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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 30, 2019 Government Records Council Meeting

Jameel Mikal Rollins
Complainant
v.
Essex County Prosecutor's Office
Custodian of Record

Complaint No. 2017-42

At the April 30, 2017 public meeting, the Government Records Council ("Council") considered the April 23, 2019 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The portion of the Complainant's request seeking "Promis Gavel" represents an invalid request for information that fails to seek identifiable government records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. 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). Thus, the Custodian did not unlawfully deny access. N.J.S.A. 47:1A-6; Franklin v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-308 (August 2018).

2. The Custodian lawfully denied access to the portion of 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); Franklin v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-308 (August 2018).

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 30th Day of April 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 3, 2019

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Council Staff
April 30, 2019 Council Meeting

Jameel Mikal Rollins[1]
Complainant

GRC Complaint No. 2017-42

v.

Essex County Prosecutor's Office[2]
Custodial Agency

Records Relevant to Complaint: Copy of the criminal history, "Promis Gavel" and "rap sheet" for an identified individual.

Custodian of Record: Cheryl M. Cucinello
Request Received by Custodian: January 30, 2017
Response Made by Custodian: February 8, 2017
GRC Complaint Received: February 27, 2017

Background[3]

Request and Response:

On January 30, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On February 8, 2017 the Custodian responded in writing denying access to the criminal history/rap sheets 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*. The Custodian also denied the Complainant's request as being overly broad and failed to identify specific documents. Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). Lastly, the Custodian denied the Complainant's request it would require the Custodian to research her files to determine which files could be responsive to his request. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

Denial of Access Complaint:

On February 27, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant did not elaborate further on the

[1] No legal representation listed on record.
[2] Represented by Maite Gaeta, Assistant County Counsel.
[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.

circumstances of his OPRA request.

Statement of Information:

On April 10, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on January 30, 2017. The Custodian stated that she looked up the Complainant on Promis Gavel to determine whether he was a defendant in Essex County and determine the connection the Complainant had with the identified individual. The Custodian stated that the individual was the victim in the Complainant's criminal case. The Custodian certified that she responded in writing on February 8, 2017, denying access to the Complainant's ORPA request on multiple grounds.

Regarding criminal rap sheets, the Custodian argued that access to such records are controlled not only in who may obtain them, but in terms of which governmental agencies may disseminate them depending on the recipient and the circumstances. N.J.S.A. 53:1-32; N.J.S.A. 53:1-20.5 through N.J.S.A. 53:1-20.37; and N.J.A.C. 13:59-1.1 through N.J.A.C. 13:59-2.4.

Additionally, the Custodian asserted that the request was overly broad and failed identify specific records to locate. Bent, 381 N.J. Super. at 37. The Custodian contended that the requestor must identify a record and not information, dates, or statistics.

Furthermore, the Custodian argued that she lawfully denied access because she is not required to conduct research in order to determine which records might be responsive to an overly broad and unclear request. MAG, 375 N.J. Super. at 546.

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 Assoc. 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).

Regarding the portion of the request seeking "Promis Gavel," the Council has previously determined that such a request is invalid. In Franklin v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-308 (August 2018), the Council held that the complainant's request seeking "Promis Gave[e]l" for six (6) individuals was 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. 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 3-4 (citing Barkley v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2013-244 (Interim Order dated April 29, 2014)).]

Here, the Complainant sought the "Promis Gavel" of an individual that the Custodian identified as the victim of the Complainant's criminal case. The facts here parallel those in Franklin, GRC 2016-308 and therefore warrant a similar outcome.

Accordingly, the portion of the Complainant's request seeking "Promis Gavel" is an invalid request for information that fails to specifically identify records. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access. N.J.S.A. 47:1A-6; Franklin, GRC 2016-308.

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

[4] Affirmed on appeal regarding Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).

"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, Executive Order No. 9 (Gov. Hughes, 1963)("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 limiting dissemination to a specific process (with multiple limitations) or outright exempted access to them. 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 addressing rap sheets support that they are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); EO 9.

In Franklin, GRC 2016-308, the complainant sought access to "rap sheets" for six (six) individuals. The Council held that "rap sheets" were exempt from disclosure under N.J.S.A. 47:1A-9(a) and EO 9. Here, the Complainant sought the "rap sheet" for one individual, and the Custodian denied access under N.J.S.A. 53:1-20.5 through -20.37, as well as N.J.A.C. 13:59-1 *et seq.* Thus, the GRC is satisfied that the Custodian's denial was lawful.

Accordingly, the Custodian lawfully denied access to the portion of 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); Franklin, GRC 2016-308.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The portion of the Complainant's request seeking "Promis Gavel" represents an invalid request for information that fails to seek identifiable government records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. 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). Thus, the Custodian did not unlawfully deny access. N.J.S.A. 47:1A-

6; Franklin v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-308 (August 2018).

2. The Custodian lawfully denied access to the portion of 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); Franklin v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-308 (August 2018).

Prepared By: Samuel A. Rosado
Staff Attorney

April 23, 2019