



**State of New Jersey**  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**JON S. CORZINE**  
Governor

**JOSEPH V. DORIA, JR.**  
Commissioner

**FINAL DECISION**

**June 23, 2009 Government Records Council Meeting**

Antwone Fosque  
Complainant

Complaint No. 2008-185

v.

New Jersey Department of Corrections  
Custodian of Record

At the June 23, 2009 public meeting, the Government Records Council (“Council”) considered the June 16, 2009 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 has lawfully denied access to the requested security threat affiliation form because it is exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1, N.J.S.A. 47:1A-9.a., Executive Order No. 26 (McGreevey 2002) and N.J.A.C. 10A:22-3.2 (a)(27). See Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008).
2. Based on the evidence of record, Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008), and the cited exemptions pursuant to N.J.S.A. 47:1A-9.a. Executive Order No. 21 (McGreevey 2002), Executive Order No. 26 (McGreevey 2002) and N.J.A.C. 10A:22-3.2 (a)(27), the July 12, 2008 inspection of the record responsive to Item No. 1 of the Complainant’s May 29, 2008 OPRA request is a reasonable substitute for copies of the requested records.
3. Because request Item No. 2 of the Complainant’s May 29, 2008 OPRA request seeks information rather than an identifiable government records, the request is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 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 23<sup>rd</sup> Day of June, 2009

Robin Berg Tabakin, Chair  
Government Records Council

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

Kathryn Forsyth  
Government Records Council

**Decision Distribution Date: June 26, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 23, 2009 Council Meeting**

**Antwone Fosque<sup>1</sup>  
Complainant**

**GRC Complaint No. 2008-185**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Copy of a security threat group affiliation form signed by the Complainant in March of 2005.
2. Copy of any comments made by S. Manera or any other official from the Special Investigation Division (“SID”) on December 14, 2006 regarding the Complainant’s status as a part of a security threat group.<sup>3</sup>

**Request Made:** May 29, 2008<sup>4</sup>

**Response Made:** June 6, 2008

**Custodian:** Michelle Hammel

**GRC Complaint Filed:** August 21, 2008<sup>5</sup>

**Background**

**May 29, 2008**

Complainant’s Open Public Records Act (“OPRA”) request.<sup>6</sup> The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**June 6, 2008**

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the fourth (4<sup>th</sup>) business day following receipt of such request.

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

<sup>2</sup> Represented by DAG Ellen Hale, on behalf of the NJ Attorney General.

<sup>3</sup> One (1) other record requested in the Complainant’s May 29, 2008 OPRA request was provided and is not at issue in this complaint.

<sup>4</sup> The Complainant asserts in the Denial of Access Complaint that he submitted a records request to the Department of Corrections in April of 2008; however, the Complainant does not provide said OPRA request as evidence.

<sup>5</sup> The GRC received the Denial of Access Complaint on said date.

<sup>6</sup> The evidence of record shows that the New Jersey Department of Corrections received the first (1<sup>st</sup>) request on June 2, 2008 and the second (2<sup>nd</sup>) on June 3, 2008. Because the Custodian responded within the statutorily mandated seven (7) business days to both requests, the GRC has combined the two (2) requests for clarity.

The Custodian states that access to the record requested in Item No. 1 is denied pursuant to N.J.S.A. 47:1A-1 et seq. and regulations promulgated under the authority of any statute or Executive Order of the Governor. The Custodian states that statements and SID investigations, provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility, shall not be considered a government record. Further, the Custodian states that a report or record relating to an identified individual which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement is exempt from disclosure under OPRA pursuant to Executive Order No. 26 (McGreevey, 2002)(“E.O. No. 26”).<sup>7</sup>

Additionally, the Custodian states that because of the need to prevent the reproduction and alteration of the form requested, access to a copy of the record is denied. The Custodian states security concerns may arise should the record be stolen and altered, possibly placing the Complainant’s or another life at risk. The Custodian states that the Complainant may review the requested form and must contact Chief Charles Muller at the SID to make proper arrangements for inspection.

The Custodian states that request Item No. 2 is invalid under OPRA and cannot be fulfilled. The Custodian states that OPRA only requires a custodian to respond to a request for specific records, not information, and does not require the creation of a record in order to respond. The Custodian states that the Complainant’s request Item No. 2 is clearly for information and is invalid pursuant to MAG Entertainment LLC. v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). The Custodian states that if the Complainant wishes to provide a request for specific records, the Complainant must clearly identify the specific records sought and provide a description.

### **August 21, 2008**

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching a letter from the Custodian to the Complainant dated June 6, 2008.

The Complainant asserts that he submitted an OPRA request to the Department of Corrections (“DOC”) some time in April of 2008. The Complainant asserts that he inspected the record responsive to request Item No. 1 on June 12, 2008, but was denied a copy of the record.<sup>8</sup>

The Complainant agreed to mediate this complaint.

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<sup>7</sup> E.O. No. 26 reaffirms the directive in Executive Order No. 21 (McGreevey, 2002) which provides that “[s]tate departments and agencies have proposed rules exempting certain government records from public disclosure, and these regulations have been published for public comment, but cannot be adopted prior to the effective date of the Open Public Records Act, State agencies are hereby directed to handle all government records requests in a manner consistent with the rules as they have been proposed and published, and the records exempted from disclosure by those proposed rules are exempt from disclosure by this Order.

<sup>8</sup> The Complainant asserts that he did not receive the Custodian’s response until June 13, 2008, so it is unclear whether the Complainant inspected the record as part of the response to his May 29, 2008 OPRA request which is the subject of this complaint.

### **August 26, 2008**

Letter from the Custodian's Counsel to the GRC. Counsel requests an extension of time until September 10, 2008 to submit the Statement of Information.

### **September 10, 2008**

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA request dated May 29, 2008.
- Letter from the Custodian to the Complainant dated June 6, 2008.

The Custodian certifies that her search for the requested records involved contacting the South Woods State Prison, where the Complainant was imprisoned during 2005 and 2006, and requesting that they locate the records responsive to the Complainant's request. The Custodian certifies that she received and reviewed copies of the requested records.

The Custodian certifies that she responded in writing to the Complainant's May 29, 2008 OPRA request on June 6, 2008 stating that access to request Item No. 1 was denied pursuant to N.J.S.A. 47:1A-1 et seq., which provides that informant documents and statements and SID investigations, provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility, shall not be considered a government record. The Custodian states that she also denied access to request Item No. 1 pursuant to E.O. No. 26 and the DOC's proposed OPRA regulations as a report or record relating to an identified individual which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement.

The Custodian contends that she relied on the above authority to deny access to request Item No. 1 based on the possible threat of reproduction or alteration of the requested forms if provided to the Complainant. The Custodian asserts that if the record responsive to request Item No. 1 was stolen and altered, these actions could place the Complainant's life or another life in jeopardy. The Custodian asserts that she advised the Complainant in her June 6, 2008 written response that he could inspect the record, which the Complainant did on June 12, 2008.

The Custodian certifies that she denied access to request Item No. 2 because the Complainant failed to identify a specific government record pursuant to MAG, supra. The Custodian argues that the Complainant's request was for information and not an identifiable government record. The Custodian states that agencies are only required to disclose "identifiable" government records and that a custodian is not required to research or collate information in order to respond to an OPRA request pursuant to MAG, supra.

Moreover, the Custodian asserts that comments made by S. Manera or any other official from the SID would not be subject to disclosure pursuant to N.J.S.A. 47:1A-1.1, because they would be advisory, consultative and deliberative ("ACD") in nature. The Custodian asserts that if S. Manera took notes during the December 14, 2006 meeting

with the Complainant, those notes would be S. Manera’s deliberations and opinions and therefore not subject to OPRA. The Custodian argues that, pursuant to N.J.S.A. 47:1A-9, Executive Order No. 26 (McGreevey 2002)(“E.O. No. 26”) shields documents which contain ACD material from disclosure.

Finally, the Custodian certifies that no records responsive exist to request Item No. 2.

### **September 11, 2008**

E-mail from the GRC to the Custodian’s Counsel. The GRC states that Counsel has submitted the SOI without first allowing the GRC a chance to offer mediation, as is required by OPRA. The GRC requests that Counsel advise by September 17, 2008 whether the Custodian would be interested in mediating this complaint. The GRC states that if Counsel does not respond by the above date, the GRC will proceed accordingly. Finally, the GRC advises Counsel to wait until the GRC offers both parties mediation prior to submitting the SOI.

### **September 11, 2008**

E-mail from the Custodian’s Counsel to the GRC. Counsel states that the Custodian is not interested in mediating this complaint.

## **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.

OPRA further provides:

“[t]he provisions of this act...shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to...*Executive Order* of the Governor.” (Emphasis added.) N.J.S.A. 47:1A-9.a.

Paragraph 4 of Executive Order No. 21 provides in relevant part as follows:

“[i]n light of the fact that State departments and agencies have proposed rules exempting certain government records from public disclosure, and these regulations have been published for public comment, but cannot be adopted prior to the effective date of the Open Public Records Act, State agencies are hereby directed to handle all government records requests in a manner consistent with the rules as they have been proposed and published, and the records exempted from disclosure by those proposed rules are exempt from disclosure by this Order...”

Paragraph 6 of Executive Order No. 26 provides that:

“[t]he remaining provisions of Executive Order No. 21 are hereby continued to the extent that they are not inconsistent with this Executive Order.”

The New Jersey Department of Corrections Proposed Amendments provide in part that:

“...Special Investigations Division investigations, provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility...[are exempt from disclosure]” *N.J.A.C. 10A:22-3.2 (a) (27)*.

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*.

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*.

#### Complainant’s May 29, 2008 OPRA request Item No. 1

The Custodian responded in writing on the fourth (4<sup>th</sup>) business day after receipt of the Complainant’s request denying access to the record responsive to this request item pursuant to *N.J.S.A. 47:1A-1 et seq.*, E.O. No. 26 and the DOC’s proposed OPRA regulations, which exempt the requested record from disclosure provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility. Additionally, the Custodian denied access to

the requested record based on the possible threat of reproduction or alteration which could place the Complainant's life or another life in jeopardy.

The DOC proposed regulations remain in effect pursuant to paragraph 4 of Executive Order No. 21 (McGreevey 2002)("E.O. No. 21") and paragraph 6 of E.O. No. 26.

Paragraph 4 of E.O. No. 21 provides in relevant part as follows:

"In light of the fact that State departments and agencies have proposed rules exempting certain government records from public disclosure, and these regulations have been published for public comment, but cannot be adopted prior to the effective date of the Open Public Records Act, State agencies are hereby directed to handle all government records requests in a manner consistent with the rules as they have been proposed and published, and the records exempted from disclosure by those proposed rules are exempt from disclosure by this Order..."

Paragraph 6 of E.O. No. 26 provides that "[t]he remaining provisions of Executive Order No. 21 are hereby continued to the extent that they are not inconsistent with this Executive Order." Paragraph 4 of E.O. No. 21 was one of its remaining provisions.

Although these Orders were issued over six (6) years ago, no rescinding or modifying order has been issued. Accordingly, they are still in full force and effect. The Superior Court in an unpublished opinion examined the continuing effect of these Orders in 2005. In Newark Morning Ledger Co., Publisher of the Star-Ledger v. Division of the State Police of the New Jersey Department of Law and Public Safety, Law Division – Mercer County, Docket No. MER-L-1090-05 (July 5, 2005), the court stated "[paragraph 6 of Executive Order No. 26] continues to permit a department or agency within State Government (sic) to adopt rules and regulations and to permit the operation of a proposed rule or regulation prior to its final adoption. Therefore...public 'agencies are hereby directed to handle all government records requests in a manner consistent with the rules as they have been proposed and published..." *Id.* at 11.

In that case, the court went on to state that "[i]t appears, from the language of both Executive Orders, that these provisions were added to provide sufficient time for departments and agencies within State government to evaluate their records, propose regulations and withhold certain documents from public inspection pending the adoption of the proposed rules. While this process may be at variance with the normal regulatory process, one can only conclude that the Executive Branch, understanding the broad scope of OPRA, felt it was appropriate to have agencies and departments, within State government, undertake a careful review and analysis of its records to determine, for purposes of security and safety, those records to be considered confidential." *Id.* at 12.

The court further held that "[r]ecognizing the time delay inherent in the normal rule adoption process, E.O. No. 21 and E.O. No. 26 included language to permit custodians of records to deny access, based on the proposed rule, pending final adoption.



Now, three years after the passage of OPRA, for the court, the continued efficacy of that practice raises some concerns." *Id.*

The court concluded, however, that "[w]hile [it] does not know the status of this proposed regulation, under E.O. No. 21, paragraph 4 and E.O. No. 26, paragraph 6, resolution of that issue is not required. ... the court assumes that the proposed rule change is still pending." *Id.* at 13.

In Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008), the Complainant requested records from the DOC reflecting his affiliation with the Latin Kings street gang. The Custodian in that complaint stated that the records could not be disclosed pursuant to N.J.S.A. 47:1A-1 et seq. The Custodian subsequently certified in the SOI that:

"...[r]ecord [No.] 1 was also lawfully denied to the Complainant pursuant to DOC's proposed regulation, which provides that SID investigations are confidential "...provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility..." *N.J.A.C. 10A:22-3.2 (a) (27)*...The Custodian certifies that [r]ecords [No.] 2, [No.] 3 and [No.] 4 also cannot be disclosed because they contain references to Security Threat Groups, which is prohibited by *N.J.A.C. 10A:4-4.1* and that the possession or exhibition of anything related to a STG is in violation of the DOCs disciplinary code and will subject an inmate to charges and sanctions." *Id.* at 4.

The GRC held that the Custodian had lawfully denied access to the requested records because the Custodian legally certified that the requested records could not be redacted without the risk of posing a safety and security threat within the correctional facility and because the DOC's proposed rules were still in effect pursuant to pursuant to E.O. No. 21 and E.O. No. 26, the court's decision in Newark Morning Ledger Co., Publisher of the Star-Ledger v. Division of the State Police of the New Jersey Department of Law and Public Safety, Law Division – Mercer County, Docket No. MER-L-1090-05 (July 5, 2005) and N.J.S.A. 47:1A-9.a.

The facts in Ortiz, *supra*, parallel the instant complaint because here, the Custodian denied access to a copy of the requested security threat group affiliation form pursuant to N.J.S.A. 47:1A-1 et seq. and E.O. No. 26. The provisions set forth in *N.J.A.C. 10A:1-1.4* through *31-6.13* of the New Jersey Department of Corrections Proposed Amendments contain a clear exemption from disclosure for reports or records in which "redactions of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility." *N.J.A.C. 10A:22-3.2 (a)(27)* Therefore, the Custodian has lawfully denied access to the requested security threat affiliation form because it is exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1, N.J.S.A. 47:1A-9.a., E.O. No. 26 and *N.J.A.C. 10A:22-3.2 (a)(27)*. See Ortiz, *supra*.

However, the Custodian permitted the Complainant to inspect the requested record on June 12, 2008. OPRA provides that:

“[a] custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium.” (Emphasis added.) N.J.S.A. 47:1A-5.d.

In NJ Libertarian Party v. NJ Department of Human Services, Division of Youth and Family Services, GRC Complaint No. 2004-114 (April 2006), the Council determined the Legislative intent of the word “medium” as used in N.J.S.A. 47:1A-5.d. The Council held that:

“[c]onsidering the plain meaning of the word “medium”, we consulted a dictionary and encyclopedia. The American Heritage Dictionary of the English Language, Fourth Edition (Copyright 2000 by Houghton Mifflin Company) defines medium as “an intervening substance through which something else is transmitted or carried on.” And, its plural abstraction “media” is defined in the same dictionary as “an object or device, such as a disk, on which data is stored.” Further, the Wikipedia (free encyclopedia) (Copyright 2001-2005) describes a “recording medium” as “a physical material that holds information expressed in any of the existing recording formats.” It lists recording formats as follows:

Examples since the 19<sup>th</sup> century include:

- Photographic film.
- Wax for recording cylinders.
- “shellac” compound and later vinyl for analog disk records.
- Plastic sheet for Dictaphone recorders.
- Steel wire for magnetic wire recorders.
- Magnetic tape.
- Rigid magnetic disks and cylinders.
- Floppy magnetic disks.
- Pressed optical media for CDs and DVDs.
- Write-once, read-many optical media for writable CDs and DVDs.
- Read-write optical media for rewritable CDs and DVDs.
- Flash memory media” Id.

Given this description of a “medium” and the use of the word “medium” in N.J.S.A. 47:1A-5.d., inspection does not fall under the term of medium because inspection is not an “object” or “device” for which copies can be substituted.<sup>9</sup> Although

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<sup>9</sup> It should be noted that NJ Libertarian Party involved a request for a record which was maintained in the format requested, although use of certain proprietary software was required in order to read the requested Antwone Fosque v. New Jersey Department of Corrections, 2008-185 – Findings and Recommendations of the Executive Director

there may be instances when a custodian may substitute inspection of a record for a requested medium in order to safeguard the safety and integrity of certain records, the “other meaningful medium” which the Custodian substitutes must be “meaningful” to the requestor, because “any limitations on the right of access accorded by [OPRA] ...shall be construed in favor of the public’s right of access [.]” N.J.S.A. 47:1A-1.

In this complaint, the Custodian expressed concern that providing copies of the record relevant to request Item No. 1 would endanger the life of the Complainant or another life if the record was stolen and altered. The Custodian’s concern that the record may be stolen and altered speaks directly to those “instances when a custodian may substitute inspection of a record...in order to safeguard the safety and integrity of certain records.” NJ Libertarian Party, supra. Additionally, N.J.A.C. 10A:1-1.4 et seq. clearly provides that “where redaction [of records] would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility...” such records are exempt from disclosure. The Custodian’s concern that said alterations may endanger the life of the Complainant or another life is therefore reasonable and supported by the DOC’s OPRA regulations, which are applicable to the instant matter pursuant to N.J.S.A. 47:1A-9.a.

Therefore, based on the evidence of record, Ortiz, supra, and the cited exemptions pursuant to N.J.S.A. 47:1A-9.a, E.O. No. 21, E.O. No. 26 and N.J.A.C. 10A:1-1.4 through 31-6.13, PRN 2002-228, the July 12, 2002 inspection of the record responsive to Item No. 1 of the Complainant’s May 29, 2008 OPRA request is a reasonable substitute for copies of the requested records.

#### Complainant’s May 29, 2008 OPRA request Item No. 2

The Custodian responded in writing on the fourth (4<sup>th</sup>) business day after receipt of the Complainant’s request stating that the request failed to identify a specific government record and is therefore invalid. The Custodian requested that the Complainant identify the specific record being requested complete with a description of said 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 (March 2005). 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.* at 549.

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record. The Complainant did not wish to pay the cost of licensing the necessary software. The GRC found that the Custodian was under no obligation to convert the requested record to another medium which did not require the use of the proprietary software, because the record was, in fact, maintained in the medium which the Complainant requested.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (October 2005)<sup>10</sup>, 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 with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.”<sup>11</sup>

In the instant matter before the Council, the Complainant’s request for comments made by S. Manera or any other official from the SID is a request for information and not an identifiable government record, defined by OPRA 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...” N.J.S.A. 47:1A-1.1.

Therefore, because request Item No. 2 of the Complainant’s May 29, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to MAG, *supra* and Bent, *supra*.

Further, because request Item No. 2 of the Complainant’s May 29, 2008 OPRA request is invalid as it is overly broad, the issue of whether any records responsive to the request are exempt from disclosure as ACD, as also asserted by the Custodian, is moot.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian has lawfully denied access to the requested security threat affiliation form because it is exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1, N.J.S.A. 47:1A-9.a., Executive Order No. 26 (McGreevey 2002) and N.J.A.C. 10A:22-3.2 (a)(27). See Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008).
2. Based on the evidence of record, Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008), and the cited exemptions pursuant to N.J.S.A. 47:1A-9.a. Executive Order No. 21 (McGreevey 2002), Executive Order No. 26 (McGreevey 2002) and N.J.A.C. 10A:22-3.2 (a)(27), the July 12, 2008 inspection of the record responsive to Item No. 1 of the Complainant’s May 29, 2008 OPRA request is a reasonable substitute for copies of the requested records.
3. Because request Item No. 2 of the Complainant’s May 29, 2008 OPRA request seeks information rather than an identifiable government records, the request is invalid pursuant to MAG Entertainment, LLC v. Division of

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<sup>10</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>11</sup> As stated in Bent.

Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005).

Prepared By: Frank F. Caruso  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

June 16, 2009