



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**June 25, 2013 Government Records Council Meeting**

Michael Vance  
Complainant

Complaint No. 2012-188

v.

County of Sussex, Sheriff's Office  
Custodian of Record

At the June 25, 2013 public meeting, the Government Records Council ("Council") considered the June 18, 2013 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 an invalid request for information that fails to seek identifiable government records. 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); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6; LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 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 25<sup>th</sup> Day of June, 2013



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

Steven Ritardi, Esq., Acting Chair  
Government Records Council

**Decision Distribution Date: June 27, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 25, 2013 Council Meeting**

**Michael Vance<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-188**

v.

**County of Sussex, Sheriff's Office<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Hardcopies via U.S. mail of:

1. How many inmates had threatening notes dropped on them in the Sussex County Jail in the last year?
2. Out of these instances, what actions, if any, was taken?

**Request Made:** May 9, 2012

**Response Made:** May 14, 2012

**GRC Complaint Filed:** June 18, 2012<sup>3</sup>

**Background<sup>4</sup>**

**Request and Response:**

On May 9, 2012, the Complainant submitted an Open Public Records Act ("OPRA") request seeking the above-listed information. On May 14, 2012, the same day as receipt of said request, the Custodian responded in writing advising that no records responsive exist.

**Denial of Access Complaint:**

On June 18, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC") disputing the Custodian's denial of access. The Complainant argues that he personally witnessed other inmates receiving threatening notes and questions why no records exist. The Complainant contends that if no records exist, he would like to know why.

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

<sup>2</sup> George DeOld, Custodian of Records. Represented by Dennis McConnel, Esq. (Newton, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

### Statement of Information:

On July 19, 2012, the Custodian filed a Statement of Information (“SOI”) certifying that he received the Complainant’s OPRA request on May 14, 2012. The Custodian certifies that he asked the Undersheriff in charge of the Bureau of Corrections to search their records for any and all records of “threatening notes” received by the jail from inmates. The Custodian certifies that the Undersheriff responded advising that no records exist. The Custodian certifies that he responded to the Complainant in writing on the same day advising that no records responsive exist.

### Analysis<sup>5</sup>

#### Unlawful Denial of Access

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 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 reasoned that:

“[m]ost 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.” [Emphasis added]. *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.* See also Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>6</sup> New Jersey Builders Association v. New

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<sup>5</sup> There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

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

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).

In LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant's request was a request for information, holding that "... because request Item No. 2 of the Complainant's June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG, *supra*] ..." *Id.* at 6. See also Ohlson v. Township of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). Additionally, in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the complainant's September 13, 2007 OPRA request asked five (5) questions. The Council determined that the request was an invalid request failing to identify government records.

Here, the Complainant sought answers to questions: how many inmates received threatening notes and what actions were taken? Similar to the requests at issue in LaMantia and Watt, this request seeks information, not records. Notwithstanding the Custodian's appropriate response that no records existed, the Complainant failed to seek specific, identifiable government records.

Therefore, the Complainant's request is an invalid request for information that fails to seek identifiable government records. MAG, supra; Bent, supra; NJ Builders, supra; Schuler, supra. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6; LaMantia, supra; Watt, supra.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant's request is an invalid request for information that fails to seek identifiable government records. 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); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6; LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009).

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Brandon D. Minde, Esq.  
Executive Director

June 18, 2013