



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

May 31, 2022 Government Records Council Meeting

Kafele Bomani
Complainant

Complaint No. 2021-119

v.

Atlantic County Prosecutor's Office
Custodian of Record

At the May 31, 2022 public meeting, the Government Records Council ("Council") considered the May 24, 2022 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 seeking access to "files . . . under the assume[d]" Complainant's name is invalid because it was a blanket request that failed to identify the specific records sought. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. 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); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (October 2008); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to the Complainant's 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 31st Day of May 2022

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council



Decision Distribution Date: June 2, 2022

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 31, 2022 Council Meeting**

**Kafele Bomani¹
Complainant**

GRC Complaint No. 2021-119

v.

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

Records Relevant to Complaint: Hardcopies via U.S. mail of “the files . . . under the assume[d] name Kafele K. Bomani.”

Custodian of Record: Debra B. Albuquerque
Request Received by Custodian: May 5, 2021
Response Made by Custodian: May 6, 2021
GRC Complaint Received: May 19, 2021

Background³

Request and Response:

On April 30, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant also identified Indictment No. 07-12-2714B and 09-08-2019B in the header of his handwritten OPRA request. On May 6, 2021, the Custodian responded in writing denying the subject OPRA request 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, 564 (2017).

Denial of Access Complaint:

On May 19, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he sought the requested “material” because he did not receive it as part of a discovery request made under N.J. Court Rules, R. “3:13-3, et seq.”

¹ No legal representation listed on record.

² No legal representation listed on record.

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

Statement of Information:

On July 2, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 5, 2021. The Custodian stated that she did not perform a search because the Complainant’s OPRA request “was an unclear and improper request for criminal investigatory records.” The Custodian certified that she responded in writing on May 6, 2021 denying access to the subject OPRA request under the criminal investigatory exemption.

The Custodian maintained her position stated in her May 6, 2021 response to the Complainant, noting that he failed to identify specific records or files other than those relating to himself. The Custodian thus contended that the request was ultimately invalid because it failed to identify specific “government records.” MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Burke v. Brandes, 429 N.J. Super. 169, 174 (App. Div. 2012).

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 v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁴ 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. 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 Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (October 2008), the complainant filed an OPRA request for two entire prosecutor’s office files. The Council relied upon MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; and Asarnow v. Dep’t of Labor, GRC Complaint No. 2006-24 (May 2006), in determining that the request was overbroad and of the nature of a blanket request for a class of various documents rather than a request for a specific government record. As such, the Council found that the custodian met her burden of proof in denying access to the responsive records.

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 [Somerset County Prosecutor’s Office] 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, GRC 2006-24] and [Morgano, GRC 2007-156].

[Id. at 8.]

In the instant complaint, the Complainant’s request sought access to “files . . . under the assume[d]” Complainant’s name. The Custodian initially denied access to the request under the criminal investigatory exemption, but later argued in the SOI that it was invalid. As in Feiler-Jampel, GRC 2007-190, the Council has repeatedly determined that requests for entire files are invalid. See also 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);

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

Bradley-Williams v. Atlantic Cnty. Jail (Atlantic), GRC Complaint No. 2011-232 (December 2012). The GRC is satisfied that this request was similarly invalid and that the Custodian lawfully denied access to it. Additional support for this finding is based on the fact that it is unclear whether the Complainant intended the indictment numbers included in the header of the letter to be part of his OPRA request. Regardless of the potential affirmative inclusion of those indictment numbers, this request is very similar to the requests at issue in Morgano, GRC 2007-156 and Feiler-Jampel, GRC 2007-190. Thus, a holding consistent with prevailing case law is warranted here.

Accordingly, the Complainant's request seeking access to "files . . . under the assume[d]" Complainant's name is invalid because it was a blanket request that failed to identify the specific records sought. MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 37; N.J. Builders Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Morgano, GRC 2007-156; Feiler-Jampel, GRC 2007-190. Thus, the Custodian lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant's request seeking access to "files . . . under the assume[d]" Complainant's name is invalid because it was a blanket request that failed to identify the specific records sought. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. 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); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (October 2008); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to the Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

May 24, 2022