



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**November 12, 2019 Government Records Council Meeting**

Ronald Long  
Complainant

Complaint No. 2018-34

v.

NJ Department of Corrections  
Custodian of Record

At the November 12, 2019 public meeting, the Government Records Council (“Council”) considered the October 30, 2019 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 portion of the Complainant’s request seeking memoranda regarding minimum custody status is invalid because it failed to include senders and/or recipients, as well as a date or range of dates. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. v. N.J. 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); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010); Inzelbuch, Esq. (O.B.O. Ctr. for Educ.) v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2015-68 (September 2016). Thus, the Custodian lawfully denied access to this portion of the Complainant’s request. N.J.S.A. 47:1A-6.
2. The Custodian did not unlawfully deny access to the records responsive to the portion of the Complainant’s OPRA request seeking “policies.” Specifically, the Custodian was under no obligation to disclose the policy deemed responsive until the Complainant remitted payment. N.J.S.A. 47:1A-5(a); N.J.S.A. 47:1A-5(b). See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006) (citing Santos v. N.J. State Parole Board, GRC Complaint No. 2004-74 (August 2004), and Cuba v. Northern State Prison, GRC Complaint No. 2004-146 (February 2005)).

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 12<sup>th</sup> Day of November 2019

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: November 15, 2019**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 12, 2019 Council Meeting**

**Ronald Long<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-34**

v.

**N.J. Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via U.S. mail of “[a]ll memoranda and policies regarding denial of full minimum [c]ustody status to inmates convicted of murder who were sentenced to 30 years to life.”

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** February 13, 2018  
**Response Made by Custodian:** February 13, 2018  
**GRC Complaint Received:** February 28, 2018

**Background<sup>3</sup>**

**Request and Response:**

On January 31, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 13, 2018, the Custodian responded in writing advising that the Complainant’s OPRA request was denied in part and granted in part. The Custodian stated that the portion of the Complainant’s OPRA seeking “all memoranda” was invalid. 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). The Custodian stated that in response to the portion of the Complainant’s OPRA request seeking “policies,” he was granting access to a copy of N.J.A.C. 10A:9 “Classification Process” (44 pages) upon payment of \$2.20.

**Denial of Access Complaint:**

On February 28, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian unlawfully

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

<sup>2</sup> Represented by Deputy Attorney General Erica R. Heyer.

<sup>3</sup> 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.

denied access to his OPRA request. The Complainant provided no additional against the Custodian's response.

Statement of Information:

On April 2, 2018, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on February 13, 2018. The Custodian certified that he responded in writing on the same day denying the request in part and granting access in part.

The Custodian contended that the portion of the Complainant's OPRA request seeking access to "all memoranda" was invalid. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37. The Custodian contended that he his denial was consistent with prior Council decisions. Citing Reda v. Twp. of West Milford, GRC Complaint No. 2002-58 (January 2003); Pizar v. Twp. of Millburn, GRC Complaint No. 2006-196 (July 2008) (holding that a request seeking all "correspondence" concerning a certain subject was invalid).

The Custodian further averred that he offered the Complainant a record responsive to the portion of the OPRA request seeking "policies" pending payment of applicable copying costs. The Custodian certified that the Complainant did not submit the proper "Payment Notification and Authorization Form," nor did he tender payment in another way. The Custodian thus affirmed that he did not disclose the record due to the Complainant's failure to remit the applicable copy cost.

Analysis

Validity of Request

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. (emphasis added). Bent, 381 N.J. Super. at 37;<sup>4</sup> N.J. Builders Assoc. v. N.J. 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).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See e.g. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See e.g. Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

Regarding requests for e-mails and correspondence, the GRC has established specific criteria deemed necessary under OPRA to request an e-mail communication. See Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid, such requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See Elcavage, GRC 2009-07; Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). Further, the Council has previously determined that a request failing to contain all appropriate criteria set forth in Elcavage, GRC 2009-07, was invalid. See e.g. Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010) (invalid request omitting the “subject and/or content”); Inzelbuch, Esq. (O.B.O. Ctr. for Educ.) v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2015-68 (September 2016) (invalid request omitting “date or range of dates”).

Here, a portion of the Complainant’s OPRA request sought “all memoranda . . . regarding denial of full minimum [c]ustody status to inmates convicted of murder who were sentenced to 30 years to life.” The request identified the subject/content; however, it did not contain senders/recipients or a date or date ranges. The Custodian responded denying this portion of the request as invalid, and later argued this position in the SOI. The Custodian’s position that the request was invalid is supported by a plain reading of same. Specifically, the Complainant did not include any senders and/or recipients or a range of dates in request; thus, the Custodian’s search for any correspondence would necessarily be open-ended. Elcavage, GRC 2009-7; Armenti, GRC 2009-154. The GRC is thus satisfied that this portion of the request is invalid, as it clearly omitted required criteria as provided for in precedential case law.

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<sup>4</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

Accordingly, the portion of the Complainant's request seeking memoranda regarding minimum custody status is invalid because it failed to include senders and/or recipients, as well as a date or range of dates. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37, N.J. Builders Assoc., 390 N.J. Super. at 180; Schuler, GRC 2007-151; Elcavage, GRC 2009-07; Armenti, GRC 2009-154. See also Verry, GRC 2009-124; Inzelbuch, GRC 2015-68. Thus, the Custodian lawfully denied access to this portion of the Complainant's request. N.J.S.A. 47:1A-6.

### **Unlawful Denial of Access**

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.

OPRA provides that "[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law . . . the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger." N.J.S.A. 47:1A-5(b).

The Council has repeatedly determined that a custodian is not required to release requested records until payment for the duplication cost of such records is received. In Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), the Council held that:

As the Custodian is awaiting payment for the duplication cost of the requested records, she is not required to release said records until payment is received pursuant to N.J.S.A. 47:1A-5(b), Santos v. N.J. State Parole Board, GRC Case No. 2004-74 (August 2004), and Cuba v. Northern State Prison, GRC Case No. 2004-146 (February 2005).

[Id.]

In the matter before the Council, the Custodian granted access to a copy of N.J.A.C. 10A:9, a forty-four (44) page record deemed responsive to the portion of subject OPRA request seeking "policies." The Custodian advised the Complainant that he would disclose the responsive record upon payment of \$2.20 in copy costs. This complaint followed and the Custodian certified in the SOI that the Complainant failed to pay for the responsive record; thus, he did not disclose it.

The Council's decision in Paff, GRC 2006-54 and its progeny support that the Custodian's actions were appropriate here. Specifically, he was not required to disclose the record until the Complainant remitted proper payment. As of the filing of the SOI, the Complainant had not yet paid for the responsive record. Thus, in accordance with Paff, the Custodian was not obligated to disclose the record absent payment of the appropriate copy costs.

Therefore, the Custodian did not unlawfully deny access to the records responsive to the portion of the Complainant's OPRA request seeking "policies." Specifically, the Custodian was

under no obligation to disclose the policy deemed responsive until the Complainant remitted payment. N.J.S.A. 47:1A-5(a); N.J.S.A. 47:1A-5(b). See Paff, GRC 2006-54 (citing Santos, GRC 2004-74 and Cuba, GRC 2004-146).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The portion of the Complainant's request seeking memoranda regarding minimum custody status is invalid because it failed to include senders and/or recipients, as well as a date or range of dates. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. v. N.J. 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); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010); Inzelbuch, Esq. (O.B.O. Ctr. for Educ.) v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2015-68 (September 2016). Thus, the Custodian lawfully denied access to this portion of the Complainant's request. N.J.S.A. 47:1A-6.
  
2. The Custodian did not unlawfully deny access to the records responsive to the portion of the Complainant's OPRA request seeking "policies." Specifically, the Custodian was under no obligation to disclose the policy deemed responsive until the Complainant remitted payment. N.J.S.A. 47:1A-5(a); N.J.S.A. 47:1A-5(b). See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006) (citing Santos v. N.J. State Parole Board, GRC Complaint No. 2004-74 (August 2004), and Cuba v. Northern State Prison, GRC Complaint No. 2004-146 (February 2005)).

Prepared By: Frank F. Caruso  
Executive Director

October 30, 2019