



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**

**April 26, 2016 Government Records Council Meeting**

Darlene Esposito  
Complainant

Complaint No. 2015-143

v.

NJ Department of Law and Public Safety,  
Division on Civil Rights  
Custodian of Record

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the March 22, 2016 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 failed to specifically identify specific government records, the request is invalid pursuant to MAG Ent’mt, LLC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>1</sup> 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). 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 26<sup>th</sup> Day of April, 2016

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: May 2, 2016**

<sup>1</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 26, 2016 Council Meeting**

**Darlene Esposito<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-143**

**v.**

**NJ Department of Law and Public Safety, Division on Civil Rights<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

1. “Any information on the two investigations of the NJDLPS Division of Civil Rights and NJOAL reviews comments or commentary from conciliators for extension of time for decisions relating to my housing matter and bona fide reasons that it may exceed the schedules dates with the NJ Division of Civil Rights and thereafter HUD reopening under a work contract with the NJ Department of Labor and/or the U.S. Department of Labor.”
2. “In the event of a disagreement, any information from the Regional Administrator or Area Manager for the particular office e.g. NJ Division of Civil Rights with the N.J. Department of Labor and with the NJ Office of Administrative Law and the final decision to resolve the issue with the NJ Department of Labor or U.S. Department of Labor.”
3. Any information or disagreement concerning housing certifications with HUD and NJDCR.
4. “Information on the negotiations agreements with HUD, New Jersey Department of Labor, New York Department of Labor, NJ Division on Civil Rights National Contract Management Association local to Ashburn, Virginia”
5. “Any information on Certifications of Compliance with Civil Rights Laws and Executive Orders from the Office of HUD Newark, NJ and Washington, DC with NJ DCR, any information on Civil Rights Compliance of any of the respondent’s employees employed by the NJ DCR mentioned herein and filed with the NJ Department of Labor and the U.S. Department of Labor Mountainside District Office, Mountainside, NJ, on any of the NJ Civil Rights Employees. Any information on the HUD Contract with the State of New Jersey and its political subdivision or instrumentality of any state or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State mentioned herein with the NJ Department of Labor and the U.S. Department of Labor . . . .”

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

<sup>2</sup> Represented by Deputy Attorney General James Michael.

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**Custodian of Record:** C. Carlos Bellido  
**Request Received by Custodian:** May 4, 2015  
**Response Made by Custodian:** May 11, 2015  
**GRC Complaint Received:** May 22, 2015

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

#### **Request and Response:**

On April 14, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.<sup>4</sup> On May 11, 2015, the Custodian responded in writing, denying the request.

In her response, the Custodian noted that each of the Complainant’s requested items sought “all” or “any” information in the Division on Civil Rights’ (“DCR”) possession and that MAG Ent’mt, LLC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) requires agencies “to disclose only ‘identifiable’ governmental records not otherwise exempt.” The Custodian further noted that in Bent v. Township of Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005), the Appellate Division explained that OPRA does not authorize a party to make a blanket request for every document that a public agency has on file. The Custodian contented that the request “would require considerable effort by DCR employees that is neither assigned by the agency nor envisioned by OPRA and would substantially disrupt agency operations.” See N.J.S.A. 47:1A-5(g). The Custodian therefore denied the request as being unduly burdensome, substantially disruptive of agency operations, and overbroad and improper.

The Custodian requested that the Complainant modify and resubmit her request so that it identifies specific public records in the possession of the DCR. The Custodian noted that should the Complainant have questions about how to frame such requests, she could contact him so that he “may help [her] narrow [her] requests to those records actually possessed by DCR.”

#### **Denial of Access Complaint:**

On May 19, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that she was unlawfully denied access to the above-mentioned records but made no additional legal arguments.

#### **Statement of Information:**

On July 1, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 4, 2015, when it was

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<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.

<sup>4</sup> The Complainant’s included additional information regarding her opinions and arguments as to why she sought the information requested.

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forwarded to him. The Custodian averred that he responded in writing on May 11, 2015, denying the request.

The Custodian argued that each of the requested items was for “all information” or “information” in the DCR’s possession regarding a particular subject, and therefore the request was legally improper on its face. The Custodian further noted that the Complainant did not revise her request as suggested.

The Custodian reiterated the arguments cited in the original denial, which cited MAG and contended that “[w]holesale requests for general information to be analyzed, collated and compiled by the responding government entity” are not contemplated by OPRA. “In short, OPRA does not countenance open-ended searches of an agency’s files.” *See also: Burke v. Brandes*, 429 N.J. Super. 169, 174 (App. Div. 2012) and *Gannett New Jersey Partners, LP v. County of Middlesex*, 379 N.J. Super. 205 (App. Div. 2005). The Custodian also noted that the request is unduly burdensome, substantially disruptive of agency operations, and overbroad and improper, pursuant to MAG. *See also: Burke*, 429 N.J. Super. 169, 174 (App. Div. 2012); *Gannett*, 379 N.J. Super. 205 (App. Div. 2005); *Bent*, 381 N.J. Super. 30 (App. Div. 2005) and N.J.S.A. 47:1A-5(g).

#### Additional Submissions:

On July 24, 2015, the Complainant wrote to the GRC, asserting that she believes the documents she requested are “missing or [have] been subject to a security breach.” The Complainant made no additional legal arguments.

### 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;<sup>5</sup> 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).

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>6</sup> the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records “accessible.” “As such, 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.”<sup>7</sup>

In the instant complaint, the Complainant's OPRA request sought “any” or “all information” regarding particular subjects. The Complainant did not identify specific government records, and as a result, the Custodian would be forced to conduct an open-ended search into the DCR's files to attempt to locate possibly responsive records. Such an open-ended search is impermissible under OPRA, which is not intended to be a research tool for litigants. N.J.S.A. 47:1A-1.

Therefore, because the Complainant's request failed to specifically identify specific government records, 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. The Custodian has thus lawfully denied access to Complainant's request. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

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<sup>5</sup> Affirming Bent v. Stafford Police Dep't, GRC Case No. 2004-78 (October 2004).

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

<sup>7</sup> As stated in Bent, *supra*.

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The Executive Director respectfully recommends the Council find that because the Complainant's request failed to specifically identify specific government records, the request is invalid pursuant to MAG Ent'mt, LLC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005) ;<sup>8</sup> 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). The Custodian has thus lawfully denied access to Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: Husna Kazmir  
Staff Attorney

March 22, 2016<sup>9</sup>

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<sup>8</sup> Affirming Bent v. Stafford Police Dep't, GRC Case No. 2004-78 (October 2004).

<sup>9</sup> This complaint could not be adjudicated at the Council's March 29, 2016 meeting due to lack of a quorum.  
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