



State of New Jersey
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

September 29, 2020 Government Records Council Meeting

Luis F. Rodriguez
Complainant

Complaint No. 2019-38

v.

Kean University
Custodian of Record

At the September 29, 2020 public meeting, the Government Records Council (“Council”) considered the September 22, 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 for “all advertising” pertaining to an employment position is invalid as it does not specifically identify government records and would require the Custodian to conduct research. 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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007). Thus, the Custodian lawfully denied access. 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 29th Day of September 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: October 1, 2020

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2020 Council Meeting**

**Luis F. Rodriguez¹
Complainant**

GRC Complaint No. 2019-38

v.

**Kean University²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: “I request all advertising for this position:

‘I request a copy of the resume and job description of the Professional Services Specialist IV for whom [Kean University (“Kean”)] applied for an H1-B visa. According the H1BData.info site, Kean submitted an H1-B visa for this person on October 31, 2015 to have the person start work on October 14, 2015 (which seems very unusual) and applied to have that person’s H1-B visa extended for another three years.’”

Custodian of Record: Laure Barkley-Haelig

Request Received by Custodian: January 17, 2019; January 29, 2019

Response Made by Custodian: January 29, 2019; February 7, 2019

GRC Complaint Received: February 15, 2019

Background³

Request and Response:

On January 17, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking government records. On January 29, 2019, the Custodian responded in writing stating that the OPRA request was vague and overly broad, and thus failed to identify specific government records. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian therefore requested clarification of the request.

On January 29, 2019, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On February 7, 2019, the Custodian responded in writing, stating that the request still failed to identify specific government records. Bent, 381 N.J. Super. at

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Kerry Soranno.

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.

37. The Custodian stated that OPRA did not require an agency to conduct research on behalf of the requestor.

Denial of Access Complaint:

On February 15, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that Kean violated OPRA by claiming that his OPRA request failed to identify specific government records. The Complainant asserted that Kean responded to a similarly worded OPRA request dated September 5, 2018, providing 148 pages of records. The Complainant argued that it was contradictory for Kean to claim they were unable to identify specific government records for the instant request. The Complainant included a copy of the September 5, 2018 request and Kean’s response thereto as part of his complaint.

The Complainant requested the Council find that the Custodian knowingly and willfully violated OPRA, requesting the Council view all OPRA requests mentioned in this complaint as the collective circumstances warranting such a finding.

Statement of Information:

On March 13, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s original OPRA request on January 17, 2019. The Custodian certified that upon review, it was determined that the request did not adequately identify government records. The Custodian certified that she responded in writing on January 29, 2019, requesting clarification of the Complainant’s request. The Custodian certified that she received the Complainant’s clarification that same day. The Custodian certified that the clarified request still lacked the specificity required to respond. The Custodian certified that she responded in writing on February 9, 2019.

The Custodian, through counsel, asserted that OPRA did not authorize a blanket request for every document a public agency has on file. Gannett N.J. Partners v. Cty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005); See also MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent, 381 N.J. Super. at 36-37. The Custodian asserted that a request for records must be described with “requisite specificity” and confine themselves to a “discrete and limited subject matter.” Burke v. Brandes, 429 N.J. Super. 169, 177 (App. Div. 2012). See also Lagerkvist v. Office of the Governor of N.J., 443 N.J. Super. 230, 236-37 (App. Div. 2015).

The Custodian argued that in the instant matter, the Complainant sought all advertising for a position described in a previous OPRA request. The Custodian asserted that there was no standard definition for “advertising,” and could not do a routine search for “advertising” like the custodian could for correspondence in Burke. Instead, the Custodian argued that the request sought access to a broad category of information that was rejected by the courts in Lagerkvist, 443 N.J. Super. at 236.

The Custodian also argued that despite being asked to clarify the request, the Complainant submitted a broad, unspecified request for “all advertising” pertaining to a generic employment position. The Custodian asserted that the request was not proper under OPRA since it amounted to a “[w]holesale request for general information” that courts have rejected as invalid. See MAG Entm’t, LLC, 375 N.J. Super. at 546.

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, 381 N.J. Super. at 37; 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).

In Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007), the Council held that pursuant to MAG, 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 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], 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.)

[Id.]

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.) requires a custodian to conduct research. MAG, 375 N.J. Super. at 534; Donato, GRC 2005-182. 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).

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 539-40. 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.* (April 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.

In Lagerkvist, 443 N.J. Super. at 237-37, the court reasoned that the plaintiff's request:

[W]ould 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.

In the instant matter, the Complainant requested “all advertising” pertaining to a job position mentioned in a previous OPRA request. The Complainant contended that because Kean was able to locate responsive records to the previous OPRA request, the request at issue should be valid since it was based upon the prior request. However, the previous request identified specific records such as “resume,” and therefore Kean was able to locate responsive records. Furthermore, Kean provided resumes for all successful candidates for the position of “Professional Services Specialist IV,” not just the candidate for the specific position sought by the Complainant.

Furthermore, the GRC agrees with the Custodian’s assertion that “advertising” is not well-defined, as the term can encompass multiple types of media including written and digital forms.⁴ Furthermore, the request requires the Custodian to research the specific “Professional Services Specialist IV” position the Complainant refers to, as well as how and where said position was advertised. Based upon the evidence of record, the GRC is satisfied that the Custodian lawfully determined that the Complainant’s request was invalid.

Accordingly, the Complainant’s request for “all advertising” pertaining to an employment position is invalid as it does not specifically identify government records and would require the Custodian to conduct research. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders Ass’n, 390 N.J. Super. at 180; Lagerkvist, 443 N.J. Super. at 236-37; Schuler, GRC 2007-151; Donato, GRC 2005-182. Thus, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s request for “all advertising” pertaining to an employment position is invalid as it does not specifically identify government records and would require the Custodian to conduct research. 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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007). Thus, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado
Staff Attorney

September 22, 2020

⁴ Advertising – definition of advertising by The Free Dictionary, <https://www.thefreedictionary.com/advertising> (last visited Aug. 25, 2020).