



## State of New Jersey

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PHILIP D. MURPHY  
Governor

TAHESHA L. WAY  
Lieutenant Governor

JACQUELYN A. SUÁREZ  
Acting Commissioner

### FINAL DECISION

#### February 29, 2024 Government Records Council Meeting

Paul Bishop  
Complainant

Complaint No. 2022-16

v.

NJ Department of Labor and Workforce Development,  
Division of Unemployment  
Custodian of Record

At the February 29, 2024 public meeting, the Government Records Council (“Council”) considered the February 20, 2024 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 Complainant’s OPRA request assigned agency number W180375, which seeks written procedures on how the Department processes unemployment claims for federal employees seeking unemployment payments, is invalid because it does not seek a specifically identifiable records and would require the Custodian to conduct research by searching through all of the Department’s files to compile any records that might be responsive to the request, which he is not required to do. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015). Thus, the Custodian lawfully denied the request. N.J.S.A. 47:1A-6.
2. The Custodian did not unlawfully deny access to the Complainant’s request assigned agency number W180376, seeking a copy of an ES-931, because the Custodian certified that the record does not presently exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Because the evidence of record reveals the requested record does not exist, it is unnecessary for the Council to determine if the record was lawfully denied as a confidential record pursuant to N.J.S.A. 43:21-11(g).

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 29<sup>th</sup> Day of February 2024

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: March 4, 2024**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 27, 2024 Council Meeting**

**Paul Bishop<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-16**

v.

**NJ Department of Labor and Workforce Development,  
Division of Unemployment<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

OPRA Request dated December 31, 2021, assigned agency number W180375. “I am requesting the written procedures on how the NJ Department of Labor processes unemployment claims for federal employees seeking unemployment payments.”

OPRA Request dated December 31, 2021, assigned agency number W180376. “I am seeking a copy of the ES-931 that my former employer, the Department of Homeland Security supplied to the NJ Department of Labor for my 2007 unemployment insurance claim.”

**Custodian of Record:** Christopher Aspinwall  
**Requests Received by Custodian:** December 31, 2021  
**Responses Made by Custodian:** January 6, 2022  
**GRC Complaint Received:** January 25, 2022

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

**Requests and Responses:**

On December 31, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 6, 2022, the Custodian responded in writing, assigning agency number W180375 to the request and denying it as overly broad and requiring research.

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

<sup>2</sup> Represented by Deputy Attorney General Kendall J. Collins.

<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.

On December 31, 2021, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On January 6, 2022, the Custodian responded in writing, assigning agency number W180376 to the request and denying it because “[t]here is no claim in LOOPS for this requester. Claim from 2007 most likely purged. No appeal listed in AIS for claimant’s ssn.” The Custodian also informed the Complainant that the request was denied as a record, report or other information obtained from employers and employees under the New Jersey Unemployment Compensation Law which is confidential and not open to public inspection pursuant to N.J.S.A. 43:21-11(g).

#### Denial of Access Complaint:

On January 25, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on December 31, 2021, he submitted his OPRA requests to the Custodian. The Complainant stated that the Custodian responded on January 6, 2022, denying the requests.

The Complainant stated that the Department of Homeland Security terminated him from employment for misconduct on August 20, 2007. The Complainant stated that he filed for and received regular and extended unemployment payments. The Complainant asserted that “[a]ccording to SUSC 8501-8509 there is a federal unemployment program administered by the states.”

#### Statement of Information:

On February 15, 2022, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that he received the Complainant’s OPRA requests on December 31, 2021, and assigned the requests agency tracking numbers W180375 and W180376. The Custodian certified that he denied the Complainant’s requests on January 6, 2022.

The Custodian certified that he denied request assigned agency number W180375 as overly broad and invalid under OPRA because it failed to identify specific government records. The Custodian certified that the request should not require him to undertake a subjective analysis to understand the nature of the request. The Custodian certified that the request appears to seek general information pertaining to employment claims processed by the New Jersey Department of Labor and Workforce Development (“Department”) and does not identify a record with sufficient specificity to enable him to locate it. The Custodian certified that the Department follows the law set forth in 20 CFR § 609.1 - 609.26, and beyond those regulations he does not know of any record(s) describing how the Department operates. The Custodian certified that without identification of a specific record, he would have to conduct a search of all the Department’s files to determine which records, if any, might exist and be responsive to the request.

In support of his argument, the Custodian cited MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Ass’n. v. N.J. Council on Affordable Hous.,

390 N.J. Super. 166 (App. Div. 2007); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015) and Paff v. Galloway Twp., 229 N.J. 340 (2017).

The Custodian certified that he denied request assigned agency number W180376 because a thorough search of the Department's records located no record responsive to the Complainant's request. The Custodian certified that he searched the Local Office Online Payment Systems ("LOOPS") and the Appeals Inquiry System ("AIS") under the Complainant's name, birth date, and social security number; however, the search resulted in no responsive record being found. The Custodian certified that if the requested record, an ES-931, was submitted to the Department in 2007 it would have been eligible for destruction in 2011.<sup>4</sup> The Custodian certified that there can be no improper denial of access where the request seeks records that either do not exist or are not in the Department's possession. In support of his argument, the Custodian cited Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) and Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

The Custodian also certified that if the record did exist, it would be exempt from access as a confidential record pursuant to N.J.S.A. 43:21-11(g) because the Complainant is seeking access to the record for purposes other than to pursue an appeal. The Custodian certified that if the Complainant was seeking the record for purposes of an appeal, there would be a record of an unemployment compensation appeal in the LOOPS database and the appeal would be listed in AIS, which was not the case.

### 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. 534, 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

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<sup>4</sup> The Custodian attached to the SOI a copy of the Records Retention and Disposition Schedule which reveals that the record series number for the requested record (006-0000) allows for destruction of the record after four (4) years.

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. 30, 37;<sup>5</sup> N.J. Builders, 390 N.J. Super. 166, 180; 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. 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 539-540. 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:

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<sup>5</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

[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. NJ 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 v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), 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 OPRA request dated December 31, 2021, assigned agency number W180375, seeks procedures on how the Department processes unemployment claims for federal employees seeking unemployment. The request does not seek specifically identifiable records, but rather is a general request for documentation on how the Department manages certain unemployment claims. There could be various files containing these types of records, or conversely, there may not be any such records in existence. To fulfill the request, the Custodian would thus have to search through all of the Department's files and extract any records that may contain written procedures on "how" the Department "processes" unemployment claims for federal employees.

The GRC finds that the Complainant's OPRA request is invalid because it failed to specifically identify a government record. Therefore, to fulfill the request the Custodian certified in the SOI that he would have to conduct a search of all the Department's files to determine which records, if any, might be responsive to the request. ". . . OPRA does not countenance open-ended searches of an agency's files." MAG, 375 N.J. Super. 534, 549. Moreover, this type of research is not contemplated under OPRA. Lagerkvist, 443 N.J. Super. at 236-37.

Therefore, the Complainant's OPRA request assigned agency number W180375, which seeks written procedures on how the Department processes unemployment claims for federal employees seeking unemployment payments, is invalid because it does not seek a specifically identifiable records and would require the Custodian to conduct research by searching through all of the Department's files to compile any records that might be responsive to the request, which he is not required to do. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; Lagerkvist, 443 N.J. Super. 230. Thus, the Custodian lawfully denied the request. N.J.S.A. 47:1A-6.

### **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.

In Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified in the SOI that request assigned agency number W180376, which is seeking a copy of the ES-931 for his 2007 unemployment insurance claim does not exist. The Custodian certified that he searched LOOPS and AIS under the Complainant's name, birth date, and social security number; however, no responsive record could be found. The Custodian further certified that if the requested ES-931 was submitted to the Department in 2007 it would have been eligible for destruction in 2011.

As such, the Custodian did not unlawfully deny access to the Complainant's request assigned agency number W180376, seeking a copy of an ES-931, because the Custodian certified that the record does not presently exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49. Because the evidence of record reveals the requested record does not exist, it is unnecessary for the Council to determine if the record was lawfully denied as a confidential record pursuant to N.J.S.A. 43:21-11(g).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Complainant's OPRA request assigned agency number W180375, which seeks written procedures on how the Department processes unemployment claims for federal employees seeking unemployment payments, is invalid because it does not seek a specifically identifiable records and would require the Custodian to conduct



research by searching through all of the Department's files to compile any records that might be responsive to the request, which he is not required to do. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015). Thus, the Custodian lawfully denied the request. N.J.S.A. 47:1A-6.

2. The Custodian did not unlawfully deny access to the Complainant's request assigned agency number W180376, seeking a copy of an ES-931, because the Custodian certified that the record does not presently exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Because the evidence of record reveals the requested record does not exist, it is unnecessary for the Council to determine if the record was lawfully denied as a confidential record pursuant to N.J.S.A. 43:21-11(g).

Prepared By: John E. Stewart

February 20, 2024