



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

December 18, 2012 Government Records Council Meeting

Rene Bradley-Williams
Complainant

Complaint No. 2011-232

v.

Atlantic County Jail
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council (“Council”) considered the October 23, 2012 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 request in this complaint is a blanket request for a class of various documents rather than a request for specifically named or identifiable government records, the Complainant’s request is invalid under OPRA and the Custodian had no legal duty to research her records to locate records potentially responsive to the Complainant’s request items pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). See Feiler-Jampel v. Somerset County Prosecutor’s Office, GRC Complaint No. 2007-190 (March 2008).

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 18th Day of December, 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: December 20, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 18, 2012 Council Meeting**

**Rene Bradley-Williams¹
Complainant**

GRC Complaint No. 2011-232

v.

**Atlantic County Jail (Atlantic)²
Custodian of Records**

Records Relevant to Complaint: Copy of the Complainant's complete correctional record from October 2005 through April 2006.

Request Made: June 13, 2011

Response Made: June 17, 2011

Custodian: Susan L. Gross

GRC Complaint Filed: July 7, 2011³

Background

June 13, 2011

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 17, 2011

Custodian's response to the OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the fourth (4th) business day following receipt of such request. The Custodian states that access to the responsive records is denied based on OPRA and State regulations on correctional facilities. The Custodian states that *N.J.A.C. 10A:31-6.8* limits access to information from adult inmate records. The Custodian notes that even correctional facility personnel have limited access inmate records under *N.J.A.C. 10A:31-6.9*.

The Custodian further states that under OPRA, she is obligated to "... safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy ..." N.J.S.A. 47:1A-1. The Custodian states that the Complainant can appreciate that her

¹ No legal representation listed on record.

² Represented by Donna Taylor, Esq., of Atlantic County Department of Law (Atlantic City, NJ).

³ The GRC received the Denial of Access Complaint on said date.

records will not be available to the public. The Custodian thus states that access to the Complainant's OPRA request is denied.⁴

July 7, 2011

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

- Complainant's OPRA request dated June 13, 2011.
- Letter from the Custodian to the Complainant dated June 17, 2011.

The Complainant states that she submitted an OPRA request to the County on June 13, 2011. The Complainant states that the Custodian denied access to said request on June 17, 2011. The Complainant states that she filed this complaint after contacting the GRC for guidance.

The Complainant agrees to mediate this complaint.

July 19, 2011

Offer of Mediation sent to the Custodian.

July 21, 2011

The Custodian agrees to mediate this complaint.

July 21, 2011

Complaint referred to mediation.

November 28, 2011

Complaint referred back from mediation.

January 10, 2012

Letter from the GRC to the Complainant. The GRC informs the Complainant that she has the opportunity to amend this Denial of Access Complaint prior to the GRC's request for the Statement of Information ("SOI") from the Custodian. The GRC states that the Complainant's response is due by close of business on January 18, 2012.

January 30, 2012

Complainant's amended Denial of Access Complaint. The Complainant states that she is seeking the following records:

1. Disciplinary records.
2. Classification records.
3. Complainant's written request of "P.C."
4. Counselor or Veteran's Affairs ("VA") information.
5. VA incarcerated handbook for incarcerated veterans.

⁴ The Custodian notes that because the Complainant is seeking her own records, she may be entitled to same under the regulations governing correctional facilities. The Custodian notes that *N.J.A.C. 10A:22-2.7* allows the Complainant to obtain her own medical records. The Custodian advises that the Complainant may want to contact the warden at the Facility, who can help with her request for any records.

6. Inmate transportation records.
7. Correctional officer names of day and night shift of minimum security facility at Atlantic County Jail (“Jail”) from October 25, 2005 to November 1, 2005.

The Complainant states that regarding Item No. 3, she was told she requested “P.C.,” however, the Jail offered no proof of this request. The Complainant states that regarding Item No. 6, she did receive some records; however, she did not receive information on her transportation out of the facility on October 28, 2005 to December 1, 2005. The Complainant states that regarding the VA records, the Jail’s warden and legal counsel asserts that there is a VA liaison in the Jail known as the Counselor. The Complainant contends that the Jail has offered no proof that the Counselor is performing the appropriate duty of assisting incarcerated female veterans to understand the effects of incarceration on their VA benefits.

February 3, 2012

Request for the SOI sent to the Custodian.

February 9, 2012

E-mail from the Custodian to the GRC. The Custodian requests an extension of time to submit the SOI.

February 9, 2012

E-mail from the GRC to the Custodian. The GRC states that it will generally grant custodians one (1) extension of five (5) business days to submit an SOI. The GRC thus grants the Custodian an extension of time until February 17, 2012 to submit the SOI.

February 17, 2012

Custodian’s SOI with the following attachments:

- Letter from Warden Joseph Bondiskey (“Warden Bondiskey”) to the Complainant dated June 6, 2011.
- Complainant’s OPRA request dated June 13, 2011.
- Letter from the Custodian to the Complainant dated June 17, 2011.

The Custodian certifies that no initial search was conducted for responsive records as the Complainant’s OPRA request was invalid because the Complainant did not sufficiently identify the specific government records sought.

The Custodian also certifies that no known records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services.

The Custodian states that she received the Complainant’s OPRA request on June 13, 2011. The Custodian certifies that she responded in writing on June 17, 2011 denying access to the Complainant’s OPRA request pursuant to *N.J.A.C.* 10A:31-6.8 and *N.J.S.A.* 47:1A-1.

The Custodian asserts that the Complainant's original OPRA request seeking "all of [the Complainant's] incarceration files from October 2005 to April 2006" was invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).

The Custodian states that in MAG, *supra*, the Court 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.) *Id.* The Custodian states that 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.*

The Custodian further states that in Bent, *supra*, the Court cited to MAG, *supra*, in holding 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." The Custodian states that in NJ Builders, *supra*, the Court reasoned that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..." See also Lado v. Essex County Prosecutor's Office, GRC Complaint No. 2007-151 (February 2009), Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009) and Gonzales v. City of Gloucester (Camden), GRC Complaint No. 2008-255 (November 2009).

The Custodian states that N.J.A.C. 10A:31-6.8 limits the availability of inmate information to non-institutional persons or outside agencies. The Custodian further states that N.J.A.C. 10A:31-6.9 limits the availability of inmate information to correctional facility personnel. The Custodian asserts that she believes these two (2) provisions establish a limited list of persons and entities entitled to access inmate records. The Custodian asserts that as such, these records are not available to the public. The Custodian states that she referred the Complainant to Warden Bondiskey to ask for copies of her own records under their practices and regulations.

The Custodian states that in the Denial of Access Complaint, the Complainant further articulated the records to which she believed she was denied access:

1. Disciplinary actions.
2. Transport of inmate records.
3. Medical records.
4. Intake report.

The Custodian certifies that once the Custodian and Warden Bondiskey became aware of the specific records sought, they attempted to provide the Complainant access to those records that the Jail would ordinarily disclose to inmates absent an OPRA request. The Custodian certifies that the following records responsive to the Item Nos. 1, 2 and 4 were provided to the Complainant on November 9, 2011:

- Atlantic County inmate orientation sheet (referred by the Complainant as an intake form).
- Complainant's inmate disciplinary report.
- Defendant Description form (an intake record).
- Discharge record.
- Complainant's Inmate transportation records.
- Commitment form dated October 26, 2005.
- Complainant's housing assignment record.
- 2004 Inmate Handbook.

The Custodian argues that Item No. 3 sought medical records, which are clearly exempt from access under OPRA pursuant to N.J.S.A. 47:1A-9 and Executive Order No. 26 (Gov. McGreevey, 2002) ("EO No. 26"). The Custodian asserts that if the Complainant wants access to certain medical records, she can obtain same pursuant to *N.J.A.C. 10A:22-2.7*. The Custodian reiterates that she must address her request for these records to the warden at the Atlantic County Justice Facility ("Facility").

The Custodian states that the Complainant submitted an amended Denial of Access Complaint on January 19, 2012 identifying the following as records she did not receive in response to her OPRA request:

1. Disciplinary records.
2. Classification records.
3. Complainant's written request of "P.C."
4. Counselor or VA information.
5. VA incarcerated handbook for incarcerated veterans.
6. Inmate transportation records.
7. Correctional officer names of day and night shift of minimum security facility at the Jail from October 25, 2005 to November 1, 2005.

The Custodian argues that Item Nos. 4 and 7 are requests for information. *See Gorbe v. Monroe Fire District No. 3 (Middlesex)*, GRC Complaint No. 2010-138 (December 2010). The Custodian further asserts that this is the first time the Complainant has specifically referred to VA and or Jail shift information. The Custodian notes that VA liaison information is on page III-4 of the 2004 Inmate Handbook previously provided to the Complainant.

The Custodian further asserts that regarding Item No. 5, this is the first time the Complainant has identified a VA handbook as responsive to her OPRA request. The Custodian certifies that the Complainant herself is aware that no handbook exists. The Custodian certifies that Warden Bondiskey previously advised her of this fact in a letter

dated June 6, 2011. The Custodian further certifies that this fact remains true: no such handbook exists or is in the Facility's possession.

The Custodian certifies that regarding the remaining request items in the amended Denial of Access Complaint:

1. The Complainant was provided with all disciplinary records maintained by the Jail.
2. The Complainant did not previously identify classification records in her initial OPRA request and complaint; nonetheless, she was provided with several records that could be considered classification records. It is worth noting that "classification records" on its face is overly broad.
3. The Complainant was provided with a defendant description form that shows a request for "P.C."
4. See above.
5. See above.
6. The Complainant was provided with all transportation records in the Facility's possession and the Facility is not aware of any other responsive records.
7. See above.

The Custodian thus contends that she did not unlawfully deny the Complainant access to any records.

Analysis

Whether the Complainant's request is invalid under OPRA?

The Complainant's request herein sought her "complete correctional record from October 2005 through April 2006." In the SOI, the Custodian asserted that the Complainant's request was invalid pursuant to MAG, *supra*, Bent, *supra*, and NJ Builders, *supra*.

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, *supra*, at 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.*

In addition, in Bent, *supra*,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

Moreover, in NJ Builders, *supra*, 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 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), *Id.* at 177.

The Court additionally 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.

⁵ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁶ As stated in Bent, *supra*.

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 [Items No.] 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] and [Bent].”

Moreover, in Feiler-Jampel v. Somerset County Prosecutor's Office, GRC Complaint No. 2007-190 (March 2008), the Complainant requested “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor's Office. The GRC reasoned that while the Complainant's request was for an entire investigation file identified by number and containing numerous individual records, the Complainant failed to identify specific government records. The GRC held that:

“because the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in MAG, *supra* and Bent, *supra* and the Council's decisions in Asarnow, *supra* and Morgano, *supra*. [citations omitted].”

In the instant matter, the Complainant's initial request sought her complete correctional record. In support of the Custodian's argument that the request was invalid, the Custodian noted that she was able to identify records only after the Complainant further clarified in the Denial of Access Complaint that she was seeking disciplinary, medical, transport and intake records. Moreover, the Complainant provided a more detailed list in her amended Denial of Access Complaint. Each time, the Complainant identified new records to which she sought access. Thus, the evidence sufficiently

indicates that the Complainant's initial request was overly broad and thus invalid under OPRA.

The GRC declines to apply the Appellate Division's reasoning in Gannett v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005) (noting that although plaintiff's request on its face seemed improper, defendants waived their right to make this argument because they initially disclosed records voluntarily and withheld others while never arguing at any point that same was invalid) to this complaint. Specifically, although the Custodian responded initially denying access to the Complainant's request, she subsequently argued in the SOI that such request was invalid and further certified that it she was only able to identify certain responsive records after receipt of the Denial of Access Complaint based on the Complainant's list contained therein.

Further, the Council's holding in Feiler-Jampel, *supra*, applies to the request herein. The Complainant's request was a blanket request seeking all documents relevant to her incarceration between October 2005 and April 2006. As was the case in Feiler-Jampel, *supra*, the records more than likely would have comprised an entire file or files that the Custodian would have needed to research in order to provide the responsive record.

Therefore, because the Complainant's request in this complaint is a blanket request for a class of various documents rather than a request for specifically named or identifiable government records, the Complainant's request is invalid under OPRA and the Custodian had no legal duty to research her records to locate records potentially responsive to the Complainant's request items pursuant to MAG, *supra*, Bent, *supra*, NJ Builders, *supra*, and Schuler, *supra*. See Feiler-Jampel, *supra*.

Because the Complainant's request was invalid, the GRC need not determine whether the exemptions cited by the Custodian constituted a lawful denial of access.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's request in this complaint is a blanket request for a class of various documents rather than a request for specifically named or identifiable government records, the Complainant's request is invalid under OPRA and the Custodian had no legal duty to research her records to locate records potentially responsive to the Complainant's request items pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). See Feiler-Jampel v. Somerset County Prosecutor's Office, GRC Complaint No. 2007-190 (March 2008).

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

October 23, 2012⁷

⁷ This complaint was prepared and scheduled for adjudication at the Council's October 30, 2012 meeting; however, said meeting was cancelled due to Hurricane Sandy. Additionally, the Council's November 27, 2012 meeting was cancelled due to lack of quorum.