



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
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TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**July 31, 2012 Government Records Council Meeting**

Mikal McClain  
Complainant

Complaint No. 2011-202

v.

Essex County Prosecutor's Office  
Custodian of Record

At the July 31, 2012 public meeting, the Government Records Council ("Council") considered the July 24, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant's request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically identify a government record pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).

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 31<sup>st</sup> Day of July, 2012

Robin Berg Tabakin, Chair  
Government Records Council

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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: August 7, 2012**

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**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
July 31, 2012 Council Meeting**

**Mikal McClain<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-202**

v.

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

**Records Relevant to Complaint:**

As it pertains to indictment # 02-03-1091, copies of:

1. Receipt of discoveries
2. Complete discoveries and all crime photos
3. The case file
4. Trial file
5. PROMIS/GAVEL
6. Voire dire

**Request Made:** May 10, 2011

**Response Made:** May 17, 2011

**Custodian:** Debra G. Simms

**GRC Complaint Filed:** May 31, 2011<sup>3</sup>

**Background**

**May 10, 2011**

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.

**May 17, 2011**

Custodian's response to the OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the fifth (5<sup>th</sup>) business day following receipt of such request. The Custodian states that access to the requested record is denied because the requested records constitute criminal investigatory records that are exempt from disclosure under OPRA pursuant to Janeczko v. Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). In addition, the Custodian asserts that access to the requested records is denied on the grounds that the requested records qualify as confidential material that is further excluded from access pursuant to OPRA, as the public agency has a responsibility and obligation to safeguard from public access a

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

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

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy.

The Custodian further maintains that the request is being denied because OPRA is not intended to replace or supplement discovery by private litigants pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-549 (App. Div. 2005). Finally, the Custodian asserts that the request is being denied because OPRA only allows for requests for identifiable records and not general data, information, or statistics pursuant to MAG. See also Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian asserts that a proper OPRA request must identify records with reasonable clarity and that in this case, the Complainant has failed to do so.

### **May 31, 2011**

Denial of Access Complaint filed with the Government Records Council ("GRC") with an attached copy of the Complainant's OPRA request dated May 10, 2011.

The Complainant does not make any arguments in support of his Denial of Access Complaint. The Complainant does not agree to mediate this complaint.

### **June 6, 2011**

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

### **June 13, 2011**

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated May 10, 2011
- Letter from the Custodian to the Complainant dated May 17, 2011

The Custodian argues that the Complainant has failed to name identifiable records with reasonable specificity and has therefore certified that there are no applicable records retention schedules and that no records responsive to the Complainant's request have been destroyed. However, the Custodian argues that access to the requested record was denied because the requested records constitute criminal investigatory records that are exempt from disclosure under OPRA pursuant to Janeczko v. Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). In addition, the Custodian asserts that access to the requested records was denied on the grounds that the requested records qualify as confidential material that is further excluded from access pursuant to OPRA, as the public agency has a responsibility and obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy.

Moreover, the Custodian further maintains that the request is being denied because OPRA is not intended to replace or supplement discovery by private litigants pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-549 (App. Div. 2005). Finally, the Custodian asserts that the request was denied because OPRA only allows for requests for identifiable records and not general data, information, or statistics pursuant to MAG. See also Bent v. Stafford

Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian maintains that a proper OPRA request must identify records with reasonable clarity and that in this case, the Complainant has failed to do so.

### Analysis

#### **Whether the Custodian unlawfully denied the Complainant 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.

In the instant complaint, the Complainant’s request sought copies of “the receipt of discoveries, complete discoveries and all crime photos, the case file, the trial file, the PROMIS/GAVEL, and the voire dire” pertaining to indictment # 02-03-1091. However, the Complainant’s request is invalid under OPRA because such request is overly broad and fails to identify specific government records sought.

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). As the court noted in invalidating MAG's request under OPRA:

"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.

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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>4</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>5</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 enumerated the responsibilities of a custodian and a requestor as follows:

"OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require "extraordinary expenditure of time and effort" and warrant assessment of a "service charge," and, when unable to comply with a request, "indicate the specific basis." N.J.S.A. 47:1A-5(a)-(j). The requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), (i). *Research is not among the custodian's responsibilities.*" (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

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<sup>4</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>5</sup> As stated in Bent, *supra*.

Moreover, 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...” Accordingly, test under MAG then, is whether a requested record is a *specifically identifiable* government record. If so, the record is disclosable, barring any exemptions to disclosure contained in OPRA.

As stated, open ended and overbroad, blanket requests for agency files are invalid under OPRA, which requires that requestors name files with reasonable specificity when making requests. Here, the Complainant’s request seeks entire files including case files, trial files, and “discoveries.” In addition, the Complainant requested “PROMIS/GAVEL” and “voire dire.” While voire dire is a legal term that refers to the preliminary examination of one presented as a witness or juror<sup>6</sup> and PROMIS/GAVEL is an automated criminal case tracking system,<sup>7</sup> neither is a government record.

Therefore, the Complainant’s request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically identify a government record pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant’s request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically identify a government record pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).

Prepared By: Darryl C. Rhone  
Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

July 24, 2012

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<sup>6</sup> Black’s Law Dictionary at 812 (West, 1983).

<sup>7</sup> <http://www.judiciary.state.nj.us/criminal/crpgmgv1.htm>