



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**January 31, 2017 Government Records Council Meeting**

Joseph Post  
Complainant

Complaint No. 2015-185

v.

NJ Department of Law & Public Safety,  
Division of Criminal Justice  
Custodian of Record

At the January 31, 2017 public meeting, the Government Records Council (“Council”) considered the January 24, 2017 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 April 23, 2015 OPRA request is a blanket request for a class of various documents rather than for specifically named or identifiable government records, the request is invalid under OPRA, and the Custodian had no legal duty to conduct research to locate potentially responsive records. 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 Ass’n 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); Abdur-Raheem v. NJ Div. of Criminal Justice, GRC Complaint No. 2014-171 (June 2015); 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 31<sup>st</sup> Day of January, 2017

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: February 3, 2017**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 31, 2017 Council Meeting**

**Joseph Post<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-185**

v.

**NJ Department of Law & Public Safety,  
Division of Criminal Justice<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies of all documents pertaining to the investigation, which was initiated in 2002, of a former Parole Board member.

**Custodian of Record:** Robert E. McGrath  
**Request Received by Custodian:** April 23, 2015  
**Response Made by Custodian:** May 4, 2015; May 13, 2015  
**GRC Complaint Received:** June 18, 2015

**Background<sup>3</sup>**

**Request and Response:**

On April 23, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 4, 2015, the Custodian responded in writing, seeking an extension of time to respond to until May 18, 2015. On May 13, 2015, the Custodian denied access to the requested records, asserting they were criminal investigatory records under N.J.S.A. 47:1A-1.1.

**Denial of Access Complaint:**

On June 18, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s blanket denial of access to the requested records as criminal investigatory records was improper and lacked sufficient detail. The Complainant referred to records under N.J.S.A. 47:1A-3(b) that are required to be made public following an arrest and contended that OPRA requires a Custodian to disclose criminal investigatory records unless such disclosure would be inimical to the public

---

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

<sup>2</sup> Represented by Deputy Attorney General Jennifer Stonerod.

<sup>3</sup> 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.

Joseph Post v. NJ Dep’t of Law & Public Safety, Div. of Criminal Justice, 2015-185 – Findings and Recommendations of the Executive Director

interest. The Complainant asserted that the Custodian failed to provide any grounds that disclosure of the requested records would be inimical to the public interest.

The Complainant argued that even if the Custodian were to provide such grounds, several factors weigh against denying him access. The Complainant noted that portions of the investigation were released to the press and that although it was only a partial release, that should not be weighed against disclosure under OPRA. The Complainant further contended that there is a significant public interest in providing information that reveals potential misconduct by agency officials.

#### Statement of Information:

On July 6, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 23, 2015, and responded in writing on May 4, 2015, extending the time to respond to until May 18, 2015. On May 13, 2015, the Custodian denied access to the investigation documents, claiming they are criminal investigatory records and exempt from access. N.J.S.A. 47:1A-1.1.

In addition to citing Janeczko v. NJ Dep’t of Law & Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), Hickson v. NJ Dep’t of Law & Public Safety, Div. of Criminal Justice, GRC Complaint No. 2006-172 (February 2007), and Seaman v. Atlantic Highlands Police Dep’t (Monmouth), GRC Complaint No. 2010-103 (May 2011), the Custodian also argued that the OPRA request is invalid on its face pursuant to Abdur-Raheem v. NJ Div. of Criminal Justice, GRC Complaint No. 2014-171 (June 2015). In that case, the Council held that a request for the complete case file pertaining to the complainant’s indictment was invalid, as it failed to identify adequately the type of record sought. The Custodian argues that the Complainant’s request in this matter is similar.

### 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);<sup>4</sup> NJ Builders Ass’n 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), to determine 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 request sought “all documents” pertaining to an investigation of a former parole board member. As was the case in Abdur-Raheem, GRC 2014-171, the Council

---

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

Joseph Post v. NJ Dep’t of Law & Public Safety, Div. of Criminal Justice, 2015-185 – Findings and Recommendations of the Executive Director

has repeatedly determined that requests for “all documents” in an investigation are invalid. *See also* Feiler-Jampel, GRC 2007-190, Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011), Bragg v. NJ Dep’t of Corr., GRC Complaint No. 2010-145 (March 2011), and Bradley-Williams v. Atlantic Cnty. Jail (Atlantic), GRC Complaint No. 2011-232 (December 2012).

Therefore, because the Complainant’s April 23, 2015 OPRA request is a blanket request for a class of various documents rather than for specifically named or identifiable government records, the request is invalid under OPRA, and the Custodian had no legal duty to conduct research to locate potentially responsive records. 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; Abdur-Raheem, GRC 2014-171; 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 April 23, 2015 OPRA request is a blanket request for a class of various documents rather than for specifically named or identifiable government records, the request is invalid under OPRA, and the Custodian had no legal duty to conduct research to locate potentially responsive records. 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 Ass’n 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); Abdur-Raheem v. NJ Div. of Criminal Justice, GRC Complaint No. 2014-171 (June 2015); 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: Samuel A. Rosado  
Staff Attorney

January 24, 2017