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LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 21, 2019 Government Records Council Meeting

Alfred Bishop
Complainant

Complaint No. 2017-178

v.

NJ Department of Corrections
Custodian of Record

At the May 21, 2019 public meeting, the Government Records Council (“Council”) considered the May 14, 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 “classification and all institutional records” is invalid because it was a blanket request 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); Bragg v. N.J. Dep’t of Corr., GRC Complaint No. 2010-145 (March 2011). Further, the request was invalid because it generically sought “records.” Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). 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 21st Day of May 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: May 22, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
May 21, 2019 Council Meeting**

**Alfred Bishop¹
Complainant**

GRC Complaint No. 2017-178

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Inspection of the Complainant’s “classification and all institutional records.”

Custodian of Record: John Falvey
Request Received by Custodian: April 20, 2017
Response Made by Custodian: April 25, 2017
GRC Complaint Received: September 7, 2017

Background³

Request and Response:

On an unknown date, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 25, 2017, the Custodian responded in writing denying the request as invalid, citing MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) and Bragg v. N.J. Dep’t of Corr., GRC Complaint No. 2010-145 (March 2011).

Denial of Access Complaint:

On September 7, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that he sought to review his entire classification file but was unlawfully denied access. The Complainant asserted that his OPRA request was valid because he sought inspection and not copies of the requested records. The Complainant contended that Bragg did not apply here; that request sought a copy of a “complete institutional file.” The Complainant also contended that multiple inmates inspected their

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.

classification files a few months earlier based on “identical requests.”⁴ The Complainant argued that he was being treated unfairly and that GRC should order the Custodian to allow for inspection.

Statement of Information:

On October 17, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 20, 2017. The Custodian certified that his search included locating the Complainant’s classification file. The Custodian certified that he responded in writing on April 25, 2017 denying the request as overly broad and thus invalid.

The Custodian argued that the Complainant’s request sought inspection of a file that contained numerous categories of records. The Custodian argued that the file is a “comprehensive dossier that could contain numerous categories of records” exempt from disclosure under OPRA and the New Jersey Department of Corrections’ (“DOC”) regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3, et seq. The Custodian further affirmed that those categories could include multiple confidential records such as Special Investigation Division reports, medical and mental health records, comprehensive criminal histories, security threat group records, and communication and visitor information. The Custodian certified that the Complainant could submit an “Inmate Remedy System Form” through any JPAY kiosk located within his facility to request certain records from his file. The Custodian noted that the Complainant could “articulat[e]” the records he would like to view and reasons why through the kiosk.

The Custodian contended that he lawfully denied access to the Complainant’s OPRA request. The Custodian asserted that the request, similar to the request in Bragg, GRC 2010-145, failed to identify a specific record. The Custodian also argued that the Complainant failed to identify any specific records sought from his classification file, which was comprised of dozens of records. Additionally, the Custodian argued that the classification file is not subject to disclosure, regardless of whether the Complainant was seeking his own file. Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017).

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).]

⁴ The Complainant does not clarify whether those inmates submitted OPRA requests or utilized some other process.

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 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 those requests 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.

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

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 “[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). 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).

In the instant complaint, the Complainant sought access to his “classification and all institutional records” on file. The Custodian denied the request as invalid. In the Denial of Access Complaint, the Complainant argued that other inmates were allowed to view their classification files and that he was being treated unfairly. The Complainant also argued that his request was different from the subject request in Bragg and that his request was valid because he sought inspection and not copies of records. The Custodian reiterated DOC’s position that the request was invalid in the SOI.

In reviewing all available case law above, the GRC is satisfied that the request at issue here is invalid and that the Custodian lawfully denied access to it. First, the request at issue here is very similar to the request at issue in Bragg, GRC 2010-145. This is contrary to the Complainant’s Denial of Access Complaint, which attempts to distinguish his request from the one at issue there. Second, all relevant case law is consistent with prior Council decisions determining that a request for a “file” is a blanket request which is overbroad. Third, the portion of the Complainant’s request seeking “records” has routinely been identified as invalid. Feiler-Jampel, GRC 2007-190. Lastly,

the fact that the Complainant has asked to inspect the record rather than obtain a hard copy of it is of no moment; it does not change the fact that the request is overbroad on its face.

Accordingly, the Complainant's request seeking access to his "classification and all institutional records" is invalid because it was a blanket request 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; Bragg, GRC 2010-145. Further, the request was invalid because it generically sought "records." Feiler-Jampel, GRC 2007-190. 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 "classification and all institutional records" is invalid because it was a blanket request 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); Bragg v. N.J. Dep't of Corr., GRC Complaint No. 2010-145 (March 2011). Further, the request was invalid because it generically sought "records." Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Acting Executive Director

May 14, 2019