



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**

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

Aaron Lynn  
Complainant

v.

Middlesex County Prosecutor's Office  
Custodian of Record

Complaint No. 2015-186

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:

1. Because a portion of the Complainant's June 3, 2015 OPRA request seeking "all documents" pertaining to a specific indictment is a blanket request for a class of various documents rather than for specifically named or identifiable government records, that portion of 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 this portion of the request is exempt as criminal investigatory records.
2. The photographs sought in the Complainant's OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, Executive Order No. 69 (Gov. Whitman, 1997), and N.J.S.A. 47:1A-9(a). See Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009). Accordingly, the Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6.

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**

**Aaron Lynn<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-186**

v.

**Middlesex County Prosecutor's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies of “a list of all document [sic] inside the Prosecutor’s entire file, involving indictment #97-09-01245. Also all photographs obtained.”

**Custodian of Record:** James O’Neill  
**Request Received by Custodian:** June 3, 2015  
**Response Made by Custodian:** June 4, 2015  
**GRC Complaint Received:** June 18, 2015

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

**Request and Response:**

On May 30, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 4, 2015, the Custodian responded in writing, providing the Complainant with a two-page copy of a judgment of conviction for the relevant matter. The Custodian denied access to the remaining documents, asserting that 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 did not provide any additional arguments to support his claim that the Custodian unlawfully denied access to the investigation file, including any photographs obtained.

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

<sup>2</sup> Represented by Thomas Mannion, Esq. (New Brunswick, NJ).

<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.

## Statement of Information:

On July 1, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 3, 2015. The Custodian then certified that he responded in writing on June 4, 2015, providing a copy of the judgment of conviction contained in the file but denying access to the remainder of the records, stating that they are criminal investigatory records and therefore exempt under N.J.S.A. 47:1A-1.1.

The Custodian stated that he makes every effort to comply with OPRA requests, even those the Custodian believes to be overly broad or vague requests. In this matter, the Custodian decided to forward the Complainant the only record contained in the investigation file he believed was subject to disclosure. Additionally, the Custodian initially interpreted the Complainant’s request as seeking copies of the records contained within the investigation file. After looking at the request a 2<sup>nd</sup> time, the Custodian then believed that the Complainant may have only sought a list of the records contained in the file rather than copies of the records themselves. Therefore, the Custodian included said list with his SOI in hopes that would satisfy the Complainant’s OPRA request.

Notwithstanding, the Custodian maintained that the records contained in the file are criminal investigatory records and not subject to disclosure, citing Kovalick v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 591 (2011), and Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 38-39 (App. Div. 2005).<sup>4</sup> The Custodian also noted that photographs taken in the course of a criminal investigation are specifically exempt under OPRA, as well as the public release of autopsy reports.

## 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*

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

*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, 381 N.J. Super. at 37; 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 (2) 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 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, determining 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, a portion of the Complainant’s request sought a list of “all documents” pertaining to a specific indictment. As was the case in Abdur-Raheem, GRC 2014-171, the Council 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 a portion of the Complainant’s June 3, 2015 OPRA request seeking “all documents” pertaining to a specific indictment is a blanket request for a class of various documents rather than for specifically named or identifiable government records, that portion of 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 this portion of the request is exempt as criminal investigatory records.

### **Unlawful Denial of Access**

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.

Criminal investigatory records are exempt from disclosure. N.J.S.A. 47:1A-1.1. A criminal investigatory record is defined as “a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding[.]” Id. For a record to be exempt from disclosure under OPRA as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1, that record must meet both prongs of a two-prong test: that is, “‘not be required by law to be made,’ and the record must ‘pertain[] to any criminal investigation or related civil enforcement proceeding.’” O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 380-381, 982 A.2d 459 (App. Div. 2009). *See also* North Jersey Media Group, Inc. (“NJMG”) v. Twp. of Lyndhurst, 441 N.J. Super. 70, (App. Div. 2015) appeal docketed, A-35-15 North Jersey Media Group, Inc. v. Twp. of Lyndhurst (076184).

In Leak v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009), the complainant sought, among other records, crime scene photographs from a 1994 trial. The Custodian denied access to the photographs pursuant to N.J.S.A. 47:1A-1.1 and Executive Order No. 69 (Gov. Whitman, 1997) (“EO 69”). The Council stated in relevant part:

Request Item No. 3 seeks crime scene photographs relating to a criminal trial in 1994 . . . E.O. No. 69, enacted on May 15, 1997, modified Executive Order No. 9 (Gov. Hughes, 1963) and Executive Order No. 123 (Gov. Kean, 1983). E.O. No. 69 holds that:

“[t]he following records *shall not be deemed to be public records*... pursuant to [OPRA], as amended: fingerprint cards, plates and *photographs* and similar criminal investigatory records . . . required to be made, maintained or kept by any State or local governmental agency.” (Emphasis added.)

N.J.S.A. 47:1A-9.a. recognizes exemptions from disclosure included in state and federal statutes, regulations and executive orders. In this complaint, E.O. No. 69 explicitly states that criminal investigatory photographs shall not be deemed to be public records. Therefore, the crime scene photographs responsive to request Item No. 3 of the Complainant's May 5, 2007 OPRA request are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-9.a and E.O. No. 69.

[Leak, GRC 2007-148.]

Based on the forgoing, the photographs sought in the Complainant's OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, EO 69, and N.J.S.A. 47:1A-9(a). See Leak, GRC 2007-148. Accordingly, the Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because a portion of the Complainant's June 3, 2015 OPRA request seeking "all documents" pertaining to a specific indictment is a blanket request for a class of various documents rather than for specifically named or identifiable government records, that portion of 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 this portion of the request is exempt as criminal investigatory records.
2. The photographs sought in the Complainant's OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, Executive Order No. 69 (Gov. Whitman, 1997), and N.J.S.A. 47:1A-9(a). See Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009). Accordingly, the Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado  
Staff Attorney

January 24, 2017