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DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**June 25, 2019 Government Records Council Meeting**

Nichalos Watson  
Complainant

Complaint No. 2017-116

v.

Passaic County Prosecutor's Office (Passaic)  
Custodian of Record

At the June 25, 2019 public meeting, the Government Records Council ("Council") considered the June 18, 2019 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. Item Nos. 1 and 2 of the Complainant's request seeking "criminal records" and "pre-trial discoveries" are blanket requests for classes of various documents rather than for specifically named or identifiable government records and are therefore 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, 549 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Bragg v. N.J. Dep't of Corr., GRC Complaint No. 2010-145 (March 2011). Further, Item No. 1 is invalid because it generically sought "records." Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to this portion of the Complainant's request. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied access to Item No. 3 of the Complainant's request seeking a pre-sentence report pertaining to his criminal matter. N.J.S.A. 47:1A-6. Specifically, pre-sentence reports are exempt as "inter-agency, intra-agency advisory, consultative, or deliberative [("ACD")] material under N.J.S.A. 47:1A-1.1. See Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2013-299 (September 2014).

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 25<sup>th</sup> Day of June 2019

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: June 28, 2019**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
June 25, 2019 Council Meeting**

**Nichalos Watson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-116**

v.

**Passaic County Prosecutor's Office (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies of:

1. Criminal records of OW
2. The Complainant's "pre-trial discoveries (State v. Nichalos Watson Ind. #07-01-0069)"
3. The Complainant's "pre-sentence report (State v. Nichalos Watson Ins. #07-01-0069)"

**Custodian of Record:** Lisa A. Verlardi, Esq.

**Request Received by Custodian:** February 1, 2017

**Response Made by Custodian:** February 10, 2017

**GRC Complaint Received:** May 15, 2017

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

**Request and Response:**

On February 1, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On February 10, 2017, the Custodian responded in writing denying access to all three (3) items of the Complainant's request.

Regarding Item No. 1, the Custodian asserted that the request for "criminal records" was overly broad and did not specifically identify government records. Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian also said that OPRA did not require custodians to conduct research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). However, the Custodian also added that if the Complainant was seeking OW's criminal history report or "rap sheet," then the request would be denied as they are not public records under N.J.S.A. 53:1-32, N.J.S.A. 53:1-20.5 through -20.37, and N.J.A.C. 13:59-1.1 through -2.4. The Custodian added that only the New Jersey State Bureau of Identification ("SBI") may release a criminal case history for non-criminal justice purposes. N.J.A.C. 13:59-1.2.

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

<sup>2</sup> Represented by William J. Pascrell, III (Paterson, 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Regarding Item No. 2, the Custodian also asserted that the request was overly broad and failed to identify specific government records. Bent, 381 N.J. Super. at 37; MAG, 375 N.J. Super. at 534. The Custodian added that most of the records that would be included as part of criminal discovery would likely be denied as criminal investigatory records. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70 (App. Div. 2015), Newman v. N.J. State Police, GRC Complaint No. 2013-347 (July 2014), Maniscalco v. Atlantic Cnty. Prosecutor's Office, GRC Complaint No. 2012-147 (July 2013), Nance v. Scotch Plains Twp. Police Dep't, GRC Complaint No. 2003-125 (January 2005).

Regarding Item No. 3, the Custodian asserted that pre-sentence reports are confidential documents not subject to access under OPRA. State v. DeGeorge, 113 N.J. Super. 542 (App. Div. 1971); R. 1:38-3(f)5; N.J.S.A. 2C:44-6 and R. 3:21-2. The Custodian stated that the Complainant should contact his defense attorney to obtain a copy of his pre-sentence report.

#### Denial of Access Complaint:

On May 15, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant did not elaborate further on the denial of access.

#### Statement of Information:

On June 14, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on February 1, 2017. The Custodian certified that she confirmed that the criminal case at issue was prosecuted by her office. The Custodian certified that she responded in writing on February 10, 2017. The Custodian did not provide additional arguments beyond what was stated in her response.

### 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. (emphasis added). Bent, 381 N.J. Super. at 37,<sup>4</sup> N.J. Builders Ass’n v. N.J. 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).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all” requests seeking “records” generically, etc.) and requires a custodian to conduct research. MAG, 375 N.J. Super. at 549; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See, e.g., Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See, e.g., Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. See also Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

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:

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

[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 v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (February 2008).

[Id.]

Also, the GRC has typically held that a request seeking access to a "file" is invalid because it represents a blanket request for a class of various records. See Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (February 2008); Nunley v. N.J. State Parole Bd., GRC Complaint No. 2013-335 (July 2014). In Bragg v. N.J. Dep't of Corr., GRC Complaint No. 2010-145 (March 2011), the complainant disputed the custodian's denial of his request seeking his "[c]omplete institutional" and "Special Investigation Division" files. In the SOI, the custodian argued that a portion of the request was invalid because it failed to identify specific records. The Council agreed, finding that both request items were invalid because the complainant's "request seeks entire files rather than specific identifiable government records." (Citations omitted). See also Bradley-Williams v. Atlantic Cnty. Jail, GRC Complaint No. 2011-232 (December 2012); Torian v. N.J. State Parole Bd., GRC Complaint No. 2013-245 (June 2014).

### Criminal Records of OW and Pre-Trial Discoveries

In the instant matter, the Complainant sought in part the "criminal records" of an individual, and "pre-trial discoveries" pertaining to the Complainant's criminal matter. The Custodian denied these portions of the request as invalid. As was the case in Feiler-Jampel, GRC 2007-190, the Council has held that requests for "records" pertaining to a criminal action are invalid and would require the Custodian to conduct research to fulfill. Additionally, the Complainant's request for discovery materials represents a blanket request for multiple types of records in his criminal file. The Complainant's specifying of the relevant criminal action does not cure the defects in the request, as the Complainant sought "discovery materials" – an overbroad class of documents. See Bragg, GRC No. 2010-145; Maldonado v. Ocean Cnty. Prosecutor's Office, GRC Complaint No. 2017-146 (May 2019).

Accordingly, Item Nos. 1 and 2 of the Complainant's request seeking "criminal records" and "pre-trial discoveries" are blanket requests for classes of various documents rather than for specifically named or identifiable government records and are therefore invalid under OPRA, and the Custodian had no legal duty to conduct research to locate potentially responsive records. MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 37; N.J. Builders Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Bragg, GRC 2010-145. Further, Item No. 1 is invalid because it generically sought "records." Feiler-Jampel, GRC 2007-190. Thus, the Custodian lawfully denied access to this portion of the Complainant's request. N.J.S.A. 47:1A-6.

## **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.

Regarding pre-sentence reports, the Council has previously held that same were exempt from disclosure under the “inter-agency, intra-agency advisory, consultative, or deliberative [(“ACD”)]” material exemption. See Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014) (citing DeGeorge, 113 N.J. Super. at 544); Baker v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2014-262 (May 2015).

Here, the Complainant sought a pre-sentence report pertaining to his criminal matter. As demonstrated above the relevant case law supports the Custodian’s denial of access to this record. Furthermore, the Complainant’s description of the record is sufficient to determine that same is exempt.

Therefore, the Custodian lawfully denied access to Item No. 3 of the Complainant’s request seeking a pre-sentence report pertaining to his criminal matter. N.J.S.A. 47:1A-6. Specifically, pre-sentence reports are exempt as ACD material under N.J.S.A. 47:1A-1.1. See Pitts, GRC 2013-299.

## **Conclusions and Recommendations**

The Council Staff respectfully recommends the Council find that:

1. Item Nos. 1 and 2 of the Complainant’s request seeking “criminal records” and “pre-trial discoveries” are blanket requests for classes of various documents rather than for specifically named or identifiable government records and are therefore 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, 549 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Bragg v. N.J. Dep’t of Corr., GRC Complaint No. 2010-145 (March 2011). Further, Item No. 1 is invalid because it generically sought “records.” Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to this portion of the Complainant’s request. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied access to Item No. 3 of the Complainant’s request seeking a pre-sentence report pertaining to his criminal matter. N.J.S.A. 47:1A-6. Specifically, pre-sentence reports are exempt as “inter-agency, intra-agency advisory,

consultative, or deliberative [“(ACD)”]” material under N.J.S.A. 47:1A-1.1. See Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014).

Prepared By: Samuel A. Rosado  
Staff Attorney

June 18, 2019