



State of New Jersey  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**March 30, 2021 Government Records Council Meeting**

Tecumseh McElwee  
Complainant

Complaint No. 2019-249

v.

NJ Department of Law & Public Safety,  
Division of Gaming Enforcement  
Custodian of Record

At the March 30, 2021 public meeting, the Government Records Council (“Council”) considered the March 23, 2021 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 “[a]ll Division of Gaming Enforcement records” is invalid because it failed to identify a specific record and would require the Custodian to perform research. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 237 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian lawfully denied access to the 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 30<sup>th</sup> Day of March 2021

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: April 1, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 30, 2021 Council Meeting**

**Tecumseh McElwee<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-249**

v.

**N.J. Department of Law & Public Safety,  
Division of Gaming Enforcement<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of “[a]ll . . . records pertaining to Vyacheslav Ivankov, alis ‘Yaponchik,’ a deceased person . . . in a time period between 1992 and 1995.”

**Custodian of Record:** Sara Ben-David  
**Request Received by Custodian:** December 2, 2019  
**Response Made by Custodian:** December 10, 2019  
**GRC Complaint Received:** December 13, 2019

**Background<sup>3</sup>**

**Request and Response:**

On December 2, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 10, 2019, the Custodian responded in writing denying the Complainant’s request as overly broad and invalid. See MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 237 (App. Div. 2015). The Custodian further stated that to the extent records did exist, they were likely destroyed in accordance with the Division of Gaming Enforcement’s (“DGE”) retention schedules. N.J.A.C. 13:69-4.4.

**Denial of Access Complaint:**

On December 13, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s denial was “completely baseless and merely a cover for the sheer laziness” of DGE staff. The Complainant

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Deputy Attorney General Elizabeth Tillou. Previously represented by Carlene J. Dooley.

<sup>3</sup> 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.

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contended that he provided a reasonably specific class of records related to the decedent and has reason to believe that DGE maintained them for potential interest by “regulators.” The Complainant argued that his request did not seek “wholesale records” and it was “disingenuous to classify the request” as such. The Complainant thus “demand[ed]” that DGE perform an actual search and disclose those records responsive to his OPRA request.

Statement of Information:<sup>4</sup>

On July 23, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on December 2, 2019. The Custodian certified that she responded in writing on December 10, 2019 denying the subject request as invalid.

The Custodian argued that she lawfully denied access to the subject OPRA request as invalid. The Custodian stated that DGE maintains a high volume of records throughout its operations, including five (5) individual bureaus: each has their own document management system. The Custodian stated that additional records are maintained by the State Police. The Custodian averred that DGE’s records are not “readily searchable, in instances requiring [her] to conduct a manual search of handwritten indexes and/or microfilm reels” maintained in various “secure locations.” The Custodian thus argued that the forgoing necessitates that a requestor specifically identifies a particular record sought.

The Custodian asserted that here, although the Complainant identified a person and time frame, he failed to specify any identifiable records. The Custodian averred that instead, the Complainant simply sought “[a]ll . . . records . . .,” thus resulting in a “wholesale request for general information. MAG, 375 N.J. Super. at 549. The Custodian further argued that, as in Lagerkvist, 443 N.J. Super. 230, the request here would require her to “speculate as to the context in which” DGE may have obtained records relating to the decedent. The Custodian argued that she would then have to conduct research that is otherwise not required under OPRA.

The Custodian also argued that to the extent that any records existed, they would have likely been destroyed in accordance with DGE’s retention policies. The Custodian noted that the Complainant’s request sought records from over twenty-four (24) years ago. The Custodian asserted that even if the Complainant’s request was valid, records likely no longer existed.

The Custodian finally argued that to the extent that any records still existed, they were likely exempt from disclosure. N.J.S.A. 47:1A-9. The Custodian noted that confidentiality is a “cornerstone” of the Casino Control Act (“CCA”). N.J.S.A. 5:12-1, *et seq.*; In re Martin, 90 N.J. 295, 323 (1982). The Custodian stated that the CCA sets forth several categories of records and information to which access is restricted. The Custodian argued that to this end, the CCA exemptions access to “all information and data” obtained in relation to internal controls or earnings/revenue of any applicant, registrant, or licensee with limited exceptions. N.J.S.A. 52:12-74.1(a). The Custodian noted that the forgoing also applies to applicant criminal histories, as well as family and background information held by DGE, again with limited exceptions. N.J.S.A.

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<sup>4</sup> On December 30, 2019, this complaint was referred to mediation. On July 7, 2020, this complaint was referred back to the GRC for adjudication.

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52:12-74.1(b). The Custodian thus argued that to the extent that any records existed, they would be exempt from disclosure under OPRA and the CCA. See In re Atlantic City Press Requesting Certain Files of the Casino Control Comm'n, 277 N.J. Super. 433, 446-448 (App. Div. 1994).

## 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);<sup>5</sup> 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

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<sup>5</sup> Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004). Tecumseh McElwee v. N.J. department of Law & Public Safety, Division of Gaming Enforcement, 2019-249 – Findings and Recommendations of the Executive Director

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.

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. See also Schulz v. N.J. State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking “all documents” was overly broad and thus invalid).]

Additionally, in Lagerkvist, 443 N.J. Super. 230, the court held that plaintiff’s request was invalid because it required research. In reaching this conclusion, the court reasoned that:

The custodian in this case would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to

collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 237.]

Here, the Complainant's request sought "[a]ll [DGE] records" regarding a decedent from 1992 to 1995. The Custodian responded denying access to the request because, among other reasons, it was invalid. In the Denial of Access Complaint, the Complainant argued that the Custodian's response was "completely baseless" and meant to absolve DGE employees from conducting a search. The Complainant further contended that his request was very specific and that he believed DGE retained records responsive to his OPRA request. In the SOI, the Custodian maintained her position that the request was invalid because it failed to identify specific records and required research.

Upon review, the GRC agrees that the Complainant's request seeking "[a]ll [DGE] records" regarding the decedent is invalid. A plain reading of the request contradicts the Complainant's assertion that he sought specific identifiable records. Instead, the request requires the Custodian to review every record within DGE's possession to determine if they relate to the decedent; MAG and its progeny support a conclusion that same is invalid. See also Lagerkvist, 443 N.J. Super. at 237.<sup>6</sup>

Accordingly, the Complainant's request seeking "[a]ll [DGE] records" is invalid because it failed to identify a specific record and would require the Custodian to perform research. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Lagerkvist, 443 N.J. Super. at 237; Schuler, GRC 2007-151. Thus, the Custodian lawfully denied access to the request. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant's request seeking "[a]ll Division of Gaming Enforcement records" is invalid because it failed to identify a specific record and would require the Custodian to perform research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 237 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian lawfully denied access to the request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Executive Director

March 23, 2021

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<sup>6</sup> The GRC notes that it will not address the Custodian's argument that potentially responsive records were likely destroyed in accordance with DGE's retention schedule because the request is, on its face, invalid. Tecumseh McElwee v. N.J. department of Law & Public Safety, Division of Gaming Enforcement, 2019-249 – Findings and Recommendations of the Executive Director