



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

JON S. CORZINE  
Governor

CHARLES A. RICHMAN  
Acting Commissioner

**FINAL DECISION**

**November 18, 2009 Government Records Council Meeting**

Harun Shahid  
Complainant

Complaint No. 2008-251

v.

Essex County Prosecutor's Office  
Custodian of Record

At the November 18, 2009 public meeting, the Government Records Council ("Council") considered the November 10, 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. Request Items No. 1 and 2 are invalid under OPRA because they would require the Custodian to conduct research to identify the records responsive to the request. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), Bart v. Passaic County Public Housing Agency, 406 N.J. Super. 445 (App. Div. 2009) and Donato v. Township of Union, GRC Complaint No. 2005-182 (January 2007). Therefore, the Custodian has not unlawfully denied the Complainant access to the records requested in Request Items No. 1 and 2.
2. Because the Custodian has certified that that no records responsive to Request Item No. 3 exist and there is no credible evidence in the record to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the records requested in Request Item No. 3.

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 18<sup>th</sup> Day of November, 2009

Robin Berg Tabakin, Chair  
Government Records Council

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

Harlynn A. Lack, Secretary  
Government Records Council

**Decision Distribution Date: November 23, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 18, 2009 Council Meeting**

**Harun Shahid<sup>1</sup>  
Complainant**

**GRC Complaint No. 2008-251**

v.

**Essex County Prosecutor's Office<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Jason Hines' statement made to Sergeant M. Kula and others of the East Orange Police Department on March 27, 1985.
2. Copy of discovery motion filed by Aaron Chandler through his attorney, Ronald Brown, for warrant nos. W332161, W332160, W156286, MM349-85, which were dismissed without prejudice by Judge Sidney Reiss on June 7, 1985.
3. Plea bargains or promises made to Kevin Hayes (DOB 9/22/65) for his cooperation in any criminal cases from 1985 until the present.

**Request Made:** October 20, 2008<sup>3</sup>

**Response Made:** October 22, 2008

**Custodian:** Hilary Brunell

**GRC Complaint Filed:** October 30, 2008<sup>4</sup>

**Background**

**October 20, 2008**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**October 22, 2008**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the second (2<sup>nd</sup>) business day following receipt of such request. The Custodian states that Request Item No. 1 is denied because the records requested comprise a part of a criminal investigatory file which is exempt from disclosure under N.J.S.A. 47:1A-1.1 et seq. The Custodian further states that although the Complainant provided warrant numbers and a MM number as part of Request Item No. 2, these do not provide sufficient information to identify a particular file. The Custodian

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

<sup>2</sup> Represented by Essex County Legal Counsel (Newark, NJ).

<sup>3</sup> The Complainant stated that he submitted his request on October 5, 2008. However, the Custodian asserts that she received the Complainant's request on October 20, 2008.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

states that because there are multiple files under the name of Aaron Chandlers, she is unable to ascertain the particular record sought by the Complainant. The Custodian also states that Request Item No. 3 is a request for information. The Custodian states that the Government Records Council (“GRC”) states that requests for information are not valid requests under OPRA.

**October 30, 2008**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Jason Hines police statement dated March 27, 1985;
- Order of the Superior Court of New Jersey, Law Division, Essex County dated June 7, 1985;
- Criminal history of Kevin Hayes a/k/a Kevin Bridges dated April 18, 1990;
- Complainant’s OPRA request dated October 20, 2008;
- Letter from the Custodian to the Complainant dated October 22, 2008.

The Complainant asserts that the Custodian failed to respond to his OPRA request and therefore unlawfully denied him access to the records requested.

**November 7, 2008**

Offer of Mediation sent to both parties.

**November 21, 2008**

The Complainant agrees to mediate this complaint.

**January 5, 2009**

The Custodian agrees to mediate this complaint.

**January 23, 2009**

Denial of Access Complaint referred to Mediation.

**May 8, 2009**

The complaint is referred back from mediation to the GRC for adjudication.

**June 1, 2009**

Request for the Statement of Information sent to the Custodian.

**June 4, 2009**

Custodian’s Statement of Information (“SOI”) with the following attachments:

- Complainant’s OPRA request dated October 20, 2008;
- Letter from the Custodian to the Complainant dated October 22, 2008.

The Custodian certifies that Request Item No. 1 was denied because statements which may have been given in the course of a police investigation are not public records and are therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. The Custodian certifies that files maintained by the Essex County Prosecutor's Office can be identified

by defendant name, indictment number or prosecutor file number but not by witness name. The Custodian further states that the request did not provide sufficient information to identify the particular file sought and cites to Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005) (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).

The Custodian states that Request Item No. 2 was denied because the records requested, if such records exist, would comprise part of a criminal investigatory file and are therefore exempt from disclosure under N.J.S.A. 47:1A-1.1. The Custodian further states that there are multiple files under the name Aaron Chandlers and the request fails to provide sufficient information to identify a particular file.

The Custodian states that Request Item No. 3 was denied because the records requested, if such records exist, would be part of a criminal investigatory file and are therefore exempt from disclosure under N.J.S.A. 47:1A-1.1. The Custodian also states that the request for any plea recommendations from 1985 to the present involving Kevin Hayes, a/k/a Kevin Bridges, is an overly broad request. See Bent, *supra*. Alternatively, the Custodian argues that OPRA does not require disclosure of any advisory, consultative, or deliberative material. N.J.S.A. 47:1A-1.1.

#### **June 12, 2009**

E-mail from the GRC to the Custodian. The GRC states that the Custodian has indicated in the SOI that no records responsive to the Complainant's OPRA request exist. The GRC requests that the Custodian provide the GRC with a legal certification stating same.

#### **June 19, 2009**

Facsimile transmission from the Custodian to the GRC. The Custodian provides the requested certification. The Custodian certifies that the Prosecutor's Office files are organized by defendant name, indictment number, and file number. The Custodian certifies that files are not organized by witness name. The Custodian certifies that additional identifiers, such as date of birth, offense type and date, or social security number, are required because defendant names are often not unique to a single case file. The Custodian certifies that the Complainant provided names without such additional identifiers. The Custodian certifies that an attempt was made to locate files but there are multiple files under the names Aaron Chandler and Jason Hines. The Custodian certifies that the database did not list any files under the defendant name Kevin Hays or Kevin Bridges.

#### **September 16, 2009**

E-mail from the GRC to the Custodian. The GRC states that the Custodian indicated in a certification dated June 19, 2009 that she maintained multiple files under the names of Jason Hines and Aaron Chandler. The GRC requests that the Custodian provide a certification stating the total number of files under each name and the respective opened and closed dates for each file by the close of business on September 18, 2009.

## September 17, 2009

Certification from the Custodian to the GRC. The Custodian certifies that there are twelve (12) files under the name Jason Hines and three (3) files under the name Aaron Chandler. The Custodian further certifies that none of the files predate 1989. The Custodian also certifies that the software used by the Prosecutor's Office, Promis Gavel, does not provide a "closed date" for files. The Custodian certifies that the only way to determine when an investigation began and ended would be to read through all the police reports in the actual file.

### 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 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.

The Custodian responded in writing to the Complainant's OPRA request on the second (2<sup>nd</sup>) business day after receipt thereof stating that Request Item No. 1 was denied because the records requested comprise a part of a criminal investigatory file which was exempt from disclosure under N.J.S.A. 47:1A-1.1 et seq. The Custodian further stated that although the Complainant provided warrant numbers and a MM number as part of Request Item No. 2, these do not provide sufficient information to identify a particular file. The Custodian stated that because there are multiple files under the name of Aaron

Chandlers, she is unable to ascertain the particular record sought by the Complainant. The Custodian also stated that Request Item No. 3 was an invalid request for information.

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 (App. Div. 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.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>5</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>6</sup>

Moreover, in Bart v. Passaic County Public Housing Agency, 406 N.J. Super. 445 (App. Div. 2009), the court stated that:

"The Act [OPRA] does not, however, require custodians of government records to undertake research for a requestor. The requestor must identify the records sought with specificity. The request may not be a broad, generic description of documents that requires the custodian to search the agency's files and "analyze, compile and collate" the requested information." (citing 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)).

Additionally, in Donato v. Township of Union, GRC Complaint No. 2005-182 (January 2007), the GRC held that:

"Pursuant to MAG, the Custodian is obligated to *search* her files to find the identifiable government records listed in the Complainant's OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word *search* is defined as "to go or look through carefully in order to find something missing or lost. The word *research*, on the other hand, means "a close and careful study to find new facts or information." (Emphasis added.)

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<sup>5</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>6</sup> As stated in Bent, *supra*.

The Custodian certified that the Prosecutor's Office files are organized by defendant name, indictment number and file number. The Custodian also certified that files are not organized by witness name. The Custodian further certified that because defendant names are often not unique to a single case file, additional identifiers such as date of birth, offense type and date, or social security number are required in order to locate specific case files.

Request Item No. 1 seeks access to Jason Hines' statement made to Sergeant M. Kula and others of the East Orange Police Department on March 27, 1985. Request Item No. 2 seeks access to a motion filed by Aaron Chandler and dismissed on June 7, 1985. However, the Custodian has certified that twelve (12) case files exist under the name Jason Hines and three (3) files exist under the name Aaron Chandler, none of which predates 1989. The Custodian further certified that the Complainant only provided names without additional identifiers. Without further indentifying information, the Custodian would be forced to conduct research to ascertain which Jason Hines and Aaron Chandler are the persons named by the Complainant in Request Items No. 1 and 2. Pursuant to MAG, supra, the Custodian is only obligated to *search* her files to find identifiable government records listed in the Complainant's OPRA request.

Therefore, Request Items No. 1 and 2 are invalid under OPRA because they would require the Custodian to conduct research to identify the records responsive to the request. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), Bart v. Passaic County Public Housing Agency, 406 N.J. Super. 445 (App. Div. 2009) and Donato v. Township of Union, GRC Complaint No. 2005-182 (January 2007). Therefore, the Custodian has not unlawfully denied the Complainant access to the records requested in Request Items No. 1 and 2.

Additionally, Request Item No. 3 seeks access to plea bargains or promises made to Kevin Hayes (DOB 9/22/65) for his cooperation in any criminal cases from 1985 until the present. The Custodian certified that no case files exist under the name Kevin Hays or Kevin Bridges.

In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a call made to him from the New Jersey Department of Education. The Custodian responded stating that there was no record of any telephone calls made to the Complainant. The Custodian subsequently certified that no records responsive to the Complainant's request existed. The GRC held the Custodian did not unlawfully deny access to the requested records because the Custodian certified that no records responsive to the request existed.

Therefore, because the Custodian has certified that that no records responsive to Request Item No. 3 exist and there is no credible evidence in the record to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the records requested in Request Item No. 3.



## **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Request Items No. 1 and 2 are invalid under OPRA because they would require the Custodian to conduct research to identify the records responsive to the request. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), Bart v. Passaic County Public Housing Agency, 406 N.J. Super. 445 (App. Div. 2009) and Donato v. Township of Union, GRC Complaint No. 2005-182 (January 2007). Therefore, the Custodian has not unlawfully denied the Complainant access to the records requested in Request Items No. 1 and 2.
  
2. Because the Custodian has certified that that no records responsive to Request Item No. 3 exist and there is no credible evidence in the record to refute the Custodian's certification, pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to the records requested in Request Item No. 3.

Prepared By: Sherin Keys, Esq.  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

November 10, 2009