



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

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**December 18, 2012 Government Records Council Meeting**

Matt Gerald Green  
Complainant

Complaint No. 2011-309

v.

New Jersey Department of Corrections  
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council (“Council”) considered the December 11, 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 the Complainant’s request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically identify a government record sought and requires research outside of a custodian’s duties pursuant to 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).

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 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**

**Matt Gerald Green<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-309**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Chain of custody and authorizations on my property, from May 8, 2011 to present; all who searched, touched, handled, or moved my legal and or personal property and their full names and ranks.
2. All documents, memorandum, reports of any kind, special reports, all notes, all written reports, all written inquiries, all authorizations, and individuals and ranks who handled my property, all individuals and ranks of persons who searched my legal and personal property that's related to me, Matt Green, being placed in 1-Left detention."

**Request Made:** June 30, 2011<sup>3</sup>

**Response Made:** July 13, 2011 and July 18, 2011

**Custodian:** John Falvey

**GRC Complaint Filed:** October 13, 2011<sup>4</sup>

**Background**

**October 13, 2011**

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

- Complainant's OPRA request dated June 30, 2011
- Letter from the Custodian to the Complainant dated July 13, 2011
- Letter from the Custodian to the Complainant dated July 18, 2011

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

<sup>2</sup> Represented by John Falvey, Esq., the Custodian.

<sup>3</sup> The Custodian certifies in the Statement of Information that he received the Complainant's request on July 11, 2011.

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

The Complainant argues that he has been unlawfully denied access to the requested records and believes that the requested records are not exempt under OPRA. The Complainant agrees to mediate this complaint.

**January 20, 2012<sup>5</sup>**

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

- Complainant's OPRA request dated June 30, 2011
- Letter from the Custodian to the Complainant dated July 13, 2011
- Letter from the Custodian to the Complainant dated July 18, 2011

The Custodian certifies that no records were destroyed in response to the Complainant's request. The Custodian's July 13, 2011 and July 18, 2011 responses to the Complainant's request denied access on the basis that the Complainant's request is only seeking information and not a specific government record. In addition, the Custodian states that the NJDOC cannot provide information gathered by the Special Investigations Division, as it would compromise investigative techniques.

In the SOI, the Custodian argues that the Complainant's request is broad and unclear pursuant to the decision of MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

**Analysis**

**Whether the Custodian unlawfully denied the Complainant 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:

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<sup>5</sup> The Custodian did not certify to the search undertaken to locate the records responsive.  
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“...[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, the Complainant requested:

1. “Chain of custody and authorizations on my property, from May 8, 2011 to present; all who searched, touched, handled, or moved my legal and or personal property and their full names and ranks.
2. All documents, memorandum, reports of any kind, special reports, all notes, all written reports, all written inquiries, all authorizations, and individuals and ranks who handled my property, all individuals and ranks of persons who searched my legal and personal property that’s related to me, Matt Green, being placed in 1-Left detention.”

However, the Complainant’s request is invalid under OPRA because such request is overly broad and fails to identify specific government records sought.

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),<sup>6</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>7</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 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), 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, test under MAG then, is whether a requested record is a *specifically identifiable* government record. If so, the record is disclosable, barring any exemptions to disclosure contained in OPRA.

As stated, open ended and overbroad, blanket requests for agency files are invalid under OPRA, which requires that requestors name files with reasonable specificity when making requests. Here, the Complainant's request fails to seek a specific government

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<sup>6</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>7</sup> As stated in Bent, *supra*.

record but is instead a request for various information that relates to an unspecified incident that occurred during the term of the Complainant's incarceration. Such a request is a blanket request that would require a Custodian to conduct research outside the scope of the duties prescribed upon custodians under OPRA.

Therefore, the Complainant's request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically identify a government record sought and requires research outside of a custodian's duties pursuant to 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).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically identify a government record sought and requires research outside of a custodian's duties pursuant to 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).

Prepared By: Darryl C. Rhone  
Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

December 11, 2012