



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

October 3, 2023 Government Records Council Meeting

David Weiner
Complainant

Complaint No. 2022-213

v.

County of Essex
Custodian of Record

At the October 3, 2023 public meeting, the Government Records Council (“Council”) considered the September 26, 2023 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 bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Notwithstanding, the GRC declines to order any further action in relation to OPRA request item No. 1 because the Custodian responded on September 22, 2022 disclosing all records that existed and the Statement of Information submission supports such a conclusion.
2. The Complainant’s request item No. 2 seeking “documents delineating” Dr. Cartaxo’s “work product” 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, 546, 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 this request item. N.J.S.A. 47:1A-6.
3. The Custodian has not borne her burden of proving she lawfully denied the Complainant’s OPRA request item No. 3 seeking [Dr. Cartaxo’s] “medical license and related credentials.” N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010). However, the

GRC declines to order any further action because the Custodian disclosed these records to the Complainant through her August 29, 2023 response to the request for additional information.

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 3rd Day of October 2023

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 10, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 3, 2023 Council Meeting**

**David Weiner¹
Complainant**

GRC Complaint No. 2022-213

v.

**County of Essex²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. “Documents describing” Dr. Kenneth Cartaxo’s job duties for which the County of Essex (“County”) paid him \$312,000.00 in Fiscal Year (“FY”) 2022.
2. “Documents delineating the work production completed” by Dr. Cartaxo for FY2020, 2021, and 2022 for which is received a salary of \$312,000.00.
3. “Documents delineating Dr. Cartaxo’s medical license and related credentials.”

Custodian of Record: Olivia Schumann, Esq.³
Request Received by Custodian: April 5, 2022
Response Made by Custodian: May 23, 2022
GRC Complaint Received: May 19, 2022

Background⁴

Request and Response:

On April 4, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 5, 2022, the Custodian e-mailed the Complainant acknowledging receipt of the OPRA request and noting that the response deadline is April 14, 2022.

Denial of Access Complaint:

On May 19, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The current “custodian of record” is George Seylaz.

⁴ 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.

respond to his OPRA request.

Supplemental Response:

On September 22, 2022, the 117th business day after receipt of the OPRA request, the Custodian responded in writing disclosing two (2) pages of records responsive to OPRA request item No. 1. The Custodian noted that redactions were made to Dr. Cartaxo's personal home address, social security number, and date of birth not disclosable under OPRA. N.J.S.A. 47:1A-1. The Custodian also denied access to OPRA request item Nos. 2 and 3 as invalid because they required research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). The Custodian noted that based on the disclosed records, Dr. Cartaxo's medical license and "related credentials" are not part of his personnel file.

Statement of Information:⁵

On December 13, 2022, the Custodian filed a Statement of Information ("SOI") attaching a legal certification from Human Resources ("HR") employee Maria Tolve. The Custodian certified that she received the Complainant's OPRA request on April 29, 2022. The Custodian certified that her search included contacting Ms. Tolve, who sent her two (2) pages of records responsive to OPRA request item No. 1 on September 13, 2022. Tolve Cert. ¶ 4. The Custodian certified that she responded in writing on September 22, 2022 disclosing those records with minimal redactions of Dr. Cartaxo's home address, social security number, and date of birth. N.J.S.A. 47:1A-1. The Custodian noted that she also denied access to OPRA request item Nos. 2 and 3 as invalid. The Custodian noted that Ms. Tolve has confirmed that the records disclosed on September 22, 2022 represent all responsive records that existed. Fusco Cert. ¶ 5.

The Custodian argued that the Council has consistently held that no unlawful denial of access could have occurred where a custodian certifies that all responsive records that existed were provided to a complainant. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Owens v. Mt. Holly Twp. (Burlington), GRC Complaint No. 2013-233 (February 2014). The Custodian argued that the County clearly disclosed the records responsive to OPRA request item No. 1. The Custodian further argued that Ms. Tolve's legal certification supports her position, and no competent, credible evidence exists to refute said certification. The Custodian thus requested that the Council find that no unlawful denial of access occurred here.

The Custodian further argued that OPRA request item Nos. 2 and 3 were invalid because they failed to identify specific records. MAG, 375 N.J. Super. at 546. The Custodian argued that item No. 2 sought "work production," which would require a wholesale search of infinite records without any definitive time frame. The Custodian further argued that item No. 3 similarly failed to seek identifiable records. However, the Custodian went on to assert that because Ms. Tolve did not disclose Dr. Cartaxo's medical license and "related credentials," said records must not be part of his personnel file.

⁵ On June 14, 2022, this complaint was referred to mediation. On December 7, 2022, this complaint was referred back to the GRC for adjudication.

Additional Submissions:

On August 24, 2023, the GRC sought additional information from the Custodian. N.J.A.C. 5:105-2.4(m). The GRC stated that it was unclear whether any records responsive to OPRA request item No. 3 existed, especially given that the job posting noted that candidates were required to have certain licensure and certification requirements. The GRC thus asked that the Custodian and/or Ms. Tolve submit a certification responding to the following questions:

1. Did the County require Dr. Cartaxo to submit as a condition of employment a copy of his medical license, certification from the American Board of Internal Medicine, or other evidentiary documentation showing he was eligible for the position (such as a degree, transcripts, *etc.*)?
 - a. If yes, did Ms. Tolve locate these records through a search and, if so, why did she not consider them responsive to OPRA request item No. 3?

The GRC requested that the certification(s) be submitted by August 30, 2023.

On August 29, 2023, the Custodian responded to the GRC's request for additional information attaching certifications from Ms. Tolve and Essex County Hospital Center ("Hospital") Director Frank J. Del Gaudio. The Custodian certified that when she received the subject OPRA request, she contacted Ms. Tolve, who produced responsive records. The Custodian certified that in preparation of responding to the request for additional information, she again contacted Ms. Tolve. The Custodian affirmed that Ms. Tolve located five (5) additional pages of records comprising Dr. Cartaxo's letter of employment and application. Tolve Cert. ¶ 5-6. The Custodian certified it was also determined that the Hospital may maintain additional records. Tolve Cert. ¶ 7. The Custodian averred that Director Del Gaudio was able to locate Dr. Cartaxo's medical license, license verification, and relevant certification. Del Gaudio Cert. ¶ 4. The Custodian certified that these records are attached.

The Custodian noted that while employment applications are generally exempt from disclosure under N.J.S.A. 47:1A-10, she was disclosing same with redactions in accordance with N. Jersey Media Grp., Inc. v. State Dep't of Personnel, 389 N.J. Super. 527 (July 21, 2006).⁶ The Custodian further certified that no additional records responsive to OPRA request item No. 3 exist. Tolve Cert. ¶ 9; Del Gaudio Cert. ¶ 5. The Custodian finally asserted that her failure to contact the Hospital when initiating the original search was based on an incorrect belief that HR would have all potentially responsive records in their possession.

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records

⁶ The Personnel court was tasked with "resolv[ing] a conflict between" basic employee information required to be disclosed under N.J.S.A. 47:1A-10 and N.J.A.C. 4A:4-2.1, which provides that examination records inclusive of applications, are not disclosable. The court held that the most appropriate action was to require disclosure of the application with redactions. 389 N.J. Super. at 537.

within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁷ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In the matter before the Council, the Custodian acknowledged receipt of the subject OPRA request on April 5, 2022 and noted that the last business day to respond was April 14, 2022. Following the expiration of the statutory response time frame, the Complainant filed the instant complaint contending that he did not receive a response to his OPRA request. Following the complainant filing, the Custodian responded on September 22, 2022 disclosing two (2) pages of records responsive to OPRA request item No. 1 and denying the remainder of the request as invalid. In the SOI, the Custodian certified that she received the OPRA request on April 5, 2022, obtained the responsive records from Ms. Tolve on September 13, 2022, and sent a written response to the Complainant on September 22, 2022. However, the response occurred more than five (5) months after receipt of the OPRA request. Thus, the evidence of record clearly supports that the Complainant's OPRA request was "deemed" denied.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. Notwithstanding, the GRC declines to order any further action in relation to OPRA request item No. 1 because the Custodian responded on September 22, 2022 disclosing all records that existed and the SOI submission supports such a conclusion.

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).]

⁷ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

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);⁸ 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 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.

⁸ Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

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. 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.]

However, regarding requests seeking information, there are instances in OPRA specifically identifies pieces of information as a “government record” under OPRA. By way of example, in Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll record and length of service” was information specifically considered to be a “government record” under N.J.S.A. 47:1A-10. The Council thus held that the complainant’s OPRA request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. Id. at 5.

Here, the Complainant’s request item No. 2 sought “[d]ocuments delineating” Dr. Cartaxo’s “work production” over three (3) fiscal year. The Complainant’s request item No. 3

sought “[d]ocuments delineating [Dr. Cartaxo’s] medical license and related credentials.” The Custodian responded denying both items as invalid because they required research. In the SOI, the Custodian maintained her position that both request items were invalid because they failed to identify specific records. Specific to item No. 2, the Custodian argued that the only way to locate responsive records would be to individually review Dr. Cartaxo’s records.

Regarding request item No. 2, as in Feiler-Jampel, GRC 2007-190 and Lagerkvist, 443 N.J. Super. 230, the item would clearly require research of more than just Dr. Cartaxo’s records. Further, the Custodian would be forced to deliberate on whether the “documents” located “delineat[ed]” Dr. Cartaxo’s amorphously termed “work production” over multiple fiscal years. The request item would thus require research that the Custodian is not required to perform under OPRA and prevailing case law. Thus, the Custodian’s denial was clearly lawful here; noting that the Council previously reached this conclusion in when evaluating an OPRA request containing a similar term. See Weiner v. Cnty. of Essex, GRC Complaint No. 2020-225 (November 2021).

Accordingly, the Complainant’s request item No. 2 seeking “documents delineating” Dr. Cartaxo’s “work product” 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 this request item. N.J.S.A. 47:1A-6.

Regarding request item No. 3, the GRC does not agree that a similar analysis to item No. 2 applies. While the inclusion of the phrase “[d]ocuments delineating” certainly places this portion of the item in the conversation of validity, the ensuing content of the request seeks reasonably defined “data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment.” N.J.S.A. 47:1A-10.⁹ When applying Danis, GRC 2009-156, the GRC finds that the Custodian had an obligation to search for and disclose those records or pieces of personnel information disclosable under N.J.S.A. 47:1A-10. Such disclosure ultimately occurred as part of the Custodian’s August 29, 2023 response to the GRC’s request for additional information.¹⁰

Accordingly, the Custodian has not borne her burden of proving she lawfully denied the Complainant’s OPRA request item No. 3 seeking [Dr. Cartaxo’s] “medical license and related credentials.” N.J.S.A. 47:1A-6; Danis, GRC 2009-156, *et seq.* However, the GRC declines to order any further action because the Custodian disclosed these records to the Complainant through her August 29, 2023 response to the request for additional information.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

⁹ Those qualification were expressly cited in the County’s job posting for the position currently held by Dr. Cartaxo, which was previously disclosed to the Complainant September 22, 2022.

¹⁰ The GRC notes its prior case law does not support that the Custodian was required to disclose a redacted copy of Dr. Cartaxo’s employment application. See *e.g.* Toscano v. NJ Dep’t of Human Serv., Div. of Health Serv., GRC Complaint No. 2010-147 (May 2011); Deutsch v. NJ Civil Serv. Comm’n, GRC Complaint No. 2011-361 (March 2013).

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Notwithstanding, the GRC declines to order any further action in relation to OPRA request item No. 1 because the Custodian responded on September 22, 2022 disclosing all records that existed and the Statement of Information submission supports such a conclusion.
2. The Complainant's request item No. 2 seeking "documents delineating" Dr. Cartaxo's "work product" 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, 546, 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 this request item. N.J.S.A. 47:1A-6.
3. The Custodian has not borne her burden of proving she lawfully denied the Complainant's OPRA request item No. 3 seeking [Dr. Cartaxo's] "medical license and related credentials." N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010). However, the GRC declines to order any further action because the Custodian disclosed these records to the Complainant through her August 29, 2023 response to the request for additional information.

Prepared By: Frank F. Caruso
Executive Director

September 26, 2023