



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

June 30, 2015 Government Records Council Meeting

Rocmon L. Sanders
Complainant

Complaint No. 2014-173

v.

NJ Department of Corrections
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 requests are invalid under OPRA because they fail to specify identifiable government records. *See* MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Lantigua v. New Brunswick Police Dep’t (Middlesex), GRC Complaint No. 2013-223 (February 2014). The Custodian has thus borne his burden of proving that he lawfully denied access to the Complainant’s two (2) 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 30th 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**

**Rocmon L. Sanders¹
Complainant**

GRC Complaint No. 2014-173

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint:

January 9, 2014, OPRA request: On-site inspection of New Jersey Department of Corrections (“DOC”) computer files, electronic files, and records made and maintained regarding the Complainant.³

January 31, 2014, OPRA request: On-site inspection of electronic or computer files made and maintained by DOC regarding the Complainant from the computer system utilized to record, locate, and report on DOC inmates.

Custodian of Record: John Falvey

Request Received by Custodian: January 23, 2014, and February 11, 2014

Response Made by Custodian: January 28, 2014, and February 19, 2014

GRC Complaint Received: April 21, 2014

Background⁴

Request and Response:

On January 9, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 28, 2014, the third (3rd) business day after receipt of the OPRA request, the Custodian responded in writing to deny the Complainant’s OPRA request as overly broad and therefore invalid. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Complainant requested additional records that are not at issue in this complaint.

⁴ 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.

On January 31, 2014, the Complainant submitted an OPRA request to the Custodian to seek the above-mentioned records. On February 19, 2014, the fifth (5th) business day after receipt of the OPRA request, the Custodian responded in writing to deny the request as overly broad and therefore invalid. MAG, 375 N.J. Super. at 546, 549.

Denial of Access Complaint:

On April 21, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian denial of access, arguing that same was arbitrary. The Complainant contended that he should have access to the records because they pertain to him. Further, the Complainant asserted that the Custodian only denied his OPRA requests in an attempt to discourage him from pursuing additional requests that would uncover records containing damaging information about DOC.

Statement of Information:

On May 7, 2014, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that he received the OPRA requests on January 23, and February 11, 2014, respectively. The Custodian certified that he responded in writing on January 28, and February 19, 2014, respectively, advising the Complainant that his requests were invalid under MAG.

The Custodian argued that he lawfully denied access to the Complainant’s requests, based on the Council’s prior decisions regarding “any and all” requests failing to identify specific records. Reid v. NJ Dep’t of Corr., GRC Complaint No. 2011-111 (Final Decision dated May 29, 2012); Reid v. NJ Dep’t of Corr., GRC Complaint No. 2012-248 (Final Decision dated May 28, 2013). The Custodian asserted that the Complainant’s requests would have required him to conduct an exhaustive search of DOC’s records.

Additional Submissions:

On July 10, 2014, the Complainant disputed the Custodian’s assertion that he would have to perform an exhaustive search of DOC’s files. The Complainant argued that, to the contrary, DOC maintains a “central computer system” that contains all records in one file.

Analysis

Validity of Request

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 Appellate Division has held that:

While 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.*

MAG, 375 N.J. Super. at 546 (emphasis added).

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. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁵ NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In Lantigua v. New Brunswick Police Dep’t (Middlesex), GRC Complaint No. 2013-223 (February 2014), the complainant requested any and all computer generated evidence, facts, or other data from department Mobile Data Terminals, or the central computers network servers or other computer related systems. The Council held that “[w]hile the Complainant attempted to limit his request to documents and information generated before November 17, 2011 and by reference to various databases and types, the request [was] still not for ‘identifiable government records not otherwise exempt’ from disclosure.” (Citing Bent, 381 N.J. Super. at 37; N.J. Builder’s Ass’n, 390 N.J. Super. at 180; Schuler, GRC 2007-151).

Here the Complainant’s two (2) requests sought “any and all” computer/electronic files/records generated, maintained, accessed by the DOC in reference to the Complainant. As in Lantigua, both requests seek information and are overly broad because they failed to identify specific government records. Specifically, the requests identify generic “files” and “records” from DOC’s “computer systems.” Further, the requests do not identify a time frame within which

⁵ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

the Complainant is seeking records. Ultimately, the requests would have required the Custodian to conduct an open-ended search of DOC's computer system to locate and identify any number of records that referred to the Complainant. A custodian is not required to conduct research.

Therefore, the Complainant's requests are invalid under OPRA because they fail to specify identifiable government records. *See* MAG, 375 N.J. Super. at 546, 549; Bent, 381 N.J. Super. at 30; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Lantigua GRC 2013-223. The Custodian has thus borne his burden of proving that he lawfully denied access to the Complainant's two (2) requests. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's requests are invalid under OPRA because they fail to specify identifiable government records. *See* MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Lantigua v. New Brunswick Police Dep't (Middlesex), GRC Complaint No. 2013-223 (February 2014). The Custodian has thus borne his burden of proving that he lawfully denied access to the Complainant's two (2) requests. N.J.S.A. 47:1A-6.

Prepared By: Ernest Bongiovanni
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

June 23, 2015