



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

Craig Thompson
Complainant

Complaint No. 2017-220

v.

NJ Department of Corrections
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 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 files” 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 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); Bragg v. N.J. Dep’t of Corr., GRC Complaint No. 2010-145 (March 2011). See also Bishop v. N.J. Dep’t of Corr., GRC Complainant 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 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**

**Craig Thompson¹
Complainant**

GRC Complaint No. 2017-220

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: On-site inspection of “inmate classification files.”

Custodian of Record: John Falvey
Request Received by Custodian: September 22, 2017
Response Made by Custodian: September 26, 2017
GRC Complaint Received: October 26, 2017

Background³

Request and Response:

On September 17, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 29, 2017 the Custodian responded in writing stating that the Complainant’s request “cannot be fulfilled as it does not adequately identify a particular government record sought.” MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bragg v. N.J. Dept of Corr., GRC Complaint No. 2010-145 (March 2011).

Denial of Access Complaint:

On October 26, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted he sought records regarding “disciplinary and/or all problems” with staff members within his classification file. The Complainant disputed the denial of access.

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

Statement of Information:

On January 2, 2018, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that he received the Complainant’s OPRA request on September 22, 2017. The Custodian certified that he responded in writing on September 26, 2017. The Custodian asserted the Complainant failed to identify a specific government record. MAG, 375 N.J. Super. at 546 and Bragg, GRC 2010-145. The Custodian also asserted that the Complainant was not entitled to his classification file under OPRA as it is not a public record and could contain numerous confidential items. Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017); N.J.S.A. 47:1A- 9 (a).; N.J.A.C. 10A:22-2.3 *et. seq.*

The Custodian argued that he lawfully denied the Complainant’s request because it was 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.

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 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).

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).

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, unidentifiable 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).

While decided during the pendency of this complaint, Bishop v. N.J. Dep’t of Corr., GRC Complainant No. 2017-178 (May 2019) is also instructive here. In Bishop, the Council cited Bragg, GRC 2010-145 in holding that that the complainant’s request seeking access to his “classification and all institutional records” was invalid because it was a blanket request that failed to identify the specific records sought. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. 30, 37; N.J. Builders Ass’n, 390 N.J. Super. 166, 180; Schuler, GRC 2007-151; Bragg, GRC 2010-145.

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. Bragg, GRC 2010-145. Specifically, the Complainant’s request does not identify with reasonable clarity those records sought.

⁴ Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

Moreover, the Complainant's request seeks an entire file rather than specific identifiable government records. Bragg GRC 2010-145. All relevant case law continuously reaffirms the Council's view on requests seeking "a file" as a blanket request. See also Bishop, GRC 2010-145.

Accordingly, the Complainant's request seeking access to his "classification files" is invalid because it was a blanket request that failed to identify the specific records sought. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. 30, 37; N.J. Builders Ass'n, 390 N.J. Super. 166, 180; Schuler, GRC 2007-151; Bragg, GRC 2010-145. See also 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 "classification files" 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 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); Bragg v. N.J. Dep't of Corr., GRC Complaint No. 2010-145 (March 2011). See also Bishop v. N.J. Dep't of Corr., GRC Complainant 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: Brandon Garcia
Case Manager

September 17, 2019