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Commissioner

FINAL DECISION

June 25, 2019 Government Records Council Meeting

Humberto Benitez
Complainant

Complaint No. 2017-137

v.

NJ Department of Corrections
Custodian of Record

At the June 25, 2019 public meeting, the Government Records Council (“Council”) considered the June 18, 2019 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 seeking access to his “prison classification file” is invalid because it was a blanket request for an entire file that failed to identify the specific records sought. 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). See also Bragg v. N.J. Dep’t of Corr., GRC Complaint No. 2010-145 (March 2011) and Bishop v. N.J. Dep’t of Corr., GRC Complaint No. 2017-178 (May 2019). Thus, the Custodian lawfully denied access to the 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 25th Day of June 2019

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 28, 2019

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
June 25, 2019 Council Meeting**

**Humberto Benitez¹
Complainant**

GRC Complaint No. 2017-137

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: “[M]y prison classification file at Northern State Prison.”

Custodian of Record: John Falvey
Request Received by Custodian: May 11, 2017
Response Made by Custodian: May 12, 2017
GRC Complaint Received: June 15, 2017

Background³

Request and Response:

On May 11, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking a review of the above-mentioned records. On May 12, 2017, the first (1st) business day following receipt of said request, the Custodian responded in writing informing the Complainant that his request was denied because the Complainant failed to “. . . adequately identify a particular government record(s) . . .” The Custodian cited MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005) and Bragg v. N.J. Dep’t of Corr., GRC Complaint No. 2010-145 (March 2011) in support of his reason for denial.

Denial of Access Complaint:

On June 15, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the cases the Custodian cited as a reason for denial do not apply to the instant complaint. The Complainant argued that in MAG, the requestor failed to provide “details.” The Complainant further argued that in Bragg, the requestor sought a “complete institutional file” without identifying the person whose file he was seeking. The Complainant argued that in this complaint the request was specific because he was

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Tasha Bradt..

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

seeking his own classification file. The Complainant stated that he could not identify a specific record within the classification file without first viewing its contents.

The Complainant asserted that his “right to equal protection” was violated by the Custodian because several other inmates had been granted access to view their classification files but the Complainant was refused such access. The Complainant stated that the Custodian was wrong in denying his request.

Statement of Information:

On July 13, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 11, 2017, and responded in writing on May 12, 2017, denying the request as overly broad because it failed to identify a specific government record. The Custodian certified that his search included locating the Complainant’s prison classification file.

The Custodian’s Counsel stated that in Bragg v. N.J. Dep’t of Corr., GRC Complaint No. 2010-145 (March 2011), the complainant sought his complete institutional file. Counsel stated that the Council subsequently found that the custodian properly denied the complainant’s request because it failed to identify a specific government record pursuant to MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). Counsel argued that in the instant complaint the Complainant’s request, analogous to the complainant in Bragg, GRC 2010-145, failed to identify the specific record sought. Rather, Counsel argued, the Complainant sought an entire classification file. As such, Counsel asserted that the Custodian lawfully denied access to the Complainant’s request.

Counsel further stated that the Complainant could request his prison classification file via other means. Counsel stated that the file could be requested via the Inmate Remedy System, or via an inquiry request through JPAY kiosks located at the housing units within the institutions.

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 (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),⁴ 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).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is a request seeking information or asking questions. *See e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. *See e.g.* Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. *See also* Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking

⁴ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

“[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in [MAG], [Bent] and the Council’s decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (February 2008).

[Id.]

Also, the GRC has typically held that a request seeking access to a “file” is invalid because it represents a blanket request for a class of various records. See Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (February 2008); Nunley v. N.J. State Parole Bd., GRC Complaint No. 2013-335 (July 2014). In Bragg, GRC 2010-145, the complainant disputed the custodian’s denial of his request seeking his “[c]omplete institutional” and “Special Investigation Division” files. In the SOI, the custodian argued that a portion of the request was invalid because it failed to identify specific records. The Council agreed, finding that both request items were invalid because the complainant’s “request seeks entire files rather than specific identifiable government records.” (Citations Omitted). More recently, in Bishop v. N.J. Dep’t of Corr., GRC Complaint No. 2017-178 (May 2019), the Council found that the custodian did not unlawfully deny access to a complainant who requested inspection of his classification and institutional records. The Council determined that the request was invalid because it was a blanket request that failed to identify the specific records sought. See also Bradley-Williams v. Atlantic Cnty. Jail, GRC Complaint No. 2011-232 (December 2012); Torian v. N.J. State Parole Bd., GRC Complaint No. 2013-245 (June 2014).

Applying this case precedent to the facts of this complaint, the GRC is satisfied that the subject request is invalid and that the Custodian lawfully denied it. All relevant case law is consistent with prior Council decisions determining that a request for a “file” is a blanket request, which is overbroad. And significantly, the request here is very similar to the requests in Bragg, GRC 2010-145 and Bishop, GRC 2017-178, wherein the Council determined the requests were invalid because they sought entire files rather than specific identifiable government records.

Accordingly, the Complainant’s request seeking access to his “prison classification file” is invalid because it was a blanket request for an entire file that failed to identify the specific records sought. MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 37; N.J. Builders Ass’n, 390 N.J. Super. at 180; Schuler, GRC 2007-151. See also Bragg, GRC 2010-145 and Bishop, GRC 2017-178. Thus, the Custodian lawfully denied access to the Complainant’s 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 access to his "prison classification file" is invalid because it was a blanket request for an entire file that failed to identify the specific records sought. 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). See also Bragg v. N.J. Dep't of Corr., GRC Complaint No. 2010-145 (March 2011) and Bishop v. N.J. Dep't of Corr., GRC Complaint No. 2017-178 (May 2019). Thus, the Custodian lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart
Staff Attorney

June 18, 2019