



State of New Jersey

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Commissioner

FINAL DECISION

April 29, 2025 Government Records Council Meeting

Michael K. Duberson
Complainant

GRC Complaint No. 2022-646

v.

Cumberland County Prosecutor's Office
Custodian of Record

At the April 29, 2025 public meeting, the Government Records Council ("Council") considered the April 15, 2025 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 September 15, 2022, and October 24, 2022 requests seeking "all the reasons" and "all the documents of what evidence" provided to the judge who issued a warrant for his arrest are invalid because they were blanket requests that failed to identify the specific records sought. See MAG Entertainment, LLC v. Div. 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 (Interim Order dated February 27, 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 the Complainant's requests. N.J.S.A. 47:1A-6. Because the requests are invalid, the GRC declines to address whether the criminal investigatory exemption applied to any potentially responsive records.

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 29th Day of April 2025

John A. Alexy, Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: May 5, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2025 Council Meeting**

**Michael K. Duberson¹
Complainant**

GRC Complaint No. 2022-646

v.

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

Records Relevant to Complaint:

OPRA Request dated September 15, 2022: Hard copies via U.S. mail of “[a]ll the reasons that the police gave to the judge to get a direct probable cause to get a warrant for my arrest. (Please provide records.)”

OPRA Request dated October 24, 2022: Hard copies via U.S. mail of “[a]ll the documents of what evidence the detective provided to the judge, to where the judge think (sic) that the detectives give him enough for probable cause to where the judge sign the warrant for my arrest” for Indictment No: 14-11-00864 between March 22, 2014 and March 23, 2014 (date of arrest).

Custodian of Record: Stephen C. Sayer, Esq.³

Request Received by Custodian: September 19, 2022 and October 27, 2022

Response Made by Custodian: September 23, 2022 and November 2, 2022

GRC Complaint Received: November 29, 2022

Background⁴

Request and Response:

On September 15, 2022 and October 24, 2022, the Complainant submitted Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On September 23, 2022 and November 2, 2022 respectively, the fourth (4th) business days after receipt of each OPRA request, the Custodian responded in writing denying the Complainant’s OPRA requests as overbroad and invalid pursuant to OPRA under MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) and other precedential case law. The Custodian also

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Complainant identified Prosecutor Jennifer Webb-McCrae as the “custodian of record” in his Denial of Access Complaint.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

denied the OPRA requests as appearing to seek records exempt under the criminal investigatory exemption at N.J.S.A. 47:1A-1.1, citing to Janeczko v. N.J. Dept. of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004) and Johnson/Press of Atlantic City v. N.J. Div. of State Police, GRC Complaint No. 2004-46 (May 2004).

Denial of Access Complaint:

On November 29, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian unlawfully denied both OPRA requests and identified the records at issue as:

1. “Records of Probable cause of Arrest.”
2. “The Arrest Reports.”
3. “All Records of How [the Complainant] got Identifiable Charges besides murder without no (sic) Insufficient Evidence.”

The Complainant noted that he previously attempted to obtain these records through discovery in his criminal case, but his rights were violated both during his arrest and through the handling of these OPRA requests. The Complainant stated he sought the requested records to aid in an ineffective assistance of counsel claim on his underlying criminal matter. The Complainant stated that the paperwork he requested will help him clear his name in his criminal appeal and therefore should be provided to him.

Statement of Information:

On February 11, 2025, the Custodian filed a Statement of Information (“SOI”).⁵ The Custodian certified that he received the Complainant’s OPRA requests on September 15, 2022, and October 24, 2022. The Custodian certified that he responded in writing on September 23, 2022, and November 2, 2022. The Custodian, citing MAG, 375 N.J. Super. at 546, certified that he denied the requests because they were overbroad requests for information which did not identify specific records to turn over. Additionally, the Custodian stated that he also denied both OPRA requests for seeking access to criminal investigatory records that are exempt under OPRA under N.J.S.A. 47:1A -1.1 and Janeczko, GRC 2002-79, *et seq.*

The Custodian noted that the Complainant “falsely listed” in his Denial of Access Complaint records he did not seek. The Custodian argued that this was the first time the Complainant specifically mentioned “arrest reports” as responsive to his OPRA request. The Custodian maintained that, considering this, the Complainant’s requests did not contain any identifiable government records and were lawfully denied. See MAG, 375 N.J. Super. at 534; 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).

⁵ The GRC originally sent its SOI request and “No Defense” letter to Prosecutor Jennifer Webb McCrae. The identity of the actual Custodian was not known to the GRC until this complaint was reassigned to a new staff attorney on January 30, 2025. Due to these facts, the Executive Director approved the Custodian’s ability to file an SOI in this complaint.

The Custodian argued that the Complainant's September 15, 2022, request required creating a new document listing "reasons" for probable cause presented to a judge. The Custodian, citing Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007), argued that custodians are required to search their files only for responsive records, but not to conduct any research on behalf of the requestor.

The Custodian argued that the Complainant's October 24, 2022, request for "all documents" was overly broad and failed to name a specifically identifiable government record. The Custodian maintained that the request also appeared to seek criminal investigatory records used by a judge to make a probable cause determination, which are exempt under OPRA pursuant to Janeczko, GRC 2002-79, *et seq.*, and Johnson, GRC 2004-46. The Custodian concluded that for the reasons outlined above, the Complainant's OPRA requests were lawfully denied.

Additional Submissions:

On March 18, 2025, the GRC sought additional information from the Custodian. Specifically, the GRC stated that the Custodian certified in the SOI to the dates he received and responded to the subject OPRA requests; however, he provided no supporting documentation. The GRC thus requested that the Custodian provide copies of this supporting documentation under cover of legal certification by March 21, 2025.

On the same day, the Custodian responded to the GRC's request for additional information. Therein, the Custodian certified that he was providing copies of the Complainant's September 15, 2022 OPRA request and his September 23, 2022 response denying the request. The Custodian further certified that he was also providing copies of the Complainant's October 24, 2022 OPRA request and his November 2, 2022 response denying the request.

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. at 549 (emphasis added); see also Bent, 381 N.J. Super. at 37;⁶ N.J. Builders Ass’n, 390 N.J. Super. 166; Schuler, GRC 2007-151.

Invalid OPRA requests typically fall into three (3) categories. The first is a request that is overly broad (*i.e.*, “any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. at 534; see also Donato, GRC 2005-182. 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 (Interim Order dated February 27, 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 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].

⁶ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

[Id. at 8.]

In the instant matter, both requests seek “all the reasons” and “all the documents of what evidence” the police gave to the judge to find probable cause to issue an arrest warrant for a specific indictment number including possible dates of arrest. The Custodian responded denying each request, in part, as invalid because they did not identify the specific government records sought. This complaint ensued, where the Complainant contended that he was entitled to the evidence used by the judge to assist in his ineffective assistance of counsel claim in an underlying criminal matter. The Complainant also asserted that he was denied access to arrest reports in addition to other “[r]ecords.”

In the SOI, the Custodian contended that both requests were invalid. The Custodian additionally argued that the September 14, 2022 request sought the creation of a new document in the form of a list of “reasons” utilized by a judge and cited Donato, GRC 2005-182. The Custodian maintained that records custodians are required to search their files for responsive records but not to conduct any research on behalf of the requestor, nor are custodians required to create new documents in response to requests. The Custodian also certified that the Complainant’s “Records Denied List” from the Denial of Access Complaint was the first time an “arrest report” was specifically mentioned.

The evidence of record supports the Custodian’s argument that both requests were invalid. The Council has repeatedly determined that requests for entire files are invalid. See Feiler-Jampel, GRC 2007-190. 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); Bradley-Williams v. Atlantic Cnty. Jail (Atlantic), GRC Complaint No. 2011-232 (December 2012). The GRC is satisfied that the requests here were invalid and that the Custodian lawfully denied access to them. Specifically, both requests sought essentially an entire universe of reasons, documents, and evidence provided to a judge to make a probable cause determination in order to issue an arrest warrant. These requests were also 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 September 15, 2022 and October 24, 2022 requests seeking “all the reasons” and “all the documents of what evidence” provided to the judge who issued a warrant for his arrest are invalid because they were blanket requests that failed to identify the specific records sought. See 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 200-190. Thus, the Custodian lawfully denied the Complainant’s requests. N.J.S.A. 47:1A-6. Because the requests are invalid, the GRC declines to address whether the criminal investigatory exemption applied to any potentially responsive records.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s September 15, 2022, and October 24, 2022 requests seeking “all the reasons” and “all the

documents of what evidence” provided to the judge who issued a warrant for his arrest are invalid because they were blanket requests that failed to identify the specific records sought. See MAG Entertainment, LLC v. Div. 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 (Interim Order dated February 27, 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 the Complainant’s requests. N.J.S.A. 47:1A-6. Because the requests are invalid, the GRC declines to address whether the criminal investigatory exemption applied to any potentially responsive records.

Prepared By: Maria M. Rossi
Staff Attorney

April 15, 2025