



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

July 31, 2018 Government Records Council Meeting

Tremayne Durham
 Complainant

Complaint No. 2016-237

v.

NJ Department of Corrections
 Custodian of Record

At the July 31, 2018 public meeting, the Government Records Council (“Council”) considered the July 24, 2018 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 request represents an invalid request for information that fails to seek identifiable government records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. v. N.J. 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). Thus, the Custodian lawfully deny access to the subject request. N.J.S.A. 47:1A-6; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015). Accordingly, the GRC declines to address the remaining defenses set forth by the Custodian.

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 31st Day of July, 2018

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: August 3, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
July 31, 2018 Council Meeting**

**Tremayne Durham¹
Complainant**

GRC Complaint No. 2016-237

v.

**N.J. Department of Corrections²
Custodial Agency**

Records Relevant to Complaint:³

- “1. The statistics on the racial background of inmates in single cells.
2. The record of the racial background of inmates assigned to jobs besides cell-sanitation.”

Custodian of Record: John Falvey
Request Received by Custodian: July 22, 2016
Response Made by Custodian: July 25, 2016
GRC Complaint Received: August 23, 2016

Background⁴

Request and Response:

On or around July 17, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 26, 2016, the Custodian responded in writing stating that no responsive records exist.

Denial of Access Complaint:

On August 23, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not elaborate further on the circumstances of the alleged denial beyond providing a copy of the Custodian’s response.

Statement of Information:

On October 10, 2016, the Custodian filed a Statement of Information (“SOF”). The

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Aziz O. Nekoukar.

³ The Complainant sought additional records that are not at issue in this matter.

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Custodian certified that he received the Complainant's OPRA request on July 22, 2016. The Custodian certified that he responded in writing on July 25, 2016, informing the Complainant that no responsive records existed for both items of the request.

The Custodian initially argued that the request is invalid as overly broad and required the Custodian to conduct research. See MAG Entm't, LLC. V. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). Notwithstanding, the Custodian argued that there was no unlawful denial of access since the records did not exist, citing Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), and Speicher v. Twp. of Long Branch (Ocean), GRC Complaint No. 2009-79 (April 2010). The Custodian contended that since the Complainant did not offer any evidence to refute his certification, the matter should be dismissed.

Analysis

Validity of Request

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 (App. Div. 2005) (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. (emphasis added). Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005),⁵ N.J. Builders Assoc. v. N.J. Council on Affordable

⁵ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004).

Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); 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 held 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). Further, in Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015), the complainant sought, among other information, the "total number of applicants" interviewed or hired by race and gender. The Council held that the request was invalid because it sought information (citing Litchult, Jr. v. Borough of Waldwick Police Dep't (Bergen), GRC Complaint No. 2010-159 (May 2011)).

In the instant matter, the Complainant's request sought statistical data on the racial background of inmates housed in single cells, and also sought the racial background of inmates assigned to jobs other than cell-sanitation. Similar to the request at issue in Redd, GRC 2014-185, the request seeks statistical information and not an identifiable "government record." The Custodian certified that while he had data on the overall racial makeup of inmates confined in New Jersey State prison (which he provided to the Complainant), there are no records containing the data requested in both request items. Thus, the GRC is satisfied that the request items were invalid, notwithstanding the Custodian's attempt to locate responsive records. See also LaMantia, GRC 2008-140.

Therefore, the Complainant's request represents an invalid request for information that fails to seek identifiable government records. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6; LaMantia, GRC 2008-140; Redd, GRC 2014-185. Accordingly, the GRC declines to address the remaining defenses set forth by the Custodian.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Complainant's request represents an invalid request for information that fails to seek identifiable government records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. v. N.J. 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). Thus, the Custodian lawfully deny access to the subject request. N.J.S.A. 47:1A-6; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015). Accordingly, the GRC declines to address the remaining defenses set forth by the Custodian.

Prepared By: Samuel A. Rosado
Staff Attorney

July 24, 2018