



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

September 24, 2019 Government Records Council Meeting

Mark L. Tompkins
Complainant

Complaint No. 2017-182

v.

Essex County Prosecutor's Office
Custodian of Record

At the September 24, 2019 public meeting, the Government Records Council ("Council") considered the September 17, 2019 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 is invalid because item No. 1 seeks records to support a claim and would require research. Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Further, item No. 2 seeks information rather than an identifiable government record. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 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 Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). Thus, the Custodian did not unlawfully deny 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 24th Day of September 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: September 27, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 24, 2019 Council Meeting**

**Mark L. Tompkins¹
Complainant**

GRC Complaint No. 2017-182

v.

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

Records Relevant to Complaint: Copies via U.S. Mail of “any and all records; including but not limited to”:

1. “A.C.S. printouts/correspondence/Administrative Dismissal/Correspondence that support the claim that on July 9, 2003 the eluding complaint W#2002-034287 was dismissed in Newark Municipal Court.”
2. “Provide the name and title of the prosecutor whom on, July 9, 2003 dismissed the eluding complaint [listed above] in Newark Municipal Court.”

Custodian of Record: Michael Morris³
Request Received by Custodian: August 16, 2017
Response Made by Custodian: August 25, 2017
GRC Complaint Received: September 11, 2017

Background⁴

Request and Response:

On August 16, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records. On August 25, 2017, the original Custodian responded in writing stating that she was enclosing a copy of the court order regarding above, correspondence to the Complainant from the Administrative Office of the Courts (“AOC”), and the Government Records Council’s (“GRC”) prior decision in Tompkins v Essex County Prosecutor’s Office, GRC Complaint No. 2014-404 (October 2015) holding that no July 9, 2003 dismissal order existed.

¹ No legal representation listed on record.

² Represented by Assistant Prosecutor LeeAnn Cunningham, Esq. (Newark, NJ).

³ The original Custodian of Record was Cheryl Cuccinello.

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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

On September 7, 2017, the Complainant submitted a nearly-identical OPRA request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On September 11, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). Regarding the August 16, 2017 OPRA request, the Complainant asserted his “OPRA rights were being violated.” The Complainant argued that he received a certification in Tompkins, GRC 2014-404 pertaining to the dismissal. The Complainant alleged that an “absence of entry” and a “misrepresentation of facts” by the Essex County Prosecutor’s Office (“ECPO”) led to an “absent record of a dismissal” of “Eluding Complaint W# 2002-034287” in Newark Municipal Court. The Complainant asserted that said record existed and he was unlawfully denied access to that record.

Supplemental Response:

On September 12, 2017, the Custodian responded in writing acknowledging receipt of the September 7, 2017 OPRA request. The Custodian referenced and attached the original Custodian’s August 25, 2017 written response to the Complainant’s August 16, 2017 OPRA request to serve as his response to the recent OPRA request.

Statement of Information:

The Custodian certified that he received an OPRA request from the Complainant that was nearly identical to the subject OPRA request on September 7, 2017. The Custodian certified that he responded in writing to that request on September 12, 2017. The Custodian certified that he included in his response the original Custodian’s response August 25, 2017.

The Custodian certified that the original Custodian enclosed in her August 25, 2017 response copies of the court order regarding above and correspondence to the Complainant from the AOC, as well as a certification from the ECPO referencing Tompkins, GRC 2014-404. The Custodian averred that therein, the original Custodian stated that: “[t]he State is not in receipt of any evidence that Assistant Prosecutor Lucille Rosano represented that this complaint was dismissed. In fact, as noted above, the charge of eluding that was filed on Complaint Warrant number 2002-034287-0714, was never dismissed.” The Custodian further averred that the original Custodian stated that the matter was “disposed of in municipal court, as it was transferred to Superior Court for disposition.” The Custodian further averred that the original Custodian stated “[t]here was neither a conviction or an acquittal in the municipal court.”

The Custodian affirmed that the Complainant was “. . . indicted, tried convicted and sentenced on that charge.” The Custodian thus certified that no records exist or have ever existed that could satisfy Complainant’s request.

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 Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 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 Ass’n. 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).

Further, 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 did note that plaintiffs failed to include additional identifiers such as a case name or docket number. See Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s

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

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 ALJ’s decision holding that a newspaper article attached to a subject OPRA request related to the records sought did not cure the deficiencies present in the request) Id. at 12-13. See also Paff v. N.J. State Police, GRC Complaint No. 2014-110 (February 2015).

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. at 546; 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).

In Donato, GRC 2005-182, the Council held that pursuant to MAG, 375 N.J. Super. at 546, a custodian is obligated to search his or her files to find identifiable government records listed in a requestor’s OPRA request. The complainant in Donato, GRC 2005-182 requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

Pursuant to [MAG, 375 N.J. Super. at 546], the Custodian is obligated to search her files to find the identifiable government records listed in the Complainant’s OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to research her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word search is defined as “to go or look through carefully in order to find something missing or lost.” The word research, on the other hand, means “a close and careful study to find new facts or information.” (Footnotes omitted.)

Additionally, in LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold 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, 375 N.J. Super. at 546] . . .” Id. at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

In this complaint, the Complainant has submitted near identical OPRA requests for “[a]ny and all records including but not limited to administrative dismissal and correspondence that support the claim . . .” that his criminal charge was dismissed in municipal court. The Complainant also sought the “name and title of the prosecutor whom . . . dismissed the eluding complaint.” The original Custodian attached correspondence, as well as a copy of the Superior Court Order and a certification from Tompkins, GRC 2014-404, certifying that records sought did not exist. In the

SOI, the Custodian asserted the Complainant requested “three (3) classes of records,” any of which may “support the claim” of a municipal action dismissing his criminal charge.

The Complainant’s request item No. 1 seeks records to “support a claim” that the eluding charge was dismissed in municipal court. However, and similar to MAG, this request item requires the Custodian to perform research to determine which records, if any, “support” the Complainant’s alleged claim. The Custodian is not required to conduct research to fulfill the demands of the Complainant nor support the alleged claims. Donato, GRC 2005-182. Further, request item No. 2 is invalid because it does not specify an identifiable government record to fulfill the request; rather, it seeks information. LaMantia, GRC 2008-140. For these reasons, the GRC is satisfied that the Custodian lawfully denied access to the subject request because it was invalid.

Therefore, the Complainant’s request is invalid because item No. 1 seeks records to support a claim and would require research. Donato, GRC 2005-182. Further, item No. 2 seeks information rather than an identifiable government record. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. 30, 37; N.J. Builders, 390 N.J. Super. 166, 180. Thus, the Custodian did not unlawfully deny access to the Complainant’s request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s request is invalid because item No. 1 seeks records to support a claim and would require research. Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Further, item No. 2 seeks information rather than an identifiable government record. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 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 Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). Thus, the Custodian did not unlawfully deny access to the Complainant’s request. N.J.S.A. 47:1A-6.

Prepared By: Brandon Garcia
Case Manager

September 17, 2019