



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
Acting Commissioner

FINAL DECISION

April 28, 2015 Government Records Council Meeting

Agustin Garcia
Complainant

Complaint No. 2014-306

v.

NJ Department of Corrections
Custodian of Record

At the April 28, 2015 public meeting, the Government Records Council (“Council”) considered the April 21, 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 because the Complainant’s request seeks information rather than a specifically identifiable government record, the request is invalid pursuant to 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 (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); and Lopez vs. NJ Dep’t of Corrections, GRC Complaint No. 2008-250 (November 2009). The Custodian has thus lawfully denied access to Complainant’s request. 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 28th Day of April, 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: April 30, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2015 Council Meeting**

**Agustin Garcia¹
Complainant**

GRC Complaint No. 2014-306

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Copies of the “legal process service” addresses for the following named individuals and entities:

1. Despina Terris, M.D., Oncologist at Saint Francis Medical Center Radiology Clinic
2. Dennis Nugent, M.D., Urologist-Surgeon at Saint Francis Medical Center
3. Correctional Medical Service, Inc. (CMS)
4. Charles Warren, former Administrator at New Jersey State Prison
5. Ralph Woodward, M.D., Chief Physician at New Jersey Department of Corrections
6. New Jersey Department of Public Safety
7. New Jersey State Prison

Custodian of Record: John Falvey
Request Received by Custodian: July 28, 2014
Response Made by Custodian: July 28, 2014
GRC Complaint Received: August 29, 2014

Background³

Request and Response:

On July 20, 2014, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On July 28, 2014, the same day as receipt of the OPRA request, the Custodian responded in writing, denying the request as invalid because it did not adequately identify the specific records sought. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005).

¹ No legal representation listed on record.

² No legal representation listed on record.

³ 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.

Denial of Access Complaint:

On August 18, 2014, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant disputed the Custodian's denial of access but provided no further relevant arguments.

Statement of Information:

On September 8, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on July 28, 2014, and that he responded in writing that same day.

The Custodian argued that the Complainant's request for addresses was invalid because it was a request for information and not for identifiable government records pursuant to MAG. The Custodian further noted that the GRC had previously found similar requests for addresses to be invalid requests pursuant to MAG. See Harris v. NJ Dep't of Corrections, GRC Complaint No. 2011-66 (August 2012), and Lopez vs. NJ Dep't of Corrections, GRC Complaint No. 2008-250 (November 2009).

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, 381 N.J. Super. at 37;⁴ 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 Lopez, GRC 2008-250, the complainant’s OPRA request sought the current work address and any alternate address for a physician who previously worked at a particular prison. In that instance, the custodian responded to the complainant, advising him that OPRA only requires a custodian to respond to a request for a specific government record and does not require a custodian to conduct research and correlate data from various records. The Council held that because the complainant’s request sought information rather than a specific identifiable government record, the request was invalid pursuant to MAG.

In the instant matter, the Complainant’s request sought the current addresses for the above-named individuals and entities. Although the Complainant did name the individuals and entities whose addresses he sought, the Complainant did not identify any specific government record. The Council’s decision in Lopez, GRC 2008-250, is applicable here because the request at issue in the instant matter is similar to the one in Lopez.

Therefore, because the Complainant’s request seeks information rather than a specifically identifiable government record, the request is invalid pursuant to MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Lopez, GRC 2008-250. The Custodian has thus lawfully denied access to Complainant’s request. N.J.S.A. 47:1A-6.

⁴ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's request seeks information rather than a specifically identifiable government record, the request is invalid pursuant to 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 (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); and Lopez vs. NJ Dep't of Corrections, GRC Complaint No. 2008-250 (November 2009). The Custodian has thus lawfully denied access to Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: Husna Kazmir
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

April 21, 2015