



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

January 30, 2024 Government Records Council Meeting

Tineen Howard
Complainant

v.

NJ State Police
Custodian of Record

Complaint No. 2022-358

At the January 30, 2024 public meeting, the Government Records Council (“Council”) considered the January 23, 2024 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 prevailing case law. Specifically, the Complainant’s request sought generic “documents” about officers that attended a hearing at the New Jersey Department of Transportation offices on February 22, 2018 required research and amounted to an “open-ended demand . . .” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015). Further, the Complainant’s request sought information and not an identifiable “government record.” LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Thus, the Custodian lawfully denied access to the Complainant’s request because it was invalid. 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 30th Day of January 2024

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: February 5, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 30, 2024 Council Meeting**

**Tineen Howard¹
Complainant**

GRC Complaint No. 2022-358

v.

**N.J. State Police²
Custodial Agency**

Records Relevant to Complaint: Copies of “[t]he names of the officers” assigned to a February 22, 2018 hearing at the New Jersey Department of Transportation (“DOT”) “Main Office Building” in Ewing, NJ, “the chain of command for those officers,” and “documentation” from DOT “or any other sources that substantiated the need for the Officers at this hearing.”

Custodian of Record: Lt. Kristina Pados
Request Received by Custodian: May 5, 2022
Response Made by Custodian: May 16, 2022
GRC Complaint Received: July 25, 2022

Background³

Request and Response:

On May 5, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 16, 2022, the Custodian responded in writing stating that an extension of time to respond through June 3, 2022 would be required. On June 3, 2022, the Custodian responded in writing again extending the response time frame through June 23, 2022. On June 23, 2022, the Complainant e-mailed the Custodian seeking a status update on the subject OPRA request. On the same day, the Custodian responded in writing extending the response time frame to July 12, 2022. The Complainant responded asking if there was “any particular reason for the delay.”

On July 12, 2022, the Custodian responded in writing denying the subject OPRA request as invalid because it sought information. The Custodian stated that OPRA does not require a custodian to analyze and evaluate information to respond to an OPRA request. Burke v. Brandes, 429 N.J. Super. 169, 175 (App. Div. 2012). The Custodian further noted that OPRA does not

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Patrick Jhoo.

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.

require a custodian to conduct research. Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 237 (App. Div. 2015). The Custodian finally stated that she reserved the right to assert additional denial bases not raised in her response.

Denial of Access Complaint:

On July 25, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian unlawfully denied his OPRA request.

Statement of Information:⁴

On March 8, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 5, 2022. The Custodian certified that following multiple extensions, she responded in writing on July 12, 2022 denying the subject OPRA request as invalid because it sought information.

The Custodian argued that well-settled case law exists to support her position that the Complainant’s request was invalid. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Burke, 429 N.J. Super. 169. The Custodian argued that the Complainant’s request required her to essentially determine the identity of a “white male” and “black female”⁵ officer present at an unspecified DOT building on February 22, 2018. The Custodian asserted that the Complainant did not seek an identifiable record, failed to provide a specific address for the building in question, and did not include start and end times of the hearing. The Custodian argued that lacking this information, she would have been required to “analyze and collate information” resulting in the type of “subjective analysis” rejected by the New Jersey Supreme Court in Paff v. Twp. of Galloway, 229 N.J. 340, 355 (2017).

The Custodian contended that the remaining portion of the request seeking “chain of command” information is especially deficient. The Custodian argued that even assuming NJSP could have identified the officers present, “chain of command” seeks information and not a specific government record. The Custodian asserted that NJSP may be able to recreate a past chain of command but would be required to cross-reference various records and collate data to reconstruct same. The Custodian thus argued that her denial of access was lawful, and this complaint should be dismissed.

Analysis

Validity of Request

The New Jersey Appellate Division has held that:

⁴ On August 10, 2022, this complaint was referred to mediation. On January 31, 2023, this complaint was referred back to the GRC for adjudication.

⁵ The Complainant identified the officers as a “white male” and “black female” in his OPRA request.

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 v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁶ N.J. Builders Ass’n 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 generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The court noted that

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

plaintiffs failed to include additional identifiers such as a case name or docket number. See also Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in [MAG], [Bent] and the Council’s decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (February 2008).

[Id. See also Schulz v. NJ State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking “all documents” was overly broad and thus invalid).]

Additionally, in Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court held that plaintiff’s request was invalid because it required research. In reaching this conclusion, the court reasoned that:

The custodian in this case would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 237. See also Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. Dec. 10, 2019) (affirming Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Serv., GRC Complaint No. 2016-262 (August 2018)).]

Also, in LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant's request was a request for information, holding that ". . . because request Item No. 2 of the Complainant's June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG] . . ." Id. at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

However, there are instances in OPRA specifically identifies pieces of information as a "government record" under OPRA. By way of example, in Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010), the Council determined that "name, title, position, salary, payroll record and length of service" was information specifically considered to be a "government record" under N.J.S.A. 47:1A-10. The Council thus held that the complainant's OPRA request for "[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009" was a valid request pursuant to OPRA. Id. at 5.

Here, the Complainant's request item is best identified in three (3) parts: 1) "names of officers assigned to" a February 22, 2018 hearing; 2) "chain of command for those officers;" and 3) "documentation" from [DOT] or any other source that substantiated the need" for the officers to attend the hearing. The Custodian responded denying the request as invalid because it sought information and required research. This complaint followed: in the SOI the Custodian argued that the request was clearly invalid and set forth the process necessary to attempt to locate records.

Upon review, request part 1 seeking "names of the officers assigned to" a February 22, 2018 hearing is, on the surface, valid based on Danis, GRC 2009-156, *et seq.* However, this request part obviously requires substantial research to fulfill, thus rendering it nonetheless invalid. Specifically, the Custodian would be required to attempt to locate personnel schedule records from more than five (5) years prior. The Custodian would then have to identify those officers on shift on February 22, 2018 and whether any were assigned to DOT. The Custodian would then have to determine whether those assigned met the identified demographics and were present at a hearing held at DOT "Main Office Building" without the benefit of knowing the time frame within which same occurred. The required process obviously amounts to research not contemplated under OPRA pursuant to MAG.

Request part 2 contains similar hallmarks of an invalid request. Even if the Custodian had the ability to identify the officers at the center of the OPRA request, producing a "chain of command" requires research to locate documents that may indicate such. Further, the term in and of itself supports the Custodian's assertion that the part seeks information and not an identifiable "government record." LaMantia, GRC 2008-140. Specifically, the request part requires the Custodian to compile a list of individuals to whom the unknown officers report. Further, the Complainant included no limitation identifying how far up or down the chain the Custodian was required to go. Ultimately, the request part seeks information requiring the Custodian to conduct research of a nondescript universe of records. Request part 3 fares no better under this analysis, as the Complainant sought generic "documentation": New Jersey's courts and the Council have routinely held that such a request is invalid because it fails to identify a specific "government

record” and requires research. MAG, 375 N.J. Super. at 546; Lagerkvist, 443 N.J. Super. at 237; Feiler-Jampel, GRC 2007-190.

Accordingly, the Complainant’s request is invalid under prevailing case law. Specifically, the Complainant’s request generic “documents” about officers that attended a hearing at the DOT offices on February 22, 2018 required research and amounted to an “open-ended demand . . .” MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Lagerkvist, 443 N.J. Super. at 236-37; Feiler-Jampel, GRC 2007-190. Further, the Complainant’s request sought information and not an identifiable “government record.” LaMantia, GRC 2008-140. Thus, the Custodian lawfully denied access to the Complainant’s request because it was invalid. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s request is invalid under prevailing case law. Specifically, the Complainant’s request sought generic “documents” about officers that attended a hearing at the New Jersey Department of Transportation offices on February 22, 2018 required research and amounted to an “open-ended demand . . .” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015). Further, the Complainant’s request sought information and not an identifiable “government record.” LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Thus, the Custodian lawfully denied access to the Complainant’s request because it was invalid. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

January 23, 2024