



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 9, 2022 Government Records Council Meeting

Mark Chatfield
Complainant

Complaint No. 2021-121

v.

NJ Department of Corrections
Custodian of Record

At the November 9, 2022 public meeting, the Government Records Council (“Council”) considered the October 27, 2022 Supplemental 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:

1. The Custodian did not fully comply with the Council’s September 29, 2022 Interim Order. Specifically, the Custodian did not respond to the Council’s Order with certified confirmation of compliance until four (4) business days after the deadline had expired. However, the Council declines to address the issue further since he certified that no responsive records exist.
2. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request seeking pictures and sounds recordings. Specifically, the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
3. Although the Custodian failed to fully comply with the Council’s September 29, 2022 Interim Order, the Custodian lawfully denied access to the majority of the Complainant’s OPRA request as per the Interim Order. Furthermore, because the Custodian certified that no records could be located, he did not unlawfully denied access to the portion of the Complainant’s OPRA request seeking pictures and sound recordings. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian’s failure to comply with the Order had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 9th Day of November 2022

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: November 15, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 9, 2022 Council Meeting**

**Mark Chatfield¹
Complainant**

GRC Complaint No. 2021-121

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: All letters, transcripts, reports, inquiries, office memos, records, pictures, sound recordings, redacted case files, and any other historical materials pertaining to three New Jersey juvenile justice programs and one individual:

1. The Highfields Residential Group Center (circa 1950 – 1960).
2. The Collegetields Project and program (1965 – 1976).
3. The Essexfields Group Rehabilitation Center in Newark, NJ (1960 – 1970s).
4. New Jersey state corrections official, Dr. Lloyd McCorkle (1946 – 1960s).

Custodian of Record: John Falvey
Request Received by Custodian: June 1, 2021
Response Made by Custodian: June 8, 2021
GRC Complaint Received: June 11, 2021

Background

September 29, 2022 Council Meeting:

At its September 29, 2022 public meeting, the Council considered the September 22, 2022 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, found that:

1. The portion of the Complainant’s OPRA request seeking all “transcripts”, “reports”, “records”, “inquiries”, “case files”, and “historical materials” pertaining to three (3) juvenile justice programs and a former Department of Corrections employee is invalid because it fails to identify specific government records and requires the Custodian to conduct research. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of 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); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC

¹ No legal representation listed on record.

² Represented by Stephanie Mersch, DAG. Previously represented by Raajen V. Bhaskar, DAG.

Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian did not unlawfully deny access to this portion of the request. N.J.S.A. 47:1A-6.

2. The portion of the Custodian's OPRA request seeking "letters" and "office memos" pertaining to three (3) juvenile justice programs and a former New Jersey Department of Corrections employee is invalid since the Complainant failed to include a sender or recipient. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2015-276 (Final Decision dated November 13, 2018). Thus, the Custodian did not unlawfully deny access to this portion of the request. N.J.S.A. 47:1A-6.
3. The Custodian may have unlawfully denied access to the Complainant's OPRA request seeking "pictures" and "sound recordings" pertaining to three (3) juvenile justice programs and a former employee. N.J.S.A. 47:1A-6. Specifically, the requested documents are sufficiently identifiable government records and not invalid under OPRA. See N.J.S.A. 47:1A-1.1. The Custodian shall conduct a search for responsive records and provide them to the Complainant. Should the records be subject to an exemption under OPRA, the Custodian shall certify to same. Additionally, should no responsive records exist, the Custodian shall also certify to same.
4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On October 4, 2022, the Council distributed its Interim Order to all parties. On October 17, 2022, Custodian's Counsel contacted the Government Records Council ("GRC") to notice that the

³ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

deadline to respond to the Order was inadvertently missed and that a response would be provided by the next day.

On October 18, 2022, the Custodian responded to the Council's Interim Order. The Custodian certified that he conducted a search for responsive records, but none were located. The Custodian also provided certified confirmation of compliance to the Executive Director.

Analysis

Compliance

At its September 29, 2022 meeting, the Council ordered the Custodian to locate responsive records and provide same, or to certify if no records exist. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On October 4, 2022, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on October 12, 2022.

On October 18, 2022, the ninth (9th) business day after receipt of the Council's Order, the Custodian responded in writing. The Custodian certified that he conducted a search and could not locate responsive records. The Custodian also provided certified confirmation of compliance to the Executive Director. Based on the foregoing, the Custodian did not fully comply with the Order due to an untimely response.

Therefore, the Custodian did not fully comply with the Council's September 29, 2022 Interim Order. Specifically, the Custodian did not respond to the Council's Order with certified confirmation of compliance until four (4) business days after the deadline had expired.

Unlawful Denial of Access

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 Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Council's September 29, 2022 Interim Order required the Custodian to conduct a search for responsive pictures and sound recordings pertaining to various juvenile centers and a former state employee. On October 18, 2022, the Custodian responded to the Council's Interim Order certifying that no responsive records exist, and there is no evidence contradicting this certification. Thus, the GRC is persuaded that the Custodian lawfully denied access to the requested records.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request seeking pictures and sounds recordings. Specifically, the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly and willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1983)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the instant matter, although the Custodian failed to fully comply with the Council's September 29, 2022 Interim Order, the Custodian lawfully denied access to the majority of the Complainant's OPRA request as per the Interim Order. Furthermore, because the Custodian certified that no records could be located, he did not unlawfully denied access to the portion of the Complainant's OPRA request seeking pictures and sound recordings. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's failure to comply with the Order had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not fully comply with the Council's September 29, 2022 Interim Order. Specifically, the Custodian did not respond to the Council's Order with certified confirmation of compliance until four (4) business days after the deadline had expired.

However, the Council declines to address the issue further since he certified that no responsive records exist.

2. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request seeking pictures and sounds recordings. Specifically, the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
3. Although the Custodian failed to fully comply with the Council's September 29, 2022 Interim Order, the Custodian lawfully denied access to the majority of the Complainant's OPRA request as per the Interim Order. Furthermore, because the Custodian certified that no records could be located, he did not unlawfully denied access to the portion of the Complainant's OPRA request seeking pictures and sound recordings. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's failure to comply with the Order had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado
Staff Attorney

October 27, 2022



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

September 29, 2022 Government Records Council Meeting

Mark Chatfield
Complainant

Complaint No. 2021-121

v.

NJ Department of Corrections
Custodian of Record

At the September 29, 2022 public meeting, the Government Records Council (“Council”) considered the September 22, 2022 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:

1. The portion of the Complainant’s OPRA request seeking all “transcripts”, “reports”, “records”, “inquiries”, “case files”, and “historical materials” pertaining to three (3) juvenile justice programs and a former Department of Corrections employee is invalid because it fails to identify specific government records and requires the Custodian to conduct research. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of 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); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian did not unlawfully deny access to this portion of the request. N.J.S.A. 47:1A-6.
2. The portion of the Custodian’s OPRA request seeking “letters” and “office memos” pertaining to three (3) juvenile justice programs and a former New Jersey Department of Corrections employee is invalid since the Complainant failed to include a sender or recipient. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2015-276 (Final Decision dated November 13, 2018). Thus, the Custodian did not unlawfully deny access to this portion of the request. N.J.S.A. 47:1A-6.
3. The Custodian may have unlawfully denied access to the Complainant’s OPRA request seeking “pictures” and “sound recordings” pertaining to three (3) juvenile justice programs and a former employee. N.J.S.A. 47:1A-6. Specifically, the requested documents are sufficiently identifiable government records and not invalid under OPRA. See N.J.S.A. 47:1A-1.1. The Custodian shall conduct a search for responsive records and provide them to the Complainant. Should the records be subject to an

exemption under OPRA, the Custodian shall certify to same. Additionally, should no responsive records exist, the Custodian shall also certify to same.

4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 29th Day of September 2022

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 4, 2022

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2022 Council Meeting**

**Mark Chatfield¹
Complainant**

GRC Complaint No. 2021-121

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: All letters, transcripts, reports, inquiries, office memos, records, pictures, sound recordings, redacted case files, and any other historical materials pertaining to three New Jersey juvenile justice programs and one individual:

1. The Highfields Residential Group Center (circa 1950 – 1960).
2. The Collegetields Project and program (1965 – 1976).
3. The Essexfields Group Rehabilitation Center in Newark, NJ (1960 – 1970s).
4. New Jersey state corrections official, Dr. Lloyd McCorkle (1946 – 1960s).

Custodian of Record: John Falvey
Request Received by Custodian: June 1, 2021
Response Made by Custodian: June 8, 2021
GRC Complaint Received: June 11, 2021

Background³

Request and Response:

On May 2, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 8, 2021, the Custodian responded in writing stating that the request was invalid and improper because it failed to adequately identify specific government records, citing MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005). The Custodian also stated that the Complainant could contact the New Jersey Department of State Archives (“Archives”) regarding his request.

¹ No legal representation listed on record.

² Represented by Raajen V. Bhaskar, DAG.

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 June 11, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he believed his OPRA request sufficiently identified documents to locate and did not ask the Custodian to siphon or correlate records. The Complainant asserted that he reasonably identified records without seeking information, data, or statistics. The Complainant maintained that he narrowed his request to specific entities, parties, and date ranges to ensure the search was limited in scope. The Complainant also asserted that Archives did not have the records he was looking for.

Statement of Information:

On August 5, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 1, 2021. The Custodian certified that he responded in writing on June 8, 2021.

The Custodian maintained that OPRA requests must seek identifiable government records, and that they could not be used as a research tool to force officials to identify and siphon information. The Custodian argued that the Complainant’s request did not seek identifiable government records but rather sought generic items related to three (3) group homes that have been closed for fifty (50) years and a former employee who passed away in 1984. The Custodian argued that the Complainant submitted an invalid request for information rather than identified government records.

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 37,⁴ N.J. Builders Ass’n. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 178-179 (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.*) because it fails to identify specific records, thus requiring a custodian to conduct research. MAG, 375 N.J. Super. at 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 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).

All “transcripts”, “reports”, “records”, “inquiries”, “case files”, and “historical materials”

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.* (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 Donato, GRC 2005-182, 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:

⁴ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004).

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.]

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.]

In the instant matter, the Complainant sought in part all "transcripts", "reports", "records", "inquiries", "case files", and "historical materials" pertaining to three (3) juvenile justice programs and a former Department of Corrections ("DOC") employee over a certain date range. As was the case in Morgano, GRC 2007-156, the Council has repeatedly determined that requests for "all records" pertaining to a subject are invalid. Inclusive to records, "transcripts", "reports", "inquiries", "case files", and "historical materials" are equally as vague as "records", as these items can encompass a host of categories, topics, and individuals. Thus, locating relevant records requires the Custodian to conduct research of DOC's files to ensure that these various items pertained to these programs and/or former DOC employee.

Accordingly, the portion of the Complainant's OPRA request seeking all "transcripts", "reports", "records", "inquiries", "case files", and "historical materials" pertaining to three (3) juvenile justice programs and a former DOC employee is invalid because it fails to identify specific government records and requires the Custodian to conduct research. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Feiler-Jampel, GRC 2007-190. Thus, the Custodian did not unlawfully deny access to this portion of the request. N.J.S.A. 47:1A-6.

All “letters” and “office memos”

Additionally, regarding requests for communications, including e-mails, text messages, and written correspondence, the GRC has established criteria deemed necessary under OPRA to request them. In Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Council determined that to be valid, such requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). The GRC notes that the Council has determined that requests seeking correspondence but omitting the specific date or range of dates are invalid. See Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014). The Council has also found that an OPRA request not containing a sender and/or recipient is invalid. See Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2015-276 (Final Decision dated November 13, 2018).

In the current matter, the Complainant sought in part “letters” and “office memos” pertaining to three (3) juvenile justice programs and a former DOC employee. In accordance with Armenti, GRC 2009-154, a request for written correspondence is subject to the same requirements as e-mails. However, while the Complainant identified subject matters and date ranges, he failed to identify senders or recipients. Thus, the Complainant’s request for these documents is invalid. See Caggiano, GRC 2015-279.

Therefore, the portion of the Custodian’s OPRA request seeking “letters” and “office memos” pertaining to three (3) juvenile justice programs and a former DOC employee is invalid since the Complainant failed to include a sender or recipient. Armenti, GRC 2009-154; Elcavage, 2009-07; Caggiano, GRC 2015-276. Thus, the Custodian did not unlawfully deny access to this portion of the request. N.J.S.A. 47:1A-6.

All “sound recordings” and “pictures”

The remaining portions of the Complainant’s request sought “pictures” and “sound recordings” pertaining to the three (3) juvenile justice centers and former employee. In contrast with the above, OPRA specifically identifies “photographs” and “sound-recordings” as examples of “government records.” See N.J.S.A. 47:1A-1.1. Because the Custodian certified that no search was conducted in response to this request, it is unknown whether such records exist. Thus, the Custodian may have unlawfully denied access to this portion of the Complainant’s request.

Accordingly, the Custodian may have unlawfully denied access to the Complainant’s OPRA request seeking “pictures” and “sound recordings” pertaining to three (3) juvenile justice programs and a former employee. N.J.S.A. 47:1A-6. Specifically, the requested documents are sufficiently identifiable government records and not invalid under OPRA. See N.J.S.A. 47:1A-1.1. The Custodian shall conduct a search for responsive records and provide them to the Complainant.

Should the records be subject to an exemption under OPRA, the Custodian shall certify to same. Additionally, should no responsive records exist, the Custodian shall also certify to same.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The portion of the Complainant's OPRA request seeking all "transcripts", "reports", "records", "inquiries", "case files", and "historical materials" pertaining to three (3) juvenile justice programs and a former Department of Corrections employee is invalid because it fails to identify specific government records and requires the Custodian to conduct research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of 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); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian did not unlawfully deny access to this portion of the request. N.J.S.A. 47:1A-6.
2. The portion of the Custodian's OPRA request seeking "letters" and "office memos" pertaining to three (3) juvenile justice programs and a former New Jersey Department of Corrections employee is invalid since the Complainant failed to include a sender or recipient. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2015-276 (Final Decision dated November 13, 2018). Thus, the Custodian did not unlawfully deny access to this portion of the request. N.J.S.A. 47:1A-6.
3. The Custodian may have unlawfully denied access to the Complainant's OPRA request seeking "pictures" and "sound recordings" pertaining to three (3) juvenile justice programs and a former employee. N.J.S.A. 47:1A-6. Specifically, the requested documents are sufficiently identifiable government records and not invalid under OPRA. See N.J.S.A. 47:1A-1.1. The Custodian shall conduct a search for responsive records and provide them to the Complainant. Should the records be subject to an exemption under OPRA, the Custodian shall certify to same. Additionally, should no responsive records exist, the Custodian shall also certify to same.
4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

redaction, if applicable. Further, the Custodian shall simultaneously deliver⁵ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

September 22, 2022

⁵ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁶ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁷ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.