

State of New Jersey Department of Community Affairs 101 South Broad Street PO Box 819 Trenton, NJ 08625-0819

JACQUELYN A. SUÁREZ Commissioner

GRC Complaint No. 2023-71

FINAL DECISION

April 29, 2025 Government Records Council Meeting

Christopher Marchesano Complainant v. Monmouth 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 Custodian's March 29, 2023, response to the Complainant's OPRA request was insufficient because she failed to address each request item. <u>See N.J.S.A.</u> 47:1A-5(g); <u>see Paff v. Willingboro Bd. of Educ. (Burlington)</u>, GRC Complaint No. 2007-272 (May 2008).
- 2. The Custodian lawfully denied access to the Complainant's OPRA request item Nos. 1 through 4 because the requested records met both prongs of the criminal investigatory test and are exempt under OPRA. <u>See N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 47:1A-6; <u>N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst</u>, 229 <u>N.J.</u> 541 (2017); <u>Janeczko v. N.J. Dep't of Law & Pub. Safety, Div. of Criminal Justice</u>, GRC Complaint No. 2002-79, *et seq.* (June 2004); <u>Snowflack v. N.J. Transit</u>, GRC Complaint No. 2018-308 (June 2020).
- The Complainant's request item No. 5 is invalid because it required the Custodian to perform an action, and specifically, confirming whether Monmouth County Prosecutor's Office investigated the June 15, 2008, incident as a potential criminal matter. See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Morgano v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012). Thus, the Custodian lawfully denied access to this request item. 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



PHILIP D. MURPHY Governor

TAHESHA L. WAY Lieutenant Governor 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 29thDay 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

Christopher Marchesano¹ Complainant

GRC Complaint No. 2023-71

v.

Monmouth County Prosecutor's Office² Custodial Agency

Records Relevant to Complaint: Electronic copies via e-mail of the following related to a June 15, 2008 fatal train incident involving "Brielle Jane Doe" and cross-referenced as N.J. Transit Police Complaint No. 08-12490, Brielle Police Department Incident No. 08-1586, and Monmouth County Prosecutor's Office ("MCPO") File No. 13-08-0620:

- 1. The investigation and supplemental report completed by an on-scene MCPO employee.
- 2. Toxicology reports completed on decedent by the Medical Examiner.
- 3. Photographs of the "crime scene (not autopsy photos), and specifically:
 - a. A bag away from the decedent, placed on top of a newspaper.
 - b. Sneakers or shoes located at the scene but not on the decedent.
 - c. Newspapers, books, personal belongings, or effects located near the decedent.
 - d. Articles of clothing, and specifically black pants, not on the decedent.
 - e. Any showing the staging of the incident.
- 4. A transcript of any witness statements made on scene, and those given by three (3) N.J. Transit employees.
- 5. "[C]onfirmation as to whether or not this incident was ever investigated by [MCPO] as a potential criminal matter."

Custodian of Record: Janine DeLucia, Esq. **Request Received by Custodian:** March 27, 2023 **Response Made by Custodian:** March 29, 2023 **GRC Complaint Received:** March 30, 2023

Background³

Request and Response:

On March 27, 2023, the Complainant submitted an Open Public Records Act ("OPRA")

¹ No legal representation listed on record.

² Represented by David A. Clark, Esq., of Dilworth, Paxson, LLP (Freehold, NJ).

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.

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request to the Custodian seeking the above-mentioned records.

On March 29, 2023, the Custodian responded in writing stating that she was denying access to OPRA request item Nos. 1, 2, and 3 under the criminal investigatory exemption pursuant to <u>N.J.S.A.</u> 47:1A-1.1 and <u>N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst</u>, 229 <u>N.J.</u> 541 (2017). The Custodian also noted that the criminal investigatory exemption applies regardless of the investigation per Janeczko v. N.J. Dep't of Law & Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79and 2002-80 (June 2004). The Custodian also added that <u>N.J.A.C.</u> 8:70-3.1(a) provides that toxicology reports are not required by law to be made; thus, they fit squarely within the criminal investigatory exemption. The Custodian also cited to <u>Grossman v. Ocean Cnty.</u> <u>Prosecutor's Office</u>, 2013 <u>N.J. Super.</u> Unpub. LEXIS 1999 (July 26, 2013), and <u>Crook v. Atlantic Cnty. Prosecutor's Office</u>, GRC Complaint No. 2010-92 (March 2011), in further support of her denial of toxicology reports.

Denial of Access Complaint:

On March 30, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant disputed the Custodian's denial of access under the criminal investigatory exemption. The Complainant first argued that the records sought related to an incident determined to be a suicide and closed with "no criminal elements." The Complainant further asserted that the Custodian "denied" OPRA request item No. 5 by not confirming whether the incident was ever investigated as a potential criminal matter.

The Complainant noted that he was also filing this complaint in hopes of clarifying whether records connected to a "cold case" can be disclosed under OPRA. The Complainant noted that while New Jersey has not defined the term "cold case," other jurisdictions have considered it to be a case in which all probative investigative leads are exhausted, and a case remains open and unsolved after applicable statute of limitations. The Complainant stated that he works for a law enforcement agency and has assisted in solving several cold cases on a *pro bono* basis. The Complainant asserted that he did not believe the legislative intent of criminal investigatory exemption under OPRA was meant for "cold case" criminal and non-criminal records. The Complainant argued his belief that public closure could give new life to cases and potentially bring about a successful closure. The Complainant contended that there should be "some measure of transparency" to records associated with criminal and non-criminal "cold cases."

Statement of Information:

On May 11, 2023, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on March 27, 2023. The Custodian certified that she searched for "Brielle Jane Doe," inclusive of intake dates, in multiple search engines and portals. The Custodian stated that she also contacted the records room to determine if physical archived files existed. The Custodian affirmed that this search resulted in a four (4) page ME "Statement of Manner of Death" with MCPO investigation report and a six (6) page resolution and supplemental investigative report closing the criminal investigation. The Custodian certified that she responded in writing on March 29, 2023, denying access to OPRA request item Nos. 1, 2, and 3 under the criminal investigatory exemption at N.J.S.A. 47:1A-1.1. The Custodian further

acknowledged that while she did not directly address OPRA request item Nos. 4 and 5, the cited exemption broadly applied to the entire OPRA request.

The Custodian argued that she lawfully denied access to OPRA request item Nos. 1 through 4 because the MCPO's investigative role in a suspicious death is to determine whether a crime occurred and to identify the criminal to charge in said death. The Custodian averred that the only reason the MCPO would have been involved was to conduct a criminal investigation. The Custodian argued that₅ contrary to the Complainant's position it does not matter that the investigation was closed after it was determined to be a suicide, and that Janeczko provides that the criminal investigatory exemption does not distinguish between any "manner of crimes," whether resolved or unresolved, confirmed or unconfirmed. Id. The Custodian further argued that precedential case law such as <u>N. Jersey Media Grp., Inc.</u>, and <u>Crook</u> support this denial of access.

The Custodian next certified that no records responsive to the Complainant's OPRA request item Nos. 3 and 4 existed. The Custodian noted that MCPO's retention policy provides for records to be destroyed five (5) years after a matter is closed. The Custodian averred that here the matter was closed on May 14, 2009, and the earliest destruction would have occurred in May 2014. The Custodian thus asserted that nine (9) years since the earliest destruction date has passed and thus the MCPO is not in possession of any photographs or witness statements from that time period.

The Custodian finally argued that the Complainant's OPRA request item No. 5 was invalid because it sought a statement rather than a "government record." The Custodian stated that in <u>MAG Entm't, LLC v. Div. of ABC</u>, 375 <u>N.J. Super.</u> 534, 546 (App. Div. 2005), the court held that an OPRA request must seek a specific "government record." The Custodian argued that OPRA did not require her to make a statement at the request of the Complainant.

<u>Analysis</u>

Sufficiency of Response

OPRA provides that if a "custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefor* . . . on the request form and promptly return it to the requestor." <u>N.J.S.A.</u> 47:1A-5(g) (emphasis added). In <u>Paff v. Willingboro Bd. of Educ.</u> (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that "[t]he Custodian's response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated <u>N.J.S.A.</u> 47:1A-5(g)." <u>Id.; see also Lenchitz v. Pittsgrove Twp. (Salem)</u>, GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Here, the Custodian responded in writing on March 29, 2023, denying access to OPRA request item Nos. 1 through 3 under the criminal investigatory exemption. <u>N.J.S.A.</u> 47:1A-1.1. However, the Custodian did not provide any response to OPRA request item Nos. 4 and 5. In the Denial of Access Complaint, the Complainant alleged an unlawful denial and noted that the Custodian effectively denied OPRA request item No. 5 by not addressing it. In the SOI, the Custodian acknowledged that she did not respond to OPRA request item Nos. 4 and 5 but that the criminal investigatory exemption broadly applied to all items. The facts here are on point with those in <u>Paff</u>; thus, it follows there was an insufficient response in the instant complaint.

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Therefore, the Custodian's March 29, 2023, response to the Complainant's OPRA request was insufficient because she failed to address each request item. <u>See N.J.S.A.</u> 47:1A-5(g); <u>Paff</u>, GRC 2007-272.

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. <u>N.J.S.A.</u> 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." <u>N.J.S.A.</u> 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to <u>N.J.S.A.</u> 47:1A-6.

OPRA also 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." <u>N.J.S.A.</u> 47:1A-1.1. Therefore, for a record to be considered exempt from disclosure under OPRA as a criminal investigatory record pursuant to <u>N.J.S.A.</u> 47:1A-1.1, that record must meet both prongs of a two-prong test. <u>See O'Shea v. Twp. of West Milford</u>, 410 <u>N.J. Super.</u> 371 (App. Div. 2009).

The New Jersey Supreme Court considered this two-prong test in <u>N. Jersey Media Grp.</u>, <u>Inc.</u>, 229 <u>N.J.</u> 541. 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.'" <u>Id.</u> at 564 (<u>quoting N.J.S.A.</u> 47:1A-1.1).

The Court made it clear that if the first prong cannot be met because such a record <u>is</u> required by law to be made, then that record "cannot be exempt from disclosure under OPRA's criminal investigatory records exemption." <u>Id.</u> at 365 (citing <u>N.J.S.A.</u> 47:1A-1.1). Although the Court agreed with the Appellate Division's analysis in <u>O'Shea</u>, 410 <u>N.J. Super.</u> 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. <u>Id.</u>

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." <u>Id.</u> at 569 (citing <u>N. Jersey Media Grp., Inc.</u>, 441 <u>N.J. Super.</u> at 105).⁴ Therefore, the Court reasoned that determining whether such records pertain to a criminal investigation requires a "case-by-case analysis." <u>Id.</u> 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).

⁴ 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. Christopher Marchesano v. Monmouth County Prosecutor's Office, 2023-71 – Findings and Recommendations of the Executive Director

The Council has long held that once a record is determined to be a criminal investigatory record, it is exempt from access. In <u>Janeczko</u>, GRC 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."⁵ Moreover, with respect to concluded investigations, the Council pointed out in <u>Janeczko</u> that "[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete."

In <u>Snowflack v. N.J. Transit</u>, GRC Complaint No. 2018-308 (June 2020), the complainant sought access to an incident report related to an August 9, 2018, incident where an individual was struck by a train. The custodian denied the OPRA request under the criminal investigatory exemption and the complainant challenged that denial before the Council. In the SOI, the custodian argued that the responsive record, a report containing investigation details and witness statements, was exempt under the criminal investigatory exemption at <u>N.J.S.A.</u> 47:1A-1.1. The Council found that lawful denial of access occurred, reasoning that:

[T]he Custodian lawfully denied access to the responsive investigation report. First, the Custodian (as well as [N.J. Transit Police Department]) certified in the SOI that the responsive investigation report was not required by law to be made, and was created in the course of a criminal investigation. <u>N. Jersey Media Grp., Inc.</u>, 229 <u>N.J.</u> 541. Second, the record was exempt from disclosure regardless of the fate of the alleged trespasser or whether the criminal investigation concluded prior to the subject OPRA request. Janeczko, GRC 2002-79 *et. seq.*

[<u>Id.</u> at 4.]

The Council also held that the facts in <u>Snowflack</u> were on point with those in <u>Mella v. Passaic</u> <u>Cnty. Prosecutor's Office</u>, GRC Complaint No. 2016-217 (August 2018), where it previously held that a custodian lawfully applied the criminal investigatory exemption to records related to an incident that resulted in a suicide.

Here, the Complainant's OPRA request item Nos. 1 through 4 sought several records associated with the June 15, 2008 fatal train incident. The Custodian responding denying OPRA request item Nos. 1 through 3 under the criminal investigatory exemption but, as already addressed, did not answer item No. 4. In his Denial of Access Complaint, the Complainant first contended that the incident was found to be a suicide with "no criminal elements." The Complainant also noted that he also wished to clarify whether the criminal investigatory exemption applied to "cold cases." The Complainant argued that the legislative intent of OPRA was not meant for "cold case" and non-criminal records. In the SOI, the Custodian maintained that the criminal investigatory exemption applied because MCPO was brought in to conduct a criminal investigation. The Custodian argued that the exemption applied regardless of the finding that the incident was a suicide and that <u>N. Jersey Media Grp., Inc.</u> and Janeczko supported her denial.⁶

⁵ The GRC's ruling was affirmed in an unpublished opinion of the Appellate Division.

⁶ The Custodian also certified that no records responsive to OPRA request item Nos. 3 and 4 existed and argued any such records could have been destroyed in accordance with the State's retention schedules as early as May 2014. Christopher Marchesano v. Monmouth County Prosecutor's Office, 2023-71 – Findings and Recommendations of the Executive Director

Upon review, the GRC finds that the facts of this complaint are on point with those in <u>Snowflack</u>, GRC 2018-308. As in <u>Snowflack</u>, the incident at the center of this complaint was a train fatality for which MCPO conducted a criminal investigation before concluding that it was a suicide. To this end, the Custodian certified in the SOI that the records sought was not required by law to be made and was created in the course of a criminal investigation. <u>See N. Jersey Media Grp., Inc.</u>, 229 <u>N.J.</u> 541. Second, potentially responsive records, including those two (2) identified by the Custodian here, are exempt from disclosure regardless of the fate of the "Brielle Jane Doe" or whether the criminal investigation concluded long before the subject OPRA request. <u>See Janeczko</u>, GRC 2002-79 *et. seq*.

Also, the GRC is not persuaded by the Complainant's arguments regarding the applicability of the criminal investigatory exemption to "cold case" and non-criminal records. The GRC notes that the Complainant is correct that non-criminal investigatory records are not subject to denial under OPRA because they fail to meet the two-prong test set forth in <u>N. Jersey Media Grp., Inc.</u> However, should a criminal investigation occur resulting in a "non-criminal" finding, longstanding case law still supports the application of the criminal investigatory exemption to those records associated therewith that were not required by law to be made. <u>N. Jersey Media Grp., Inc.</u>, 229 <u>N.J.</u> at 569; <u>Janeczko</u>, GRC 2002-79, *et. seq.* While the Complainant surmised that the legislative intent of OPRA did not appear to contemplate the exemption extending to these items, a plain reading of <u>N.J.S.A.</u> 47:1A-1.1 provides no exception. Instead, OPRA supports that any record falling within the two-prong test, absent a time or status constraint, are exempt from disclosure under the criminal investigatory exemption. <u>N. Jersey Media Grp., 129 N.J.</u> 541; Janeczko, GRC 2002-79, *et. seq.*⁷

Accordingly, the Custodian lawfully denied access to the Complainant's OPRA request item Nos. 1 through 4 because the requested records met both prongs of the criminal investigatory test and are exempt under OPRA. <u>See N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 47:1A-6; <u>N. Jersey Media</u> <u>Grp., Inc.</u>, 229 <u>N.J.</u> 541; Janeczko, GRC 2002-79, *et. seq.*; <u>Snowflack</u>, GRC 2018-308.

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 The GRC notes that while the criminal investigatory exemption applies to records meeting the two-prong <u>N. Jersey</u> <u>Media Grp., Inc.</u> test regardless of status or outcome, this application only applies to requests made under OPRA. The GRC cannot speak to disclosability of these types of records through other request processes, whether through informal requests, common law requests, or judicial processes.

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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." <u>Id.</u> (emphasis added). <u>Bent v. Stafford Police Dep't</u>, 381 <u>N.J. Super.</u> 30, 37 (App. Div. 2005);⁸ <u>N.J. Builders Ass'n v. N.J. Council on Affordable Hous.</u>, 390 <u>N.J. Super.</u> 166, 180 (App. Div. 2007); <u>Schuler v. Borough of Bloomsbury</u>, 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. <u>MAG</u>, 375 <u>N.J. Super.</u> 534; <u>Donato v. Twp. of Union</u>, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. <u>See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders</u>, 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. <u>See *e.g.* Naples v. N.J. Motor Vehicle Comm'n</u>, GRC Complaint No. 2008-97 (December 2008).

A more unique invalid OPRA request category is one where the requestor seeks to require a custodian to perform a certain action. For instance, in <u>Morgano v. N.J. Civil Serv. Comm'n</u>, GRC Complaint No. 2011-69 (April 2012), the complainant requested "a certification clarifying" facts about a certain issue. The custodian denied the complainant's request as invalid, and the Council agreed, reasoning that:

The Complainant's request that the Custodian provide a certification . . . does not seek the Custodian's disclosure of an existing identifiable government record but instead seeks that the Custodian perform the action of clarifying facts through the creation of a legal certification. The performance of such an action does not further the Legislative purpose of increasing public access to information contained in records. Moreover, the performance of such an action is not among the enumerated duties of a custodian set forth in OPRA. As such, the Complainant's request is invalid

⁸ Affirmed on appeal regarding <u>Bent v. Stafford Police Department</u>, GRC Case No. 2004-78 (October 2004). Christopher Marchesano v. Monmouth County Prosecutor's Office, 2023-71 – Findings and Recommendations of the Executive Director

[<u>Id.</u> at 5; <u>see also Roundtree v. Camden Cnty. Clerk's Office</u>, GRC Complaint No. 2013-276 (June 2014) (holding that portion of the OPRA request was invalid because it sought verification of facts).]

In this matter, the Complainant's request item No. 5 sought confirmation from MCPO that they conducted a criminal investigation into the June 15, 2008, incident involving "Brielle Jane Doe." The Custodian did not respond to this item, but subsequently argued in the SOI that it was invalid because it failed to identify a record, and she was not required make a statement at the request of the Complainant. Upon review, the GRC agrees that request item No. 5 is invalid because, as in Morgano, GRC 2011-69. it required the Custodian to perform an action. OPRA requires that custodians disclose identifiable government records, not engage in an action at the demand of a requestor.

Accordingly, the Complainant's request item No. 5 is invalid because it required the Custodian to perform an action, and specifically, confirming whether MCPO investigated the June 15, 2008, incident as a potential criminal matter. <u>See MAG</u>, 375 <u>N.J. Super.</u> at 546; <u>Morgano</u>, GRC 2011-69. Thus, the Custodian lawfully denied access to this request item. <u>N.J.S.A.</u> 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

- The Custodian's March 29, 2023, response to the Complainant's OPRA request was insufficient because she failed to address each request item. <u>See N.J.S.A.</u> 47:1A-5(g); <u>see Paff v. Willingboro Bd. of Educ. (Burlington)</u>, GRC Complaint No. 2007-272 (May 2008).
- 2. The Custodian lawfully denied access to the Complainant's OPRA request item Nos. 1 through 4 because the requested records met both prongs of the criminal investigatory test and are exempt under OPRA. <u>See N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 47:1A-6; <u>N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst</u>, 229 <u>N.J.</u> 541 (2017); <u>Janeczko v. N.J. Dep't of Law & Pub. Safety, Div. of Criminal Justice</u>, GRC Complaint No. 2002-79, *et seq.* (June 2004); <u>Snowflack v. N.J. Transit</u>, GRC Complaint No. 2018-308 (June 2020).
- The Complainant's request item No. 5 is invalid because it required the Custodian to perform an action, and specifically, confirming whether Monmouth County Prosecutor's Office investigated the June 15, 2008, incident as a potential criminal matter. See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Morgano v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012). Thus, the Custodian lawfully denied access to this request item. N.J.S.A. 47:1A-6.
- Prepared By: Frank F. Caruso Executive Director

April 15, 2025