



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

June 25, 2019 Government Records Council Meeting

Brian Keith Bragg
Complainant

Complaint No. 2017-185

v.

Rutgers University
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 August 24, 2017 request is invalid because it failed to sufficiently identify the records sought. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). Specifically, the Complainant provided a generic single name not conducive to locating responsive personnel information. Additionally, the portion of the request seeking that individual’s personnel record is a blanket request for unspecified records. See Boslet v. Greenwich Twp. (Warren), GRC Complaint No. 2012-29 (March 2013). Thus, the Custodian lawfully denied access to the Complainant’s request. N.J.S.A. 47:1A-6. The GRC need not address the Custodian’s remaining arguments against disclosure because the subject request was invalid.

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



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Brian Keith Bragg¹
Complainant**

GRC Complaint No. 2017-185

v.

**Rutgers University²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of the “correct full name” and “personnel file” for “Nurse Pam or Pamela” who works at Northern State Prison (“NSP”)³

Custodian of Record: Casey Woods

Request Received by Custodian: August 29, 2017

Response Made by Custodian: August 30, 2017

GRC Complaint Received: September 12, 2017

Background⁴

Request and Response:

On August 24, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 30, 2017, the Custodian responded in writing denying the Complainant’s OPRA request. First, the Custodian noted that the Complainant did not identify whether he had been convicted of an indictable offense. Second, the Custodian stated that the request was invalid because it sought information. Citing James v. N.J. Dep’t of Corr., GRC Complaint No. 2009-283 (June 2010); Gorbe v. Monroe Fire Dist. No. 3 (Middlesex), GRC Complaint No. 2010-137 (December 2010). Third, the Custodian stated that personnel records were exempt from access under OPRA. N.J.S.A. 47:1A-10.

Denial of Access Complaint:

On September 12, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was unlawfully denied

¹ No legal representation listed on record.

² Represented by Elizabeth Minott, Esq. (New Brunswick, NJ).

³ The Complainant sought additional records that he did not identify as at issue here. The GRC notes that those records (“Nurse Pam’s disciplinary reports, complaints, policies and procedures for nurses, and license) likely comprised a portion of the term “personnel file, which the Complainant also listed as an item in his OPRA request.

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.

access to personnel records regarding “Nurse Pam or Pamela” who works at NSP but is employed by Rutgers University (“Rutgers”).

Statement of Information:

On October 12, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 29, 2017. The Custodian certified that he responded in writing on August 30, 2017 denying the request.

The Custodian argued that the Complainant’s OPRA request failed to identify the specific records sought. The Custodian stated that the Complainant sought the name of a nurse working at NSP, which was information. James, GRC 2009-283; Gorbe, 2010-137. Further, the Custodian asserted that he could not attempt to locate personnel files without being supplied with a name. The Custodian argued that notwithstanding, personnel records are exempt from access under OPRA. N.J.S.A. 47:1A-10. Finally, the Custodian added that the Complainant failed to certify that the records sought did not pertain to his victim or victim’s family. N.J.S.A. 47:1A-2.2.

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 ABC, 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.* at 549 (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).

Moreover, 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. In Boslet v. Greenwich Twp. (Warren), GRC Complaint No. 2012-29 (March 2013), the complainant sought access to a patrolman’s “personnel file.” The Council held that prevailing case law supported that the request was invalid. Citing Kelley v. Rockaway Twp. (Morris), GRC Complaint No. 2009-19 (November 2009) and Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011). The Council thus found that the complainant’s request was invalid. *Id.* at 4.

However, in Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll record and length of service” is information which is specifically considered to be a government record under N.J.S.A. 47:1A-10, and that “payroll records” must be disclosed pursuant to Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). The Council thus held that the complainant’s March 25, 2009, request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. *Id.* at 5.

In the matter before the Council, the Complainant’s request sought the “correct full name” of “Nurse Pam or Pamella,” as well as a copy of her “personnel file.” The Custodian responded in writing denying access to the request because, among other things, it was invalid. The Complainant filed the instant complaint disputing the denial. In the SOI, the Custodian contended that the Complainant failed to provide a name by which he could a personnel file.

A plain reading of the Complainant’s request supports the Custodian’s denial on the basis that the request was invalid. Unlike in Danis, GRC 2009-156, where an employee’s full name may properly be sought, here the partial name “Nurse Pam” or “Pamella” is not sufficient for the Custodian to be able to identify the subject employee. There simply is not enough information present in the request for the Custodian to identify the employee in question, let alone determine whether the individual was employed by Rutgers in the first place. The Custodian would have to conduct research to identify the subject employee, which is not permitted under OPRA. Further, and like in Boslet, the portion of the request seeking the partially identified employee’s personnel file was invalid because it sought an entire file and failed to identify specific records.

Accordingly, the Complainant’s August 24, 2017 request is invalid because it failed to sufficiently identify the records sought. MAG, 375 N.J. Super. at 546. Specifically, the Complainant provided a generic single name not conducive to locating responsive personnel information. Additionally, the portion of the request seeking that individual’s personnel record is a blanket request for unspecified records. See Boslet, GRC 2012-29. Thus, the Custodian lawfully

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

denied access to the Complainant's request. N.J.S.A. 47:1A-6. The GRC need not address the Custodian's remaining arguments against disclosure because the subject request was invalid.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Complainant's August 24, 2017 request is invalid because it failed to sufficiently identify the records sought. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). Specifically, the Complainant provided a generic single name not conducive to locating responsive personnel information. Additionally, the portion of the request seeking that individual's personnel record is a blanket request for unspecified records. See Boslet v. Greenwich Twp. (Warren), GRC Complaint No. 2012-29 (March 2013). Thus, the Custodian lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6. The GRC need not address the Custodian's remaining arguments against disclosure because the subject request was invalid.

Prepared By: Frank F. Caruso
Acting Executive Director

June 18, 2019