



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 30, 2020 Government Records Council Meeting

Kevin Alexander
Complainant

Complaint No. 2018-136

v.

NJ Department of Corrections
Custodian of Record

At the June 30, 2020 public meeting, the Government Records Council (“Council”) considered the June 23, 2020 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 was invalid because it failed to identify a specific government record sought. Specifically, item No 1 was a request for information and fail to identify a specific government record. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). See also Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Additionally, request item Nos. 2 and 3 asked a question rather than seeking a specific government record. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Vance v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2012-188 (June 2013). 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 30th Day of June 2020

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: July 2, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2020 Council Meeting**

**Kevin Alexander¹
Complainant**

GRC Complaint No. 2018-136

v.

**N.J. Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Copies via U.S. Mail of the following:

1. Program used for the month of May 2018, by JPAY at South Woods State Prison (“SWSP”)
2. Who approved the installation of the program?
3. [W]hat program(s) were used by JPAY that target the life span of batteries in handheld devices at SWSP and who approved the installation of the program(s)?

Custodian of Record: John Falvey
Request Received by Custodian: June 13, 2018
Response Made by Custodian: June 13, 2018
GRC Complaint Received: July 13, 2018

Background³

Request and Response:

On June 3, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 13, 2018, the same day of receipt, the Custodian responded in writing denying the Complainant’s request. The Custodian advised the Complainant that item Nos. 1 and 3 sought records that were not made, maintained or kept on file by the DOC. Additionally, the Custodian noted item No. 2 was an improper question. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). The Custodian provided the Complainant JPAY’s contact information and suggested he contact the company directly.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Suzanne Davies.

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.

Denial of Access Complaint:

On July 13, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that the Custodian failed to respond to his OPRA request within the statutorily mandated seven (7) business day timeframe. N.J.S.A. 47:1A-1. The Complainant contended that the Custodian never sought an extension to respond to his request.

The Complainant further argued that the Custodian unlawfully denied him access to the information sought in the subject OPRA request. The Complainant asserted that he submitted his OPRA request in furtherance of determining who gave approval to implement the battery-targeting program. The Complainant alleged that one of JPAY’s programs targets the lifespan of the batteries in handheld tablets issued to inmates, requiring them to purchase batteries more frequently to operate the devices. The Complainant further asserted that the above-mentioned records should be disclosed to him because JPAY entered into a contract with the DOC; thus, DOC must have oversight of the installation of JPAY programs within SWSP.

Statement of Information:

On August 16, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 13, 2018. The Custodian certified that he responded in writing on that same day denying the subject request. The Custodian contended that the Complainant’s OPRA request, while overly broad, sought records that were not made, maintained, kept on file or received by the DOC.

The Custodian certified that in response to item Nos. 1 and 3, JPAY is a private company contracted by the DOC to provide inmates with computer-based services and technologies. The Custodian asserted that JPAY’s programs are the “proprietary product” of the company and not government records. The Custodian thus contended that he lawfully denied access to these items because no records existed.

The Custodian asserted that item No. 2 was an improper question. MAG, 375 N.J. Super. at 534. The Custodian asserted that this request item failed to identify a specific government record sought. The Custodian contended that he would have to conduct research through all DOC records to compile data to answer “who approved the installation of the [JPAY] program at SWSP.”

Additional Submissions:

On August 24, 2018, the Complainant sent a letter to the GRC acknowledging receipt of the SOI. The Complainant asserted that although JPAY was not a government entity, JPAY and JPAY Securus “inherit[ed]” the requirement of government transparency through its contract with DOC. The Complainant further contended that while the Custodian may be correct that JPAY’s programs are their own, DOC was required to approve installation of these programs. The Complainant further asserted that based on the Custodian’s response, he attempted to submit an OPRA request to JPAY and was referred back to the DOC.

Analysis

Validity of Request

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

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. at 549 (emphasis added). 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).

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 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 Entm't, 375 N.J. Super. 534 546 and Bent, 381 N.J. Super. 30 37 . . ." Id. at pg. 6.

Similarly, in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the complainant submitted an OPRA request to the Borough on September 13, 2007 seeking answers to five (5) questions regarding a property named the Villa Maria. The GRC held that the Complainant's request was invalid because it failed to identify a specific government record. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009)

In Lantigua v. New Brunswick Police Dep't (Middlesex), GRC Complaint No. 2013-223 (February 2014), the complainant requested any and all computer-generated evidence, facts, or other data from department Mobile Data Terminals, or the central computers network servers or other computer related systems. The Council held that "[w]hile the Complainant attempted to limit his request to documents and information generated before November 17, 2011 and by reference to various databases and types, the request [was] still not for 'identifiable government records not otherwise exempt' from disclosure." (Citing Bent, 381 N.J. Super. at 37; N.J. Builder's Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151.

Further, in Vance v. Sussex Cnty. Sheriff's Office, GRC Complaint No. 2012-188 (June 2013), the complainant sought an answer to the following question: "how many inmates received threatening notes and what actions were taken?" Id. at 3. Similar to the requests at issue in LaMantia, GRC 2008-140 and Watt, GRC 2007-246, the Council held that the request was invalid because it failed to seek identifiable government records. The Council noted that this was notwithstanding the custodian's appropriate response that no records existed. Id.

In the instant complaint, the Complainant submitted an OPRA request seeking 1) the JPAY program system utilized at SWSP in May 2018; 2) who within [DOC] approved the installation of the program at SWSP in May of 2018; and 3) what program was installed by JPAY targeting the lifespan of batteries and who approved said program. The Custodian denied access to the subject OPRA request. In the Denial of Access Complaint, the Complainant argued that JPAY was contracted by the State of New Jersey through the DOC, making the company and its technology subject to OPRA. In the SOI, the Custodian contended that the request sought records that were not "government records" under OPRA. The Custodian further argued that item No. 2 asked an "improper question" and failed to identify a specific government record sought. The Custodian contended that he would have to conduct research to find a responsive record revealing who approved the installation of the JPAY program at SWSP.

On the whole, the Complainant's request failed to identify a specific government record. Similar to the requests at issue in LaMantia, GRC 2008-140 and Watt, GRC 2007-246 this request sought information, not records. Specifically, item No. 1 sought the "program system" used at SWSP by JPAY. The Complainant's generic verbiage "program system" does not refer to any specific government record sought. Additionally, item Nos. 2 and 3 ask questions that require research, which is outside the scope of the Custodian's responsibilities under OPRA. MAG, 375 N.J. Super. at 546. As in Lantigua, GRC 2013-223, the subject request was overly broad because it sought information and not any specific government records. Furthermore, it is not the Custodian's responsibility under OPRA to speculate what government records will satisfy the Complainant's request for information. N.J.S.A. 47:1A-1.

Therefore, the Complainant's request was invalid because it failed to identify a specific government record sought. Specifically, item No. 1 was a request for information and failed to identify a specific government record. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. 30, 37; Donato, GRC 2005-182; LaMantia, GRC 2008-140; See also Schuler, GRC 2007-151. Additionally, item Nos. 2 and 3 asked a question rather than seeking a specific government record. Rummel, GRC 2012-188; Watt, GRC 2007-246; Vance, GRC 2012-188. 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 was invalid because it failed to identify a specific government record sought. Specifically, item No 1 was a request for information and fail to identify a specific government record. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). See also Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Additionally, request item Nos. 2 and 3 asked a question rather than seeking a specific government record. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Vance v. Sussex Cnty. Sheriff's Office, GRC Complaint No. 2012-188 (June 2013). 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

June 23, 2020