



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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

LORI GRIFA  
Commissioner

**FINAL DECISION**

**May 24, 2011 Government Records Council Meeting**

Louis Paul Toscano  
Complainant

Complaint No. 2010-147

v.

New Jersey Department of Human Services,  
Division of Health Services  
Custodian of Record

At the May 24, 2011 public meeting, the Government Records Council (“Council”) considered the April 20, 2011 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. The employment application sought by Complainant is not disclosable pursuant to OPRA because it is a personnel record which is exempt from disclosure pursuant to N.J.S.A. 47:1A-10, and Executive Order 26 (McGreevey 2002). See N.J.S.A. 47:1A-9.a.
2. Because the Complainant’s request is overly broad, fails to specify identifiable government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant’s request is invalid under OPRA. 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), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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 24<sup>th</sup> Day of May, 2011

Robin Berg Tabakin, Chair  
Government Records Council

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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: June 2, 2011**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 24, 2011 Council Meeting**

**Louis Paul Toscano<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2010-147**

v.

**New Jersey Department of Human Services,  
Division of Mental Health Services<sup>2</sup>**  
**Custodian of Records**

**Records Relevant to Complaint:** Copies of:

1. Complainant's original employment application with Greystone<sup>3</sup> that the Complainant received on January 31, 2007.
2. All records relevant to how the Department of Human Services (DHS) will respond to the Complainant's Merit System Appeal involving conflicts of interest.

**Request Made:** June 28, 2010<sup>4</sup>

**Response Made:** June 29, 2010

**Custodian:** Paula Hayes

**GRC Complaint Filed:** July 13, 2010<sup>5</sup>

**Background**

**June 28, 2010**

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.

**June 29, 2010**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request the next business day following receipt of such request. The Custodian states that access to the records responsive to request Item No. 1 is denied because OPRA only provides for inspection, copies and examination of specific identifiable government records. The Custodian also states that access to the records responsive to request Item No. 2 is denied because the Complainant failed to reasonably identify a record pursuant to New Jersey Builders Association v. New Jersey Council on

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

<sup>2</sup> Represented by DAG Michael J. Kennedy, on behalf of the NJ Attorney General.

<sup>3</sup> The Complainant appears to be referring to Greystone Park Psychiatric Hospital.

<sup>4</sup> The Complainant's OPRA request is dated June 26, 2010.

<sup>5</sup> The GRC received the Denial of Access Complaint on said date.

Affordable Housing, 390 N.J.Super. 166 (App. Div. 2007) and MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. (App. Div. 2005).

**July 20, 2010**

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

- Complainant’s OPRA request dated June 26, 2010; and
- Letter from the Custodian to the Complainant dated June 29, 2010.

The Complainant states that his Merit System appeal records are public records and the Custodian has copies of every record the Complainant has filed. The Complainant states that these records concern his employment, employment attempts, and service history.

The Complainant asserts that Greystone received his employment application under false pretenses and requested numerous references, although the Complainant asserts that Greystone was aware of the Complainant’s work and medical history.

The Complainant further asserts that the requested records pertaining to the Merit System appeals may not exist; the Complainant states that his purpose in filing the instant OPRA request was to challenge the Department to create those records.

The Complainant states that concerning his employment for the position of Technician, MIS, and his later promotion to Senior Technician, MIS, he requests records that disclose the circumstances surrounding the Complainant’s interview for and appointment to said position, including the Complainant’s re-employment application in October 1986, as well as the conflict of interest which the Complainant asserts he brought to the Department’s attention.

The Complainant also states that concerning his hospitalization at Hagedorn,<sup>6</sup> the Complainant requests the Department to disclose all communications regarding the hospital’s justification for his hospitalization at the facility, the hospital’s treatment strategy, and why the hospital failed to question the Complainant about his employment standing. The Complainant further states that regarding his issues before the Merit System, the Complainant requests disclosure of all communications which show how the Department addressed the handling of his candidacy for the position of Technical Assistant, communications between Ms. Allen and Ms. Casazza regarding the Complainant’s attempts to meet with a patient advocate and how Mr. Firth and Mr. Fishbein handled the Complainant’s telephone requests for same, how the Division handled the Complainant’s complaint against Greystone, how the Department addressed the conflict of interest with Assistant Commissioner Cohen, how the Department handled the Complainant’s correspondence to Mr. Marton and Mr. Ditto, how the Department addressed the Complainant’s Easter Seal complaint, how the Department handled the Complainant’s request for a home visit, including the Complainant’s telephone response to Mr. Roberts’ letter, any communication that represents a “gag order”, any record of

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<sup>6</sup> The Complainant appears to be referring to Hagedorn Psychiatric Hospital.  
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the Complainant's attendance at the Olmstead meetings which took place quarterly at the Middlesex County ARC, and records pertaining to the Department's direct involvement in the Complainant's litigation in both Superior and Federal District Courts.

The Complainant states he has a right to pursue this Denial of Access Complaint.

The Complainant does not agree to mediate this complaint.

**July 28, 2010**

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

**August 3, 2010**

Custodian's SOI with the Complainant's OPRA request dated July 26, 2010 attached.

The Custodian certifies that the records responsive to request Item No. 1 must be kept for three (3) years in accordance with the New Jersey Department of State, Division of Archives and Records Management ("DARM").<sup>7</sup>

The Custodian certifies that the Complainant attached to his Denial of Access Complaint a statement in which he requests records that were not part of his original request dated June 26, 2010. The Custodian certifies that because these records were not part of the Complainant's original OPRA request, these records will not be addressed in the SOI.

The Custodian also certifies that the Complainant's OPRA request comprised two (2) parts. The Custodian certifies that request Item No. 1 sought the Complainant's original employment application. The Custodian further certifies that access to the records responsive to request Item No. 1 was denied because OPRA provides that "government records shall be readily accessible for inspection, copying or examination by the citizens of this State." The Custodian argues that OPRA does not authorize or compel a State agency to provide original records in response to an OPRA request. The Custodian argues that the Complainant was adamant that the Department of Human Services surrender the original employment application and thus the Complainant's OPRA request for this item was denied.

The Custodian also certifies that the Complainant's OPRA request Item No. 2 sought all records relevant to how DHS will respond to the Complainant's Merit System appeals. The Custodian certifies that access to records responsive to request Item No. 2 was denied because the Complainant failed to reasonably identify specific government records sought pursuant to New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J.Super. 166 (App. Div. 2007) and MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). The

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<sup>7</sup> The Custodian did not provide a response to how she searched for the records responsive to the OPRA request because she states that the Complainant requested original records and OPRA only provides for "inspection, copies, and examination" only and further states that the Complainant did not reasonably identify responsive records.

Custodian asserts that in order to identify these records, the Custodian needs a reasonably detailed description of the records sought which the Complainant failed to provide; thus the Complainant's OPRA request for said item was denied.

The Custodian states that OPRA provides specific procedures for requests and responses thereto. The Custodian further states that the purpose of OPRA is to make identifiable government records readily accessible for inspection, copying, or examination. In addition, the Custodian asserts that OPRA does not contemplate "wholesale requests for general information to be analyzed, collated and compiled by the responding government entity." MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 at 546-549 (App. Div. 2005). The Custodian asserts that in order to respond to the Complainant's OPRA request for records responsive to Item No. 2, the Custodian would have to review DHS's files and analyze, collate or compile data. The Custodian also asserts that the Complainant's OPRA request is not valid and was therefore properly denied.

### 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 also provides:

"The provisions of this act...shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to ... Executive Order of the Governor .... N.J.S.A. 47:1A-9.a.

Furthermore, Executive Order 26 (McGreevey 2002) states:

3. “No public agency shall disclose the resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing. The *resumes* of successful candidates shall be disclosed once the successful candidate is hired...” (Emphasis added).

OPRA further states that:

“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, except that:

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 [;]” N.J.S.A. 47:1A-10.

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.

The evidence of record indicates that the Complainant filed an OPRA request for 1) the Complainant’s original employment application with Greystone and 2) all records relevant to how DHS will respond to the Complainant’s Merit System Appeal. The evidence of record further indicates that the Custodian timely denied access to the records responsive to request Item No. 1 stating that OPRA only provides for inspection, copies and examination of specific identifiable government records. In addition, the evidence of record indicates that the Custodian denied access to the records responsive to request Item No. 2 because the Complainant failed to reasonably identify specific government record sought.

Item No. 1 of Records Request – Original Employment Application with Greystone that the Complainant received on January 31, 2007.

In the instant complaint, the Complainant submitted an OPRA request seeking his original employment application with Greystone. The Custodian denied access to the responsive record stating that N.J.S.A. 47:1A-1 only provides for the “inspection, copying, or examination...” of government records and asserting that the Complainant was not entitled to receive the original employment application. The spirit of OPRA dictates that custodians work with complainants to provide complainants access to requested records, if disclosable. Nevertheless, the Complainant’s employment

application is not disclosable pursuant to N.J.S.A. 47:1A-9.a., N.J.S.A. 47:1A-10 and Executive Order 26 (McGreevey 2002).

Furthermore, OPRA provides that:

“The provisions of this act...shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to ... Executive Order of the Governor ....” N.J.S.A. 47:1A-9.a.

OPRA also provides that:

“Notwithstanding the provisions of [OPRA] or any other law to the contrary, 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, except that:

- an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be a government record...” N.J.S.A. 47:1A-10.

In addition, Executive Order 26 (McGreevey 2002) states in pertinent part that: “[n]o public agency shall disclose the resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing. The *resumes* of successful candidates shall be disclosed once the successful candidate is hired...” (Emphasis added).

The employment application sought by Complainant is not among the enumerated list of releasable records set forth at N.J.S.A. 47:1A-10. Furthermore, Executive Order 26 (McGreevey 2002) states that only *resumes* of successful candidates shall be disclosed once that candidate is hired. Executive Order 26 (McGreevey 2002) makes no mention of employment applications being disclosed after the completion of the recruitment search.<sup>8</sup>

Therefore, the employment application sought by Complainant is not disclosable pursuant to OPRA because it is a personnel record which is exempt from disclosure pursuant to N.J.S.A. 47:1A-10, and Executive Order 26 (McGreevey, 2002). *See* N.J.S.A. 47:1A-9.a.

Item No. 2 of the Records Request – All records relevant to how the DHS will respond to the Complainant’s Merit System Appeal.

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<sup>8</sup> The evidence of record does not indicate if the Complainant was a successful candidate for employment at Greystone.  
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In the present complaint, the Complainant's request Item No. 2 sought all records relevant to how the DHS will respond to the Complainant's Merit System Appeal. This request item does not specify identifiable government records sought. Moreover, the Complainant's request would require the Custodian to conduct research through every file in his possession to locate and identify responsive records.<sup>9</sup> The Complainant's request is invalid under OPRA.

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>10</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>11</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..." The court also quoted N.J.S.A. 47:1A-5.g in that "[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency." The court further stated that "...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency's need to...generate new records..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), 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

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<sup>9</sup> The Complainant details several request items in his Denial of Access Complaint, however, these items were not part of his original OPRA request and furthermore, these are requests for information and not requests for specific identifiable government records.

<sup>10</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>11</sup> As stated in Bent, *supra*.

(App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).”

Therefore, because the Complainant’s request is overly broad, fails to specify identifiable government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant’s request is invalid under OPRA. 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), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The employment application sought by Complainant is not disclosable pursuant to OPRA because it is a personnel record which is exempt from disclosure pursuant to N.J.S.A. 47:1A-10, and Executive Order 26 (McGreevey 2002). *See* N.J.S.A. 47:1A-9.a.
2. Because the Complainant’s request is overly broad, fails to specify identifiable government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant’s request is invalid under OPRA. 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), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Prepared By: Harlynn A. Lack, Esq.  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

April 20, 2011