



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

August 27, 2024 Government Records Council Meeting

Luis S. Manso
Complainant

v.

County of Essex
Custodian of Record

Complaint No. 2022-128

At the August 27, 2024, public meeting, the Government Records Council (“Council”) considered the August 20, 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:

1. The part of the Complainant’s OPRA request seeking user agreements between inmates and Global Tel Link are not subject to access under OPRA because they are exempt under N.J.A.C. 10A:31-6.10(a)(12), applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). See Lugo v. N.J. Dep’t of Corr., GRC Complaint No. 2017-8 (March 2018). Thus, the Custodian lawfully denied access to these portions of the OPRA request. N.J.S.A. 47:1A-6.
2. Because contracts between Global Tel Link and the Essex County Correctional Facility are generalized contracts for service provision to the Essex County Correctional Facility, the Custodian has unlawfully denied access to the part of the Complainant’s OPRA request seeking such contracts. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose said records. Further, should the Custodian determine that no responsive contracts exist, she must certify to that fact.
3. **The Custodian shall comply with conclusion No. 2 above within twenty (20) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**
4. The part of the Complainant’s OPRA request seeking “types of GTL media” is invalid because it is seeking information, not records. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Thus, the Custodian lawfully denied this portion of the request. 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 27th Day of August 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: August 29, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 27, 2024 Council Meeting**

**Luis S. Manso¹
Complainant**

GRC Complaint No. 2022-128

v.

**County of Essex²
Custodial Agency**

Records Relevant to Complaint: Copies via mail of “any contracts that are currently in effect between Global Tel Link ([“]GTL[”]) and the Essex County Correctional Facility. I also ask for any GTL user agreements that are currently in effect between individual prisoner customers and GTL. Lastly, please include the types of GTL media that are currently approved by the Essex County Correctional Facility for purchase and download onto inmate tablets (e.g. music, e books, video rentals, telephone etc.).[.]”

Custodian of Record: Olivia Schumann, Esq.

Request Received by Custodian: March 2, 2022

Responses Made by Custodian: March 2, 2022 and March 23, 2022

GRC Complaint Received: April 13, 2022

Background³

Request and Responses:

On March 2, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 2, 2022, the Custodian responded in writing advising the Complainant that an extension of time to respond until March 23, 2022, would be required due to lingering disruptions from the COVID-19 public health emergency.⁴ On March 23, 2022, the Custodian responded in writing denying the Complainant’s

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

⁴ The GRC notes that on June 4, 2021, Governor Murphy signed into law P.L. 2021, c.103, which provides in relevant part that “[w]hile the state of emergency declared in Executive Order No. 103 of 2020 shall remain in effect, the deadlines in N.J.S.A. 47:1A-5(i) shall apply to any request made under [OPRA] after the effective date of this act, with the exception of requests made for records related to the COVID-19 response[.]” Id. Thus, N.J.S.A. 47:1A-5(i)(2) no longer applied and normal statutory response time frames were in effect at the time of the Custodian’s response. However, notwithstanding the elimination of N.J.S.A. 47:1A-5(i)(2), the GRC concludes that a fifteen (15) business day extension of time, as taken here, is reasonable given the voluminous nature of the request.

request in its entirety pursuant to N.J.A.C. 10A:31-6.10(a)(12), applicable to OPRA by operation of N.J.S.A. 47:1A-9(a).

Denial of Access Complaint:

On April 13, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on March 2, 2022, he submitted his OPRA request to the Custodian and she responded on March 23, 2022, denying his request.

The Complainant stated that the Custodian erred in denying his request based upon N.J.A.C. 10A:31-6.10(a)(12). The Complainant stated that he did not request any person’s personal records and/or content related to inmate phone, e-mail or visit information. The Complainant stated that he requested a copy of the current contract in effect between GTL and the Essex County Correctional Facility (“ECCF”). The Complainant stated that he also requested types of GTL media that are currently approved by ECCF for purchase and download. The Complainant asserted that the user agreements between GTL and individual inmates are boilerplate documents. The Complainant argued that he did not request anything of a “personal matter.”

Statement of Information:

On April 26, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that eighty-one (81) pages of records are responsive to the request. The Custodian listed the responsive records as:

- A proposed contract between GTL and Essex County Department of Corrections (“ECDC”).
- GTL’s terms of use for ECCF containing detailed terms for use of inmate phone and tablet services.
- GTL free, standard, and promotional inmate profile applications.

The Custodian certified that all of the above-listed records are exempt from access under N.J.A.C. 10A:31-6.10(a)(12) as records and/or content related to inmate phone, e-mail or visit information. The Custodian further certified that the regulation applies to OPRA via operation of N.J.S.A. 47:1A-9(a). The Custodian certified that the records responsive to the request include the proposed contract with GTL and its related terms of use and applications available through GTL, all of which directly relate to inmate phone information. The Custodian certified that the responsive records detail the inmate phone system currently in use at ECCF and the applications available through use of the system and their functionality. To further establish the nexus between GTL and inmate phone information, the Custodian attached to the SOI a certification from Officer Philip Flor of the ECDC, who certified that “Global Tel Link is presently the vendor for inmate phone and tablet services at Essex County Correctional Facility.”

The Custodian asserts that, contrary to the Complainant’s Denial of Access Complaint argument, N.J.A.C. 10A:31-6.10(a)(12) is not limited to personal information, but rather applies broadly to records and/or content related to inmate phone information. The Custodian contended

that the responsive records clearly relate to inmate phone services qualifying as exempt under the cited regulation.

The Custodian certified that the portion of the Complainant's request seeking "types of GTL media that are currently approved by the [ECCF] for purchase and download onto inmate tablets" is invalid under OPRA because it fails to specifically identify any government record, and instead improperly seeks information. The Custodian cited MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005) in support of her assertion.

Analysis

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 further provides that:

The provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA] . . . any other statute; resolution of either or both Houses of the Legislature; *regulation promulgated under the authority of any statute* or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

The New Jersey Department of Corrections regulation governing adult county correctional facilities and facilities or units housing county inmates provides that:

(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated under the authority of any statute or Executive Order of the Governor, resolution of both Houses of the Legislature, Executive Order of the Governor, Rules of Court or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.: . . . (12) Records and/or content related to inmate phone, e-mail, or visit information[.]

[N.J.A.C. 10A:31-6.10(a)(12).]

Contracts between GTL and the ECCF and user agreements between GTL and inmate customers.

The Custodian denied access to this part of the Complainant's request under N.J.A.C. 10A:31-6.10(a)(12) and N.J.S.A. 47:1A-9(a). The Complainant argued that N.J.A.C. 10A:31-6.10(a)(12) does not apply because he is not seeking records of a "personal matter."

The Custodian attached to the SOI Officer Flor's certification, wherein he certified that GTL is the vendor for inmate phone and tablet services. In the SOI, the Custodian certified that the records responsive to the request include the proposed contract with GTL and its related terms of use and applications available through GTL, all of which directly relate to inmate phone information. The Custodian maintained her position that the responsive records are therefore exempt from disclosure under N.J.A.C. 10A:31-6.10(a)(12).

There is a close relationship between Chapters 22 and 31 in Title 10A of the New Jersey Administrative Code, which governs "Corrections." Chapter 22 sets forth provisions for records in the Department of Corrections ("DOC"), including requests for records under OPRA. Chapter 31 addresses Adult County Correctional Facilities, including in Subchapter 6, records designated as confidential. The provisions of N.J.A.C. 10A:22-2.3(a)(12) and N.J.A.C. 10A:31-6.10(a)(12) are identical.

The GRC examined the legality of a denial under N.J.A.C. 10A:22-2.3(a)(12) in Lugo v. N.J. Dep't of Corr., GRC Complaint No. 2017-8 (March 2018). In Lugo, the complainant alleged that the custodian unlawfully denied him access to phone recordings from the East Jersey State Prison. The Council determined that the custodian's denial was "lawful pursuant to N.J.A.C. 10A:22-2.3(a)(12), which provides in relevant part that '[r]ecords and/or content related to inmate phone . . . information' shall not be considered a government record subject to access under OPRA." Id.

In the instant complaint, the Custodian's reliance on N.J.A.C. 10A:31-6.10(a)(12) to deny access to the user agreements between inmates and GTL is analogous to the custodian's basis for denying access to the phone recordings in Lugo. The user agreements between inmates and GTL, which includes GTL's terms of use for ECCF and GTL inmate profile applications, contains detailed terms for use of inmate phone and tablet services and are "records and/or content *related to* inmate phone . . . information." (Emphasis added.) As such, the Custodian lawfully denied access to said records pursuant to N.J.A.C. 10A:31-6.10(a)(12).⁵

Therefore, the part of the Complainant's OPRA request seeking user agreements between inmates and GTL are not subject to access under OPRA because they are exempt under N.J.A.C. 10A:31-6.10(a)(12), applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). See Lugo, GRC 2017-8. Thus, the Custodian lawfully denied access to this part of the OPRA request. N.J.S.A. 47:1A-6.

However, with respect to contracts between GTL and the ECCF, such contracts are generalized service contracts unrelated to inmate phone, e-mail, or visit information. Such

⁵ Because the Complainant is an inmate in a county correctional facility, N.J.A.C. 10A:31-6.10(a)(12) rather than N.J.A.C. 10A:22-2.3(a)(12) applies; however, the language of subsection (a)(12) is the same.

contracts would not commonly contain information regarding individual inmates; however, to the extent such contracts may contain specific inmate information, such information can be redacted pursuant to N.J.A.C. 10A:31-6.10(a)(12). Further, should the Custodian determine that no responsive contracts exist, she must certify to that fact.

Because contracts between GTL and the ECCF are generalized contracts for service provision to the ECCF, the Custodian has unlawfully denied access to the part of the Complainant's OPRA request seeking such contracts. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose said records.

Types of GTL media approved by the ECCF for purchase and download by inmates.

The Custodian argued in the SOI that this portion of the Complainant's request is invalid under OPRA because it seeks information rather than identifying specific records. The Custodian cited MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005) and N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007) in support of her denial of this portion of the 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. 534, 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, 390 N.J. Super. 166, 180; 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. 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).

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).

Here, the Complainant requested “types of GTL media that are currently approved . . . for purchase and download onto inmate tablets.” The Complainant listed for example “music, [eBooks], video rentals, telephone[,] etc.” The GRC finds that this part of the Complainant’s OPRA request is invalid because it seeks information, not records. The Complainant failed to specifically identify a government record. MAG, 375 N.J. Super. 534; LaMantia, GRC 2008-140.

Accordingly, the part of the Complainant’s OPRA request seeking “types of GTL media” is invalid because it is seeking information, not records. MAG, 375 N.J. Super. 534; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Thus, the Custodian lawfully denied this portion of the request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The part of the Complainant’s OPRA request seeking user agreements between inmates and Global Tel Link are not subject to access under OPRA because they are exempt under N.J.A.C. 10A:31-6.10(a)(12), applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). See Lugo v. N.J. Dep’t of Corr., GRC Complaint No. 2017-8 (March 2018). Thus, the Custodian lawfully denied access to these portions of the OPRA request. N.J.S.A. 47:1A-6.
2. Because contracts between Global Tel Link and the Essex County Correctional Facility are generalized contracts for service provision to the Essex County Correctional Facility, the Custodian has unlawfully denied access to the part of the Complainant’s OPRA request seeking such contracts. N.J.S.A. 47:1A-6. Thus, the Custodian must

⁶ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

locate and disclose said records. Further, should the Custodian determine that no responsive contracts exist, she must certify to that fact.

3. **The Custodian shall comply with conclusion No. 2 above within twenty (20) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**
4. The part of the Complainant's OPRA request seeking "types of GTL media" is invalid because it is seeking information, not records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Thus, the Custodian lawfully denied this portion of the request. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart

August 20, 2024