



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

Lt. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

September 25, 2018 Government Records Council Meeting

Stanley Ray
Complainant

Complaint No. 2017-31

v.

Passaic County Prosecutor's Office
Custodian of Record

At the September 25, 2018 public meeting, the Government Records Council ("Council") considered the September 18, 2018 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 Custodian lawfully denied access to the Complainant's OPRA request seeking "rap sheets." N.J.S.A. 47:1A-6. Specifically, Executive Order No. 9 (Gov. Hughes, 1963) provides that said records are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a).

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 25th Day of September, 2018

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: September 27, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
September 25, 2018 Council Meeting**

**Stanley Ray¹
Complainant**

GRC Complaint No. 2017-31

v.

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

Records Relevant to Complaint: Hardcopies of criminal “rap sheets” for four (4) witnesses in relation to State v. Stanley Ray, Indictment No. 99-04-0384.³

Custodian of Record: Lisa A. Verlardi

Request Received by Custodian: January 25, 2017

Response Made by Custodian: January 27, 2017

GRC Complaint Received: February 10, 2017

Background⁴

Request and Response:

On January 18, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 27, 2017 the Custodian responded in writing denying access to the requested “rap sheets” as exempt from disclosure pursuant to the National Crime Prevention and Privacy Compact (“Compact”). N.J.S.A. 53:1-32. See also N.J.S.A. 53:1-20.37; N.J.A.C. 13:59-1, *et seq.*

Denial of Access Complaint:

On February 10, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted he was unlawfully denied access to the responsive records.

¹ No legal representation listed on record.”

² Represented by William J. Pascrell, III (Paterson, NJ)

³ The Complainant requested an additional record not at issue in this complaint.

⁴ 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.

Statement of Information:

On February 27, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 25, 2017. The Custodian affirmed that she did not perform a search because the requested records were exempt from disclosure. The Custodian certified that she responded in writing on January 27, 2017 denying access to the subject OPRA request.

The Custodian argued that she lawfully denied access to responsive records because they were exempt under the N.J.A.C. 13:59-1.2. The Custodian asserted that N.J.A.C. 13:59-1.6(c) prohibited a public employee from permitting access to rap sheets beyond those exceptions cited specifically in the regulations. Additionally, the Custodian noted that both the New Jersey State Police, Department of Corrections, and Adult County Correctional Facilities all maintained regulations barring disclosure of criminal rap sheets. N.J.A.C. 13:59-1.6(c); N.J.A.C. 10A:22-2.3(a)(6); N.J.S.A. 10A:31-6.10(a)(6). See also The Westfield Leader v. N.J. Div. of State Police, GRC Complaint No. 2004-152 (July 2005); Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (Interim Order dated February 27, 2008); N.J.S.A. 53:1-32; N.J.S.A. 47:1A-9(a); Executive Order No. 9 (Gov. Hughes, 1963)(“EO 9”), and Executive Order No. 69 (Gov. Whitman, 1997).

Analysis

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 criminal history background information, colloquially known as criminal “rap sheets,” OPRA provides that it “shall not abrogate any exemption . . . made pursuant to . . . any . . . *Executive Order of the Governor* . . .” N.J.S.A. 47:1A-9(a) (emphasis added). To this end, EO 9 provides that “criminal records required to be made, maintained[,] and kept pursuant to [N.J.S.A. 53:1-20.1] and [N.J.S.A. 53:1-20.2]” are exempt from disclosure. *Id.* at 2(f). EO 9 is relevant with regard to rap sheets because N.J.S.A. 53:1-20.1 requires this information be collected and submitted into the criminal history background check database through the State Bureau of Identification (“SBI”). Additionally, N.J.S.A. 53:1-20.2 provides that bureaus of identification are established in “the office of the sheriff and . . . prosecutors . . .” *Id.* Thus, it follows that any information coalesced by county and State SBIs are exempt from access under OPRA in accordance with N.J.S.A. 47:1A-9(a) and EO 9.

To further emphasize the confidential nature of rap sheet information, State agencies have promulgated regulations that either completely exempt the information from access or limit its dissemination to a specific process (with multiple limitations). See N.J.A.C. 13:59-1 *et seq.* (New Jersey State Police regulations providing for the specific process of obtaining background checks

and the limitations on who can access this information); N.J.A.C. 10A:22-2.3(a)(6) (New Jersey Department of Corrections regulation exempting from access “[c]omprehensive criminal history information (rap sheet) . . .”). Thus, all relevant statutes, regulations, and executive orders concerning rap sheets support that they are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); EO 9.

Of additional note, the Council recently addressed the disclosability of “rap sheets” under OPRA in Lewis v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018). There, the Council held that “rap sheets” were exempt from disclosure under N.J.S.A. 47:1A-9(a) and EO 9. In the instant complaint, the Complainant sought access to “rap sheets” for four (4) individuals. The Custodian denied this OPRA request pursuant to N.J.S.A. 53:1-20.5 and 20.37, as well as N.J.A.C. 13:59-1 et seq. In light of the above, the GRC is persuaded that the Custodian’s denial of access was lawful.

Accordingly, the Custodian lawfully denied access to the Complainant’s OPRA request seeking “rap sheets.” N.J.S.A. 47:1A-6. Specifically, EO 9 provides that said records are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a).

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant’s OPRA request seeking “rap sheets.” N.J.S.A. 47:1A-6. Specifically, Executive Order No. 9 (Gov. Hughes, 1963) provides that said records are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a).

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

September 18, 2018