



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

February 18, 2025 Government Records Council Meeting

Andrew Christopher Cruz
Complainant

Complaint No. 2023-136

v.

Camden County Prosecutor's Office
Custodian of Record

At the February 18, 2025, public meeting, the Government Records Council ("Council") considered the February 11, 2025, 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 did not seek identifiable government records and would have required the Custodian to conduct research to create a record. See MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (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); Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015). Thus, the Custodian did not unlawfully deny access to the subject request. N.J.S.A. 47:1A-6. Finally, the GRC does not reach whether said data was exempt from disclosure for the reasons asserted by the Custodian because the request is considered invalid.

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 18th Day of February 2025

John A. Alexy, 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: February 20, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 18, 2025 Council Meeting**

**Andrew Christopher Cruz¹
Complainant**

GRC Complaint No. 2023-136

v.

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

Records Relevant to Complaint: Electronic copies via e-mail as a spreadsheet or database file of the following between January 1, 2021 and December 31, 2021:

1. Total number of Firearm Purchase Identification Card ("FPIC") appeal hearing litigated.
2. Of those in item No. 1, the total number of appellants with expungements.
3. Of those in item No. 2, the total number of appellants granted an FPIC by the court.

Custodian of Record: Angela M. Seixas, Esq.
Request Received by Custodian: June 10, 2023
Response Made by Custodian: June 13, 2023
GRC Complaint Received: June 15, 2023

Background³

Request and Response:

On June 10, 2023, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On June 13, 2023, the Custodian responded in writing first denying the OPRA request on the basis that it was invalid because it failed to identify specific government records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (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); Bart v. Passaic Cnty. Pub. Hous. Agency, 406 N.J. Super. 445, 451-452 (App. Div. 2009); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian also stated that responsive records are exempt under the personal firearms and expungement records exemptions. N.J.S.A. 47:1A-1.1, et seq.

¹ No legal representation listed on record.

² Represented by First Assistant County Counsel Howard Goldberg, Esq. (Camden, NJ).

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 15, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s first reason for denial was incorrect because he sought specific aggregate data about FPIC appeals. The Complainant argued that the OPRA request was not a blanket request for all documents or records. The Complainant further contended that the request did not impose a burden on the Custodian and does not require research; rather, it only required data compilation. Paff v. Div. of Law, 412 N.J. Super. 140, 148-149 (App. Div. 2010).

The Complainant also argued that the cited exemptions concern individual records containing personal information. N.J.S.A. 47:1A-1.1. The Complainant contended that neither exemption applied here because he sought data distinct and separate from those individual records. The Complainant also asserted that the requested data was crucial to understanding how government is performing on FPIC appeals.

The Complainant asked the GRC to: 1) order disclosure of the responsive data; 2) find a knowing and willful violation occurred if supported by law; and 3) provide any other relief deemed appropriate given the circumstances of this complaint.⁴

Statement of Information:

On July 11, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 10, 2023. The Custodian certified she did not perform a search because the Camden County Prosecutor’s Office (“CCPO”) does not possess any records tracking FPIC appeals or records allowing her to cross-reference appeals against expungements and successful actions. The Custodian certified she responded in writing on June 13, 2023, denying the request as invalid and that any responsive records would be exempt under OPRA. N.J.S.A. 47:1A-1.1.

The Custodian affirmed that CCPO does not maintain Superior Court hearing data in any specific record or document; thus, no responsive records exist. The Custodian further averred CCPO’s internal database provides no support for a search that would generate the data sought. The Custodian argued that, instead, the subject request would require an inquiry of every current and former member of CCPO who may have been involved in those specific hearings.

The Custodian argued that adding to the above, the Complainant’s request was invalid because it did not identify specific records and required research. MAG, 375 N.J. Super. at 546. The Custodian asserted she would have to research each appeal handled by CCPO to identify the number of FPIC actions, then try and cross-reference those appeals with expungement information for the second number, and finally try to determine the third number of successful appellants.

The Custodian noted the Complainant’s usage of the term “expungement” failed to specify the applicable jurisdiction. The Custodian also argued the Complainant did not appreciate that

⁴ The Complainant sought an advisory opinion and assistance in refining his OPRA request: neither option is available as part of the Denial of Access Complaint adjudication process. N.J.S.A. 47:1A-7.

“expunged” records are not accessible under N.J.S.A. 2C:52-1, *et seq.* under threat of disorderly persons offense. N.J.S.A. 2C:52-30.

The Custodian contended that OPRA does not require her to obtain Superior Court statistics, compare them to inaccessible records, and then conduct additional research regarding the success of those actions.

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 37⁵; N.J. Builders, 390 N.J. Super. at 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; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is requests seeking information or

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

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).

In LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that held 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). Further, in Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015), the complainant sought, among other information, the “total number of applicants” interviewed or hired by race and gender. The Council held that the request was invalid because it sought information. *Id.* (*citing* Litchult, Jr. v. Borough of Waldwick Police Dep’t (Bergen), GRC Complaint No. 2010-159 (May 2011)).

However, while longstanding case law supports that a custodian is not required to create records to respond to OPRA requests, those requests seeking “information stored or maintained electronically” as defined in N.J.S.A. 47:1A-1.1 require a different analysis. In Paff v. Twp. of Galloway, 229 N.J. 340 (2017), the New Jersey Supreme Court determined that an agency’s electronically stored information is a “government record” under OPRA, unless otherwise exempt. The Court thus reversed the Appellate Division, holding that basic e-mail information stored electronically is a “government record” under OPRA unless an exemption applies to that information.

The Supreme Court’s ruling in Paff squares with the Council’s past decisions on the issue of coalescing information from electronic systems. Specifically, in Zahler v. Ocean Cnty. Coll., GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014), the Council addressed the custodian’s argument that she was not required to create a record to satisfy an OPRA request for database information pursuant to Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (Interim Order dated February 27, 2008). Therein, the complainant sought access to a list of adjuncts to include certain information. The custodian produced a list that did not include all information sought; however, the evidence of record indicated that she could have produced a fully responsive record. Specifically, evidence existed to support that all information the complainant sought existed within a few different databases.

Here, the Complainant sought certain data related to FPIC appeals where specific conditions applied and their outcomes. The Custodian denied the request because, among other bases, the request was invalid since it failed to identify specific government records. This complaint ensued, where the Complainant argued that his request sought aggregate data and did not require any research. In the SOI, the Custodian certified that CCPO did not maintain hearing data; she would be required to conduct research and cross-referencing to obtain the requested data. The Custodian thus argued that because the request failed to identify specific records and required research, it was invalid.

Upon review, the GRC agrees that the subject request is invalid because, as in Redd, GRC 2014-185, it sought information in the form of data related FPIC appeals with conditions. While the Complainant crafted his OPRA request as one seeking “aggregate data,” same was based on the premise that CCPO maintained electronic statistical information that could be produced. The Custodian has confirmed that this is not true: CCPO did not maintain such data and would be required to engage in extensive research of various records to create a responsive dataset. Thus, and unlike Paff, 229 N.J. 340, the information sought is not contained within an electronic form that can be produced in a spreadsheet or database file. Longstanding case law provides that the Custodian was not required to conduct research and collate information from multiple different physical and electronic records to satisfy the request.

Accordingly, the Complainant’s request is invalid because it did not seek identifiable government records and would have required the Custodian to conduct research to create a record. See MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Redd, GRC 2014-185. Thus, the Custodian did not unlawfully deny access to the subject request. N.J.S.A. 47:1A-6. Finally, the GRC does not reach whether said data was exempt from disclosure for the reasons asserted by the Custodian because the request is considered invalid.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s request is invalid because it did not seek identifiable government records and would have required the Custodian to conduct research to create a record. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (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); Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015). Thus, the Custodian did not unlawfully deny access to the subject request. N.J.S.A. 47:1A-6. Finally, the GRC does not reach whether said data was exempt from disclosure for the reasons asserted by the Custodian because the request is considered invalid.

Prepared By: Frank F. Caruso
Executive Director

February 11, 2025