



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

**JON S. CORZINE**  
*Governor*

**CHARLES A. RICHMAN**  
*Acting Commissioner*

**FINAL DECISION**

**November 4, 2009 Government Records Council Meeting**

Edwin Lopez  
Complainant

Complaint No. 2008-250

v.

New Jersey Department of Corrections  
Custodian of Record

At the November 4, 2009 public meeting, the Government Records Council (“Council”) considered the October 21, 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 request seeks information rather than a specific identifiable government record, the request is invalid 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). Additionally, the Custodian has borne her burden of proving a lawful denial of access pursuant to 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 4<sup>th</sup> Day of November, 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, Secretary  
Government Records Council

**Decision Distribution Date: November 9, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 4, 2009 Council Meeting**

**Edwin Lopez<sup>1</sup>  
Complainant**

**GRC Complaint No. 2008-250**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** The current work address and any alternate address for a doctor<sup>3</sup> who previously worked in South Woods Prison.

**Request Made:** September 19, 2009

**Response Made:** September 29, 2008

**Custodian:** Michelle Hammel

**GRC Complaint Filed:** October 27, 2008<sup>4</sup>

**Background**

**September 19, 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.

**September 29, 2008**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the same business day as receipt of such request.<sup>5</sup> The Custodian states that access to the Complainant's OPRA request is denied because the Complainant's request seeks information and does not adequately identify a government record. The Custodian states that OPRA only requires a custodian to respond to a request for a specific government record and does not require a custodian to conduct research and correlate data from various records. The Custodian states that the Complainant's request is therefore denied because it is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). Further, the Custodian states that if the Complainant wishes to request specific records, he should clearly identify the records and provide the description of the records to the Custodian.

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

<sup>2</sup> Represented by DAG Ellen Hale, on behalf of the NJ Attorney General.

<sup>3</sup> Although the Complainant stated in his request the specific name of the individual whose address he sought, the GRC declines to do so herein.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

<sup>5</sup> The Custodian certified in the SOI that she received the Complainant's OPRA request on September 29, 2008 and attached the Complainant's OPRA request with the agency's date stamp.

**October 27, 2008**

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching a letter from the Custodian to the Complainant dated September 29, 2008.

The Complainant states that he submitted an OPRA request to the New Jersey Department of Corrections (“DOC”) on September 19, 2008. The Complainant states that the Custodian responded in writing on September 29, 2008 denying access to the request as a request for information not subject to OPRA pursuant to MAG, *supra*.

The Complainant contends that the address requested should be provided to him.

The Complainant agrees to mediate this complaint.

**November 5, 2008**

Offer of Mediation sent to both parties.

**December 15, 2008**

The Custodian’s Counsel declines mediation.

**December 16, 2008**

Request for the Statement of Information (“SOI”) sent to the Custodian.

**December 23, 2008**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated September 19, 2008 date stamped as received September 29, 2008.
- Letter from the Custodian to the Complainant dated September 29, 2008.

The Custodian certifies that no search was necessary and that no records responsive were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management (“DARM”).

The Custodian certifies that she received the Complainant’s OPRA request on September 29, 2008. The Custodian certifies that she responded in writing on the same day stating that the Complainant’s request seeks information and is denied because it is invalid pursuant to MAG, *supra*. The Custodian certifies that she informed the Complainant that OPRA only requires a custodian to provide access to a request for specific government records and not information. The Custodian states that if the Complainant wishes to request specific records, he should clearly identify the records and provide the description of the records to the Custodian.<sup>6</sup>

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<sup>6</sup>The Custodian’s Counsel also submitted a legal argument which repeats and reiterates the assertions contained in the Custodian’s certification.  
Edwin Lopez v. New Jersey Department of Corrections, 2008-250 – Findings and Recommendations of the Executive Director

## Analysis

### **Whether the Complainant's request for records is a valid request under OPRA?**

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's request sought the current work address and any other address for a physician who previously worked at the South Woods Prison. Although the Complainant named the individual whose address he sought, the Complainant did not state any particular identifiable government record sought nor did the Complainant provide any dates of employment for that individual.

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)<sup>7</sup>, 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.”<sup>8</sup>

In the instant matter before the Council, the Complainant’s request for the work address and alternate address of a doctor who previously worked at South Woods Prison is a request for information and not an identifiable government record.

Therefore, because the Complainant’s request seeks information rather than a specific identifiable government record, the request is invalid 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). Additionally, the Custodian has borne her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant’s request seeks information rather than a specific identifiable government record, the request is invalid 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). Additionally, the Custodian has borne her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

October 21, 2009