



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

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

**FINAL DECISION**

**January 26, 2010 Government Records Council Meeting**

Carnell Gibbs  
Complainant

Complaint No. 2009-52

v.

New Jersey Department of Corrections  
Custodian of Record

At the January 26, 2010 public meeting, the Government Records Council (“Council”) considered the January 19, 2010 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 with reasonable clarity the specific government records sought and seeks information rather than identifiable records, the Complainant’s OPRA request is invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). As such, the Custodian has not unlawfully denied access to the Complainant’s OPRA request.<sup>1</sup>

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.

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<sup>1</sup> The Custodian would have also carried her burden of proving a lawful denial of access because she certified that there are no records responsive to the Complainant’s OPRA request; however, this issue is moot because the Complainant’s OPRA request is invalid. See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).



Final Decision Rendered by the  
Government Records Council  
On The 26<sup>th</sup> Day of January, 2010

Robin Berg Tabakin, Chair  
Government Records Council

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

Harlynn A. Lack, Secretary  
Government Records Council

**Decision Distribution Date: January 29, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 26, 2010 Council Meeting**

**Carnell Gibbs<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-52**

v.

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

**Records Relevant to Complaint:** “Whatever [the Special Investigation Division] send to Atlantic County Prosecutor’s Office and the name of who send these paperwork [sic].”

**Request Made:** January 7, 2009

**Response Made:** January 26, 2009

**Custodian:** Michelle Warren Hammel

**GRC Complaint Filed:** February 20, 2009<sup>3</sup>

**Background**

**January 7, 2009**

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.

**January 26, 2009**

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the third (3<sup>rd</sup>) business day following receipt of such request.<sup>4</sup> The Custodian states that access to the requested records is denied because said request is unclear and does not adequately identify the records sought. The Custodian states that OPRA only requires a response to a request for specific records, not for information. The Custodian states that pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), a request is invalid when it requires a custodian to conduct research and correlate data from various records. However, the Custodian also states that the Complainant may resubmit his request with more specificity regarding the records sought.

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

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

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> The Custodian certifies in her Statement of Information that she received the Complainant’s OPRA request on January 21, 2009.

**February 20, 2009**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the Custodian’s response to the Complainant’s OPRA request dated January 26, 2009 attached.<sup>5</sup> The Complainant states that he submitted his OPRA request on January 14, 2009.<sup>6</sup> The Complainant states that he sought access to the records that the Special Investigation Division sent to the courts. The Complainant states that the records already in his possession are numbered pages three (3) and ten (10), implying that there are other records the Complainant does not have. The Complainant states that the Custodian denied his OPRA request on January 26, 2009 on the basis that said request is unclear and does not adequately identify the records sought.

**March 9, 2009**

Letter of Representation from Custodian’s Counsel to GRC. Counsel states that she will prepare the Statement of Information.<sup>7</sup>

**March 18, 2009**

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

**March 24, 2009**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated January 7, 2009
- Custodian’s response to the Complainant’s OPRA request dated January 26, 2009
- Custodian Counsel’s letter brief dated March 25, 2009

The Custodian certifies that she received the Complainant’s OPRA request on January 21, 2009. The Custodian certifies that upon review of said request, she determined that said request was overly broad and lacked specificity regarding the exact records sought. Additionally, the Custodian certifies that said request sought the name of the individual who sent records to the Atlantic County Prosecutor’s Office, which is a request for information, not specific records. The Custodian certifies that she provided the Complainant with a written response to said request on January 26, 2009, in which the Custodian denied the Complainant’s OPRA request on the basis that the Complainant failed to identify specific government records.

Additionally, the Custodian certifies that upon receipt of the Complainant’s Denial of Access Complaint, which provided more specificity regarding the Complainant’s OPRA request, the Custodian contacted the Special Investigation Division to determine if any employee faxed records to the Atlantic County Prosecutor’s Office regarding the Complainant. The Custodian certifies that on March 17, 2009, the Special Investigation Division informed her that no personnel from said office provided the Atlantic County Prosecutor’s Office or judicial authorities with any records regarding an investigation involving the Complainant. As such, the Custodian certifies that there are no records responsive to the Complainant’s OPRA request.

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<sup>5</sup> The Complainant attaches additional records; however, said records are not relevant to the adjudication of this Denial of Access Complaint.

<sup>6</sup> The Complainant’s OPRA request is dated January 7, 2009.

<sup>7</sup> Said statement implies a declination of the upcoming Offer of Mediation.

The Custodian also certifies that no records responsive to the request 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”).

**March 25, 2009<sup>8</sup>**

Custodian Counsel’s letter brief to GRC. The Custodian’s Counsel asserts that this complaint should be dismissed because the Custodian properly denied the Complainant’s OPRA request within the statutorily mandated seven (7) business days because said request sought information rather than specific government records. Additionally, Counsel states that the Complainant sought access to the name of an individual who allegedly provided the Atlantic County Prosecutor’s Office with unknown and unspecified information. Counsel contends that pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), agencies are only required to disclose identifiable government records.

Further, the Custodian’s Counsel asserts that after the Complainant provided additional information regarding his OPRA request when he filed this Denial of Access Complaint, the Custodian confirmed with the Special Investigation Division that there are no records responsive to the Complainant’s request.<sup>9</sup>

**Analysis**

**Whether the Custodian unlawfully denied access to the requested records?**

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.

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<sup>8</sup> Additional correspondence was submitted by the parties. However, said correspondence is either not relevant to this complaint or restates the facts/assertions already presented to the GRC.

<sup>9</sup> The Custodian’s Counsel also restates the facts presented in the Custodian’s SOI.

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 stated that he submitted his OPRA request on January 14, 2009, although the Complainant’s OPRA request is dated January 7, 2009. The Custodian in this complaint certified that she received the Complainant’s OPRA request on January 21, 2009. The Custodian certified that upon review of said request, she determined that said request was overly broad and lacked specificity regarding the exact records sought. The Custodian certified that she provided the Complainant with a written response to said request on January 26, 2009, in which the Custodian denied the Complainant’s OPRA request on the basis that the Complainant failed to identify specific government records.

Both the courts and the Council have discussed the level of specificity required when requesting government records under OPRA. Specifically, 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 (App. Div. 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 (App. Div. 2005),<sup>10</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>11</sup>

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...”

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) 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

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<sup>10</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>11</sup> As stated in Bent, *supra*.

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).”

In this instant complaint, the Complainant sought access to “whatever [the Special Investigation Division] send to Atlantic County Prosecutor’s Office and the name of who send these paperwork [sic].” The Complainant’s OPRA request does not identify with reasonable clarity any specific government records sought. Additionally, the Complainant’s request seeks information, the name of an individual, rather than an identifiable government record.

Therefore, because the Complainant’s OPRA request fails to identify with reasonable clarity the specific government records sought and seeks information rather than identifiable records, the Complainant’s OPRA request is invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). As such, the Custodian has not unlawfully denied access to the Complainant’s OPRA request.<sup>12</sup>

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant’s OPRA request fails to identify with reasonable clarity the specific government records sought and seeks information rather than identifiable records, the Complainant’s OPRA request is invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). As such, the Custodian has not unlawfully denied access to the Complainant’s OPRA request.<sup>13</sup>

Prepared By: Dara Lownie  
Senior Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

January 19, 2010

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<sup>12</sup> The Custodian would have also carried her burden of proving a lawful denial of access because she certified that there are no records responsive to the Complainant’s OPRA request; however, this issue is moot because the Complainant’s OPRA request is invalid. See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

<sup>13</sup> The Custodian would have also carried her burden of proving a lawful denial of access because she certified that there are no records responsive to the Complainant’s OPRA request; however, this issue is moot because the Complainant’s OPRA request is invalid. See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).