



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 21, 2019 Government Records Council Meeting

Ernest Pierce
Complainant

Complaint No. 2017-176

v.

Salem County Prosecutor's Office
Custodian of Record

At the May 21, 2019 public meeting, the Government Records Council ("Council") considered the May 14, 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 the Complainant's request is invalid. 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 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Specifically, request item Nos. 1 and 2 failed to include sufficient identifiers necessary for the Custodian to avoid performing research. Shahid v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2008-251 (November 2009) (citing Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007)). Additionally, request item No. 3 seeking "promis gavel" is invalid. Barkley v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2013-244 (Interim Order dated April 29, 2014). Thus, the Custodian lawfully denied access to the subject request. 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 21st Day of May 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: May 22, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
May 21, 2019 Council Meeting**

**Ernest Pierce¹
Complainant**

GRC Complaint No. 2017-176

v.

**Salem County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of:

1. The Complainant's "judgment of conviction."
2. The Complainant's "grand jury charges."
3. The Complainant's "promis gavel."

Custodian of Record: David Galemba
Request Received by Custodian: April 3, 2017
Response Made by Custodian: April 6, 2017
GRC Complaint Received: September 1, 2017

Background³

Request and Response:

On March 29, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On April 6, 2017, the Custodian responded in writing denying access to the Complainant's request as invalid. 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 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

Additionally, the Custodian directed the Complainant to Superior Court for records responsive to item No. 1 per N.J. Court Rule R. 1:38. The Custodian also sought clarification in response to item No. 2. Finally, the Custodian noted that "promis gavel" was the Judiciary's criminal case management system. The Custodian stated that the Complainant should direct this request item to the Administrative Offices of the Courts.

¹ No legal representation listed on record.

² Represented by Michael Mulligan, Esq. (Salem, NJ).

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

Denial of Access Complaint:

On September 1, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s denial of access but provided no additional arguments as to why he believed he was unlawfully denied access.

Statement of Information:

On September 19, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 3, 2017. The Custodian certified that his search included utilizing the Salem County Prosecutor’s Office (“SCPO”) InfoShare system, which identified five (5) cases in which the Complainant was listed as a defendant. The Custodian certified that he responded in writing on April 6, 2017 denying the request as invalid, but also directing the Complainant to Superior Court or seeking clarification.

The Custodian argued that the Complainant’s request item Nos. 1 and 2 were invalid because they lacked reasonable identifiers. The Custodian thus contended that he could not determine whether the SCPO possessed any responsive records. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders, 390 N.J. Super. 166. See also Goodman v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2010-323 (April 2012). The Custodian argued that the Complainant was involved in twenty (20) prior criminal cases in New Jersey, with six (6) occurring in Salem County. The Custodian noted that he sought clarification, but the Complainant never responded.

The Custodian further argued that the Complainant’s request item No. 3 was invalid pursuant to Barkley v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2013-244 (April 2014) (holding that complainant’s request for “promis gavel” in two (2) cases was invalid). The Custodian further noted that even if the request were valid, such a request would be properly directed to the Courts, who are custody and control of the system.

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 37,⁴ N.J. Builders, 390 N.J. Super. at 180; 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. 534; 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).

In Shahid v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2008-251 (November 2009), the complainant sought statements and discovery motions filed in relation to two (2) individuals identified by two (2) dates. The custodian denied the request as invalid, arguing that the request items did not provide sufficient information necessary to identify the records sought. The custodian later provided several supplemental certifications, wherein she described the agency’s filing system and noted that multiple cases existed for the two (2) individuals identified in the request. The Council, citing Donato, GRC 2005-182, found that the request was invalid because it required research. The Council reasoned that “without further identifying information,” the custodian would have needed to conduct research to ascertain which individuals were the correct ones referred to in the request.

Also, regarding the request item seeking “promis gavel,” the Council has previously determined that such a request is invalid. In Barkley v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2013-244 (Interim Order dated April 29, 2014), the Council held that the complainant’s request items seeking “promis gavel” in two cases were invalid, reasoning that:

The promis gavel computer system is an automated criminal case tracking system that captures base information concerning defendants. The system is a searchable database in which only certain information is available to the public at public access terminals either on the Internet or at Superior courthouses in each County in the State.

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

Thus, on its face, a promis gavel is not a record but a system by which basic information can be retrieved. To this end, the GRC is satisfied that these request items are invalid because they seek a system and not a record.

[Id. at 6 (footnote omitted). See also McClain v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2011-202 (July 2012).]

In the complaint currently before the Council, the complainant sought his “judgement of conviction,” “grand jury charges,” and “promis gavel.” The Custodian denied the request as invalid. In the SOI, the Custodian certified that a review of the SCPO’s Infoshare system revealed that the Complainant was involved in twenty (20) criminal cases with six (6) occurring in Salem County and five (5) in which he was a named defendant. The Custodian also argued that prior case law supported that request item No. 3 was invalid.

All the above case law supports that the request at issue here is invalid and that the Custodian lawfully denied access to it. Regarding request item Nos. 1 and 2, the Complainant failed to provide sufficient identifiers such as date ranges, indictment or case numbers, case names, *etc.* In the absence of these identifiers, the Custodian would have been forced to perform research and guesswork as to which files contained the records sought. As was the case in Shahid, the Custodian was not required to perform such a task. Regarding request item No. 3, the Council’s decision in Barkley, GRC 2013-244 is on point here: requests for “promis gavel” are invalid.

Accordingly, the Complainant’s request is invalid. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; N.J. Builders, 390 N.J. Super. 166; Schuler, GRC 2007-151 (February 2009). Specifically, request item Nos. 1 and 2 failed to include sufficient identifiers necessary for the Custodian to avoid performing research. Shahid, GRC 2008-251 (citing Donato, GRC 2005-182). Additionally, request item No. 3 seeking “promis gavel” is invalid. Barkley, GRC 2013-244. Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Complainant’s request is invalid. 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 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Specifically, request item Nos. 1 and 2 failed to include sufficient identifiers necessary for the Custodian to avoid performing research. Shahid v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2008-251 (November 2009) (citing Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007)). Additionally, request item No. 3 seeking “promis gavel” is invalid. Barkley v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2013-244 (Interim Order dated April 29, 2014). Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Acting Executive Director

May 14, 2019