



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 28, 2020 Government Records Council Meeting

Abdul-Rahim Muslim
Complainant

Complaint No. 2018-59

v.

Essex County Prosecutor's Office
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council ("Council") considered the April 3, 2020 Supplemental 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 current Custodian complied with the Council's February 26, 2020 Interim Order because he responded in the prescribed time frame providing the withheld records, with applicable redactions, to the Complainant via certified mail. Additionally, the current Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the requested arrest report and warrant affidavit, he lawfully denied access to the remainder of the Complainant's OPRA request. Additionally, the current Custodian cured the Custodian's unlawful denial of access by disclosing the arrest report and warrant affidavit in accordance with the Council's February 26, 2020 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 28th Day of April 2020

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: April 30, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 28, 2020 Council Meeting**

**Abdul-Rahim Muslim¹
Complainant**

GRC Complaint No. 2018-59

v.

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

Records Relevant to Complaint: Regarding the criminal matter State v. Phillip Holden, Ind. No. 2010-8-1918:

“All arrest reports; arrest warrants; 911 emergency calls; EMT reports; crime scene photo(s); autopsy reports; polygraph examination reports; ballistic reports; photo array(s); finger print cards; DNA samples; gunshot trace evidence reports; forensic reports; and all Open Public Records regarding the above-referenced criminal matter.”

Custodian of Record: LeeAnn Cunningham³
Request Received by Custodian: March 6, 2018
Response Made by Custodian: March 12, 2018
GRC Complaint Received: April 5, 2018

Background

February 26, 2020 Council Meeting:

At its February 26, 2020 public meeting, the Council considered the January 21, 2020⁴ 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, found that:

1. Because a portion of the Complainant's March 6, 2018 OPRA request seeking “all Open Public Records” pertaining to the Complainant's criminal case 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

¹ No legal representation listed on record.

² Represented by Courtney M. Gaccione, Essex County Counsel (Newark, NJ).

³ The current Custodian of Record is Stephen A. Pogany, Esq.

⁴ This complaint was prepared for adjudication at the Council's January 28, 2020 meeting, but could not be adjudicated due to a lack of quorum.

- records. MAG Entm't, LLC v. Div. of ABC, 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 Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (February 2008); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
2. The portion of the Complainant's March 6, 2018 OPRA request seeking DNA samples is an invalid request that fails to meet the definition of a government record and does not seek specifically identifiable records. N.J.S.A. 47:1A-1.1; MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37, 39 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Miller v. N.J. Dep't of Corr., GRC Complaint No. 2009-226 (October 2010); Ayinde v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2018-52 (December 2019). Thus, the Custodian did not unlawfully deny access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
 3. The portion of the Complainant's March 6, 2018 OPRA request seeking 911 emergency calls, polygraph examination reports, ballistic reports, gunshot trace evidence reports, and forensic reports are exempt from disclosure under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order February 25, 2009); McCrone (The Trenton Times) v. Burlington Cnty. Prosecutor's Office, GRC Complaint No. 2005-146 (November 2005). Thus, the Custodian lawfully denied access to these records. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
 4. The Custodian unlawfully denied access to the requested arrest reports and arrest warrants. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008); Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013). The Custodian shall disclose these responsive records, with redactions where applicable.
 5. **The Custodian shall comply with conclusion No. 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁵**

⁵ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷

6. The Custodian lawfully denied access to any autopsy reports contained within his criminal file. N.J.S.A. 47:1A-6. Specifically, such reports contain the medical history of the Complainant's victim and is therefore exempt from access. N.J.S.A. 47:1A-2.2(a); Boretsky v. Middlesex Cnty. Examiner's Office, GRC Complaint No. 2016-219 (January 2018).
7. The crime scene photo(s), photo arrays, and fingerprint cards responsive to the Complainant's March 6, 2018 OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), and Executive Order No. 69 (Gov. Whitman, 1997). See Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009); Lynn v. Middlesex Cnty. Prosecutor's Office, GRC Complaint No. 2015-186 (January 2017). Therefore, the Custodian lawfully denied access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
8. The EMT reports responsive to the Complainant's March 6, 2018 OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a) and Executive Order No. 69 (Gov. Whitman, 1997). See Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (April 2008). Therefore, the Custodian lawfully denied access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
9. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On February 28, 2020, the Council distributed its Interim Order to all parties. On March 4, 2020, the current Custodian responded to the Council's Interim Order. The current Custodian attached a copy of the requested arrest report and warrant affidavit, as well as a certified confirmation of compliance to the Executive Director. The current Custodian certified that he provided the Complainant with a copy of the arrest report and warrant affidavit that same day via certified mail, with redactions to the arrestee's Social Security number.

⁶ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁷ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Analysis

Compliance

At its February 26, 2020 meeting, the Council ordered the Custodian to provide the Complainant with a copy of the withheld arrest report and warrant. The Council also ordered the Custodian to submit a certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On February 28, 2020, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on March 6, 2020.

On March 4, 2020, the third (3rd) business day after receipt of the Council's Order, the current Custodian responded in writing, attached a copy of the requested arrest report and warrant affidavit as well as a certified confirmation of compliance to the Executive Director. Furthermore, the current Custodian certified that the Complainant was simultaneously provided a copy of the requested records via certified mail.

Therefore, the current Custodian complied with the Council's February 26, 2020 Interim Order because he responded in the prescribed time frame providing the withheld records, with applicable redactions, to the Complainant via certified mail. Additionally, the current Custodian simultaneously provided certified confirmation of compliance to the Executive Director.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian unlawfully denied access to the requested arrest report and warrant affidavit, he lawfully denied access to the remainder of the Complainant's OPRA request. Additionally, the current Custodian cured the Custodian's unlawful denial of access by disclosing the arrest report and warrant affidavit in accordance with the Council's February 26, 2020 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The current Custodian complied with the Council's February 26, 2020 Interim Order because he responded in the prescribed time frame providing the withheld records, with applicable redactions, to the Complainant via certified mail. Additionally, the current Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the requested arrest report and warrant affidavit, he lawfully denied access to the remainder of the Complainant's OPRA request. Additionally, the current Custodian cured the Custodian's unlawful denial of access by disclosing the arrest report and warrant affidavit in accordance with the Council's February 26, 2020 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado
Staff Attorney

April 3, 2020



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

February 26, 2020 Government Records Council Meeting

Abdul-Rahim Muslim
Complainant

Complaint No. 2018-59

v.

Essex County Prosecutor's Office
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council ("Council") considered the January 21 Findings and Recommendations of the Council Staff 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. Because a portion of the Complainant's March 6, 2018 OPRA request seeking "all Open Public Records" pertaining to the Complainant's criminal case 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, 546 (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. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (February 2008); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
2. The portion of the Complainant's March 6, 2018 OPRA request seeking DNA samples is an invalid request that fails to meet the definition of a government record and does not seek specifically identifiable records. N.J.S.A. 47:1A-1.1; MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37, 39 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Miller v. N.J. Dep't of Corr., GRC Complaint No. 2009-226 (October 2010); Ayinde v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2018-52 (December 2019). Thus, the Custodian did not unlawfully deny access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
3. The portion of the Complainant's March 6, 2018 OPRA request seeking 911 emergency calls, polygraph examination reports, ballistic reports, gunshot trace evidence reports, and forensic reports are exempt from disclosure under the criminal investigatory

- exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order February 25, 2009); McCrone (The Trenton Times) v. Burlington Cnty. Prosecutor's Office, GRC Complaint No. 2005-146 (November 2005). Thus, the Custodian lawfully denied access to these records. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
4. The Custodian unlawfully denied access to the requested arrest reports and arrest warrants. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008); Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013). The Custodian shall disclose these responsive records, with redactions where applicable.
 5. **The Custodian shall comply with conclusion No. 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**
 6. The Custodian lawfully denied access to any autopsy reports contained within his criminal file. N.J.S.A. 47:1A-6. Specifically, such reports contain the medical history of the Complainant's victim and is therefore exempt from access. N.J.S.A. 47:1A-2.2(a); Boretsky v. Middlesex Cnty. Examiner's Office, GRC Complaint No. 2016-219 (January 2018).
 7. The crime scene photo(s), photo arrays, and fingerprint cards responsive to the Complainant's March 6, 2018 OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), and Executive Order No. 69 (Gov. Whitman, 1997). See Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009); Lynn v. Middlesex Cnty. Prosecutor's Office, GRC Complaint No. 2015-186 (January 2017). Therefore, the Custodian lawfully denied access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
 8. The EMT reports responsive to the Complainant's March 6, 2018 OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a) and Executive Order No. 69 (Gov. Whitman, 1997). See Bart v. City of Passaic (Passaic), GRC Complaint No.

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

2007-162 (April 2008). Therefore, the Custodian lawfully denied access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.

9. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 26th Day of February 2020

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 28, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 26, 2020 Council Meeting**

**Abdul-Rahim Muslim¹
Complainant**

GRC Complaint No. 2018-59

v.

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

Records Relevant to Complaint: Regarding the criminal matter State v. Phillip Holden, Ind. No. 2010-8-1918:

“All arrest reports; arrest warrants; 911 emergency calls; EMT reports; crime scene photo(s); autopsy reports; polygraph examination reports; ballistic reports; photo array(s); finger print cards; DNA samples; gunshot trace evidence reports; forensic reports; and all Open Public Records regarding the above-referenced criminal matter.”

Custodian of Record: LeeAnn Cunningham³
Request Received by Custodian: March 6, 2018
Response Made by Custodian: March 12, 2018
GRC Complaint Received: April 5, 2018

Background⁴

Request and Response:

On February 20, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 12, 2018, the Custodian responded in writing, granting in part and denying in part access to the Complainant’s request. The Custodian stated that she was attaching the letter provided to the Complainant in response to a prior OPRA request seeking records pertaining to his criminal case. The Custodian stated that the prior response included copies of the indictment, complaint, arrest report, and judgement of conviction.

As to the remainder of the Complainant’s request, the Custodian denied access on various

¹ No legal representation listed on record.

² Represented by Courtney M. Gaccione, Essex County Counsel (Newark, NJ).

³ The current Custodian of Record is Michael Morris.

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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

grounds. Regarding the request for “All Open Records,” the Custodian denied access as the request was vague, overly broad, and failed to name specific government records. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005).

Regarding the requests for “911 emergency calls; EMT reports; crime scene photo(s); autopsy reports; polygraph examination reports; ballistic reports; photo array(s); fingerprint cards; DNA samples; gunshot trace evidence reports,” the Custodian denied access on the separate and independent ground that the prosecutor’s criminal investigatory file, open or closed, is not a public record and is exempt from disclosure under N.J.S.A. 47:1A-1.1. Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 591 (2011); Bent, 381 N.J. Super. at 38-39; Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

The Custodian then stated that the request was denied on the separate and independent ground that the requested records are unfiled discovery materials and as such exempt from disclosure. N.J.S.A. 47:1A-9(b); Drinker Biddle & Reath, LLP v. New Jersey Dep’t of Law and Public Safety, Div. of Law, 421 N.J. Super. 489, 498-98 (App. Div. 2011).

The Custodian stated that the request was denied on the separate and independent ground that OPRA does not require disclosure of certain privileged materials defined as any “inter-agency or intra-agency advisory, consultative, or deliberative material.” N.J.S.A. 47:1A-1.1; Bent, 381 N.J. Super. at 40.

The Custodian stated that the request was being denied on the separate and independent ground that Executive Order No. 69 (Gov. Whitman, 1997) (“EO 69”) prevents disclosure of the documents requested, specifically photographs. N.J.S.A. 47:1A-9(a).

The Custodian stated that the request was being denied on the separate and independent ground that OPRA excludes disclosure of twenty-one (21) categories of information “deemed to be confidential.” N.J.S.A. 47:1A-1.1. The Custodian stated that among those categories were a citizen’s personal information and victim’s records.

The Custodian stated that OPRA exempts photographs, negatives, prints, and/or videotapes taken at the scene of death or in the course of postmortem examination or autopsy and autopsy reports. N.J.S.A. 47:1A-1.1.

The Custodian stated that fingerprint cards were exempt pursuant to Executive Order No. 21 (Gov. McGreevey 2002) (“EO 21”).

The Custodian stated that the Government Records Council (“GRC”) has held that EMS Division Incident reports were exempt from disclosure pursuant to Executive Order No. 26 (Gov. McGreevey, 2002) (“EO 26”).

Denial of Access Complaint:

On April 5, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the requested records were

public, such as the arrest reports and judgement of conviction. The Complainant contended that his request was illegally denied.

Statement of Information:

On April 23, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 6, 2018. The Custodian certified that her search involved reviewing the Complainant’s criminal case, as well as previous OPRA request and responses provided. The Custodian certified that she responded in writing on March 12, 2018.

The Custodian maintained her position that she properly denied the Complainant’s OPRA request for all reasons stated in her March 12, 2018 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 Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (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 37,⁵ 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 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).

“All Open Public Records”

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.* (April 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:

[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).

⁵ Affirmed on appeal from Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004).

[Id.]

In the instant matter, in addition to specific types of records, the Complainant sought “all Open Public Records” regarding his criminal case. As was the case in Morgano, 2007-156, 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. N.J. 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 March 6, 2018 OPRA request seeking “all Open Public Records” pertaining to the Complainant’s criminal case 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; N.J. Builders Ass’n, 390 N.J. Super. at 180; Morgano, GRC 2007-156; Feiler-Jampel, GRC 2007-190.

DNA Samples

The Council is permitted to raise additional defenses regarding the disclosure of records pursuant to Paff v. Twp. of Plainsboro, 2007 N.J. Super. Unpub. LEXIS 2135 (App. Div.), certif. denied, 193 N.J. 292 (2007).⁶ In Paff, the complainant challenged the GRC’s authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that the Open Public Meetings Act prohibited the disclosure of the redacted portions to the requested executive session minutes. The Council affirmed the custodian’s denial to portions of the executive session minutes but for reasons other than those cited by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian’s cited basis for denial was lawful. The court held that:

The GRC has an independent obligation to “render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to’ OPRA . . . The GRC is not limited to assessing the correctness of the reasons given for the custodian’s initial determination; it is charged with determining if the initial decision was correct.”

The court further stated that:

Aside from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998) (citing Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) (lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975)

⁶ On appeal from Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

(judgments must be affirmed even if lower court gives wrong reason), certif. denied, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. Super. 110, 121 (App. Div. 1956) (question for reviewing court is propriety of action reviewed, not the reason for the action), aff'd, 24 N.J. 139 (1957).

In Miller v. N.J. Dep't of Corr., GRC Complaint No. 2009-226 (October 2010), the complainant sought a DNA sample taken by the agency in accordance with state law. The Council held that when measured against OPRA's definition of a "government record" a sample of DNA did not match what is identified under N.J.S.A. 47:1A-1.1, as it was not a "paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof . . ." Therefore, the Council found that the complainant's request did not seek a specific, identifiable government record.

Although decided during the pendency of this matter, the Council's holding in Ayinde v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2018-52 (December 2019) is instructive. In that case, the Complainant sought in part "DNA samples" pertaining to his indictment. In accordance with Miller, 2009-226, the Council held that the Complainant's request was invalid because the Complainant was seeking physical evidence, and not records as defined under OPRA. N.J.S.A. 47:1A-1.1.

Here, the Complainant also sought "DNA samples" pertaining to his criminal case. Although the Custodian did not argue that this portion of the request was invalid, the GRC *sua sponte* applies Miller, GRC 2009-226 and Ayinde, GRC 2018-52 to the facts here. In accordance with both of those prior decisions, the DNA sample portion of the Complainant's request does not seek records that meet OPRA's definition of a government record under N.J.S.A. 47:1A-1.1.

Therefore, the portion of the Complainant's March 6, 2018 OPRA request seeking DNA samples is an invalid request that fails to meet the definition of a government record and does not seek specifically identifiable records. N.J.S.A. 47:1A-1.1; MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders Ass'n, 390 N.J. Super. at 180; Miller, GRC 2009-226; Ayinde, GRC 2018-52. Thus, the Custodian did not unlawfully deny access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.

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.

OPRA defines a criminal investigatory record 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." N.J.S.A. 47:1A-1.1.

Therefore, for a record to be considered 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. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009).

The New Jersey Supreme Court considered this two-prong test in N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017), on appeal from N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70 (App. Div. 2015). In the appeal, the Court affirmed that OPRA’s criminal investigatory records exemption applies to police records which originate from a criminal investigation. However, the court stated that “to qualify for the exception — and be exempt from disclosure — a record (1) must not be ‘required by law to be made,’ and (2) must ‘pertain[] to a criminal investigation.’ N.J.S.A. 47:1A-1.1.” Id. at 564.

The Court made it clear that if the first prong cannot be met because such a record is required by law to be made, then that record “cannot be exempt from disclosure under OPRA’s criminal investigatory records exemption. N.J.S.A. 47:1A-1.1.” Id. at 365. Although the Court agreed with the Appellate Division’s analysis in O’Shea, 410 N.J. Super. at 382, that a clear statement of policy to police officers from the State Attorney General has “the force of law for police entities,” it refused to conclude that records retention schedules adopted by the State Records Committee meet OPRA’s “required by law” standard.

The Court also noted that even if a record is not required by law to be made, it must still be found to pertain to a criminal investigation. The Court reiterated the Appellate Division’s observation that “some police records relate to an officer’s community-caretaking function; others to the investigation of a crime.” Id. at 569 (citing N. Jersey Media Grp., Inc., 441 N.J. Super. at 105).⁷ Therefore, the Court reasoned that determining whether such records pertain to a criminal investigation requires a “case-by-case analysis.” However, the Court pointed out that police records that stem from “an investigation into *actual or potential* violations of criminal law,” such as “detailed investigative reports and witness statements,” will satisfy the second prong of OPRA’s criminal investigatory records exemption. Id. (emphasis added).

The Council has long held that once a record is determined to be a criminal investigatory record, it is exempt from access. In Janeczko, GRC Complaint No. 2002-79, *et seq.*, the Council held that “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed.”⁸ Moreover, with respect to concluded investigations, the Council pointed out in Janeczko that, “[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete.” Id.

In the instant matter, it is not in dispute that the requested records pertain to a criminal investigation, as the Complainant denotes his request as seeking records originating from his criminal case. Additionally, the Custodian provided copies of the Appellate Division’s decision

⁷This is instructive for police agencies because it underscores the fact that their role in society is multi-faceted; hence, not all of their duties are focused upon investigation of criminal activity. And only those records created in their capacity as criminal investigators are subject to OPRA’s criminal investigatory records exemption.

⁸The GRC’s ruling was affirmed in an unpublished opinion of the Appellate Division.

stemming from the Complainant's appeal from his criminal conviction. Therefore, the GRC must next determine whether the requested records satisfy the first prong of the test.

911 Emergency Calls, Polygraph Examination Reports; Ballistic Reports, Gunshot Trace Evidence Reports; Forensic Reports

The GRC has previously held that many of the identified records were exempt from disclosure where they met the two (2) prong test required to be a criminal investigatory record under OPRA. See Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order February 25, 2009) (holding that ballistic reports are exempt from disclosure); McCrone (The Trenton Times) v. Burlington Cnty. Prosecutor's Office, GRC Complaint No. 2005-146 (November 2005) (forensic reports).

Here, the Complainant requested 911 emergency calls, polygraph examination reports, ballistic reports, gunshot trace evidence reports, and forensic reports. As was previously noted, it is not in dispute that the records originate from the Complainant's criminal case file. Furthermore, there is no evidence in the record indicating that the identified records were required by law to be made. Therefore, as discussed above, precedential case law supports the inclusion of these records under the criminal investigatory exemption when they meet the two-prong test, regardless of the investigation status. Janeczko, GRC 2002-79, *et seq.*; Leak, GRC 2007-148; McCrone, GRC 2005-146.

Accordingly, the portion of the Complainant's March 6, 2018 OPRA request seeking 911 emergency calls, polygraph examination reports, ballistic reports, gunshot trace evidence reports, and forensic reports are exempt from disclosure under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541; Janeczko, GRC 2002-79, *et seq.*; Leak, GRC 2007-148; McCrone, GRC 2005-146. Thus, the Custodian lawfully denied access to these records. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.

Arrest Report, Arrest Warrants

The Council has held that arrest reports are disclosable, with redactions for information otherwise exempt under OPRA. See Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008). Further, the Council has also held that warrants are subject to disclosure under OPRA. Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013).

In the current matter, the Complainant seeks arrest reports and arrest warrants pertaining to his OPRA request. In response, the Custodian stated that the Complainant received copies of said records in response to a previous OPRA request in 2016 and attached a copy of the cover letter accompanying said response. In his complaint, the Complainant contended that he was unlawfully denied access to his request, specifically referencing arrest reports. In the SOI, the Custodian does not raise the claim that the Complainant possessed copies of the records at the time of the request, only certifying that copies were provided in response to the 2016 OPRA request.

Accordingly, the Custodian unlawfully denied access to the requested arrest reports and arrest warrants. N.J.S.A. 47:1A-6; Morgano, GRC 2007-156; Seabrooks, GRC 2012-230. The Custodian shall disclose these responsive records, with redactions where applicable.

Autopsy Report

OPRA also prohibits a convicted person from accessing records relating to the victim of the person's crime:

Notwithstanding the provisions of [OPRA] or the provisions of any other law to the contrary, where it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, *medical history* or any other identifying information, the right of access provided for in [OPRA] shall be denied.

[N.J.S.A. 47:1A-2.2(a) (emphasis added).]

In Boretsky v. Middlesex Cnty. Examiner's Office, GRC Complaint No. 2016-219 (January 2018), the complainant, a convicted person, sought any audio recordings made by a medical examiner during an autopsy performed on his victim. The custodian asserted that the record was denied as it contained information pertaining to the complainant's victim. The Council agreed, finding that the audio recordings taken during an autopsy would invariably contain medical information on the complainant's victim, and was therefore exempt from access under N.J.S.A. 47:1A-2.2(a).

In the instant matter, the Complainant requested in part a copy of any autopsy reports pertaining to his criminal indictment. The Custodian denied access on the grounds that autopsy reports are exempt from access pursuant to OPRA's exemption for photographs taken during an autopsy or by a medical examiner. N.J.S.A. 47:1A-1. However, the exemption extends only to photographs and not to autopsy reports. See Shulz v. N.J. State Police, GRC Complaint No. 2014-390 (Interim Order dated June 30, 2015). Notwithstanding, the Custodian also exempted access to the records on the grounds that Complainant is seeking records containing his victim's information. N.J.S.A. 47:1A-2.2(a). The evidence in the record indicates that any autopsy report contained in the Complainant's file would be of his victim. In accordance with Boretsky, GRC 2016-2019, such records are exempt from access pursuant to OPRA.

Accordingly, the Custodian lawfully denied access to any autopsy reports contained within his criminal file. N.J.S.A. 47:1A-6. Specifically, such reports contain the medical history of the Complainant's victim and is therefore exempt from access. N.J.S.A. 47:1A-2.2(a); Boretsky, GRC 2016-219.

Crime Scene Photo(s) and Photo Array(s), Fingerprint Cards

OPRA also provides that its provisions:

[S]hall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; *Executive Order of the Governor*; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

Executive Order No. 69 (Gov. Whitman, 1997) (“EO 69”), which superseded Executive Order No. 9 (Gov. Hughes, 1963) (“EO 9”), states that:

The following records shall not be deemed to be public records subject to inspection and examination and available for copying pursuant to the provisions of [OPRA], as amended: *fingerprint cards*, plates and *photographs* and similar criminal investigation records that are required to be made, maintained or kept by any State or local governmental agency.

[Id. (emphasis added).]

In Leak, GRC 2007-148, 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 EO 69. The Council stated in relevant part:

Request Item No. 3 seeks crime scene photographs relating to a criminal trial in 1994 . . . EO 69, enacted on May 15, 1997, modified [EO 9] and Executive Order No. 123 (Gov. Kean, 1983). EO 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, EO 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 EO 69.

[Leak, GRC 2007-148 at 5-6.]

Additionally, the Council has previously found that photographs pertaining to a criminal investigation, especially those of a decedent or victim, are exempt from disclosure under OPRA. See *e.g.* Barkley v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2011-221 (February 2013); Lynn v. Middlesex Cnty. Prosecutor's Office, GRC Complaint No. 2015-186 (January 2017).⁹

In the matter before the Council, the Complainant's OPRA sought in part any crime scene photo(s), photo arrays, and fingerprint cards pertaining to his criminal case. The GRC has already determined that the requested records pertain to a criminal investigation. Further, a plain reading of EO 69 and all relevant case law supports the conclusion that the photographs, photo arrays, and fingerprint cards responsive to the subject OPRA request are exempt from disclosure. Based on the forgoing, the GRC is satisfied that the Custodian lawfully denied access to this portion of the OPRA request.

Accordingly, the crime scene photo(s), photo arrays, and fingerprint cards responsive to the Complainant's March 6, 2018 OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), and EO 69. See Leak, GRC 2007-148; Lynn, GRC 2015-186. Therefore, the Custodian lawfully denied access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.

EMT Reports

EO 26 states in part that, "[i]nformation relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation" are not government records subject to access under OPRA. In Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (April 2008), the Council held that pursuant to EO 26, an EMS report sought by the Complainant was exempt from disclosure as a medical record.

In the instant matter, the Complainant seeks in part any "EMT reports" pertaining to his criminal case. In accordance with Bart, GRC 2007-162, the Complainant's request seeks medical records, which are not subject to disclosure pursuant to EO 26.

Therefore, the EMT reports responsive to the Complainant's March 6, 2018 OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a) and EO 69. See Bart, GRC 2007-162. Therefore, the Custodian lawfully denied access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

⁹ Affirmed on appeal in Lynn v. Middlesex Cnty. Prosecutor's Office, 2018 N.J. Super. Unpub. LEXIS 370 (App. Div. 2018).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because a portion of the Complainant's March 6, 2018 OPRA request seeking "all Open Public Records" pertaining to the Complainant's criminal case 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, 546 (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. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (February 2008); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
2. The portion of the Complainant's March 6, 2018 OPRA request seeking DNA samples is an invalid request that fails to meet the definition of a government record and does not seek specifically identifiable records. N.J.S.A. 47:1A-1.1; MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37, 39 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Miller v. N.J. Dep't of Corr., GRC Complaint No. 2009-226 (October 2010); Ayinde v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2018-52 (December 2019). Thus, the Custodian did not unlawfully deny access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
3. The portion of the Complainant's March 6, 2018 OPRA request seeking 911 emergency calls, polygraph examination reports, ballistic reports, gunshot trace evidence reports, and forensic reports are exempt from disclosure under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order February 25, 2009); McCrone (The Trenton Times) v. Burlington Cnty. Prosecutor's Office, GRC Complaint No. 2005-146 (November 2005). Thus, the Custodian lawfully denied access to these records. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
4. The Custodian unlawfully denied access to the requested arrest reports and arrest warrants. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008); Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013). The Custodian shall disclose these responsive records, with redactions where applicable.

5. **The Custodian shall comply with conclusion No. 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹⁰ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹¹ to the Executive Director.¹²**
6. The Custodian lawfully denied access to any autopsy reports contained within his criminal file. N.J.S.A. 47:1A-6. Specifically, such reports contain the medical history of the Complainant's victim and is therefore exempt from access. N.J.S.A. 47:1A-2.2(a); Boretsky v. Middlesex Cnty. Examiner's Office, GRC Complaint No. 2016-219 (January 2018).
7. The crime scene photo(s), photo arrays, and fingerprint cards responsive to the Complainant's March 6, 2018 OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), and Executive Order No. 69 (Gov. Whitman, 1997). See Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009); Lynn v. Middlesex Cnty. Prosecutor's Office, GRC Complaint No. 2015-186 (January 2017). Therefore, the Custodian lawfully denied access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
8. The EMT reports responsive to the Complainant's March 6, 2018 OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a) and Executive Order No. 69 (Gov. Whitman, 1997). See Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (April 2008). Therefore, the Custodian lawfully denied access. N.J.S.A. 47:1A-6. Further, the GRC declines to address the Custodian's remaining asserted exemptions because it has found the requested records to be exempt on one basis.
9. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

January 21, 2020¹³

¹⁰ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

¹¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

¹³ This complaint was prepared for adjudication at the Council's January 28, 2020 meeting, but could not be adjudicated due to a lack of quorum.