



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

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

LORI GRIFA  
*Commissioner*

**FINAL DECISION**

**October 26, 2010 Government Records Council Meeting**

Daniel Gatson  
Complainant

Complaint No. 2009-238

v.

Somerset County Prosecutor's Office  
Custodian of Record

At the October 26, 2010 public meeting, the Government Records Council ("Council") considered the September 13, 2010 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. Because the Complainant's request for records, memos, texts, e-mails and reports fails to specify identifiable government records and would require the Custodian to conduct research among all of the records maintained by the agency to locate and identify responsive records, the Complainant's request is invalid under OPRA. *See* 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); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
2. The Complainant's request to be taken from his current state of incarceration in a secured state prison to the Somerset County Prosecutor's Office to view and inspect the requested records is not a request that can be granted through OPRA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7.a. through e.

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 26<sup>th</sup> Day of October, 2010

Robin Berg Tabakin, Chair  
Government Records Council

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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: November 1, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 26, 2010 Council Meeting**

**Daniel Gatson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-238**

v.

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

**Records Relevant to Complaint:** Any and all records, memos, texts, e-mails, and reports related to Daniel Gatson and Bergen County indictment nos. 01-11-2672-I and 04-04-934-I, and docket nos. SOM-L-1733-05, and MER-L-003181-07.

**Request Made:** June 24, 2009

**Response Made:** July 2, 2009

**Custodian:** Thomas White

**GRC Complaint Filed:** August 13, 2009<sup>3</sup>

**Background**

**June 15, 2009<sup>4</sup>**

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. Of note, the Complainant requests that he be brought from his current state of incarceration in a secured state prison to the Custodian's office to copy and inspect the requested records himself.

**July 2, 2009**

Custodian's response to the Complainant's OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the sixth (6th) business day following receipt of such request. The Custodian states that access to the requested records is denied because:

(1) the request is overbroad and of the nature of a blanket request for a class of various documents. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford PD, 381 N.J. Super. 30 (App. Div. 2005), GRC Complaint No. 2006-24 (May 2006), Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2007-190 (February 2008), Morgano v. Essex County Prosecutor's Office, GRC Complaint

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

<sup>2</sup> Represented by Scott D. Rodgers, Esq., Deputy Somerset County Counsel (Somerville, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date. The Denial of Access Complaint is signed but not dated.

<sup>4</sup> The Complainant's OPRA request is dated June 15, 2009, and is stamped as received on June 24, 2009.

No. 2007-190 (March 2008), Cynthia Feiler-Jampel v. Somerset County Prosecutor's Office;

(2) the request seeks the production of criminal investigatory records which are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1.1;

(3) the request may seek the production of handwritten notes which are not considered government records under OPRA. O'Shea v. West Milford Board of Education, 391 N.J. Super. 534 (App. Div. 2007), GRC Complaint 2007-190 (March 2008), Cynthia Feiler-Jampel v. Somerset County Prosecutor's Office;

(4) the request seeks the production of documents protected from disclosure under the deliberative process privilege under N.J.S.A. 47:1A-1.1; and

(5) the requested records include criminal history record information that the Custodian is prohibited from allowing other people to access under *N.J.A.C. 13:59-1.6(c)*, which is applicable to OPRA pursuant to N.J.S.A. 47:1A-9.a.

### **August 13, 2009**

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:<sup>5</sup>

- Complainant's OPRA request dated June 15, 2009
- Letter from the Custodian to the Complainant dated July 2, 2009

The Complainant agrees to mediate this complaint.

### **August 28, 2009**

Offer of Mediation sent to the Custodian.

### **September 8, 2009<sup>6</sup>**

The Custodian declines the Offer of Mediation.

### **September 21, 2009**

Request for the Statement of Information ("SOI") sent to the Custodian.

### **September 25, 2009**

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated June 15, 2009
- Letter from the Custodian to the Complainant dated July 2, 2009

The Custodian certifies that his search for the requested records included a voluminous criminal file that consists of six (6) large banker's boxes of documents. The Custodian further certifies that the search also revealed a small box containing documents and exhibits and an expanding file folder containing documents from a civil lawsuit. The Custodian certifies that no documents related to the Complainant's criminal or civil cases have been destroyed.

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<sup>5</sup> The Complainant attached additional materials which are irrelevant to the adjudication of this Denial of Access Complaint. Additionally, the Complainant provides no argument or assertions in his complaint.

<sup>6</sup> The response took more than five (5) days because the County Counsel was out of the office.

The Custodian asserts that the Complainant's OPRA request is defective. The Custodian asserts that the Complainant did not request that the Somerset County Prosecutor's Office provide him with copies of documents, but instead the Complainant requests that he himself be physically brought from his place of incarceration to the Somerset County Prosecutor's Office to copy and inspect the requested records. The Custodian certifies that he searched and could not find any provision of OPRA or decision of the GRC which could compel or authorize the Somerset County Prosecutor's Office to release the Complainant from a New Jersey Department of Corrections ("NJDOC") secured state prison facility and bring the Complainant to the Prosecutor's Office to copy and inspect the requested records. The Custodian asserts that OPRA makes public records accessible, but does not require custodians to conduct research and attempt to identify and siphon useful information.

The Custodian cites to Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005), in support of his argument that OPRA only allows requests for records and not requests for information. The Custodian argues that OPRA is not intended as a research tool to force government officials to "identify and siphon" useful information. The Custodian also argues that OPRA operates to make identifiable records "accessible," and if OPRA does not require custodians to conduct research in an attempt to identify and siphon information, how can the Complainant use OPRA to compel, authorize, or allow a records custodian to appear before a New Jersey Superior Court Judge to make application for a court order seeking his release from a New Jersey Department of Corrections secured state prison facility to be brought to the location of the requested records under armed guard. The Custodian certifies that the Complainant's OPRA request is defective and that the denial of his OPRA request is not unlawful.

In addition, the Custodian argues that the remainder of the Complainant's request is overbroad and of the nature of a blanket request. In support of this argument, the Custodian cites MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford PD, 381 N.J. Super. 30 (App. Div. 2005), GRC Complaint No. 2006-24 (May 2006) Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2007-190 (February 2008), Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-190 (March 2008), Cynthia Feiler-Jampel v. Somerset County Prosecutor's Office.

The Custodian states that some of the records that may be encompassed in the Complainant's request may include criminal investigatory records which are exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1. The Custodian asserts that the request may also seek the production of handwritten notes, which are not considered government records under OPRA. See O'Shea v. West Milford Board of Education, 391 N.J. Super. 534 (App. Div. 2007), GRC Complainant 2007-190 (March 2008), Jampel v. Somerset County Prosecutor's Office.

The Custodian cites to the Government Records Council Handbook for Records Custodians, Preliminary Release #1 – June 2002, on page 4, Part 1 – "What Is The Open Public Records Act (OPRA)," and quotes the following, "OPRA is a series of substantial changes to the state law that governs the public's access to government records. It was enacted to give the public greater access to records maintained by public agencies in New

by balancing the public's interest in government records, respect for personal privacy, and the efficient process of government." The Custodian asserts that the essence of OPRA's enactment was to enable the public to secure documents that they were otherwise legally entitled to have.

### 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 ...

A government record shall not include the following information which is deemed to be confidential for the purposes of [OPRA] as amended and supplemented:

...

criminal investigatory records." (Emphasis added.) N.J.S.A. 47:1A-1.1.

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.

"...[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.

The Complainant's request for records, memos, texts, e-mails and reports relating to certain subjects is invalid under OPRA because it is overly broad, fails to specify identifiable government records and would require the Custodian to conduct research to fulfill the request.

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.

In determining that MAG Entertainment’s request for “all documents or records” from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that:

“[m]ost 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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>7</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>8</sup>

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...” The court also quoted N.J.S.A. 47:1A-5.g in that “[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” The court further stated that “...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency’s need to...generate new records...”

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) the Council held that “[b]ecause the Complainant’s OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG

<sup>7</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>8</sup> As stated in Bent, *supra*.

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 matter is substantially different from the facts presented in Burnett v. County of Gloucester, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2010); 2010 N.J. Super. LEXIS 79. In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” *Id.* at \_\_\_. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. *Id.* at \_\_\_.

In the matter before the Council, however, the Complainant’s request for records, memos, texts, e-mails and reports relating to a particular subject fails to specify identifiable government records and would require the Custodian to conduct research among all of the records maintained by the agency to locate and identify responsive records which contain the subject matter requested. Although OPRA requires custodians to search their files for responsive records, custodians are not obligated to perform research among all of an agency’s files to locate and identify government records which may be responsive to a request.

Therefore, because the Complainant’s request for records, memos, texts, e-mails and reports relating to a particular subject fails to specify identifiable government records and would require the Custodian to conduct research among all of the records maintained by the agency to locate and identify responsive records, the Complainant’s request is invalid under OPRA. See 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); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In addition, the Complainant’s request to be taken from his current state of incarceration in a secured state prison to the Somerset County Prosecutor’s Office to view and inspect the requested records is not a request that can be granted through OPRA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7.a. through .e.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant’s request for records, memos, texts, e-mails and reports fails to specify identifiable government records and would require the Custodian to conduct research among all of the records maintained by the agency to locate and identify responsive records, the Complainant’s request is invalid under OPRA. See 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); New Jersey Builders



Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

2. The Complainant's request to be taken from his current state of incarceration in a secured state prison to the Somerset County Prosecutor's Office to view and inspect the requested records is not a request that can be granted through OPRA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7.a. through .e.

Prepared By: Darryl C. Rhone  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

September 13, 2010