



State of New Jersey  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**September 29, 2022 Government Records Council Meeting**

Ivery Brinson  
Complainant

Complaint No. 2021-125

v.

Essex County Prosecutor's Office  
Custodian of Record

At the September 29, 2022 public meeting, the Government Records Council ("Council") considered the September 22, 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:

1. Because a portion of the Complainant's OPRA request seeking "all documents" 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. 2007-156 (February 2008); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
2. The Complainant's OPRA request item No. 1 seeking police reports is exempt from disclosure under the criminal investigatory records exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 546 (2017); Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). The Custodian thus lawfully denied access to said records. N.J.S.A. 47:1A-6. Additionally, the Council declines to address the other defenses raised by the Custodian.
3. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request item Nos. 2, 3, 4 and 5 seeking "Pre-Complaint Warrants", Complaint Warrants, Grand Jury Tally Sheet, and "Pre-Indictment Forms" pertaining to his criminal indictment, because the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

4. Because Executive Order No. 9 (Gov. Hughes, 1963) provides that criminal records are exempt from disclosure, and because said Executive Order is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), the Custodian lawfully denied the Complainant access to OPRA request item No. 6 seeking criminal record histories of State's witnesses named in his indictment. N.J.S.A. 47:1A-6. See also Lewis v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018); Franklin v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-308 (April 2018); Abdul-Shabazz v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2017-41 (April 2019); Tyler v. Passaic Cnty. Prosecutor's Office, 2017-30 (March 2019). The Council notes that because the Custodian lawfully denied access to the requested records under EO 9, it declines to address the Custodian's other reasons for denial.

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 29<sup>th</sup> Day of September 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: October 6, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 29, 2022 Council Meeting**

**Ivery Brinson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-125**

v.

**Essex County Prosecutor's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via U.S. mail of: “[a]ll documents relating to my arrest, Indictment [State v. Ivery Brinson, Indictment No. 14-05-1420-I] and conviction, such as:

1. Police Reports;
2. Pre-Complaint Warrants Report;
3. Complaint Warrants;
4. Essex County Grand Jury Tally Sheet;
5. Pre-Indictment Plea Forms;
6. State and Federal criminal history/judgment of convictions for all witnesses;

**Custodian of Record:** Stephen A. Pogany, Esq.  
**Request Received by Custodian:** May 10, 2021  
**Response Made by Custodian:** May 17, 2021  
**GRC Complaint Received:** June 12, 2021

**Background<sup>3</sup>**

**Request and Response:**

On or about April 23, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 17, 2021, the same date as receipt, the Custodian responded in writing stating that the records were denied on various grounds.

The Custodian first stated that the records was overly broad and failed to name specific documents to be released. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 38-39 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Olivia Schumann, Esq., Essex County Counsel (Newark, NJ).

<sup>3</sup> 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.

Div. 2009). The Custodian further stated that the request required him to conduct research, which he was not obligated to perform under OPRA. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005).

Second, the Custodian stated that the prosecutor's criminal investigatory file, open or closed, was 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 also noted that dash cam videos, investigative reports, and witness statements were covered by the criminal investigatory records exemption since they were not "required by law to be made, maintained, or kept on file," and pertained to an investigation into actual or potential violations of criminal law. N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 569 (2017); Attorney General Law Enforcement Directive No. 2018-1.

Third, the Custodian stated that the request constituted "inter-agency or intra-agency advisory, consultative, or deliberative material" ("ACD") exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; Bent, 381 N.J. Super. at 40. Fourth, the Custodian stated that the requested records were 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. N.J. Dep't of Law and Public Safety, Div. of Law, 421 N.J. Super. 489, 498-98 (App. Div. 2011).

Fifth, 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 any requested crime scene photographs. N.J.S.A. 47:1A-9(a); McCrone (The Trenton Times) v. Burlington Cnty. Prosecutor's Office, GRC Complaint No. 2005-146 (November 2005); Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009). Sixth, the Custodian stated that the request was intended to circumvent the discovery process, which was not OPRA's intent. MAG, 375 N.J. Super. at 546-49.

#### Denial of Access Complaint:

On June 12, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he clearly specified the documents he requested, including his indictment number. The Custodian then stated that the records fell under discovery rule N.J. Court Rules, R. 3:13-3, and was therefore entitled to the records.

#### Statement of Information:

On July 21, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on May 10, 2021. The Custodian certified that he responded in writing on May 17, 2021, denying access on multiple grounds.

The Custodian argued that he lawfully denied access to the Complainant's OPRA request for all the same reasons stated in his May 17, 2021 response.

### Additional Submissions:

On September 9, 2022, the GRC requested additional information from the Custodian. Specifically, the GRC asked:

1. Regarding the Complainant's request seeking "Pre-Complaint Warrants Report", does such a record exist? If so, under what basis are you denying access?
2. Regarding the Complainant's request seeking "Pre-Indictment Plea Form", does such a record exist? If so, under what basis are you denying access?
3. For the remaining requested documents please confirm whether any responsive records in fact exist.

On September 16, 2022, the Custodian responded to the GRC, providing a certification. As to the first two (2) inquiries, the Custodian certified that no records exist in the indictment files, and certified that the documents were "vague and unrecognizable" and did not appear in any court rule or statute. As to the third (3<sup>rd</sup>) inquiry, the Custodian certified the request for "all documents relating to my arrest" was an improper request under OPRA. The Custodian maintained that the request was invalid pursuant to MAG and Bent.

As to the other records, the Custodian certified that no records exist regarding the "grand jury tally sheet". The Custodian certified that records did exist for "police reports" but constituted criminal investigatory records under OPRA. N.J.S.A. 47:1A-1.1. The Custodian also certified that criminal histories did exist but were exempt from disclosure under the National Crime Prevention and Privacy Compact ("NCPCC"), N.J.S.A. 53:1-32, -20.5 through -20.37, and N.J.A.C. 13:59-1.1 through -2.4.

### 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,<sup>4</sup> N.J. Builders Ass’n, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 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 Documents”

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:

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<sup>4</sup> Affirmed on appeal from Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004).

[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. 2007-156 (February 2008).

[Id.]

In the instant matter, in addition to specific types of records, the Complainant sought "all documents relating to my arrest, indictment, and conviction." As was the case in Morgano, GRC 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 OPRA request seeking "all documents" 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.

### **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, 380-381 (App. Div. 2006).

The New Jersey Supreme Court considered this two-prong test in N. Jersey Media Grp., Inc., 229 N.J. at 564. 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.

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. (citing O’Shea, 410 N.J. Super. at 365). Although the Court agreed with the Appellate Division’s analysis 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. Id. at 566.

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).<sup>5</sup> 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 also long held that once a record is determined to be a criminal investigatory record, it is exempt from access. See Janeczko, GRC 2002-79, holding 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.<sup>6</sup> 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.”

### Police Reports

The GRC has previously held that police reports were exempt from disclosure where they met the two (2) prong test required to be a criminal investigatory record under OPRA. See Nance v. Scotch Plains Twp. Police Dep’t, GRC Complaint No. 2003-125 (January 2005) (holding that incident reports are exempt from disclosure under OPRA as criminal investigatory records). However, the Council has found these records can be disclosable where they did not meet the criminal investigatory test. See De La Cruz, Esq. v. City of Union City (Hudson), GRC Complaint No. 2015-14 (May 2017) (holding that certain incident reports were disclosable where they were not criminal investigatory, medical, or otherwise exempt under State regulations). In the instant complaint, the GRC must determine whether the responsive records meet the N. Jersey Media Grp. test and act accordingly based on the result.

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<sup>5</sup>This 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.

<sup>6</sup>The GRC’s ruling was affirmed in an unpublished opinion of the Appellate Division.



Regarding the first prong, there is no evidence in the record indicating that police reports sought in OPRA request item No. 1 are required by law to be made, maintained, or kept on file in the ECPO's course of official business. As to the second prong, the Complainant explicitly asserted that the documents pertained to his own criminal indictment. Based on the foregoing, the GRC is satisfied that the requested police reports fall under the criminal investigatory records exemption and are not subject to disclosure. N.J.S.A. 47:1A-1.1.

Therefore, the Complainant's OPRA request item No. 1 seeking police reports is exempt from disclosure under the criminal investigatory records exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., 229 N.J. at 546; Janeczko, GRC 2002-79, *et seq.* The Custodian thus lawfully denied access to said records. N.J.S.A. 47:1A-6. Additionally, the Council declines to address the other defenses raised by the Custodian.

### Pre-Complaint Warrants, Complaint Warrants, Grand Jury Tally Sheet, Pre-Indictment Plea Forms

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant's OPRA request item Nos. 2, 3, 4 and 5 sought "Pre-Complaint Warrants", Complaint Warrants, Grand Jury Tally Sheet, and "Pre-Indictment Forms" pertaining to his criminal indictment. In response to the GRC's request for additional information, the Custodian certified that no responsive records exist for the aforementioned records. Additionally, the Complainant provided no evidence to refute the Custodian's certification.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request item Nos. 2, 3, 4 and 5 seeking "Pre-Complaint Warrants", Complaint Warrants, Grand Jury Tally Sheet, and "Pre-Indictment Forms" pertaining to his criminal indictment, because the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

### Criminal Histories

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). 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 exempting 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).

In Lewis v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018) the complainant requested, inter alia, criminal “rap sheets.” The Council held that the requested “rap sheets” contained criminal history information exempt from disclosure under EO 9 and N.J.S.A. 47:1A-9(a). See also Tyler v. Passaic Cnty. Prosecutor’s Office, 2017-30 (March 2019).

In Franklin v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2016-308 (April 2018), the complainant sought access to “rap sheets” for six (6) individuals. 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. The custodian further noted that multiple statutes, regulations, executive orders, and case law supported her denial of access. The custodian specified that the NCPPC was one such statute. N.J.S.A. 53:1-32. Additionally, the custodian noted that the New Jersey State Police, Department of Corrections, and Adult County Correctional Facilities all maintain 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). The Council held that “rap sheets” were exempt from disclosure under N.J.S.A. 47:1A-9(a) and EO 9.

The Council relied upon this same analysis in Abdul-Shabazz v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2017-41 (April 2019). The complainant sought the “rap sheet” for one individual, a witness in his indictment. The custodian denied access under the NCPPC, N.J.S.A. 53:1-20.5 through -20.37, and EO 9. Specifically, EO 9 provides that said records are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); Lewis, GRC 2016-131; Franklin, GRC 2016-308. Accordingly, the Council held that the Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking “rap sheets.”

In the instant complaint, the Complainant’s OPRA request item No. 6 sought the “criminal histories/judgement of convictions” of State’s witnesses named in his indictments. The Custodian initially denied the Complainant’s request under various grounds. However, in response to the GRC’s request for additional information, the Custodian confirmed that responsive records did exist for request item No. 6 but denied access under the NCPPC, N.J.S.A. 53:1-20.5 through -20.37, and N.J.A.C. 13:59-1.1 through -2.4. In accordance with prevailing case law, the Custodian lawfully denied access to the requested criminal record histories as they are not subject to disclosure pursuant to EO 9. N.J.S.A. 47:1A-9(a).

Therefore, because EO 9 provides that criminal records are exempt from disclosure, and because said Executive Order is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), the Custodian lawfully denied the Complainant access to OPRA request item No. 6 seeking criminal

record histories of State's witnesses named in his indictment. N.J.S.A. 47:1A-6. See also Lewis, GRC 2016-131; Franklin, GRC 2016-308; Abdul-Shabazz, GRC 2017-41; Tyler, GRC 2017-30. The Council notes that because the Custodian lawfully denied access to the requested records under EO 9, it declines to address the Custodian's other reasons for denial.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because a portion of the Complainant's OPRA request seeking "all documents" 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. 2007-156 (February 2008); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
2. The Complainant's OPRA request item No. 1 seeking police reports is exempt from disclosure under the criminal investigatory records exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 546 (2017); Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). The Custodian thus lawfully denied access to said records. N.J.S.A. 47:1A-6. Additionally, the Council declines to address the other defenses raised by the Custodian.
3. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request item Nos. 2, 3, 4 and 5 seeking "Pre-Complaint Warrants", Complaint Warrants, Grand Jury Tally Sheet, and "Pre-Indictment Forms" pertaining to his criminal indictment, because the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
4. Because Executive Order No. 9 (Gov. Hughes, 1963) provides that criminal records are exempt from disclosure, and because said Executive Order is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), the Custodian lawfully denied the Complainant access to OPRA request item No. 6 seeking criminal record histories of State's witnesses named in his indictment. N.J.S.A. 47:1A-6. See also Lewis v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018); Franklin v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-308 (April 2018); Abdul-Shabazz v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2017-41 (April 2019); Tyler v. Passaic Cnty. Prosecutor's Office, 2017-30 (March 2019). The Council notes that because the Custodian lawfully denied access to the

requested records under EO 9, it declines to address the Custodian's other reasons for denial.

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