



**State of New Jersey**  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
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TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**LORI GRIFA**  
*Commissioner*

**FINAL DECISION**

**October 26, 2010 Government Records Council Meeting**

Daniel Gatson  
Complainant

Complaint No. 2009-240

v.

Bergen County Prosecutor's Office  
Custodian of Record

At the October 26, 2010 public meeting, the Government Records Council ("Council") considered the October 19, 2010 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 the Complainant's request for memos, texts, e-mails and reports fails to specify identifiable government records and would require the Custodian to conduct research among all of the records maintained by the agency to locate and identify responsive records, the Complainant's request is invalid under OPRA. *See* MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
2. The Complainant's request to be taken from his current state of incarceration in a secured state prison to the Somerset County Prosecutor's Office to view and inspect the requested records is not a request that can be granted through OPRA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7.a. through e.

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 26<sup>th</sup> Day of October, 2010

Robin Berg Tabakin, Chair  
Government Records Council

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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: November 1, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 26, 2010 Council Meeting**

**Daniel Gatson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-240**

v.

**Bergen County Prosecutor's Office<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

Inspection of: Any and all memos, texts, e-mails, and reports relating to Daniel Gatson or relating to the following indictments:

- Bergen County Ind. No. 01-11-2672-I
- Bergen County Ind. No. 04-04-934-I
- Somerset County Docket No. SOM-L-1733-05
- MER-L-003181-07

**Request Made:** June 24, 2009

**Response Made:** June 25, 2009

**Custodian:** Frank Puccio

**GRC Complaint Filed:** August 13, 2009<sup>3</sup>

**Background**

**June 24, 2009<sup>4</sup>**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**June 25, 2009**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the first (1<sup>st</sup>) business day following receipt of such request. The Custodian states that access to the requested records is denied because the Complainant has not requested that the Bergen County Prosecutor's Office provide the Complainant with copies of the requested records; instead, the Complainant requests that

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

<sup>2</sup> Represented by Haig Panossian, Esq., Assistant County Counsel (Hackensack, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on August 13, 2009. The Denial of Access complaint is signed but not dated.

<sup>4</sup> The Custodian received the Complainant's OPRA request on June 24, 2009; however, such request was dated June 15, 2009.

he be permitted to travel to the Prosecutor's Office to inspect certain documents. The Custodian argues that OPRA does not provide authorization for an incarcerated individual to be transported to a government agency to inspect documents.

**July 20, 2009**

Letter from the Custodian to the Complainant. The Custodian sends a letter to the Complainant notifying him that his response to the Custodian's OPRA request dated June 25, 2009 was returned to the Custodian for lack of an inmate number. The Custodian attaches to this letter a copy of the Custodian's response to the Complainant's OPRA request dated June 25, 2009.

**August 13, 2009**

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Complainant's OPRA request dated June 15, 2009
- Letter from the Custodian to the Complainant dated June 25, 2009<sup>5</sup>
- Letter from the Custodian to the Complainant dated July 20, 2009

The Complainant agrees to mediate this complaint.

**August 28, 2009**

Offer of Mediation sent to the Custodian.

**September 2, 2009**

Letter from the Custodian to the GRC. The Custodian declines the Offer of Mediation.<sup>6</sup>

**September 21, 2009**

Request for the Statement of Information ("SOI") sent to the Custodian.

**September 28, 2009**

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated June 15, 2009
- Letter from the Custodian to the Complainant dated June 25, 2009

The Custodian restates the initial three (3) grounds on which the Complainant's OPRA request was originally denied:

- (1) On the original records request form, the Complainant did not request records, but rather requested to be transported to the Prosecutor's Office to inspect those records.

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<sup>5</sup> Sent as an attachment to the July 20, 2009 letter. Custodian states that the original response, dated June 25, 2009, was returned to him because he lacked the Complainant's inmate number.

<sup>6</sup> In the letter declining mediation, the Custodian includes arguments regarding the legal justification for the denial of access to the requested records. These arguments are repeated in the Custodian's SOL.

- (2) Under N.J.S.A. 47:1A-2.2, if the requestor is a convict, he must be denied access to records containing his victim's personal information.
- (3) Many of the records requested are criminal investigatory records.

The Custodian also asserts that the Complainant's request should be denied because it is overbroad. The Custodian states that the Complainant has requested all records relating to cases filed against him and the Custodian argues that the Complainant failed to identify specific records sought by name, date, type of record, or some other specific identifying information. In addition, the Custodian points to the certification of Executive Assistant Prosecutor, Frank Puccio, that there are 11 boxes containing records which are potentially responsive to the Complainant's OPRA request and that responding to such a broad request would require at least 337.50 hours of work at a cost of \$23,709.38.

The Custodian cites Feiler-Jampel v. Somerset County Prosecutor's Office, GRC Complaint No. 2007-190 and draws attention to the following facts of Feiler. In Feiler, the Complainant sought any and all records relating to a specific investigation being conducted by the Somerset County Prosecutor's Office ("SCPO"), referred to by its case file number. In Feiler, the GRC decided in favor of the Custodian, reasoning that:

"Because the record 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 a specific government record, and 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 . . . ."

The Custodian analogizes Feiler with the Complainant's request herein and argues that the Complainant's request must be found to be overbroad, as well.

The Custodian asserts that access to the requested records comprising Somerset County Dockets, criminal files, presentence investigation reports, police reports, witness statements, laboratory reports, witness lists, photocopies of photographs, notes, criminal case histories, and grand jury minutes is denied because such records are criminal investigatory records which are exempt from disclosure under OPRA and/or because such records contain the personal information of the Complainant's victims and are therefore not disclosable to him pursuant to N.J.S.A. 47:1A-2.2. The Custodian certifies that there is a ten (10) year record retention schedule applicable to criminal records; such records may be destroyed ten (10) years after the final judgment or sentence served.

Frank Puccio, Executive Assistant Bergen County Prosecutor, certifies that there are a total of ten (10) cases against the Complainant in the Bergen County Prosecutor's Office and that the files for two (2) of these cases were destroyed or are presumed destroyed. Mr. Puccio certifies that he has examined all of the records in the 11 boxes in the agency's possession and determined that there are approximately 26,798 pages of records. Mr. Puccio further certifies that there is duplication among the records. Mr. Puccio certifies that based upon his experience, examining the 26,798 pages of records would require at least 337.50 hours (42.19 working days) of work. Mr. Puccio further

certifies that at his hourly salary of \$70.25, the special service charge required for him to perform the work while checking for duplication would be \$23,709.38. In addition, Mr. Puccio certifies that it is not possible to search for e-mails that are potentially responsive to the Complainant's request for the reasons described in the affidavit of Chief Information Officer Kenneth Ardizzone.

Kenneth Ardizzone, Chief Information Officer, Bergen County Prosecutor's Office, certifies that the e-mail system as it presently exists was not in use until about 2002 and that an office wide network required to support such a system did not exist prior to 2002. Mr. Ardizzone further certifies that since its beginning, the e-mail system as designed and implemented was first used as a method of inter- and intra-office communication. Mr. Ardizzone certifies that it was never contemplated that the e-mail system would be required to perform as a document archival or retrieval system. Mr. Ardizzone also certifies that prior to approximately the second quarter of 2002, the Bergen County Prosecutor's Office did not archive or store e-mails and further certifies that no e-mails from that period can be retrieved. Mr. Ardizzone further certifies that from the second quarter of 2006 through approximately 2008, the Bergen County Prosecutor's Office did archive and store tapes which captured all personal, public, and shared access documents, including e-mail; these e-mails are only searchable by a combination of date and either the name of the sender or the name of the recipient. Mr. Ardizzone certifies that e-mails are not searchable by subject nor by words in the text, such as the name of the Complainant. Mr. Ardizzone certifies that the practice of archiving and storing e-mails was discontinued approximately one year ago and further certifies that currently all e-mail records are deleted and taped over after three weeks; accordingly, e-mails older than three weeks old cannot be retrieved.

Elizabeth DeLorenzo, Chief Clerk in charge of the Record Room of the Bergen County Prosecutor's Office, certifies that the file for Indictment No. S-1351-91, Docket No. 949-91, was destroyed on October 30, 2007 pursuant to applicable record retention standards and schedules. Ms. DeLorenzo further certifies that records indicate that the file for Docket No. 540-93 related to charges that were dismissed without an indictment on August 13, 1993; although the Complainant was sentenced on charges related to Indictment No. S-14-93, Docket No. 2389-92. Additionally, Ms. DeLorenzo certifies that because the charges in the file for Docket No. 540-93 were dismissed without having been indicted on August 19, 1993, that file was eligible for destruction any time on or after August 19, 1993 without the destruction having been properly recorded. Ms. DeLorenzo further certifies that she directed her staff to search for the file related to Docket No. 540-93 but no records responsive were found.

### Analysis

#### **Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*”  
(Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

The Complainant’s request for memos, texts, e-mails and reports relating to certain subjects is invalid under OPRA because it is overly broad, fails to specify identifiable government records and would require the Custodian to conduct research to fulfill the request.

The New Jersey Superior Court has held that “[w]hile 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.” (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). 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.” (Emphasis added.) *Id.* at 549.

In determining that MAG Entertainment’s request for “all documents or records” from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that:

“[m]ost 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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>7</sup> the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records “accessible.” “As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.”<sup>8</sup>

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...” The court also quoted N.J.S.A. 47:1A-5.g in that “[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” The court further stated that “...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency’s need to...generate new records...”

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) the Council held that “[b]ecause the Complainant’s OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005).”

This matter is substantially different from the facts presented in Burnett v. County of Gloucester, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2010); 2010 N.J. Super. LEXIS 79. In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” Id. at \*3. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. Id.

In the matter before the Council, however, the Complainant’s request for memos, texts, e-mails and reports relating to a particular subject fails to specify identifiable government records and would require the Custodian to conduct research among all of the records maintained by the agency to locate and identify responsive records which contain the subject matter requested. Although OPRA requires custodians to search their files for responsive records, custodians are not obligated to perform research among all of an agency’s files to locate and identify government records which may be responsive to a request.

Therefore, because the Complainant’s request for memos, texts, e-mails and reports relating to a particular subject fails to specify identifiable government records and would

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<sup>7</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>8</sup> As stated in Bent, *supra*.



require the Custodian to conduct research among all of the records maintained by the agency to locate and identify responsive records, the Complainant's request is invalid under OPRA. *See* MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In addition, the Complainant's request to be taken from his current state of incarceration in a secured state prison to the Somerset County Prosecutor's Office to view and inspect the requested records is not a request that can be granted through OPRA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7.a. through .e.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant's request for memos, texts, e-mails and reports fails to specify identifiable government records and would require the Custodian to conduct research among all of the records maintained by the agency to locate and identify responsive records, the Complainant's request is invalid under OPRA. *See* MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
2. The Complainant's request to be taken from his current state of incarceration in a secured state prison to the Somerset County Prosecutor's Office to view and inspect the requested records is not a request that can be granted through OPRA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7.a. through .e.

Prepared By: Darryl C. Rhone  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

October 19, 2010