



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

June 25, 2013 Government Records Council Meeting

Walter A. Tormasi
Complainant

Complaint No. 2012-203, 2012-204
and 2012-205

v.

New Jersey Department of Corrections
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:

1. Because the Custodian made the records responsive to the Complainant’s May 6, 2012 OPRA request No. 1, item No. 1, available to the Complainant upon payment of the appropriate copying costs, his response is appropriate. N.J.S.A. 47:1A-5(b), Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006) and Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008). *See also* Reid v. New Jersey Department of Corrections, GRC Complaint No. 2010-83 (Final Decision dated May 24, 2011). Moreover, the Custodian is not required to provide the requested records until receipt of payment of \$2.10. *See Paff, supra*. Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.
2. Because OPRA does not require custodians to research files, correlate and compile data to create a record that may be responsive to an OPRA request, the Custodian had no legal duty to create a record containing the information which the Complainant specifically requested. Thus, the Custodian has met the burden of proof that access to any responsive records was not unlawfully denied. N.J.S.A. 47:1A-6; MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Fang v. Department of Transportation, GRC Complaint No. 2006-93 (May 2007). Additionally, because the Custodian certified in the Statement of Information that no records responsive to the Complainant’s request item existed, and because there is no credible evidence in the record to refute the Custodian’s certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005); Kehoe v. NJ Dept. of Environmental Protection, Div. of Fish and Wildlife, GRC Complaint No. 2010-300 (July 2012).



3. The Custodian lawfully denied access to any records responsive to the Complainant's May 6, 2012 OPRA request No. 1, item No. 3, because same do not fall within the excepted material allowed for disclosure under OPRA (notwithstanding the fact the request item failed to identify, with reasonable clarity, the records sought). N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10.
4. Because the Complainant's May 6, 2012 request No. 2 and May 18, 2012 request failed to identify the specific government records sought and would have forced the Custodian to research his records in order to locate any documents meeting the criterion set forth in said requests, the Complainant's requests are overly broad and 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, 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 any records. N.J.S.A. 47:1A-6.

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 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**

**Walter A. Tormasi¹
Complainant**

**GRC Complaint Nos. 2012-203,
2012-204 and 2012-205²**

v.

**New Jersey Department of Corrections³
Custodian of Records**

Records Relevant to Complaint: Hardcopies via U.S. mail of:⁴

May 6, 2012 OPRA request No. 1:

1. All "ITAG" and Inmate Management System policies, procedures and manuals.
2. Computer-generated lists of "ITAG" and Inmate Management System scheduling entries made by, through or at the request of Lucile Roach in 2006, 2007 and 2008.
3. Documents indicating that Ms. Roach was issued an "ITAG" and Inmate Management System profile for accessing said computer networks/systems/applications in order to schedule inmates for medical care at the New Jersey State Prison ("NJSP").

May 6, 2012 OPRA request No. 2: all reports, memoranda and other documents generated by or in the possession of Quality Assurance staff regarding the Complainant's optometry care as related to "Inmate Remedy System Form," Part 5.

May 18, 2012 OPRA request: all documents in the possession of the New Jersey Department of Corrections ("DOC"), including the Office of Information Technology ("OIT"), indicating (1) that medical appointments can be electronically scheduled through the "ITAG" and Inmate Management System; and (2) that Ms. Lucile Roach had access to, and scheduled appointments through, ITAG and Inmate Management System while at the New Jersey State Prison ("NJSP") in 2007 and 2008.

Request Made: May 6, 2012 and May 18, 2012

Response Made: May 15, 2012, May 21, 2012, May 29, 2012 and June 8, 2012

GRC Complaint Filed: July 5, 2012⁵

¹ No legal representation listed on record.

² The GRC has consolidated these complaints for adjudication because of the commonality of the parties and issues herein.

³ John Falvey, Esq., Custodian of Records. No legal representation listed on record.

⁴ The Complainant's May 6, 2012 OPRA request No. 1 is the subject of GRC Complaint No. 2012-203. The Complainant's May 6, 2012 OPRA request No. 2 is the subject of GRC Complaint No. 2012-204. The Complainant's May 18, 2012 OPRA request is the subject of GRC Complaint No. 2012-205.

⁵ The GRC received the Denial of Access Complaints on said date.

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Background⁶

Request and Response:

May 6, 2012 OPRA request No. 1:

On May 6, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On May 21, 2012, the seventh (7th) business day following receipt of said request,⁷ the Custodian responded in writing requesting ten (10) additional business days to respond. On May 29, 2012, the Custodian responded in writing as follows:

1. Two (2) records totaling 42 pages are available for disclosure pending payment of \$2.10 in copying costs.
2. OPRA does not require an agency to recreate or restore records not readily available. The Inmate Management System does not have the ability to query changes to its journals; however, DOC has placed a function called triggered journaling in its system to manage changes to specific journals. OIT could query this information by creating a script to extract the records possibly meeting the Complainant’s criterion. In order to query certain information, DOC must know the specific table requiring research. OIT has provided a preliminary estimate of \$266.50 for 4 hours of work to query records from one specific journal into a spreadsheet calculated as follows:

Offender Schedules Journal

- Analysis, development and testing (1 hour based on \$78.00 an hour) = \$78.00
- Copying to CD (30 minutes – minimum charge based on \$32.00 an hour) = \$16.00
- CD expense = \$0.50
- Total = \$94.50

In order to determine changes in the journals, an employee will need to compare old journals with newer journals since each trigger turns into a new table; thus the process of identifying responsive information is fairly manual.

Identifying Information

- Analysis, development and testing (2 hours based on \$78.00 an hour) = \$156.00
- Copying to CD (30 minutes – minimum charge based on \$32.00 an hour) = \$16.00
- CD expense = \$0.50
- Total = \$172.50

⁶ 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.

⁷ The Custodian certifies in the Statement of Information that he received the Complainant’s OPRA request on May 10, 2012.

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OIT will begin processing this portion of the OPRA request upon receipt of the preliminary estimate. Additionally, any information pertaining to any other inmate will be redacted. Executive Order No. 47 (Governor Christie, 2010); *N.J.A.C.* 10A:22-2.3(b).

3. The personnel records of an individual, with certain exceptions, are exempt from disclosure. *N.J.S.A.* 47:1A-10.

The Custodian requests that the Complainant complete the enclosed “OPRA records Request Payment Notification and Authorization Form” and forward it to the NJSP Business Office. The Custodian states that once he has been notified of payment from the Business Office, the records will be provided.

On June 26, 2012, the Complainant sent a letter to the Custodian advising that he did not receive a response from the Custodian. The Complainant requested that, in the event that the response letter was lost, the Custodian should resend same. On July 2, 2012, the Custodian re-forwarded the Complainant his May 29, 2012 response.

May 6, 2012 OPRA request No. 2:

On May 6, 2012, the Complainant submitted a second (2nd) OPRA request seeking the above-listed records. On May 15, 2012, the third (3rd) business day following receipt of said request,⁸ the Custodian responded in writing denying access to the Complainant’s OPRA request as overly broad. *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 *N.J. Super.* 534 (App. Div. 2005). The Custodian further stated that “... any information relating to medical ... diagnosis, treatment or evaluation ...” is exempt from disclosure. Executive Order No. 47 (Governor Christie, 2010); *N.J.A.C.* 10A:22-2.3(a)(4).

May 18, 2012 OPRA request:

On May 18, 2012, the Complainant submitted a third (3rd) OPRA request seeking the above-listed records. On June 8, 2012, the sixth (6th) business day following receipt of said request,⁹ the Custodian responded in writing denying access to the Complainant’s OPRA request as overly broad. *MAG*, *supra*.

Denial of Access Complaint:

On July 5, 2012, the Complainant filed these Denial of Access Complaints with the Government Records Council (“GRC”). The Complainant argues that he never received a response to his May 6, 2012 OPRA request No. 1. The Complainant further disputes that his May 6, 2012 OPRA request No. 2 and May 18, 2012 OPRA request are invalid.

Regarding his May 6, 2012 OPRA request No. 1, the Complainant provides no additional arguments.

⁸ The Custodian certifies in the Statement of Information that he received the Complainant’s OPRA request on May 10, 2012.

⁹ The Custodian certifies in the Statement of Information that he received the Complainant’s OPRA request on May 31, 2012.

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Regarding his May 6, 2012 OPRA request No. 2, the Complainant contends since the Custodian was fully capable of identifying responsive records, it is clear that the Complainant's request was very specific. The Complainant contends that if the Custodian was unable to personally identify the responsive records, personnel from DOC's Quality Assurance department would have easily been able to locate the responsive records. The Complainant contends that it appears from the Custodian's response that he made no effort to contact Quality Assurance and thus the purported exemption is without merit.

The Complainant further disputes that the responsive records are exempt under Executive Order No. 47 (Governor Christie, 2010) and *N.J.A.C. 10A:22-2.3(b)*. The Complainant contends that his OPRA request sought records related to an investigation of an administrative remedy. The Complainant contends that these records would not pertain to any "diagnosis, treatment or evaluation."

Regarding his May 18, 2012 OPRA request, the Complainant similarly argues that his request was extremely specific. The Complainant contends that it appears from the Custodian's response that he made no effort to contact OIT and thus the purported exemption is without merit.

Statement of Information:

On August 29, 2012, the Custodian filed a Statement of Information ("SOI") for these complaints.

May 6, 2012 OPRA request No. 1:

The Custodian certifies that he received the Complainant's OPRA request on May 10, 2012. The Custodian certifies that he responded on May 21, May 29, and July 2, 2012. The Custodian further certifies that the responsive records offered for disclosure were located in DOC's electronic files.

The Custodian certifies that he granted access to the records responsive to item No. 1 pending payment of the appropriate fees. Reid v. NJ Department of Corrections, GRC Complaint No. 2010-83 (October 2011); Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). The Custodian certifies that the Complainant did not pay the copy cost, so no records were provided. The Custodian contends that he did not deny access to the responsive records since previous case law permits custodians to withhold records until receipt of copy costs.

The Custodian certifies that no records responsive to item No. 2 existed, but that he offered, as a courtesy, OIT's services in creating a record pending agreement and payment of a special service charge. Librizzi v. Township of Verona Police Department (Essex), GRC Complaint No. 2009-213 (Final Decision dated August 17, 2010); MAG, supra. The Custodian certifies that he realized the record created would differ from the request, so the Custodian explained to the Complainant in his May 29, 2012 response exactly what information could be obtained. The Custodian certifies that in order to fulfill this request item, the Custodian would be required to create a record by querying a database, compiling information for a three (3) year

period and determining whether Ms. Roach was involved in the scheduling of the entries. The Custodian requests that the Council consider this accommodation as outside the scope of OPRA.

The Custodian contends that he lawfully denied access to the records responsive to OPRA request item No. 3 because said item sought personnel records exempt from disclosure. N.J.S.A. 47:1A-10. The Custodian certifies that the responsive records relate to Ms. Roach's access to DOC networks.

May 6, 2012 OPRA request No. 2 and May 18, 2012 OPRA request:

Regarding the Complainant's May 6, 2012 OPRA request No. 2, the Custodian certifies that he received same on May 10, 2012. The Custodian certifies that he denied access to the Complainant's request on May 15, 2012.

Regarding the Complainant's May 18, 2012 OPRA request, the Custodian certifies that he received same on May 31, 2012. The Custodian certifies that he denied access to the Complainant's request on June 8, 2012.

The Custodian states that the Appellate Division has held that "... 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." Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian further states that the GRC has previously held that "any and all" requests failed to identify specific government records. Reid v. NJ Department of Corrections, GRC Complaint No. 2011-111 (July 2012). The Custodian argues that the Complainant's May 6, 2012 request No. 2 and May 18, 2012 request similarly failed to identify specific records and as such he lawfully denied access to same.

The Custodian contends that regarding the Complainant's May 6, 2012 request No. 2, DOC would have been forced to search the Complainant's inmate files and other potential files that might contain responsive records. The Custodian further argues that he then would have to decide which reports, memoranda or other documents were generated by or in the possession of Quality Assurance staff that concerned the Complainant's optometry care. The Custodian contends that the Remedy form attached to the Complainant's request did not cure the deficiency. The Custodian notes that since the Complainant's request is invalid, DOC believes its denial of any responsive records under EO 47 and *N.J.A.C.* 10A:22-2.3(b) is moot.

Analysis¹⁰

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

¹⁰ 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.
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“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.

May 6, 2012 OPRA request No. 1, item No. 1:

OPRA provides that:

“[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation.” N.J.S.A. 47:1A-5(b).

In Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008), the Council referred to Paff, *supra*, in reaffirming that the custodian was “not required to release the requested records until payment is received...” *Id.* at 8. The Council subsequently held in Leak v. Union County Prosecutor’s Office, GRC Complaint No. 2007-148 (June 2009), that the custodian had complied in part with the Council’s February 25, 2009 Interim Order “by advising that the requested records would be provided upon payment of copying costs ... pursuant to N.J.S.A. 47:1A-5(b), [Paff, *supra*], and Mejias v. New Jersey Department of Corrections, GRC Complaint No. 2007-181 (July 2008).” *Id.* at 4 (Council’s June 11, 2009 Supplemental Findings & Recommendations of the Executive Direction).

Here, the Custodian responded by offering disclosure of records responsive to item No. 1 pending payment of the appropriate copy cost of \$2.10 for 42 pages of records. However, the Complainant failed to pay for the responsive records.

Therefore, because the Custodian made the records responsive to the Complainant’s May 6, 2012 OPRA request No. 1, item No. 1, available to the Complainant upon payment of the appropriate copying costs, his response is appropriate. N.J.S.A. 47:1A-5(b), Paff and Ortiz. *See also Reid v. New Jersey Department of Corrections*, GRC Complaint No. 2010-83 (Final Decision dated May 24, 2011). Moreover, the Custodian is not required to provide the requested records until receipt of payment of \$2.10. *See Paff*, *supra*. Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.

May 6, 2012 OPRA request No. 1, item No. 2:

In Fang v. Department of Transportation, GRC Complaint No. 2006-93 (May 2007), the complainant sought disciplinary action records and specified particular information that the records had to contain. The custodian certified that no records existed which contained a compilation of the information specified by the complainant’s request. The Council, relying upon the Court’s decision in MAG, *supra*, held that:

“[b]ecause OPRA does not require custodians to research files to discern which records may be responsive to a request or compile records which do not otherwise exist, the Custodian has met his burden of proof that access to these records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. *See [MAG]*.” *Id.* at 10.

In Kehoe v. NJ Dep't of Environmental Protection, Div. of Fish and Wildlife, GRC Complaint No. 2010-300 (July 2012), the Council applied its determination in Fang, supra, to the facts of that complaint to reach the same conclusion. The Council further determined that the custodian did not unlawfully deny access to the responsive records because he "...certified in the SOI dated April 12, 2011 that no records responsive to the Complainant's requests exist, and because there is no credible evidence in the record to refute the Custodian's certification ..."
(citing Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005)) *Id.* at 7.

In Pusterhofer, supra, the complainant sought a copy of a telephone bill from the custodian in an effort to obtain proof that a phone call was made to him by an official from the Department of Education. The custodian provided a certification in his submission to the GRC that the requested record was nonexistent and the complainant submitted no evidence to refute the custodian's certification. The Council subsequently determined that "[t]he Custodian has certified that the requested record does not exist. Therefore, the requested record cannot (sic) be released and there was no unlawful denial of access." *Id.*

Here, the Custodian responded advising that OPRA does not require an agency to create or restore records not readily available. In the SOI, the Custodian certified that no records exist and that he properly denied access to the request item. Librizzi, supra; MAG, supra. However, the Custodian offered the Complainant an accommodation of creating a record that might be responsive to the request item. The Custodian also described the process necessary to query, extract, analyze, redact and determine whether the responsive schedule logs were made by, through or at the request of Ms. Roach. The actions described by the Custodian are similar to those actions the custodian in Fang described; thus, the Council's reasoning therein applies to the instant complaint. Moreover, similar to the facts in Kehoe, the Custodian here certified in the SOI that no record existed and there is no evidence in the record to refute this certification.

Therefore, because OPRA does not require custodians to research files, correlate and compile data to create a record that may be responsive to an OPRA request, the Custodian had no legal duty to create a record containing the information, which the Complainant specifically requested. Thus, the Custodian has met the burden of proof that access to any responsive records was not unlawfully denied. N.J.S.A. 47:1A-6; MAG, supra; Fang, supra. Additionally, because the Custodian certified in the SOI that no records responsive to the Complainant's request item existed, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer, supra; Kehoe, supra.

May 6, 2012 OPRA request No. 1, item No. 3:

OPRA provides 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.

Here, the Complainant sought records indicating that Ms. Roach was issued access to the scheduling system. Notwithstanding the fact that the Complainant's request item failed to identify with reasonable clarity a specific type of record, the GRC is satisfied that any such records would be exempt from access under the personnel exemption. N.J.S.A. 47:1A-10. None of the exceptions under OPRA address authorization of specific job duties, as the responsive records, if any even exist, necessarily would reference.

Therefore, the Custodian lawfully denied access to any records responsive to the Complainant's May 6, 2012 OPRA request No. 1, item No. 3, because same do not fall within the excepted material allowed for disclosure under OPRA (notwithstanding the fact the request item failed to identify, with reasonable clarity, the records sought). N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10.

May 6, 2012 OPRA request No. 2 and May 18, 2012 OPRA request:

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. 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),¹¹ 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).

¹¹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).
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However, in Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), the Court found an “any and all” request to be sufficiently specific. In that case, the plaintiff submitted a request to the county on March 14, 2008, asking for “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” *Id.* at 508-509. The Court determined that the fact that the plaintiff did not specify matters to which the settlements related “... did not render his request a general request for information obtained through research, rather than a request for a specific record.” *Id.* at 513-14.

In Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the Court noted that plaintiff’s request was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information, namely, E-Z Pass benefits provided to Port Authority retirees. The Court determined that, as in Burnett, *supra*, the request was limited to particularized identifiable government records, namely, correspondence with another government entity, rather than information generally.

Here, the Complainant argued in the Denial of Access Complaint that his requests were very specific and that the Custodian failed to indicate that he performed an adequate search by contacting OIT and Quality Assurance. Conversely, the Custodian argued in the SOI that the Council has previously held that “any and all” requests failed to identify specific government records. Reid, *supra*. The Custodian contended that the Complainant’s requests similarly failed to identify specific records.

Although the Complainant identifies reports and memoranda in his May 6, 2012 request No. 2, there is no identifiable time frame: the Complainant refers to a comment from an attached “Inmate Remedy System Form.” The GRC agrees with the Custodian that the inclusion of this report did not cure the deficiencies present in said request. *See* Edwards v. Housing Authority of Plainfield (Union), GRC Complaint Nos. 2008-183 and 2009-259 (Final Decision dated April 25, 2012) at 7 (holding that the inclusion of a newspaper article attached to the complainant’s OPRA request “... did not cure the defect ...”). Moreover, the portion of the May 6, 2012 request No. 2 and the May 18, 2012 request seeking “documents” are distinguishable from the requests in Burnett and Burke because here the Complainant largely failed to identify a particularized type of government records. The Complainant’s requests identify a non-specific class of records that would force the Custodian to look at every single record maintained by DOC to determine whether they met the criterion set forth by the Complainant.

Therefore, because the Complainant’s May 6, 2012 request No. 2 and May 18, 2012 request failed to identify the specific government records sought and would have forced the Custodian to research his records in order to locate any documents meeting the criterion set forth in said requests, the Complainant’s requests are overly broad and invalid under OPRA. MAG, *supra*; Bent, *supra*; NJ Builders, *supra*; Schuler, *supra*. Thus, the Custodian did not unlawfully deny access to any records. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian made the records responsive to the Complainant's May 6, 2012 OPRA request No. 1, item No. 1, available to the Complainant upon payment of the appropriate copying costs, his response is appropriate. N.J.S.A. 47:1A-5(b), Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006) and Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008). *See also* Reid v. New Jersey Department of Corrections, GRC Complaint No. 2010-83 (Final Decision dated May 24, 2011). Moreover, the Custodian is not required to provide the requested records until receipt of payment of \$2.10. *See Paff, supra*. Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.
2. Because OPRA does not require custodians to research files, correlate and compile data to create a record that may be responsive to an OPRA request, the Custodian had no legal duty to create a record containing the information which the Complainant specifically requested. Thus, the Custodian has met the burden of proof that access to any responsive records was not unlawfully denied. N.J.S.A. 47:1A-6; MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Fang v. Department of Transportation, GRC Complaint No. 2006-93 (May 2007). Additionally, because the Custodian certified in the Statement of Information that no records responsive to the Complainant's request item existed, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005); Kehoe v. NJ Dept. of Environmental Protection, Div. of Fish and Wildlife, GRC Complaint No. 2010-300 (July 2012).
3. The Custodian lawfully denied access to any records responsive to the Complainant's May 6, 2012 OPRA request No. 1, item No. 3, because same do not fall within the excepted material allowed for disclosure under OPRA (notwithstanding the fact the request item failed to identify, with reasonable clarity, the records sought). N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10.
4. Because the Complainant's May 6, 2012 request No. 2 and May 18, 2012 request failed to identify the specific government records sought and would have forced the Custodian to research his records in order to locate any documents meeting the criterion set forth in said requests, the Complainant's requests are overly broad and 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, 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 any records. N.J.S.A. 47:1A-6.

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Senior Case Manager

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

June 18, 2013