



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

July 26, 2022 Government Records Council Meeting

Rashon Barkley
Complainant

Complaint No. 2021-72

v.

Essex County Prosecutor's Office
Custodian of Record

At the July 26, 2022 public meeting, the Government Records Council ("Council") considered the July 19, 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 the Complainant's March 15, 2021 OPRA request is invalid because it seeks information and not identifiable "government records," and would require the Custodian to perform research. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 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. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2009). 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 26th Day of July 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: July 28, 2022

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 26, 2022 Council Meeting**

**Rashon Barkley¹
Complainant**

GRC Complaint No. 2021-72

v.

**Essex County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Copies of “the names of juror #7 and juror #1 in the [Indictment No. 1390-4-93].”

Custodian of Record: Stephen Pogany
Request Received by Custodian: March 15, 2021
Response Made by Custodian: March 15, 2021
GRC Complaint Received: March 31, 2021

Background³

Request and Response:

On March 15, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded in writing denying access to the request under various grounds.

The Custodian first stated that the request was overly broad and failed to name specific documents to be released. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2009).

The Custodian next stated that the request was denied because it would require the Custodian to conduct research, which he is not obligated to do under OPRA. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). Lastly, the Custodian stated that request sought information as opposed to a government record. Bent, 381 N.J. Super. at 39.

¹ No legal representation listed on record.

² No legal representation listed on record.

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 March 31, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the names of jurors sitting during a public trial are public record and should be disclosed.

Statement of Information:

On May 3, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on March 15, 2021. The Custodian certified that he did not conduct a search for records. The Custodian certified that he responded in writing on March 15, 2021, deny access to the request.

The Custodian maintained the same arguments in the SOI as stated to the Complainant in the March 15, 2021 response. In the SOI’s item No. 9 index, the Custodian described the request as seeking “petit jury lists with juror names/town of residence/occupation.”

Additional Submissions:

On May 19, 2021, the Complainant submitted a letter to the GRC, stated that he did not seek “petit jury lists”, and requested only the names of juror box #7 and #1 in State v. Barkley, Ind. No. 1390-4-93. The Complainant asserted that the request was therefore not overly broad as he was seeking the names of specific jurors.

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, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Regarding requests seeking information or asking questions, 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] . . .” Id. at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

Additionally, in Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012), the complainant sought in part “the names of everyone interviewed” pertaining to a law enforcement matter. Citing MAG, the Council held that the request sought information, rather than specific government records, and was therefore invalid under OPRA. 375 N.J. Super. at 546.

In the instant matter, the Complainant sought the names of jurors who participated in his criminal trial. Like the request in Rummel, GRC 2011-168, the Complainant sought information instead of specific government records. The Custodian would be required to perform research to locate records which contain the names of jurors, which he is not obligated to conduct under OPRA. See MAG, 375 N.J. Super. at 549.

Accordingly, the Complainant’s March 15, 2021 OPRA request is invalid because it seeks information and not identifiable “government records,” and would require the Custodian to perform research. LaMantia, GRC 2008-140; Rummel, GRC 2011-168; MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 37; and N.J. Builders, 390 N.J. Super. at 180. Thus, the Custodian lawfully denied 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 March 15, 2021 OPRA request is invalid because it seeks information and not identifiable “government records,” and would require the Custodian to perform research. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Rummel v.

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

Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012); MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 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. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2009). Thus, the Custodian lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado
Staff Attorney

July 19, 2022