000 as of July 2008. Mr. Gonzalez further certifies that inter-institutional video visits among inmates is extremely rare and are not kept in any statistical analysis within one computer database.

The Custodian also attaches the certification of Karl Klein, Administrator of the Medical/Central Transportation Unit, who certifies that Central Transportation handles transports of groups of inmates and that it is common for the "parent" institution to handle inter-institutional visit transport requests. Additionally, Mr. Klein certifies that transport orders usually list only general reasons for transport such as "Superior Court, Middlesex Count" or "medical" or "evaluation." Mr. Klein certifies that there is no single database which solely documents transports made pursuant to N.J.A.C. 10A:18-6.6.

The Custodian's Counsel asserts that the two visitation policies cited by the Complainant are for visitation in general and are not responsive to the request for policies and procedures related to "visitation between immediate family members who are incarcerated at different facilities." Referencing the policies Custodian attached to her reply, the Custodian's Counsel argues that these policies do not provide details on how to conduct the types of visits listed in the Complainant's OPRA request. Accordingly, the Custodian relies upon her original response that no internal policies or management procedures exist because the visit program established pursuant to N.J.A.C. 10A:18-6.6 is administered pursuant to the Department of Corrections Code. The Custodian's Counsel argues that the Complainant is mistaken in his assertions that there are central databases which contain prisoner requests for tele-video and inter-institutional visits, all actual tele-video visits, and prisoners transported for inter-institutional visits which occur pursuant

to N.J.S.A. 10A:18-6.6. Based upon the facts set forth in the certifications, Counsel reasserts that information is maintained in individual inmates' classification files and would require research and collation in order to respond to the Complainant's OPRA request.

### **October 28, 2008**

E-mail from the GRC to the Custodian. The GRC requests further information from the Custodian. The Custodian is asked if there are ledger pages or some other accounting record which shows costs charged to prisoners for visits under N.J.A.C. 10A:18-6.6.

### **November 10, 2008**

Facsimile from the Custodian to the GRC. The Custodian certifies that, as stated in the Statement of Information, any information regarding costs associated with prisoner visits pursuant to N.J.A.C. 10A:18-6.6 is maintained in individual inmate classification files. The Custodian further certifies that there is no separate accounting document or ledger that contains the information of costs charged inmates for visits.

## **Analysis**

### **Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

"...[t]he public agency shall have the burden of proving that the denial of access is authorized by law..." N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1.



Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In the matter before the Council, the Custodian timely denied access to the records requested on the grounds that the Complainant's OPRA request was overly broad and that, in order to properly respond to certain items requested, the Custodian would be required to conduct research and correlate data from various records.

The New Jersey Superior Court has held that "[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. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'* N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005). The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files.*" (Emphasis added.) *Id.* at 549.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>11</sup> the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, 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."<sup>12</sup>

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008), the Council held that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (March 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005)."

In this case, the Custodian certifies that no records exist that are responsive to Item No. 1. When a Custodian certifies that no responsive record exists, there is no unlawful denial of access. *See* Pusterhofer v. NJ Department of Education, GRC Complaint No. 2005-49 (July 2005) (stating that the Custodian did not unlawfully deny access because the Custodian certified that the requested records did not exist). Because the Custodian herein certified that no records exist that are responsive to Item No. 1, the

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<sup>11</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>12</sup> As stated in Bent, *supra*.

Custodian did not unlawfully deny access to the requested record. See Pusterhofer, supra.

Further, because Item No. 2 of the Complainant's OPRA request seeks "records identifying the number of requests for visits made or occurring under the authority of N.J.A.C. 10A:18-6.6, along with the date each request was approved and/or disapproved by NJDOC since the adoption of the regulation," this item is overly broad and, rather than identifying specific documents, requires the Custodian to search through records (specifically the individual inmate classification files) in order to determine whether a document identifies a visit request and/or provides the date said visit was approved or disapproved. The Request and Remedy form and the copy of an Administrative Remedy Procedure provided by Complainant<sup>13</sup> support this conclusion. The form and the procedure, as well as the computer database log, relate to any type of request, not just a request for a tele-video or inter-institutional visit. Thus, those documents would also have to be researched in order for the Custodian to respond to this requested item.

Item No. 3 seeks "Accounting records from the Office of Financial Management recording the costs actually charged prisoners under N.J.A.C. 10A: 18-6.6..." and lists the types of records which may be included. The Custodian has certified that this item is not maintained in any central location but is kept in individual inmate classification files. Accordingly, Item No. 3 would require the Custodian to conduct research in thousands of inmates' classification files in order to respond to this requested item.

Complainant's Item No. 4 requests records of any disciplinary infractions or incidents involving prisoners who participated in the visitation program under N.J.A.C. 10A:18-6.6. Once again, this item seeks information contained in individual inmate classification files, not specific identifiable documents, and it would require the Custodian to search through those records and therefore is overly broad.

Because Items No. 2, No. 3 and No. 4 require the Custodian to conduct research in order to determine the records responsive to the request, and fail to specify identifiable government records, the Complainant's OPRA request for these items is invalid. Mag, supra, Bent, supra and NJ Builders, supra.

Finally, Item No. 5 requests records evaluating the visitation program under N.J.A.C. 10A: 18-6.6. The Custodian certifies that this request fails to specify the record requested. Because this request fails to specifically identify the documents sought, it is not 'encompassed' by OPRA and therefore is invalid. Bent, supra.

Based upon the foregoing, the Custodian has borne her burden of proof that the denial of access to the requested records was authorized by law pursuant to N.J.S.A. 47:1A-6.

The Complainant's assertions that he is entitled to access to the requested records under the common law, as well as in the interests of public policy are beyond the scope of the GRC's jurisdiction.

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<sup>13</sup> Attachment No. 2 of Complainant's response to Custodian's Statement of Information.  
Michael Brown v. NJ Department of Corrections, 2007-191 – Findings and Recommendations of the Executive Director

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian herein certified that no records exist that are responsive to Item No. 1, the Custodian did not unlawfully deny access to the requested record. *See Pusterhofer v. NJ Department of Education*, GRC Complaint No. 2005-49 (July 2005) (stating that the Custodian did not unlawfully deny access because the Custodian certified that the requested records did not exist).
2. Because Items No. 2, No. 3 and No. 4 require the Custodian to conduct research in order to determine the records responsive to the request, and fail to specify identifiable government records, the Complainant's OPRA request for these items is invalid. *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534 (App. Div. 2005), *Bent v. Stafford Police Department*, 381 N.J. Super. 30 (App. Div. 2005), and *New Jersey Builders Association v. New Jersey Council on Affordable Housing*, 390 N.J. Super. 166, 180 (App. Div. 2007).
3. Item No. 5 requests records evaluating the visitation program under N.J.A.C. 10A: 18-6.6. The Custodian certifies that this request fails to specify the record requested. Because this request fails to specifically identify the documents sought, it is not 'encompassed' by OPRA and therefore is invalid. *Bent v. Stafford Police Department*, 381 N.J. Super. 30 (App. Div. 2005).
4. Based upon the foregoing, the Custodian has borne her burden of proof that the denial of access to the requested records was authorized by law pursuant to N.J.S.A. 47:1A-6.

Prepared By: Elizabeth Ziegler-Sears, Esq.  
Case Manager/Staff Attorney

Approved By: Catherine Starghill, Esq.  
Executive Director

February 18, 2009