



State of New Jersey

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FINAL DECISION

December 12, 2023 Government Records Council Meeting

Griselda Muck-Raker
Complainant

Complaint No. 2022-44

v.

NJ Department of Banking and Insurance
Custodian of Record

At the December 12, 2023 public meeting, the Government Records Council (“Council”) considered the December 5, 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 the Complainant’s request is invalid because it failed to specifically identify government records and would require the Custodian to perform research. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Ass’n, 390 N.J. Super. 166; Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian lawfully denied the 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 12th Day of December 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: December 14, 2023



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 12, 2023 Council Meeting**

**Griselda Muck-Raker¹
Complainant**

GRC Complaint No. 2022-44

v.

**New Jersey Department of Banking and Insurance²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of “[any] and all emails, or interoffice communications between NJ Dept. of Banking and Insurance employees Marilyn Cerides, Ila Bhatnagar, Thomas Gallagher Martin Burns, (sic) Jennifer Zoog, Richard Besser, and any other unknown or unnamed department heads regarding the use, policy or change in policy of state owned transportation/vehicles assigned to the NJ Dept. of Banking and insurance (sic) and it’s (sic) employees, dated May 2020 to [February 16, 2022].”

Custodian of Record: Lauren Wiley

Request Received by Custodian: February 16, 2022

Response Made by Custodian: February 25, 2022

GRC Complaint Received: March 2, 2022

Background³

Request and Response:

On February 15, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 25, 2022, the sixth (6th) business day following receipt of the request, the Custodian responded in writing informing the Complainant that the request was denied as “improper and overbroad.”

Denial of Access Complaint:

On March 2, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that she filed her request on February 15, 2022. The Complainant stated that she was “very specific in the TOPIC request for emails, and the actual topic of the emails.” (Emphasis in original.) The Complainant asserted that

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Chandra M. Arkema.

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.

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the Custodian stated that the request was too broad in scope, citing MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005), N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The Complainant stated that, although the volume of e-mails requested may be numerous, the topic is not broad because it focuses on a very specific time frame and topic. The Complainant stated that she followed the GRC's example for a valid request, which provides: "Any and all e-mails between Jane Doe and John Smith regarding the construction of the new high school from January 1, 2009 to February 28, 2009." The Complainant stated that the GRC example is proof that her request is not too broad; therefore, she wants the Custodian to disclose the records she requested.

Statement of Information:

On March 10, 2022, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on February 16, 2022, and responded to the request on February 25, 2022.

The Custodian certified that requests for correspondence must identify the individuals or accounts to be searched and be confined to a discrete and limited subject matter, pursuant to Burke v. Brandes, 429 N.J. Super. 169, 176-78 (App. Div. 2012). The Custodian also certified that the Council in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010) set forth criteria for a proper request for e-mail and correspondence. The Custodian certified that the request must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the mail or e-mails were transmitted, and (3) identification of the sender and/or recipient. The Custodian certified that the Complainant's request failed to meet the Elcavage requirements. The Custodian certified that the Complainant's request contained a broad, generic description of documents that would require her to search, analyze and compile nearly two (2) years of e-mails for a multitude of Department of Banking and Insurance ("DOBI") employees, including "unknown or unnamed department heads." The Custodian certified that, as such, the Complainant failed to specifically identify the senders and/or recipients.

The Custodian certified that in the subject matter of her request, the Complainant failed to identify a specific policy or policy announcement. The Custodian certified that the Complainant used the amorphous phrase, "use, policy or change in policy of state owned transportation/vehicles." The Custodian certified that such a phrase creates a vast universe of potential records and would require her to assess each piece of correspondence to determine whether it is responsive to the request, which she is not required to do under OPRA.

The Custodian further certified that the request spanned almost a two (2) year time frame. The Custodian certified that the Complainant even admitted in the complaint that the search would yield numerous records. The Custodian certified that it is unreasonable for her to perform

such a vague search and then review every e-mail to ascertain which ones might pertain to the stated topic, which is itself subject to interpretation.

Additional Submissions:

On March 21, 2022, the Complainant submitted a reply to the Custodian's SOI. The Complainant stated that DAG Kant, on behalf of the Custodian, continues to "hide behind the 'overly broad' restriction." The Complainant asserted that DAG Kant provides no specifics other than a blanket legal argument.

The Complainant asserted that DAG Kant failed to acknowledge that she, as a citizen, would not know the unknown or unnamed department heads at DOBI because their website does not identify them. The Complainant stated that she used the language in the request as a "catch all," so that the agency would not be able to hide e-mails and feign ignorance or knowledge of "unknown said parties."

The Complainant asserted that she specifically asked for e-mails "with the subject of the NJ DOBI vehicle policy USE, or a change in the USE." (Emphasis in original.) The Complainant stated that changes in policy, like vehicle use, "come from the top down to assistant commissioners, and then department heads." The Complainant asserted that such an e-mail chain "would be what a normal person would expect[.]"

The Complainant summed up her submission by stating that her request was "a specific, simple topic, during a specific time frame, with a specific group of state employees, as exemplified from the OPRA guideline." The Complainant stated that she would welcome a GRC *in camera* examination of the documents requested to determine if the request was overly broad.

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. 30, 37;⁴ N.J. Builders Ass’n, 390 N.J. Super. 166, 180; Schuler, GRC 2007-151.

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, 546; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second concerns 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).

With respect to the first category, 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:

⁴ Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004). Griselda Muck-Raker v. New Jersey Department of Banking and Insurance, 2022-44 – Findings and Recommendations of the Executive Director

[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.]

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, GRC 2009-07, 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. NJ 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).

Here, the Complainant's request sought emails or inter-office communications between several named DOBI employees and "any other unknown or unnamed department heads" regarding the "use, policy or change in policy of state owned transportation/vehicles assigned to DOBI employees, dated May 2020 to [February 16, 2022]." In the SOI, the Custodian certified that the request was invalid because it was overly broad by failing to identify specific records.

Because the Complainant is seeking communications, including e-mails, the request must be analyzed under the Elcavage criteria. The second (2nd) criterion requires a specific date or range of dates during which the e-mail(s) were transmitted. The Custodian certified in the SOI that the time frame was excessive; however, the GRC disagrees. The Complainant defined a discrete time frame: May 2020 to “the present day,” which was February 15, 2022 (the date of the OPRA request). The time frame itself is not problematic, but rather the first (1st) and third (3rd) Elcavage criteria: the subject of the e-mail(s) and the identity of the sender and/or the recipient, respectively.

The Complainant listed the subject as “the use, policy or change in policy of state owned transportation/vehicles.” Contrary to the Complainant’s assertion, the subject is not specific because it contemplates three (3) different categories of records. Moreover, “state owned transportation and/or vehicles” could encompass many modes of travel aside from travel by automobile. As such, the subject is less than clear; therefore, it is open to interpretation by the Custodian. The Complainant also fails to clearly identify the sender and/or the recipient of the requested communications. Although the Complainant initially listed several DOBI employees by name, she subsequently clouded the identification by adding, “any other unknown or unnamed department heads.” Responding to this request would require the Custodian to conduct research to discover the identification of any other possible senders or recipients, which the Custodian is not required to do under OPRA.

Here, the Complainant failed to satisfy the criteria deemed necessary under Elcavage, GRC 2009-07, for the Custodian to properly conduct a search for responsive records. Moreover, similar to Feiler-Jampel, GRC 2007-190 and Lagerkvist, 443 N.J. Super. 230, the request would require the Custodian to conduct research of e-mails and inter-office communications encompassing a time frame of almost two (2) years.

Accordingly, the Complainant’s request is invalid because it failed to specifically identify government records and would require the Custodian to perform research. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders, 390 N.J. Super. 166; Lagerkvist, 443 N.J. Super. 230; Elcavage, GRC 2009-07. Thus, the Custodian lawfully denied the request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s request is invalid because it failed to specifically identify government records and would require the Custodian to perform research. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Ass’n, 390 N.J. Super. 166; Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian lawfully denied the request. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart

December 5, 2023