



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

July 28, 2015 Government Records Council Meeting

Agustin Garcia
Complainant

Complaint No. 2014-382

v.

NJ Department of Corrections
Custodian of Record

At the July 28, 2015 public meeting, the Government Records Council (“Council”) considered the July 21, 2015 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:

1. The Custodian’s response, concerning items 1-3 of the Complainant’s OPRA request, was timely sent on October 10, 2014, and the appropriately responsive record was ultimately disclosed on October 29, 2014.
2. Because the remainder of the Complainant’s request seeks information rather than specifically identifiable government records, the request is invalid pursuant to MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Lopez vs. N.J. Dep’t of Corrections, GRC Complaint No. 2008-250 (November 2009). The Custodian has therefore lawfully denied access. 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 28th Day of July, 2015

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 30, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 28, 2015 Council Meeting**

**Agustin Garcia¹
Complainant**

GRC Complaint No. 2014-382

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Copies of:

- 1) NJ Department of Correction's ("NJDOC") Medical Service Provider's and or Contractor's Directory specifying: (1) home office and/or "legal process service" addresses (2) New Jersey address (3) telephone number (4) Chief Executive Officer ("CEO") (5) contact person (6) other...
- 2) Copy of Directory of NJDOC's Medical Service Providers and/or Contractor's "legal process service" addresses
- 3) Copy of Medical Service Provider Directory of person assigned to provide medical service to inmates presently under the care and custody of NJDOC
- 4) The "legal process service address" for the following named individuals and entities:
 - a. Despina Terris, M.D., Oncologist at Saint Francis Medical Center Radiology Clinic
 - b. Dennis Nugent, M.D., Urologist-Surgeon at Saint Francis Medical Center
 - c. Correctional Medical Service, Inc. (CMS)
 - d. Charles Warren, former Administrator at New Jersey State Prison
 - e. Ralph Woodward, M.D., Chief Physician at New Jersey Department of Corrections
 - f. New Jersey Department of Public Safety
 - g. New Jersey State Prison

Custodian of Record: John Falvey

Request Received by Custodian: October 9, 2014

Response Made by Custodian: October 10, 2014; October 29, 2014

GRC Complaint Received: November 17, 2014

¹ No legal representation listed on record.

² No legal representation listed on record.

Background³

Request and Response:

On September 25, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 10, 2014, the Custodian responded in writing, granting the request in part and denying it in part. With respect to items 1, 2, and 3 of the request, the Custodian noted that he had been provided with 17 pages of medical personnel directories containing addresses and phone numbers. While those records could be provided, unlisted phone numbers and email addresses would be redacted pursuant to case law. Additionally, the Custodian noted that OPRA only requires production of specifically-requested documents, not answers to requests for information, nor does it require the creation of any document. The Custodian further argued that a request is invalid where it requires a custodian to conduct research and to correlate data from various records, pursuant to MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). In addition, the Custodian cited to MAG, noting that “OPRA is not intended as a research tool litigants may use to force government officials to identify and siphon useful information...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.” Id. at 549. The Custodian informed the Complainant that the directory provided did not contain all of the information sought in the request. With respect to item 4, the Custodian denied the request as invalid pursuant to MAG, as it constituted a request for information and not an identifiable government record.

With respect to the documents he could disclose, the Custodian informed the Complainant that the documents were available and would be provided following the payment of an \$0.85 fee. On October 29, 2014, the Custodian wrote to the Complainant to confirm that payment had been received and to provide the requested records.

Denial of Access Complaint:

On November 13, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he received only a partial response to his request, consisting of a directory which provided none of the “legal process” addresses requested.

Statement of Information:

On December 1, 2014, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that he received the Complainant’s OPRA request on October 9, 2014. The Custodian certified that his search included contacting the NJDOC’s Health Services Unit, which provided him with a 17-page directory of medical services providers and contractors, including addresses, phone numbers, and assignment areas. The Custodian noted that this is the directory maintained by the Health Services Unit. The Custodian certified that he responded in writing on

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

October 10, 2014, noting that with respect to items 1-3 of the request, the Complainant asked for specific information included in the directory. The Custodian argued that pursuant to MAG, an agency is not required to research data to craft a record meeting the requestor's needs and that OPRA only requires the release of identifiable government records not otherwise exempt. The Custodian certified that the directory requested in the instant matter was provided to the Complainant, and the "legal process service addresses" of specified individuals, as requested by the Complainant, would require the agency to research that information and either add it to the directory or create a new record to respond to the request. The Custodian argued that neither option is required under OPRA and that a request for addresses has been found to be an invalid request for information pursuant to Lopez vs. NJ Dep't of Corrections, GRC Complaint No. 2008-250 (November 2009 and Harris v. NJ Dep't of Corrections, GRC Complaint No. 2011-66 (August 2012).

The Custodian further certified that item 4 of the Complainant's request was improper pursuant to MAG, as he asked for addresses and not identifiable government records, pursuant to Lopez, GRC 2008-250, and Harris, GRC 2011-66. The Custodian certified that he responded with the requested documents on October 29, 2014.

Analysis

Unlawful Denial of Access as to Items 1, 2, 3

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.

With respect to items 1, 2, and 3 of the request, the Custodian certified that he conducted a search for the records, which consisted of contacting the NJDOC's Health Services Unit, which provided him with a 17-page directory of medical services providers and contractors, including addresses, phone numbers, and assignment areas. The Custodian stated that this document is maintained by the Health Services Unit in this form. He argued that OPRA only requires production of specifically requested records, not information, and does not require the creation of any document in order to respond. The Custodian further argued that a request is invalid where it requires a custodian to conduct research and correlate data from various records, pursuant to MAG.

Here, the Custodian certified that he responded in writing on October 10, 2014, informing the Complainant as to the directory pages, which may have contained the specific information sought. The Custodian certified that a copy of the directory was ultimately provided to the Complainant on October 29, 2014.

The Custodian's response with respect to items 1-3 of the Complainant's OPRA request was sent on October 10, 2014; and the responsive record was ultimately disclosed on October 29, 2014. Therefore, the Custodian provided the existing responsive records to the Complainant, concerning items 1-3 of the request, on that date.

Validity of Request as to Item 4

The New Jersey Appellate Division has held that:

While 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.*

MAG, 375 N.J. Super. at 546 (emphasis added).

The Court reasoned that:

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 (emphasis added).

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.” Id. at 549 (emphasis added). Bent, 381 N.J. Super. at 37;⁴ N.J. Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In Lopez, GRC 2008-250, the complainant’s OPRA request sought the current work address and any alternate address for a physician who previously worked at a particular prison. In that instance, the custodian responded to the complainant, advising him that OPRA only requires a custodian to produce records in response to a request for a specific government record and does not require a custodian to conduct research and correlate data from various records. The Council held that because the complainant’s request sought information rather than a specific identifiable government record, the request was invalid pursuant to MAG.

In the instant matter, item 4 of the Complainant’s request sought current addresses for the above-named individuals and entities. Although the Complainant did name the individuals and

⁴ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

entities whose addresses he sought in item 4, he did not identify any specific government record. The Council's decision in Lopez, GRC 2008-250, is applicable here because the request at issue in the instant matter is similar to the one in Lopez.

Therefore, because the Complainant's request seeks information rather than a specifically identifiable government record, the request is invalid pursuant to MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Lopez, GRC 2008-250. The Custodian has thus lawfully denied access to Complainant's request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's response, concerning items 1-3 of the Complainant's OPRA request, was timely sent on October 10, 2014, and the appropriately responsive record was ultimately disclosed on October 29, 2014.
2. Because the remainder of the Complainant's request seeks information rather than specifically identifiable government records, the request is invalid pursuant to MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App Div. 2005); N.J. Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Lopez vs. N.J. Dep't of Corrections, GRC Complaint No. 2008-250 (November 2009). The Custodian has therefore lawfully denied access. N.J.S.A. 47:1A-6.

Prepared By: Husna Kazmir
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

July 21, 2015