



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**June 30, 2015 Government Records Council Meeting**

Cliff Moore  
Complainant

Complaint No. 2014-128

v.

NJ State Police  
Custodian of Record

At the June 30, 2015 public meeting, the Government Records Council (“Council”) considered the June 23, 2015 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 March 17 and March 18, 2014, requests are invalid because they fail to seek identifiable government records. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (March 2005). See also LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009) and Watt v. Borough of N. Plainfield (Somerset), Complaint No. GRC 2007-246. Thus, the Custodian lawfully denied access to the Complainant’s requests. 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 30<sup>th</sup> Day of June, 2015

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: July 2, 2015**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 30, 2015 Council Meeting**

**Cliff Moore<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-128**

**v.**

**New Jersey State Police<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via email of:

March 17, 2014 OPRA Request:

“Information from NJSP regarding the September 1976 murder of [victim’s name withheld] . . . whose body was found in Skillman, NJ.”

March 18, 2014 OPRA Request:

Information regarding the murder of a certain victim found on September 14, 1976, in Skillman, New Jersey, including the name of the investigator, the identity of the person who found the body, the time of day the body was found, the owner of the car in which the victim was found, where the victim was last seen, and any conclusions the investigators were able to draw.

**Custodian of Record:** Marco Rodriguez

**Request Received by Custodian:** March 17 and March 18, 2014

**Response Made by Custodian:** March 18, 2014

**GRC Complaint Received:** March 24, 2014

**Background<sup>3</sup>**

Request and Response:

On March 17 and March 18, 2014, the Complainant submitted Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On March 18, 2014, the Custodian responded in writing, denying access to both requests.

With respect to the Complainant’s request from March 17, 2014, the Custodian denied access to the records, stating that the request was improper and overbroad. The Custodian

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

<sup>2</sup> Represented by Deputy Attorney General Megan E. Shafranski.

<sup>3</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.

argued that the Complainant sought information rather than specifically identified records. The Custodian also noted that OPRA does not require Custodians to research files to discern which records may be responsive to a request. Finally, the Custodian argued that the records requested were exempt from disclosure as criminal investigatory records. N.J.S.A. 47:1A-1 et. seq.

With respect to the request from March 18, 2014, the Custodian denied access to the records, contending that they are criminal investigatory records that are not subject to disclosure.

#### Denial of Access Complaint:

On March 24, 2014 the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts without elaboration that both of his requests were “rejected” and thus improperly denied.

#### Statement of Information:

On May 6, 2014 the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the homicide investigation, although a cold case, is still active.

### Analysis

#### Validity of 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 Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (March 2005). 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. at 549.

The Court reasoned that:

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 (emphasis added).

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.” Id. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>4</sup> NJ Builders, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In LaMantia v. Jamesburg Pub. 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] . . .” Id. at 6. *See also* Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

#### March 17, 2015 Request

The Complainant’s request from March 17, 2014, failed to identify government records. Rather the Complainant sought: “Information from NJSP regarding the September 1976 murder of [victim’s name withheld] . . . whose body was found in Skillman NJ.” The Complainant explicitly sought information, not an “identifiable government record.” MAG, 375 N.J. Super. 534 at 549. As such, the request was similar to the requests in LaMantia, GRC Complaint No. 2008-140, and Watt, GRC 2007-246.

#### March 18, 2014 Request

Similar to his request from March 17, 2014, the Complainant failed to identify government records. Instead, the Complainant sought information, including the name of the investigator, who found the body, the time of day the body was found, the owner of the car in which the victim was found, where the victim was last seen, and any conclusions the investigators were able to draw. The Complainant explicitly sought information, not an “identifiable government record.” MAG, 375 N.J. Super. 534 at 549. As such, the request was similar to the requests in LaMantia, GRC Complaint No. 2008-140, and Watt v. Borough of N. Plainfield (Somerset), Complaint No. GRC 2007-246.

Therefore, both of the Complainant’s requests are invalid because they fail to seek identifiable government records.<sup>5</sup> MAG, 375 N.J. Super. 534. *See also* LaMantia, GRC No. 2008- 140 and Watt, GRC 2007-246. Thus, the Custodian lawfully denied access to the Complainant’s requests. N.J.S.A. 47:1A-6.

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<sup>4</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>5</sup> Having found that the requests were invalid, because they failed to request identifiable government records and were instead requests for information, the GRC declines to address whether the documents were exempt as criminal investigatory records.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that: the Complainant's March 17 and March 18, 2014, requests are invalid because they fail to seek identifiable government records. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (March 2005). See also LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009) and Watt v. Borough of N. Plainfield (Somerset), Complaint No. GRC 2007-246. Thus, the Custodian lawfully denied access to the Complainant's requests. N.J.S.A. 47:1A-6.

Prepared By: Ernest Bongiovanni  
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.  
Deputy Executive Director

June 23, 2015