State of New Jersey
GOVERNMENT RECORDS COUNCIL
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

FINAL DECISION

April 25, 2012 Government Records Council Meeting

Quran Goodman
Complainant
v.
Essex County Prosecutor's Office
Custodian of Record

Complaint No. 2010-323

At the April 25, 2012 public meeting, the Government Records Council ("Council") considered the April 18, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that because the Complainant's request is an overly broad, blanket request that lacks reasonable identifiers, the Complainant's request is invalid under OPRA pursuant to the holdings of 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 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 25th Day of April, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: April 30, 2012

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Executive Director
April 25, 2012 Council Meeting

Quran Goodman[1] **GRC Complaint No. 2010-323**
Complainant

v.

Essex County Prosecutor's Office[2]
Custodian of Records

Records Relevant to Complaint:
1. All arrest reports of Tauheedah Carney.
2. All arrest reports of Angela Smith.

Request Made: October 26, 2010
Response Made: October 27, 2010
Custodian: Debra G. Simms
GRC Complaint Filed: December 8, 2010[3]

Background

October 26, 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.

October 27, 2010

Custodian's response to the OPRA request. The Custodian responds in writing via letter to the Complainant's request on the first (1st) business day following receipt of such request. The Custodian states that access to the requested record is denied because all of the Prosecutor's criminal investigatory files whether open or closed are not public records. The Custodian argues that pursuant to N.J.S.A. 47:1A-1.1 and the GRC's holding in Janeczko v. Division of Criminal Justice, GRC Complaint Nos. 2002-79 (June 2004) and 2002-80 (June 2004), the exemption from disclosure for criminal investigatory records applies to all investigations. The Custodian maintains that this includes both unresolved and resolved cases.

Additionally, the Custodian maintains that this request is being denied because OPRA only allows requests for actual records and not general data, information, or statistics. *See* Bent v. Township of Stafford Police Department, Custodian of Records, 381 N.J. Super. 30 (App. Div. 2005) and MAG Entertainment, LLC. V. Div. of Alcoholic

[1] No legal representation listed on record.
[2] Represented by James Paganelli, Esq. of the Office of the Essex County Counsel (Newark, NJ).
[3] The GRC received the Denial of Access Complaint on said date.

Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). The Custodian further argues that OPRA is not to be used as "a research tool… to force government officials to identify and siphon useful information." Id. at 546-47.

The Custodian further contends that the request is being denied because the County of Essex has a responsibility and an obligation to safeguard from public access a citizen's personal information. *See* Serrano v. South Brunswick Township, 358 N.J. Super. 352 (App. Div. 2003) and Doe v. Poritz, 142 N.J. 1 (1995).

December 8, 2010

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

- Complainant's OPRA request dated October 26, 2010
- Custodian's response to the OPRA request dated October 27, 2010

The Complainant contends that his request was unlawfully denied because the requested arrest reports are disclosable under OPRA. The Complainant does not agree to mediate this complaint.[4]

December 21, 2011

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

January 6, 2011

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated October 26, 2010
- Custodian's response to the OPRA request dated October 27, 2010

The Custodian certifies that he is unable to search for the requested records because the request is of a general nature that lacks sufficient specificity pursuant to Asarnow v. Department of Labor, GRC Complaint No. 2006-24 (May 2006). The Custodian argues that the Complainant has not provided identifiers to aid in the identification of a specific record. *See* Bent v. Township of Stafford Police Department, Custodian of Records, 381 N.J. Super. 30 (App. Div. 2005) and MAG Entertainment, LLC. V. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). The Custodian further argues that the records sought consist of criminal investigatory files which are exempt from disclosure under OPRA and are further exempt because of privacy implications.

January 27, 2011

The Complainant's response to the Custodian's SOI. The Complainant asserts that the Custodian's denial of access is unlawful because the names provided in the OPRA request are enough information to determine exactly what records are sought. The

[4] While the Complainant asserted he wished to engage in mediation, the Complainant failed to complete the required Mediation Agreement.

Complainant states that he would not dispute being provided a redacted copy of the requested records.

Analysis

Whether the Complainant's records request is valid under OPRA?

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 complaint, of issue is whether the Complainant's request is valid under OPRA. The Complainant requested:

1. "All arrest reports of Tauheedah Carney.
2. All arrest reports of Angela Smith."

Here, the Complainant's request is invalid under OPRA because it requires the Custodian to perform research to locate and identify responsive records as the Complainant failed to provide the Custodian with sufficient information to identify the specific arrest reports sought. More specifically, the Complainant has failed to give the Custodian a range of dates that correspond with his request. The broadness of the Complainant's request requires research that is outside of a custodian's duties.

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). As the court noted in invalidating MAG's request under OPRA:

> "Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." *Id.* at 549.

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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),[5] 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."[6]

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court enumerated the responsibilities of a custodian and a requestor as follows:

> "OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require "extraordinary expenditure of time and effort" and warrant assessment of a "service charge," and, when unable to comply with a request, "indicate the specific basis." N.J.S.A. 47:1A-5(a)-(j). The requestor must pay the costs of reproduction and

[5] Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).
[6] As stated in Bent, *supra*.

> submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), *(i). Research is not among the custodian's responsibilities*." (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

Moreover, 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…" Accordingly, the test under MAG then, is whether a requested record is a ***specifically identifiable*** government record.

Under such rationale, the GRC has repeatedly found that blanket requests are not valid OPRA requests. In the matter of Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the relevant part of the Complainant's request sought:

- Item No. 2: "From the Borough Engineer's files: all engineering documents for all developments or modifications to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
- Item No. 3: From the Borough Engineer's files: all engineering documents for all developments or modifications to North St., to the south and east of Wilson St.
- Item No. 4: From the Borough Attorney's files: all documents related to the development or modification to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
- Item No. 5: From the Borough Attorney's files: all documents related to the development or modification to North Street, to the south and east of Wilson St."

In reviewing the Complainant's request, the Council found 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 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005)."

In the instant matter, the Complainant's request for "all arrest reports" of Tauheedah Carney and Angela Smith is invalid under OPRA because it is overly broad and requires the Custodian to conduct research. As in MAG, the Complainant in the instant matter failed to request records with the necessary specificity. The Complainant's failure to provide of range of dates that correspond with his request requires the

Custodian to conduct research that is outside of the duties of a custodian. *See* New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 177 (App. Div. 2007). Absent date ranges, the Complainant's request for "all the arrest reports" of Tauheedah Carney and Angela Smith is an overly broad and invalid blanket request. *See* Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Therefore, because the Complainant's request is an overly broad, blanket request that lacks reasonable identifiers, the Council finds that the Complainant's request is invalid under OPRA pursuant to the holdings of 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 Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find because the Complainant's request is an overly broad, blanket request that lacks reasonable identifiers, the Complainant's request is invalid under OPRA pursuant to the holdings of 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 Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

April 18, 2012