



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

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**July 31, 2012 Government Records Council Meeting**

Bernard Reid  
Complainant

Complaint No. 2011-111

v.

New Jersey Department of Corrections  
Custodian of Record

At the July 31, 2012 public meeting, the Government Records Council (“Council”) considered the July 24, 2012 *Reconsideration* 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 failed to establish in his request for reconsideration of the Council’s May 29, 2012 Final Decision that the Council’s decision was based upon a “palpably incorrect or irrational basis” or that it is obvious the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Further, the Complainant failed to demonstrate that the Council in rendering its decision acted in an arbitrary, capricious or unreasonable manner. Accordingly, reconsideration of the Council’s decision, based upon the Complainant’s asserted reasons for said reconsideration, is denied. *See Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996), *D’Atria v. D’Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990), and *In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey*, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 31<sup>st</sup> Day of July, 2012



Robin Berg Tabakin, Chair  
Government Records Council

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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: August 7, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***Reconsideration***  
**Supplemental Findings and Recommendations of the Executive Director**  
**July 31, 2012 Council Meeting**

**Bernard Reid<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2011-111**

v.

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

**Records Relevant to Complaint:**

1. Any and all letters and or grievances received by the New Jersey Department of Corrections (“NJDOC”) officials within the past two (2) years concerning matters similar or analogous to the events that are the subject matters of [his] complaint... that have either been filed by similarly situated inmates or on behalf of similarly situated inmates.
2. Any and all policies, customs, and practices governing the conduct of NJDOC officials in relation to the matters described in paragraph 1.
3. Any and all court decisions, consent decrees, or settlement agreements on record with respect to NJDOC officials regarding the matters described in paragraph 1.
4. Any and all grievances received by officials of the NJDOC within the past two (2) years concerning officials’ failure to use security safeguards with respect to inmates assigned to administrative segregation during the course of custodian operations.
5. A copy of any record concerning the treatment of inmates described above in relation to the matters described above by officials of the NJDOC.
6. Any and all policies, customs, and practices concerning not only the contraband search of the Complainant’s cell, but also the confiscation and seizure of any property in said cell resulting from the said search as is otherwise described by the above said complaint.
7. Any and all departmental disciplinary records in relation to disciplinary actions implemented against any of the NJDOC officials stemming from the events described in paragraph 6.
8. Any and all policies, customs, practices relating to security safeguards created by the NJDOC and New Jersey State Police (“NJSP”) with respect

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

<sup>2</sup> No legal representation listed on record.

to inmates confined in administrative segregation that were in effect at the time of the events described in paragraph 6.

9. Any and all policies that establish the duties and responsibilities of defendants/respondents or other agents otherwise described[.]

**Request Made:** October 25, 2010

**Response Made:** November 15, 2010

**Custodian:** Deirdre Fedkenheuer<sup>3</sup>

**GRC Complaint Filed:** February 28, 2011<sup>4</sup>

### **Background**

#### **May 29, 2012**

Government Records Council's ("Council") Final Decision. At its May 29, 2012 public meeting, the Council considered the May 22, 2012 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, found the Complainant's request is invalid under OPRA because it fails to reasonably specify identifiable government records and constitutes an overbroad and unclear request that would require the Custodian to conduct research outside the scope of his duties pursuant to 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); and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

#### **June 4, 2012**

Council's Final Decision ("Decision") distributed to the parties.

#### **June 15, 2012**

Letter from the Complainant to the GRC. The Complainant argues that the Council's May 29, 2012 decision was not supported by credible supporting evidence. The Complainant requests that the GRC grant his request for reconsideration as the Council's May 29, 2012 decision qualifies as an arbitrary and capricious decision that was made in error or mistake.

### **Analysis**

#### **Whether the Complainant has met the required standard for reconsideration of the Council's May 29, 2012 Final Decision?**

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served

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<sup>3</sup> The Custodian has since retired, and John Falvey, Esq., now serves as Custodian for the NJDOC.

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

on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Complainant requested reconsideration of the Council's May 29, 2012 Final Decision on June 15, 2012, nine (9) business days after the dissemination of the Council's decision on June 4, 2012. While the Complainant's incarcerated status does not allow the Council to determine when the Complainant actually received the decision, the GRC received the Complainant's request for reconsideration within ten (10) business days of the Council's dissemination of the decision. Accordingly, the Council will consider the Complainant's request for reconsideration of this matter as timely filed pursuant to N.J.A.C. 5:105-2.10(a) and (b).

Applicable case law holds that:

“[a] party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. E.g., Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, supra, 242 N.J. Super. at 401. 'Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.' Ibid." In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

In the instant matter, the Complainant provided no new competent evidence in support of his request for reconsideration to refute the Council's finding that the Complainant's October 25, 2010 request was an invalid request that failed to request specifically identifiable records. Instead, the Complainant's request for reconsideration merely stated that the Council's decision was not supported by competent evidence and is arbitrary and capricious; the Complainant failed to submit any evidence that the Council acted in an arbitrary, capricious or unreasonable manner. Similarly, the Complainant failed to submit any legal argument to support his contentions in this regard. Therefore, there is no basis upon which the Council should reconsider this matter.

Such a conclusion is in accord with the Court's decision in D'Atria, as the Court held that a party should not seek reconsideration based upon dissatisfaction with the decision. Such is the case before the Council. Here, the Complainant has failed to demonstrate or provide any evidence that the Council's decision was based upon a

“palpably incorrect or irrational basis,” nor has the Complainant identified any probative or competent evidence that was overlooked by the Council in its May 29, 2012 Decision. *See Cummings*. Accordingly, the Complainant has failed to meet his burdens and the Council’s Decision will remain undisturbed. The Council notes that its May 29, 2012 decision is based on long-standing and well-accepted legal precedent.

Accordingly, the Complainant failed to establish in his request for reconsideration of the Council’s May 29, 2012 Final Decision that the Council's decision was based upon a “palpably incorrect or irrational basis” or that it is obvious the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Further, the Complainant failed to demonstrate that the Council in rendering its decision acted in an arbitrary, capricious or unreasonable manner. Accordingly, reconsideration of the Council’s decision, based upon the Complainant’s asserted reasons for said reconsideration, is denied. *See Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996), *D’Atria v. D’Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990), and *In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey*, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant failed to establish in his request for reconsideration of the Council’s May 29, 2012 Final Decision that the Council's decision was based upon a “palpably incorrect or irrational basis” or that it is obvious the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Further, the Complainant failed to demonstrate that the Council in rendering its decision acted in an arbitrary, capricious or unreasonable manner. Accordingly, reconsideration of the Council’s decision, based upon the Complainant’s asserted reasons for said reconsideration, is denied. *See Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996), *D’Atria v. D’Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990), and *In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey*, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Darryl C. Rhone  
Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

July 24, 2012



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

RICHARD E. CONSTABLE, III  
Acting Commissioner

**FINAL DECISION**

**May 29, 2012 Government Records Council Meeting**

Bernard Reid  
Complainant

Complaint No. 2011-111

v.

New Jersey Department of Corrections  
Custodian of Record

At the May 29, 2012 public meeting, the Government Records Council (“Council”) considered the May 22, 2012 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 under OPRA because it fails to reasonably specify identifiable government records and constitutes an overbroad and unclear request that would require the Custodian to conduct research outside the scope of his duties pursuant to 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); and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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 29<sup>th</sup> Day of May, 2012

Robin Berg Tabakin, Chair  
Government Records Council



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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: June 4, 2012**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 29, 2012 Council Meeting**

**Bernard Reid<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-111**

v.

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

**Records Relevant to Complaint:**

1. Any and all letters and or grievances received by the New Jersey Department of Corrections (“NJDOC”) officials within the past two (2) years concerning matters similar or analogous to the events that are the subject matters of [his] complaint... that have either been filed by similarly situated inmates or on behalf of similarly situated inmates.
2. Any and all policies, customs, and practices governing the conduct of NJDOC officials in relation to the matters described in paragraph 1.
3. Any and all court decisions, consent decrees, or settlement agreements on record with respect to NJDOC officials regarding the matters described in paragraph 1.
4. Any and all grievances received by officials of the NJDOC within the past two (2) years concerning officials’ failure to use security safeguards with respect to inmates assigned to administrative segregation during the course of custodian operations.
5. A copy of any record concerning the treatment of inmates described above in relation to the matters described above by officials of the NJDOC.
6. Any and all policies, customs, and practices concerning not only the contraband search of the Complainant’s cell, but also the confiscation and seizure of any property in said cell resulting from the said search as is otherwise described by the above said complaint.
7. Any and all departmental disciplinary records in relation to disciplinary actions implemented against any of the NJDOC officials stemming from the events described in paragraph 6.

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

<sup>2</sup> No legal representation listed on record.

8. Any and all policies, customs, practices relating to security safeguards created by the NJDOC and New Jersey State Police (“NJSP”) with respect to inmates confined in administrative segregation that were in effect at the time of the events described in paragraph 6.
9. Any and all policies that establish the duties and responsibilities of defendants/respondents or other agents otherwise described[.]

**Request Made:** October 25, 2010

**Response Made:** November 15, 2010

**Custodian:** Deirdre Fedkenheuer

**GRC Complaint Filed:** February 28, 2011<sup>3</sup>

### **Background**

#### **October 25, 2010**

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.

#### **November 15, 2010**

Custodian’s response to the OPRA request. The Custodian responds in writing via letter to the Complainant’s OPRA request on the fourth (4<sup>th</sup>) business day following receipt of such request.<sup>4</sup> The Custodian states that the Complainant’s request is unclear. The Custodian requests that the Complainant provide additional clarification of his request.

#### **November 23, 2010**

Letter from the Complainant to the Custodian. The Complainant states that he needs to know exactly what it is about his request that is unclear.

#### **December 9, 2010**

Letter from the Custodian to the Complainant. The Custodian states that the Complainant’s request is overly broad and does not clearly specify the records that he is seeking. The Custodian asserts that the request should be in plain language and be as clear as possible.

#### **December 24, 2010**

Letter from the Complainant to the Custodian. The Complainant states that the Custodian is not giving due consideration to his request and the Custodian’s refusal to complete it is a product of the Custodian’s attitude. The Complainant contends his request is clear and specifies the records that he is seeking.

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

<sup>4</sup> The Custodian certifies in the Statement of Information that she received the Complainant’s OPRA request on November 9, 2010.

**February 1, 2011**

Letter from the Custodian to the Complainant. The Custodian states that the NJDOC's Special Legal Advisor will also review the Complainant's request.

**February 7, 2011**

Letter from the Custodian to the Complainant. The Custodian states that the Complainant has refused to refine his request. The Custodian asserts that the Complainant's request is invalid because the request requires the Custodian to do research. The Custodian cites MAG Entertainment v. Division of ABC, 375 N.J. Super. 534 (App. Div. 2005) in support of the proposition that the Complainant's request is invalid.

**February 28, 2011**

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

- Complainant's OPRA request dated October 25, 2010
- Letter from the Custodian to the Complainant dated November 15, 2010
- Letter from the Complainant to the Custodian dated November 23, 2010
- Letter from the Custodian to the Complainant dated December 9, 2010
- Letter from the Complainant to the Custodian dated December 24, 2010
- Letter from the Custodian to the Complainant dated February 1, 2011
- Letter from the Custodian to the Complainant dated February 7, 2011<sup>5</sup>

The Complainant states that he has been unlawfully denied access to the requested records and that the NJDOC has not acted in good faith in denying his request. The Complainant agrees to mediate this complaint.

**April 29, 2011**

Offer of Mediation sent to the Custodian.

**April 29, 2011**

The Custodian declines mediation.

**April 29, 2011**

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

**May 2, 2011**

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated October 25, 2010
- Letter from the Custodian to the Complainant dated November 15, 2010
- Letter from the Complainant to the Custodian dated November 23, 2010
- Letter from the Custodian to the Complainant dated December 9, 2010
- Letter from the Complainant to the Custodian dated December 24, 2010

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<sup>5</sup> The Complainant attached additional documentation that is not relevant to the adjudication of this complaint.

- Letter from the Custodian to the Complainant dated February 1, 2011
- Letter from the Custodian to the Complainant dated February 7, 2011<sup>6</sup>

The Custodian certifies that the NJDOC is unable to ascertain whether there are any records responsive to the Complainant's request because the Complainant's request is invalid pursuant to MAG Entertainment v. Division of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent. v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004); and Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 2005). The Custodian certifies that the NJDOC has made several attempts to work with the Complainant in an effort to help him refine his request but these attempts to reach out to the Complainant were met with resistance. The Custodian argues that the Complainant's refusal to identify records with reasonable specificity makes his request invalid.

### Analysis

#### **Whether the Complainant's records request is valid 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.

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<sup>6</sup> The Custodian has attached additional documentation that is not relevant to the adjudication of this complaint.

In the instant Complaint, the Complainant is requesting:

1. “Any and all letters and or grievances received by the NJDOC officials within the past two (2) years concerning matters similar or analogous to the events that are the subject matters of [his] complaint... that have either been filed by similarly situated inmates or on behalf of similarly situated inmates.
2. Any and all policies, customs, and practices governing the conduct of NJDOC officials in relation to the matters described in paragraph 1.
3. Any and all court decisions, consent decrees, or settlement agreements on record with respect to NJDOC officials regarding the matters described in paragraph 1.
4. Any and all grievances received by officials of the NJDOC within the past two (2) years concerning officials’ failure to use security safeguards with respect to inmates assigned to administrative segregation during the course of custodian operations.
5. A copy of any record concerning the treatment of inmates described above in relation to the matters described above by officials of the NJDOC.
6. Any and all policies, customs, and practices concerning not only the contraband search of the Complainant’s cell, but also the confiscation and seizure of any property in said cell resulting from the said search as is otherwise described by the above said complaint.
7. Any and all departmental disciplinary records in relation to disciplinary actions implemented against any of the NJDOC officials stemming from the events described in paragraph 6.
8. Any and all policies, customs, practices relating to security safeguards created by the NJDOC and New Jersey State Police (“NJSP”) with respect to inmates confined in administrative segregation that were in effect at the time of the events described in paragraph 6.
9. Any and all policies that establish the duties and responsibilities of defendants/respondents or other agents otherwise described[.]”

Here, the Complainant’s request is invalid under OPRA because it fails to identify the government records sought with reasonable specificity and would require research to fulfill.

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). As the court noted in invalidating MAG's request under OPRA:

"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.

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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 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>

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court enumerated the responsibilities of a custodian and a requestor as follows:

"OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require "extraordinary expenditure of time and effort" and warrant assessment of a "service charge," and, when unable to comply with a request, "indicate the specific basis." N.J.S.A. 47:1A-5(a)-(j). The requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), (i). *Research is not among the custodian's responsibilities.*" (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

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<sup>7</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>8</sup> As stated in Bent, *supra*.

Moreover, 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...” The court also quoted N.J.S.A. 47:1A-5.g in that “[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” The court further stated that “...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency’s need to...generate new records...”

Under such rationale, the GRC has repeatedly found that blanket requests are not valid OPRA requests. In the matter of Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the relevant part of the Complainant’s request sought:

- Item No. 2: “From the Borough Engineer’s files: all engineering documents for all developments or modifications to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
- Item No. 3: From the Borough Engineer’s files: all engineering documents for all developments or modifications to North St., to the south and east of Wilson St.
- Item No. 4: From the Borough Attorney’s files: all documents related to the development or modification to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
- Item No. 5: From the Borough Attorney’s files: all documents related to the development or modification to North Street, to the south and east of Wilson St.”

In reviewing the complainant’s request, the Council found 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).”

The test under MAG, then, is whether a requested record is a *specifically identifiable* government record. If so, the record is disclosable, barring any exemptions to disclosure contained in OPRA. In the instant matter, the Complainant’s request fails to identify government records with reasonable specificity and consists of blanket and overbroad queries seeking “any and all.” See Schuler, *supra*. Such a request is a prime example of the type of overly broad and “complex” type of request that was admonished in the New Jersey Appellate Division’s decision in MAG. The vagueness of the Complainant’s request would require the Custodian to conduct research in order ascertain what specific records correspond with the Complainant’s request. Such research is outside of a custodian’s duties under OPRA. See MAG and NJ Builders, *supra*.

Accordingly, the Complainant's request is invalid under OPRA because it fails to reasonably specify identifiable government records and constitutes an overbroad and unclear request that would require the Custodian to conduct research outside the scope of his duties pursuant to 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); and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it fails to reasonably specify identifiable government records and constitutes an overbroad and unclear request that would require the Custodian to conduct research outside the scope of his duties pursuant to 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); and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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May 22, 2012