



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

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

March 25, 2025 Government Records Council Meeting

Amir Madison
Complainant

Complaint No. 2023-208 and 2023-228

v.

Somerset County Prosecutor's Office
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council ("Council") considered the March 18, 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:

1. The Complainant's August 16, 2023 request seeking "[a]ll recording proceedings regarding" his arrest on September 16, 2021 is invalid because it was a blanket request that failed to identify any specific government record. See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (October 2008). Thus, no unlawful denial of access to this request occurred because it was invalid. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied access to Complainant's September 1, 2023 OPRA request pursuant to New Jersey Court Rules, R. 1:38-3(c)(10), R. 3:5-4, and R. 3:5-6(c), applicable to OPRA by operation of N.J.S.A. 47:1A-9. N.J.S.A. 47:1A-6. Because the records are exempt under New Jersey's court rules, the GRC need not address whether the records sought were also exempt as criminal investigatory 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 25th Day of March 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: March 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2025 Council Meeting**

**Amir Madison¹
Complainant**

**GRC Complaint Nos. 2023-208
and 2023-228²**

v.

**Somerset County Prosecutor's Office³
Custodial Agency**

Records Relevant to Complaint:

August 16, 2023 OPRA request:⁴ Hardcopy via U.S. mail of "[a]ll recording proceedings regarding [the Complainant's] September 16, 2021 arrest and booking"

September 1, 2023 OPRA request:⁵ Hardcopies via U.S. mail of:

1. Search warrant dated September 17, 2021 allowing Detective Kenneth Drews from the Somerset County Prosecutor's Office ("SCPO") to conduct a search on Complainant Somerset County Jail ("SCJ") cell.
2. Report from officer that performed the above search.
3. Affidavit of search referenced above.
4. "Any and all reports attached to cell being searched"

Custodian of Record: Kelly Mager

Request Received by Custodian: August 21, 2023; September 5, 2023

Response Made by Custodian: August 25, 2023; September 13, 2023

GRC Complaint Received: September 5, 2023; September 21, 2023

Background⁶

Request and Response:

On August 16, 2023, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On August 25, 2023, the Custodian

¹ No legal representation listed on record.

² These complaints have been consolidated due to commonality of parties and issues.

³ Represented by Bradley D. Tishman, Esq., of Cleary, Jacobbe, Alfieri, Jacobs, LLC (Oakland, NJ).

⁴ This OPRA request is the subject of GRC 2023-208.

⁵ This OPRA request is the subject of GRC 2023-228.

⁶ 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.

responded in writing denying the OPRA request as an invalid blanket request for an unspecified class of various documents, citing MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Asarnow v. Dep't of Labor, GRC Complaint No. 2006-24 (May 2006); and Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (October 2008). The Custodian stated that, although the OPRA request failed to identify the records sought, she was disclosing a copy of the relevant arrest report with redactions under N.J.S.A. 47:1A-1.1, Executive Order No. 26 (Gov. McGreevey, 2002) ("EO 26"), and N.J. Court Rules, R. 1:38-7.

Denial of Access Complaint:

On September 5, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC") in GRC 2023-208. The Complainant asserted that the Custodian unlawfully denied access to his August 16, 2023 OPRA request. The Complainant contended that, on the date of his arrest, he believed that video and audio were taken in the booking room "where fingerprinting is processed." The Complainant asserted that it was these "records, I.E. (sic) audio/video" sought and not the disclosed arrest report.

Request and Response (cont'd):

On September 1, 2023, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On September 13, 2023, the Custodian responded in writing denying the OPRA request. The Custodian stated that, regarding OPRA request item Nos. 1 and 3, warrants and applications therefor "are not public records" under R. 1:38-3(c)(10), R. 3:5-4, and R. 3:5-6(c). The Custodian further stated that regarding OPRA request item Nos. 2 and 4, the requested reports were exempt under the criminal investigatory exemption at N.J.S.A. 47:1A-1.1 and cited N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017) and Janeczko v. N.J. Dep't of Law & Pub. Safety, Div. of Criminal Justice, GRC Complaint No. 2002-79, *et seq.* (June 2004). The Custodian noted that she confirmed with SCJ that they maintained no responsive records.

Denial of Access Complaint:

On September 21, 2023, the Complainant filed a Denial of Access Complaint with the GRC in GRC 2023-228. The Complainant argued that on September 17, 2021, a detective searched his SCJ cell without showing him a search warrant or post-search "receipt." The Complainant contended that the records sought were not criminal investigatory records. The Complainant cited Serrano v. South Brunswick Twp., 358 N.J. Super. 352 (App. Div. 2003) and Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191 (October 28, 2002) in support of his arguments.

Statement of Information:

On October 19, 2023, the Custodian filed a Statement of Information ("SOI") in GRC 2023-208. Therein, the Custodian certified that she received the Complainant's August 16, 2023 OPRA request on August 21, 2023. The Custodian certified that the SCPO searched its database for records related to the Complainant without a date limitation and located only the November

16, 2021 arrest report. The Custodian certified that she responded in writing on August 25, 2023 denying the request as invalid under OPRA and disclosing the located arrest report with redactions consistent with N.J.S.A. 47:1A-1.1, EO 26, and R. 1:38-7.

The Custodian maintained her position that the Complainant's August 16, 2023 request was invalid per MAG. Bent, and relevant GRC case law. The Custodian argued that the request failed to identify with reasonable clarity the records sought, and she was not required to conduct research to discern potentially responsive records. The Custodian noted that notwithstanding the invalid nature of the request, she disclosed the arrest report in a show of good faith.⁷

On November 27, 2023, the Custodian filed an SOI in GRC 2023-228. Therein, the Custodian certified that she received the Complainant's September 1, 2023 OPRA request on September 5, 2023. The Custodian certified that her search included contacting SCJ Chief Frank J. Apisa, who reviewed all incident reports, as well as the Complainant's classification and inmate history files, and determined that no records indicating a November 17, 2021 cell search existed. The Custodian certified that she responded in writing on September 13, 2023, denying the subject OPRA request on multiple bases.

The Custodian maintained her position that she lawfully denied access to the subject OPRA request. The Custodian argued that regarding OPRA request item Nos. 1 and 3, applicable court rule exemptions apply to the requested records through operation of N.J.S.A. 47:1A-9(b). The Custodian further argued that, regarding OPRA request item Nos. 2 and 4, the records sought "plainly constitute[d]" criminal investigatory records under OPRA per N. Jersey Media Grp., Inc., 229 N.J. 541, and Janeczko, GRC 2002-79, *et seq.*⁸

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:

⁷ On February 29, 2024, the Complainant submitted a sur-reply to the SOI. However, same was well out of time pursuant to N.J.A.C. 5:105-2.4(n). Thus, this submission will not be considered as part of this adjudication.

⁸ On January 23, 2024, the Complainant submitted a sur-reply to the SOI. However, same was out of time pursuant to N.J.A.C. 5:105-2.4(n). Thus, this submission will not be considered as part of this adjudication.

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;⁹ N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 171 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Invalid OPRA requests typically fall 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, GRC 2007-156, 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, GRC 2006-24, 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.

Here, the Complainant’s August 16, 2023 OPRA request sought “[a]ll recording proceedings” related to his arrest and booking on September 16, 2021. The Custodian responded stating the request was invalid and disclosing an arrest report. This complaint followed, wherein the Complainant contended that he believed that “video and audio” of his arrest existed and he was seeking those records, not the disclosed arrest report. In the SOI, the Custodian argued that the request was invalid as a blanket request for a class of various documents. The Custodian noted that SCPO made a good faith effort to locate and disclose to the Complainant the arrest report.

Upon review, precedential case law supports that the Complainant’s August 16, 2023 request were invalid. Specifically, as in Morgano, GRC 2007-156, the request is not clear on its

⁹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

face that “recording proceedings” means audio and video recordings. Further, the date included in the OPRA request, while helpful in identifying the date of the underlying arrest, does not create a definitive time frame within which the Custodian could search. Instead, without the benefit of the Complainant’s complaint clarification, it is reasonable that the Custodian could have interrupted “recording proceedings” to seek any records associated with the Complainant’s arrest. Further, the date inclusion requires the Custodian to evaluate whether the request sought all records created on or after September 16, 2021, from the arrest to the prosecution and the Complainant’s incarceration.

Accordingly, the Complainant’s August 16, 2023 request seeking “[a]ll recording proceedings regarding” his arrest on September 16, 2021 is invalid because it was a blanket request that failed to identify any specific government record. See MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Morgano, GRC 2007-156. Thus, no unlawful denial of access to this request occurred because it was invalid. N.J.S.A. 47:1A-6.

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 also provides that:

The provisions of [OPRA] *shall 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).]

Additionally, OPRA provides that:

The provisions of [OPRA] *shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by* the Constitution of this State, statute, *court rule or judicial case law*, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

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

Under New Jersey Court Rules, “search warrants . . . and the affidavit or testimony address the disclosability of search warrants, including all attachments or testimony upon which the

warrant is based” are included within those court records “excluded from public access. R. 1:38-3(c)(10). This nondisclosure edict is reinforced in R. 3:5-4, which provides that, “[a]fter execution, a warrant and accompanying papers shall remain confidential except as provided in R. 3:5-6(c).” Id. Finally, R. 3:5-6(c) also reinforces the former rules by clearly exempting access to “[a]ll warrants that have been completely executed and the papers accompanying them, including the affidavits, certification . . . [and] return and inventory.” Id. However, this rule does allow for disclosure in two (2) distinct situations: “that the warrant and accompanying papers shall be provided to the defendant in discovery pursuant to R. 3:13-3 and available for inspection and copying by any person claiming to be aggrieved by an unlawful search and seizure on notice to the county prosecutor for good cause shown.” Id.

In the matter before the Council, the Complainant’s September 1, 2023 OPRA request sought a search warrant from September 17, 2021 and corresponding reports associated therewith. The Custodian responded in writing denying access to the OPRA request in its entirety citing to both the criminal investigatory exemption and applicable court rules. This complaint followed, where the Complainant contended that the requested records were not criminal investigatory in nature, citing Serrano, 358 N.J. Super. 352 and Courier Post, 360 N.J. Super. 191. The Custodian maintained her position in the SOI that she lawfully denied access to the OPRA request based on the cited exemptions but that SJC also advised that no records existed.

Upon review, New Jersey’s court rules support that search warrants and their attachments are not disclosable except in the limited circumstances of discovery or through notice to a county prosecutor inclusive of an argument of good cause. Further, OPRA’s catch-all exemption in N.J.S.A. 47:1A-9 recognizes the court rules exclusion as a valid exemption under OPRA. Additionally, neither of the limited circumstances for disclosure apply here. First, OPRA and the discovery process are separate processes and the GRC has no authority over the latter. Mid-Atlantic Recycling Technologies v. City of Vineland, 222 F.R.D. 81 (D.N.J. 2004); Cauthen v. N.J. Dep’t of Corr., 2024 N.J. Super. Unpub. LEXIS 506, 5 (App. Div. 2024) (holding that plaintiff’s ability to obtain records through other processes does not equate to an unlawful denial of access under OPRA); Labinski, Jr. v. Clayton Police Dep’t (Gloucester), GRC Complaint No. 2022-90 (May 2024). Moreover, there is no language in the court rules to suggest that the “notice” contemplated in R. 3:5-6(c) includes an OPRA request. For these reasons, and regardless of whether any records ultimately existed, the Custodian lawfully denied access to the Complainant’s September 1, 2023 OPRA request.

Accordingly, the Custodian lawfully denied access to Complainant’s September 1, 2023 OPRA request pursuant to R. 1:38-3(c)(10), R. 3:5-4, and R. 3:5-6(c), applicable to OPRA by operation of N.J.S.A. 47:1A-9. N.J.S.A. 47:1A-6. Because the records are exempt under New Jersey’s court rules, the GRC need not address whether the records sought were also exempt as criminal investigatory records.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant’s August 16, 2023 request seeking “[a]ll recording proceedings

regarding” his arrest on September 16, 2021 is invalid because it was a blanket request that failed to identify any specific government record. See MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (October 2008). Thus, no unlawful denial of access to this request occurred because it was invalid. N.J.S.A. 47:1A-6.

2. The Custodian lawfully denied access to Complainant’s September 1, 2023 OPRA request pursuant to New Jersey Court Rules, R. 1:38-3(c)(10), R. 3:5-4, and R. 3:5-6(c), applicable to OPRA by operation of N.J.S.A. 47:1A-9. N.J.S.A. 47:1A-6. Because the records are exempt under New Jersey’s court rules, the GRC need not address whether the records sought were also exempt as criminal investigatory records.

Prepared By: Frank F. Caruso
Executive Director

March 18, 2025