



**State of New Jersey**  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**JON S. CORZINE**  
*Governor*

**CHARLES A. RICHMAN**  
*Acting Commissioner*

**FINAL DECISION**

**November 18, 2009 Government Records Council Meeting**

Frank Amoresano  
Complainant

Complaint No. 2008-169

v.

Rowan University  
Custodian of Record

At the November 18, 2009 public meeting, the Government Records Council (“Council”) considered the November 10, 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 because the Complainant’s OPRA request seeks information rather than a specifically identifiable government record, the request items are invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).

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 18<sup>th</sup> Day of November, 2009

Robin Berg Tabakin, Chair  
Government Records Council

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



Harlynn A. Lack, Secretary  
Government Records Council

**Decision Distribution Date: November 23, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 18, 2009 Council Meeting**

**Frank Amoresano<sup>1</sup>  
Complainant**

**GRC Complaint No. 2008-169**

v.

**Rowan University<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** All fines levied by the Division of Health against the Rowan University Human Resources Department (“HR”) from May 31, 2007 to June 26, 2008 for failure to remove employees from the State’s files.

**Request Made:** June 26, 2008

**Response Made:** July 2, 2008

**Custodian:** Marguerite Carbonaro-Davey<sup>3</sup>

**GRC Complaint Filed:** August 4, 2008<sup>4</sup>

**Background**

**June 26, 2008**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**July 2, 2008**

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the fourth (4<sup>th</sup>) business day following receipt of such request. The Custodian states that access to the requested record is denied because the Complainant’s OPRA request is not a valid request for government records. The Custodian states that general requests for information are invalid pursuant to OPRA and that State agencies are only required to comply with requests for identifiable government records.

**August 4, 2008**

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching the Complainant’s OPRA request dated June 26, 2008 with the Custodian’s undated response thereon.

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

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

<sup>3</sup> The Custodian originally named in this complaint is Richard Hale.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

The Complainant states that he submitted an OPRA request to Rowan University on June 26, 2008. The Complainant states that the Custodian responded in writing on the Complainant's official OPRA request form stating that the Complainant's request is a request for information and not a request for identifiable government records.<sup>5</sup> The Complainant disputes the Custodian's denial of access.

Additionally, the Complainant contends that the Custodian failed to sign and date the request form.

The Complainant agrees to mediate this complaint.

**August 14, 2008**

Offer of Mediation sent to both parties.

**August 20, 2008**

The Custodian agrees to mediate this complaint.

**August 22, 2008**

Complaint referred to mediation.

**July 22, 2009**

Complaint referred back from mediation.

**July 30, 2009**

Letter from the GRC to the Complainant. The GRC informs the Complainant that he has the opportunity to amend this Denial of Access Complaint prior to the GRC's request for the Statement of Information from the Custodian. The GRC states that the Complainant Counsel's response is due by close of business on August 7, 2009.

**August 10, 2009**

Request for the Statement of Information ("SOI") sent to the Custodian.

**August 12, 2009**

E-mail from the Custodian's Counsel to the GRC. Counsel requests an extension until August 27, 2009 to provide the requested SOI.

**August 12, 2009**

E-mail from the GRC to the Custodian's Counsel. The GRC grants an extension until August 27, 2009 to submit the requested SOI.

**August 27, 2009**

Custodian's SOI attaching the Complainant's OPRA request dated June 26, 2008 with the Custodian's undated response thereon.<sup>6</sup>

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<sup>5</sup> The Complainant states that the Custodian's response on the form was not signed or dated by the Custodian.

<sup>6</sup> The SOI was signed by acting custodian Joseph F. Scully, Jr., Chief Financial Officer, because the Custodian of Record retired on August 20, 2009.

The Custodian certifies that she received the Complainant's OPRA request on June 26, 2008. The Custodian certifies that she mailed the Complainant's official OPRA request form with her response to the Complainant via regular and certified mail on July 2, 2008. The Custodian certifies that she denied access to the Complainant's request as a request for information and not an identifiable government record.

The Custodian's Counsel argues that the Custodian properly denied access the Complainant's request because said request fails to identify the specific records sought. Counsel asserts that the Complainant requests a category of records over more than one year's time. Counsel asserts that the Custodian would have to research her files in order to find any records responsive to the Complainant's request.

Counsel asserts that the Custodian's denial is strongly supported by case law. Counsel states that the court held in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005) that "[u]nder OPRA, agencies are required to disclose only 'identifiable' governmental records not otherwise exempt. Wholesale requests for general information, to be analyzed, collated, and compiled by the responding governmental entity are not encompassed therein. In short, OPRA does not countenance open-ended searches of an agency's files." Counsel states that in Gannett New Jersey Partners, LP v. County of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005) the court, citing MAG, added that "OPRA requires a party requesting access to a public record to specifically describe the document sought."

Additionally, Counsel states that in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), 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. OPRA does not authorize unbridled searches of an agency's property."

Counsel states that in a more recent Appellate Division holding, New Jersey Builders Association v. Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court, again citing to MAG, stated that the requestor's obligation to specifically describe the document sought is essential to a public agency's obligation and ability to provide a prompt response under OPRA. Counsel states that the court held that "[w]hen a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA ..."

Finally, Counsel argues that the Custodian properly denied access to the Complainant's OPRA request because said request failed to identify the particular records being sought by the Complainant.<sup>7</sup>

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<sup>7</sup> The Custodian does not certify to the search undertaken or whether any records responsive were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM").

## Analysis

### **Whether the Complainant's OPRA request is a valid OPRA request?**

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 instant matter before the Council, the Complainant requested "all fines levied by the Division of Health to the Rowan University Human Resources Department ("HR") from May 31, 2007 to June 26, 2008 for failure to remove employees from the State's files." The Custodian responded in writing on July 2, 2008, stating that the Complainant's request failed to identify a specific government record. The Complainant's OPRA request is a request for information and not a request for specifically identifiable government 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>8</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>9</sup>

In the instant complaint, the Complainant's request for "all fines" levied by the Division of Health to Rowan University HR fails to identify a specific set of records and would have forced the Custodian research all files in his possession to locate and identify evidentiary records of the fines levied by the Division of Health. OPRA does not require that Custodians conduct research to fulfill requests. See MAG, supra and Bent, supra.

Therefore, because the Complainant's OPRA request seeks information rather than a specifically identifiable government record, the request items are invalid pursuant to MAG, supra and Bent, supra.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant's OPRA request seeks information rather than a specifically identifiable government record, the request items are invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).

Prepared By: Frank F. Caruso  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

November 10, 2009

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<sup>8</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>9</sup> As stated in Bent, supra.