



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

June 30, 2015 Government Records Council Meeting

Shamsiddin Abdur-Raheem
Complainant

Complaint No. 2014-171

v.

NJ Division of Criminal Justice
Custodian of Record

At the June 30, 2015 public meeting, the Government Records Council (“Council”) considered the June 23, 2015 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 because the Complainant’s requests are a blanket request (with the exception of the indictment) for a class of various documents rather than a request for specifically named or identifiable government records, same are invalid under OPRA and the Custodian had no legal duty to research his records to locate records potentially responsive to the Complainant’s requests. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Based on the foregoing, the Council need not address whether potentially responsive records are exempt under the criminal investigatory exemption.

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 30th Day of June, 2015

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: July 2, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2015 Council Meeting**

**Shamsiddin Abdur-Raheem¹
Complainant**

GRC Complaint No. 2014-171

v.

**New Jersey Division of Criminal Justice²
Custodial Agency**

Records Relevant to Complaint:

February 9, 2014, OPRA request: Hardcopies via U.S. mail of the complete case file from State v. Shamsiddin Abdur-Raheem, Indictment No. 10-08-0102 including, but not limited to, complete discovery, indictment, motion briefs, *etc.*

March 31, 2014 OPRA request: Hardcopies via U.S. mail of the complete case file for Indictment No. 10-08-0102.

Custodian of Record: Robert McGrath

Request Received by Custodian: March 11, 2014, and April 4, 2014

Response Made by Custodian: March 18, 2014, and April 4, 2014

GRC Complaint Received: April 15, 2014

Background³

Request and Response:

On February 9, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 18, 2014, the Custodian responded in writing, advising that he was providing the Grand Jury Indictment.

On March 31, 2014, the Complainant submitted a second (2nd) OPRA request to the Custodian, seeking the above-mentioned records. The Complainant alleged that he had a legal right to the more than 1,000 page file. On April 4, 2014, the Custodian responded in writing to deny access to the responsive case file under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1.

¹ No legal representation listed on record.

² Represented by Assistant Attorney General E. Robbie Miller.

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.

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Denial of Access Complaint:

On April 15, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that he was unlawfully denied access to the complete file for Indictment No. 10-08-0102. The Complainant asserted that he is a party in the case and previously received the records prior to trial but lost them. The Complainant contended that he is entitled to another copy for pending litigation as part of discovery.

Statement of Information:

On June 16, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA requests on March 11 and April 4, 2014. The Custodian certified that he responded on March 19, and April 4, 2014, respectively.

The Custodian contended that he denied access to the Complainant’s OPRA requests because the entire prosecution file is a criminal investigatory record exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1. The Custodian noted that he did provide the Grand Jury Indictment as part of his response to the Complainant’s first (1st) OPRA request.

The Custodian contended that the GRC, since its inception, has consistently upheld the criminal investigatory exemption. Janeczko v. NJ Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Hickson v. NJ Dep’t of Law & Pub. Safety, Div. of Criminal Justice, GRC Complaint No. 2006-172 (February 2007); Seaman v. Atlantic Highlands Police Dep’t (Monmouth), GRC Complaint No. 2010-103 (May 2011). The Custodian asserted that the Complainant’s OPRA requests sought an entire criminal case file, which fits squarely within the criminal investigatory exemption.

Analysis

Validity of 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. at 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. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁴ NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (February 2008), the complainant filed an OPRA request for two entire prosecutor’s office files. The Council relied upon MAG, 375 N.J. Super. at 546, Bent, 381 N.J. Super. at 37, and Asarnow v. Dep’t of Labor, GRC Complaint No. 2006-24 (May 2006), in determining that the request was overbroad and of the nature of a blanket request for a class of various documents rather than a request for a specific government record. As such, the Council found that the custodian met her burden of proof in denying access to the responsive records.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in [MAG], [Bent] and the Council’s decisions in [Asarnow, GRC 2006-24] and [Morgano, GRC 2007-190].

Here, the Complainant’s requests sought “the complete case file” for Indictment No. 10-08-0102. As in Feiler-Jampel, GRC 2007-190, the Council has repeatedly determined that

⁴ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

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requests for entire files are invalid. *See also* Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011); Bragg v. NJ Dep't of Corrections, GRC Complaint No. 2010-145 (March 2011); Bradley-Williams v. Atlantic Cnty. Jail (Atlantic), GRC Complaint No. 2011-232 (December 2012).

Therefore, because the Complainant's requests are a blanket request (with the exception of the indictment) for a class of various documents rather than a request for specifically named or identifiable government records, same are invalid under OPRA and the Custodian had no legal duty to research his records to locate records potentially responsive to the Complainant's requests. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Feiler-Jampel, GRC 2007-190. Based on the foregoing, the Council need not address whether potentially responsive records are exempt under the criminal investigatory exemption.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's requests are a blanket request (with the exception of the indictment) for a class of various documents rather than a request for specifically named or identifiable government records, same are invalid under OPRA and the Custodian had no legal duty to research his records to locate records potentially responsive to the Complainant's requests. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Based on the foregoing, the Council need not address whether potentially responsive records are exempt under the criminal investigatory exemption.

Prepared By: Ernest Bongovanni
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

June 23, 2015