



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

August 28, 2012 Government Records Council Meeting

Golda D. Harris
Complainant

Complaint No. 2011-66

v.

New Jersey Department of Corrections
Custodian of Record

At the August 28, 2012 public meeting, the Government Records Council (“Council”) considered the August 21, 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 specify an identifiable government record sought 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). While the Council notes that the privacy interests of the affected individuals may be implicated if the requested addresses were released, the invalidity of the Complainant’s request precludes the need for further analysis.

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 28th Day of August, 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 30, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 28, 2012 Council Meeting**

**Golda D. Harris¹
Complainant**

GRC Complaint No. 2011-66

v.

**New Jersey Department of Corrections²
Custodian of Records**

Records Relevant to Complaint: Copies of the following:

1. The home address of New Jersey Department of Correction (“NJDOC”) staff member, LeLeetha Holland
2. The home address of NJDOC staff member, Sergeant Ptaszeski
3. The home address of NJDOC staff member, Officer McCrea/Allen
4. The home address of NJDOC staff member, Officer Stove
5. The home address of NJDOC staff member, Officer Brown

Request Made: September 15, 2010

Response Made: October 25, 2010

Custodian: John Falvey³

GRC Complaint Filed: March 10, 2011⁴

Background

September 15, 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. The states that she needs the addresses for complaints for assault, threats, and harassment.

October 25, 2010

Custodian’s response to the OPRA request. The Custodian responds in writing via letter to the Complainant’s OPRA request on the same business day on which such request was received.⁵ The Custodian states that the requested records are not subject to disclosure under OPRA pursuant to N.J.S.A. 47:1A-1 which provides that a public

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Custodian at the time of the Complainant’s OPRA request was Michelle Hammel. The Custodian at the time of the Statement of Information was Deirdre Fedkenheuer.

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

⁵ The Custodian certifies in the SOI that she received the Complainant’s OPRA request on October 25, 2010.

agency has an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy.

The Custodian further states that personnel records of an individual shall not be considered and cannot be made available for public access except in a case where an individual's name, title, position, salary, payroll record, length of service, date of separation and reason therefore, and amount of pension is requested. N.J.S.A. 47:1A-10.

May 10, 2011

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

- Complainant's OPRA request dated September 15, 2010
- Letter from the Custodian to the Complainant dated October 25, 2010⁶

The Complainant states that she was denied access to the requested records because the Custodian was safeguarding the citizens' personal information pursuant to a public agency's obligation to uphold a citizen's reasonable expectation of privacy. The Complainant contends that there is no expectation of privacy when public agents are acting under the color of law as employees and are being sought in a court of law. The Complainant asserts that she needs the home addresses of the NJDOC staff to file civil and criminal charges.

The Complainant agrees to mediate this complaint.

March 10, 2011

Offer of Mediation sent to the Custodian.

March 11, 2011

The Custodian declines to mediate this complaint.

March 15, 2011

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

March 21, 2011

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated September 15, 2010
- Letter from the Custodian to the Complainant dated October 25, 2010⁷

The Custodian certifies that a search for records involved reviewing NJDOC human resource department records which contained the address of personnel. The

⁶ The Complainant submitted additional documentation that is not relevant to the adjudication of this complaint.

⁷ The Custodian submitted additional documentation that is not relevant to the adjudication of this complaint.

Custodian certifies that the responsive records must be maintained for three (3) years following the termination of the applicable employee.

The Custodian contends that the requested records are not subject to disclosure under OPRA pursuant to N.J.S.A. 47:1A-1, which provides that public agencies have an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy. The Custodian argues that there has been no unlawful denial of access.

In addition, the Custodian maintains that access to the human resource department records was lawfully denied because OPRA provides that personnel records of an individual shall not be considered and cannot be made available for public access except in a case where an individual's name, title, position, salary, payroll record, length of service, date of separation and reason therefore, and amount of pension is requested. N.J.S.A. 47:1A-10.

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.

Moreover, OPRA provides that:

"Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5.e.

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.

In the instant matter, the Complainant requested:

1. The home address of New Jersey Department of Correction (“NJDOC”) staff member, LeLeetha Holland;
2. The home address of NJDOC staff member, Sergeant Ptaszeski;
3. The home address of NJDOC staff member, Officer McCrea/Allen;
4. The home address of NJDOC staff member, Officer Stove;
5. The home address of NJDOC staff member, Officer Brown.

Such a request merely seeks information and fails to request a specifically identifiable government record.

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),⁸ 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

⁸ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.”⁹

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.

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...” Accordingly, 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 does not seek a specifically identifiable record. Instead, the Complainant merely requests the address information of NJDOC employees. Such a request fails to identify a specific government record sought with reasonable specificity. Accordingly, the Complainant’s request is invalid under OPRA.

Therefore, the Complainant’s request is invalid under OPRA because it fails to specify an identifiable government record sought 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). While the Council notes that the privacy interests of the affected individuals may be implicated if the requested addresses were released, the invalidity of the Complainant’s request precludes the need for further analysis.

⁹ As stated in Bent, *supra*.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it fails to specify an identifiable government record sought 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). While the Council notes that the privacy interests of the affected individuals may be implicated if the requested addresses were released, the invalidity of the Complainant's request precludes the need for further analysis.

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

August 21, 2012