



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

Daniel Gatson
Complainant

Complaint No. 2011-63

v.

New Jersey State Parole Board
Custodian of Record

At the July 31, 2012 public meeting, the Government Records Council (“Council”) considered the July 24, 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 because the Complainant’s request fails to identify specific government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant’s request is overly broad and is invalid under OPRA 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), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (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 31st 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 6, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Daniel Gatson¹
Complainant**

GRC Complaint No. 2011-63

v.

**New Jersey State Parole Board²
Custodian of Records**

Records Relevant to Complaint: Any and all papers, written or printed book, memo, documents, drawings, map, plan, photographs, microfilm, data processed or image processed documents, information stored or maintained electronically or by sound recording or in a similar device, e-mails, or any copy thereof, that has been made, maintained, kept on file or received in the official course of business, which concern the Complainant or mentions the Complainant's name.

Request Made: December 30, 2010
Response Made: January 11, 2011
Custodian: Anthony Pegues³
GRC Complaint Filed: March 1, 2011⁴

Background

December 30, 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.

January 11, 2011

Custodian's response to the OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the first (1st) business day following receipt of such request.⁵ The Custodian states that access to the requested record is denied because the Complainant's request is overly broad and does not specifically identify a government record. See 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 of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007). The Custodian

¹ No legal representation listed on record.

² Represented by DAG Emily Samuels, on behalf of the NJ Attorney General.

³ The Custodian at the time of the Complainant's OPRA request and Denial of Access complaint was Dina Rogers. Mr. Pegues responded to the GRC's request for the Statement of Information.

⁴ The GRC received the Denial of Access Complaint on said date.

⁵ The Custodian certifies in the Statement of Information that he received the Complainant's OPRA request on January 10, 2011.

requests the Complainant to clarify his request to clearly identify specific government records.⁶

March 1, 2011

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching a letter from the Custodian to the Complainant dated January 11, 2011.⁷

March 8, 2011

Offer of Mediation sent to both parties.

March 16, 2011

E-mail from Custodian’s Counsel to the GRC. Counsel states that the Custodian agrees to mediate this complaint.

March 18, 2011

The Complainant agrees to mediate this complaint.

March 21, 2011

The Complainant’s Denial of Access Complaint is referred to mediation.

July 27, 2011

The Complainant’s Denial of Access Complaint is referred back from mediation.

August 2, 2011

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

August 12, 2011

E-mail from the GRC to Custodian’s Counsel. The GRC confirms a telephone conversation on August 12, 2011 wherein the Counsel requested a five (5) business day extension to complete the SOI. The GRC informs Counsel to provide the SOI by August 19, 2011.

August 19, 2011

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated December 30, 2010
- Letter from the Custodian to the Complainant dated January 11, 2011

The Custodian certifies that since the request was overly broad and did not identify specific records as required a search could not be conducted. The Custodian certifies that the New Jersey State Parole Board retains parole records for two (2) years after an offender is released or passes away. The Custodian also certifies that the records are then maintained in a record retention center for an additional five (5) years in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

⁶ The Complainant does not clarify his OPRA request.

⁷ The Complainant made no legal arguments or factual assertions in support of his Denial of Access Complaint. The Complainant also does not state whether he wishes to participate in the mediation process.

Daniel Gatson v. New Jersey State Parole Board, 2011-63 – Findings and Recommendations of the Executive Director

The Custodian certifies that the New Jersey State Parole Board received the Complainant's request on December 30, 2010 and responded via letter on January 11, 2011 denying said request because it was overly broad and did not adequately identify records sought.⁸ The Custodian certifies that the Complainant is requesting an exhaustive list of records either "relating" to him or containing his name. The Custodian also certifies that the New Jersey State Parole Board files are voluminous records containing a variety of documents relating to the conviction, incarceration and rehabilitation of inmates. The Custodian further certifies that parole files also contain confidential materials.

Counsel states that on December 30, 2010 the Complainant filed his OPRA request for "any and all papers, written or printed book, memo, documents, drawings, map, plan, photographs, microfilm, data processed or image processed documents, information stored or maintained electronically or by sound recording or in a similar device, e-mails, or any copy thereof, that has been made, maintained, kept on file or received in the official course of business, which concern the Complainant or mentions the Complainant's name." Counsel also states that the Custodian responded on January 11, 2011 via letter denying the Complainant's request because it was overly broad and does not identify specific records as required by OPRA. Counsel further states that in the Custodian's letter dated January 11, 2011, she asked the Complainant to clarify his request to identify a government record. Counsel additionally states that the Complainant failed to clarify is OPRA request.

Custodian's Counsel argues that the Complainant's Denial of Access Complaint should be dismissed because the request is overly broad and does not identify specific government records as required by N.J.S.A. 47:1A-1.1. Counsel also argues that where a party's request for public records does not specifically identify the record it seeks, as required by N.J.S.A. 47:1A-5.f., OPRA does not require a government agency to produce said records within seven (7) business days pursuant to N.J.S.A. 47:1A-5.i. Counsel further argues that agencies are only required to disclose "identifiable" governmental records 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 of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007). Counsel additionally argues that the GRC should dismiss the Complainant's Denial of Access Complaint because the Custodian timely responded to the Complainant's OPRA request and properly denied the request because it was overly broad.

Analysis

Whether the Complainant's request is valid under OPRA?

OPRA provides that:

⁸ Although the Custodian certified he received the Complainant's request on December 30, 2010, the Complainant's OPRA request was date stamped received on January 10, 2011.
Daniel Gatson v. New Jersey State Parole Board, 2011-63 – Findings and Recommendations of the Executive Director

“...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 filed an OPRA request for, “any and all papers, written or printed book, memo, documents, drawings, map, plan, photographs, microfilm, data processed or image processed documents, information stored or maintained electronically or by sound recording or in a similar device, e-mails, or any copy thereof, that has been made, maintained, kept on file or received in the official course of business, which concern the Complainant or mentions the Complainant’s name.” The Custodian denied the Complainant access to the requested records via letter stating that it was overly broad and does not adequately identify records sought.

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.*

In addition, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),⁹ 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."¹⁰

Moreover, 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.

Further, 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

⁹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹⁰ As stated in Bent, *supra*.

operations than the agency's need to...generate new records..." Accordingly, the test under MAG then, is whether a requested record is a *specifically identifiable* government record.

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)."

In the instant complaint, the Complainant's request mirrored the definition of a government record in N.J.S.A. 47:1A-1.1 and sought every record in the Custodian's possession which concerns the Complainant or mentions the Complainant's name. The Complainant's request therefore failed to specifically identify a government record sought. The Complainant's OPRA request would have the Custodian not only search, but research, every single government record in the Custodian's possession to determine if said record relates to the Complainant or mentions his name. Thus, the Complainant's request is invalid under OPRA.

Therefore, because the Complainant's request fails to identify specific government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant's request is overly broad and is invalid under OPRA 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), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (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 because the Complainant's request fails to identify specific government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant's request is overly broad and is invalid under OPRA 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), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Prepared By: Harlynn A. Lack, Esq.
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

July 24, 2012