



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

June 26, 2018 Government Records Council Meeting

Kenneth Duckett
Complainant

Complaint No. 2016-274

v.

Essex County Prosecutor's Office
Custodian of Record

At the June 26, 2018 public meeting, the Government Records Council ("Council") considered the May 15, 2018 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant's request seeking records based on retention schedule "Record Series" numbers was invalid. The Custodian had no legal duty to research her files to locate records potentially responsive to "Evidence No. 0018-0008, No. 0018-0009, and No. 0018-0010." 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 did not unlawfully deny access to the subject OPRA 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 26th Day of June, 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: June 29, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
June 26, 2018 Council Meeting**

**Kenneth Duckett¹
Complainant**

GRC Complaint No. 2016-274

v.

**Essex County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of Evidence No. 0018-0008, No. 0018-0009, and No. 0018-0010 from State of N.J. v. Duckett, Docket No. 09-02-0457.

Custodian of Record: Debra G. Simms, Esq.³
Request Received by Custodian: August 25, 2016
Response Made by Custodian: September 1, 2016
GRC Complaint Received: October 12, 2016

Background⁴

Request and Response:

On August 19, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 1, 2016, the Custodian responded in writing denying the Complainant’s OPRA request as invalid because it failed to identify specific records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian noted that the Complainant must identify specific records.

Denial of Access Complaint:

On October 12, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he sought information from the Essex County Prosecutor’s Office (“ECPO”) “C310000-003 package” pertaining to his trial conviction. The Complainant contended that the Custodian’s denial of access was unlawful: he sought specific records as set forth in the “package.”

¹ No legal representation listed on record.

² Represented by Courtney Gaccione, Esq. (Newark, NJ). Previously represented by Maite Gaeta, Esq. (Newark, NJ).

³ The current Custodian of Record is LeeAnn Cunningham.

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.

Statement of Information:

On November 28, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 25, 2016. The Custodian certified that she did not perform a search because the Complainant’s request failed to identify a government record. The Custodian certified that she responded in writing on September 1, 2016 denying the request because it was invalid. The Custodian noted that she also sought clarification.

The Custodian argued that she lawfully denied access to the Complainant’s request. The Custodian argued that OPRA was not intended as a research tool and requires requestors to identify specific government records. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. at 37. The Custodian further asserted that upon reviewing the retention schedule attached to the Denial of Access Complaint, it appeared the Complainant was citing to it as his “evidence” request. The Custodian argued that the Complainant certainly failed to identify any specific records by referring to the schedules.

Analysis

Validity of Request

The New Jersey Superior Court, 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. 534 (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;⁵ 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).

Of note, the Council recently adjudicated a complaint where the complainant submitted an OPRA request for records which he only identified by “Record Series No.” In Herbert v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2016-51 (March 2018), the custodian responded providing several bases for denial, to include that the request was invalid. However, the custodian also identified several records, which she provided to the Complainant. In analyzing the merits of the complaint, the Council noted that:

[T]he Complainant’s OPRA request items sought certain records from Indictment No. 12-11-2693, *identified categorically by terms used in a retention schedule*. Thus, *this request is invalid on its face because it failed to seek specific, identifiable records*. However, in situations where a request was overly broad on its face but the custodian was able to locate records, the Council has followed Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), in determining that the request contained sufficient information for record identification. See Bond v. Borough of Washington (Warren), GRC Complaint No. 2009-324 (March 2011); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2014-92 (September 2014). Here, the Custodian was clearly able to locate the indictment file and responsive records, notwithstanding that the Complainant only provided generic retention terms. Based on this . . . the GRC declines to determine that the OPRA request is invalid.

[*Id.* at 3 (emphasis added).]

Here, the Complainant’s request sought Evidence No. 0018-0008, No. 0018-0009, and No. 0018-0010 from State of N.J. v. Duckett, Docket No. 09-02-0457. The Complainant appears to be referring to “Records Series” numbers in the State of New Jersey’s “Records Retention and Disposition Schedule” specific to all county prosecutor’s offices. The retention schedules are administered by Records Management Services.⁶ The Custodian responded denying the request as invalid.

Although decided during the pendency of this complaint, the GRC finds Herbert, GRC 2016-51 to be instructive. As noted in Herbert, the Complainant’s utilization of a “Record Series” number was invalid on its face. However, unlike the custodian in Herbert, the Custodian here could not identify any responsive records. For this reason, the GRC is satisfied that the Complainant’s request is invalid. Specifically, the identification of a “Record Series” number provides little more than a broad category of records that an agency must maintain for a certain period of time. Providing a number pertaining to a broad category of documents does not identify specific records in a manner that would afford a proper search. Further, the request would have required the

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

⁶ <http://www.nj.gov/treasury/revenue/rms/pdf/c310000.pdf> (accessed May 14, 2018).

Custodian to review the ECPO's retention schedule to determine what types of records pertaining to Duckett were responsive to the Complainant's request: this would be contrary to OPRA which does not require custodians to perform research to locate responsive records. MAG, 375 N.J. Super. 534. See also Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007).

Accordingly, the Complainant's request seeking records based on retention schedule "Record Series" numbers was invalid. The Custodian had no legal duty to research her files to locate records potentially responsive to "Evidence No. 0018-0008, No. 0018-0009, and No. 0018-0010." 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, the Custodian did not unlawfully deny access to the subject OPRA request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Complainant's request seeking records based on retention schedule "Record Series" numbers was invalid. The Custodian had no legal duty to research her files to locate records potentially responsive to "Evidence No. 0018-0008, No. 0018-0009, and No. 0018-0010." 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 did not unlawfully deny access to the subject OPRA request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

May 15, 2018⁷

⁷ This complaint was prepared for adjudication at the Council's May 22, 2018 meeting but could not be adjudicated due to lack of a quorum.