State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

FINAL DECISION

June 11, 2009 Government Records Council Meeting

Ronald Gray
Complainant
v.
New Jersey Department of Children and Family Service,
Division of Youth and Family Service
Custodian of Record

Complaint No. 2008-33

At the June 11, 2009 public meeting, the Government Records Council ("Council") considered the May 20, 2009 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 because the Complainant's OPRA request fails to identify a particular record, pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008), the Complainant's request is invalid. Therefore, the Custodian has not unlawfully denied the Complainant access to the requested records. Because the Complainant's OPRA request is invalid, the GRC withholds analysis of the basis for the denial of access asserted by the Custodian.

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 11th Day of June, 2009

Robin Berg Tabakin, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Janice L. Kovach
Government Records Council

Decision Distribution Date: June 16, 2009

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Executive Director
June 11, 2009 Council Meeting

Ronald Gray[1] **GRC Complaint No. 2008-33**
Complainant

v.

New Jersey Department of Children and Family Service,
Division of Youth and Family Service[2]
Custodian of Records

Records Relevant to Complaint: Whatever school or state records that the Custodian can provide.

Request Made: February 10, 2008
Response Made: February 11, 2008
Custodian: Aileen William
GRC Complaint Filed: February 20, 2008[3]

Background

February 10, 2008

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

February 11, 2008

Custodian's response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the first (1st) business day following receipt of such request. The Custodian states that access to the requested record is denied because pursuant to N.J.S.A. 9:6-8.10.a. all records and information obtained by the Division of Youth and Family Services ("DYFS") pertaining to child abuse/neglect reports are confidential.

February 20, 2008

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Letter from the Custodian to the Complainant dated February 11, 2008
- South Carolina Birth Certificate Application dated December 19, 2007

[1] No legal representation listed on record.
[2] Represented by DAG Christian Arnold, on behalf of the NJ Attorney General.
[3] The GRC received the Denial of Access Complaint on said date.

The Complainant states that he submitted his OPRA request via e-mail. The Complainant states that he would like to obtain a driver license or state identification and needs a birth certificate to do so. The Complainant further states that he needs his school records, DYFS records, juvenile records or proof that he was a ward of the state to obtain a birth certificate.

The Complainant agreed to mediate this complaint.

March 17, 2008

Offer of Mediation sent to both parties.

March 26, 2008

The Custodian did not agree to mediate this complaint.

April 10, 2008

Request for the Statement of Information sent to the Custodian.

March 20, 2009

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA request dated February 10, 2008
- E-mail from the Custodian to the Complainant dated February 11, 2008 (with attachments)

The Custodian states that the Complainant has requested a copy of any state records from the Department of Children and Families Services regarding the Complainant as a minor ward of the state. The Custodian argues that pursuant to N.J.S.A. 9:6-8.10.a., "all records of child abuse reports … and all information obtained by [DCF] in investigating such reports … shall be kept confidential." The Custodian further argues that pursuant to N.J.S.A. 47:1A-1, the records requested are not subject to public access as they are exempted by statue.

The Custodian argues that the confidentiality of DYFS child abuse records has been upheld in the face of a blanket request for records. The Custodian also argues that in Kaszerman v. Manshel, 176 N.J. Super. 132 (App. Div. 1980), the court held that while persons may obtain DYFS child abuse records under limited exceptions, the plaintiff's request did not meet any of those exceptions. The Custodian argues that similarly, the Complainant's request for DYFS child abuse records does not meet any of the exceptions set forth in N.J.S.A. 9:6-8.10.a. and therefore, was properly denied by the Custodian.

Analysis

Whether the Custodian unlawfully denied access to the requested record?

> OPRA provides that:
> "…government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions*…" (Emphasis added.) N.J.S.A. 47:1A-1.
>
> Additionally, OPRA defines a government record as:
>
> "… any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file* … or *that has been received* in the course of his or its official business …" (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

> "…[t]he public agency shall have the burden of proving that the denial of access is authorized by law…" N.J.S.A. 47:1A-6.

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.

The Complainant requested that the Custodian provide him with whatever records pertaining to the Complainant that she could provide to help him prove his identity.

The New Jersey Superior Court has held that "[w]hile 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.*" (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (March 2005). 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." (Emphasis added.) *Id.* at 549.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (October 2005)[4], the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."[5]

Moreover, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008) the Council held that "[b]ecause the Complainant's OPRA requests #2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005)."

Like the complainants in MAG, *supra*, Bent, *supra*, and Schuler, *supra*, the Complainant has failed to identify the records sought with any specificity.

Because the Complainant's OPRA request fails to identify a particular record, pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008), the Complainant's request is invalid. Therefore, the Custodian has not unlawfully denied the Complainant access to the requested records. Because the Complainant's OPRA request is invalid, the GRC withholds analysis of the basis for the denial of access asserted by the Custodian.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's OPRA request fails to identify a particular record, pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008), the Complainant's request is invalid. Therefore, the Custodian has not unlawfully denied the Complainant access to the requested records. Because the Complainant's OPRA request is invalid, the GRC withholds analysis of the basis for the denial of access asserted by the Custodian.

Prepared By: Sherin Keys, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

[4] Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).
[5] As stated in Bent, *supra*.

May 20, 2009