



State of New Jersey
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 26, 2019 Government Records Council Meeting

LaShaun Fitch
(o/b/o Pro-Spec Corporation)
Complainant

Complaint No. 2017-06

v.

Monmouth County Prosecutor's Office
Custodian of Record

At the March 26, 2019 public meeting, the Government Records Council ("Council") considered the March 19, 2019 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 November 2, 2016 OPRA request seeking "all criminal records" and "indictments" pertaining to the Complainant 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 Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, Custodian of Records, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. v. New Jersey 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. Because the portion of the Complainant's November 30, 2016 OPRA request seeking "background information" on jurors does not specify government records but seeks information, that portion of the request is invalid. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, Custodian of Records, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).
3. The Custodian lawfully denied access to the portion of the Complainant's OPRA November 2, 2016 and November 30, 2016 OPRA requests seeking pre-sentencing reports, investigative reports, prosecutor's handwritten notes and criminal rap sheets. N.J.S.A. 47:1A-6. Specifically, pre-sentencing reports are exempt as "inter-agency, intra-agency advisory, consultative, or deliberative" material. See Pitts v. N.J. Dep't of

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Corr., GRC Complaint No. 2013-299 (September 2014). Further, investigative reports and prosecutor's handwritten notes in this instance fall within the definition of a criminal investigatory records because they are not required to be made by law and pertain to a criminal investigation. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541 (2017). Finally, Executive Order No. 9 (Gov. Hughes, 1988) provides that criminal rap sheets are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a).

4. The Custodian lawfully denied access to the portion of the Complainant's November 2, 2016 OPRA request seeking grand jury tally-sheets, and the portion of the Complainant's November 30, 2016 OPRA request seeking the judge's handwritten notes. N.J.S.A. 47:1A-6. Specifically, R. 3:6-5 exempts such grand jury tally-sheets from disclosure except on order from the Assignment Judge. N.J.S.A. 47:9(a). Additionally, R. 1:38(b)(1) exempts notes maintained by a judge while performing official duties from public access. Id.

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 26th Day of March, 2019

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: March 29, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
March 26, 2019 Council Meeting**

**LaShaun Fitch¹
Complainant**

GRC Complaint No. 2017-6

v.

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

Records Relevant to Complaint:

November 2, 2016 OPRA Request

“Access to all criminal records files [sic] related to my name and criminal indictments in the County of Monmouth.” Additionally, “Pre[-]Sentencing Reports, Arrest(s) Records, Investigative Reports, Judgement(s) of Conviction(s), Grand Jury Tally-Sheets, Prosecutor Handwritten Notes, and Criminal Rap Sheets related” in the Complainant’s name.

November 30, 2016 OPRA Request

1. “Background information on the petit jurors who sat on defendant’s trial from January 28, 2014 – February 18, 2014.”
2. “The prosecutor’s handwritten notes during January 14, 2014 – February 18, 2014 including petit juror voir-dire notes.”
3. “The judge’s handwritten notes of the [Complainant’s] entire trial.”

Custodian of Record: Michael J. Costanzo

Request Received by Custodian: November 7, 2016; December 5, 2016

Response Made by Custodian: November 16, 2016; December 9, 2016

GRC Complaint Received: January 10, 2017

Background³

November 2, 2016 OPRA Request and Response:

On November 2, 2016 the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 16, 2016, the Custodian responded in writing to the Complainant’s request. The Custodian first stated that the Complainant’s request seeking “all records” related to the Complainant in Monmouth County was

¹ No legal representation listed on record.

² Represented by Patricia B. Quelch, Esq., of Helmer, Conley & Kesselman, P.A. (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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

LaShaun Fitch v. Monmouth County Prosecutor’s Office, 2017-6 – Findings and Recommendations of the Council Staff

invalid, citing MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

Regarding “investigative reports” and “prosecutor handwritten notes,” the Custodian stated that those records are exempt as criminal investigatory records, citing Janeczko v. N.J. Dep't of Law and Pub Safety, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). The Custodian also referenced N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70 (App. Div. 2015) aff'd in part, 229 N.J. 541 (2017).

The Custodian also stated that with respect to the Complainant seeking juvenile records, such records are exempt from disclosure pursuant to N.J.S.A. 2A:4A-60 and N.J.S.A. 47:1A-9(a). The Custodian also noted that records of delinquency are prohibited from public disclosure from N.J.S.A. 2A:4A-60 to -62, and R. 5:19-2B.

Regarding “Pre[-]Sentencing Reports,” the Custodian denied access pursuant to State v. DeGeorge, 113 N.J. Super. 542 (App. Div. 1971). Lastly, the Custodian provided the Complainant with copies of three (3) Judgement of Convictions, and three (3) arrest reports in response.

November 30, 2016 OPRA Request

On November 30, 2016, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On December 9, 2016, the Custodian responded in writing to the Complainant's request. The Custodian first stated that background “information” on jurors was an invalid request. The Custodian stated that OPRA deals with the production of identifiable records and not information, citing MAG, 375 N.J. Super. at 546-47. The Custodian added that he was not obligated to create records, citing N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 171 (App. Div. 2007).

Regarding the request for the prosecutor's handwritten notes, the Custodian stated that, in accordance with N.J.S.A. 47:1A-9(b), attorney work product is protected from OPRA. Gannett New Jersey Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 218 (App. Div. 2005). The Custodian asserted that such work product includes the mental impressions, conclusions, opinions, or legal theories of an attorney. Laporta v. Gloucester Cnty. Bd. of Chosen Freeholders, 340 N.J. Super. 254, 260 (App. Div. 2001).

Lastly, the Custodian stated that he is not the custodian for the Judge's handwritten notes, and that the Complainant should make a request for these records with the Superior Court.

Denial of Access Complaint:

On January 10, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that the Custodian violated OPRA by denying him access to the request records.

Statement of Information:⁴

On April 28, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA requests on November 7, 2016, and December 5, 2016, respectively. The Custodian certified that he responded to the first request on November 16, 2016, providing redacted copies of three (3) judgements of convictions and three (3) arrest reports. The Custodian also certified that he responded to the Complainant’s second request on December 9, 2016, denying access to the requested records.

The Custodian incorporated the arguments against disclosure from his initial responses outlined above. In addition, the Custodian argued that grand jury tally-sheets are records maintained by the Judiciary, and not the Monmouth County Prosecutor’s Office (“MCPO”). The Custodian contended that R. 3:6-5 controls the disclosure of such records and may only be made public by order of the Assignment Judge.

The Custodian argued that he supplied the Complainant with the responsive records allowed to be disclosed, and properly denied the remainder. The Custodian stated that therefore the matter should be dismissed.

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

⁴ The Complaint was referred to mediation on June 6, 2016. The Complaint was referred back from mediation on November 4, 2016.

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). Bent v. Twp. of Stafford Police Dep’t, Custodian of Records, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc., 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008), the complainant filed an OPRA request for two (2) 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), to determine that the request was overbroad and 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, determining 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 2007-190].

Upon review, the GRC is satisfied that parts of the Complainant’s OPRA request are invalid for the reasons set forth below.

Access to “All Criminal Records” and “Indictments”

In this matter, a portion of the Complainant’s November 2, 2016 OPRA request sought “all criminal records” and “indictments” pertaining to the Complainant. As was the case in Morgano, 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 the portion of the Complainant's November 2, 2016 OPRA request seeking "all criminal records" and "indictments" pertaining to the Complainant 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 Assoc., 390 N.J. Super. at 180; Morgano, GRC 2007-156; Feiler-Jampel, GRC 2007-190.

Background Information on Petit Jurors

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.) requires a custodian to conduct research. MAG, 375 N.J. Super. at 546. The second is those requests seeking information or asking questions. See 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).

Regarding the request at issue here, in LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that held library cards. The GRC determined that the complainant's request was not for an identifiable government record, but for information. Id. As such, the request was deemed invalid pursuant to MAG. Id.; see also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

Here, the Complainant requested background information on petit jurors as part of his November 30, 2016 OPRA request. Similar to the complainant in LaMantia, the Complainant was not seeking a specific record, but explicitly requested information on the jurors who sat on his trial.

Therefore, because the portion of the Complainant's November 30, 2016 OPRA request seeking "background information" on jurors does not specify government records but seeks information, that portion of the request is invalid. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders Assoc., 390 N.J. Super. at 180; LaMantia, GRC 2008-140.

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.

Pre-Sentencing Reports, Investigative Reports, Prosecutor's Handwritten Notes and Criminal Rap Sheets

The Council has previously held that pre-sentence reports were exempt from disclosure under the "inter-agency, intra-agency advisory, consultative, or deliberative [(“ACD”)]" material

exemption. See Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2013-299 (September 2014) (citing State v. DeGeorge, 113 N.J. Super. 542, 544 (App. Div. 1971)); Baker v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2014-262 (May 2015).

Regarding investigative reports, 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 (App. Div. 2009).

The New Jersey Supreme Court considered this two-prong test in N. Jersey Media Grp., Inc., 229 N.J. at 541. 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. at 564.

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. at 365. Although the Court agreed with the Appellate Division's analysis in O'Shea, 410 N.J. Super. 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.

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).⁵ 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 v. N.J. Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), 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.”⁶ Moreover, with respect to concluded investigations, the Council pointed out in

⁵This 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.

⁶The GRC's ruling was affirmed in an unpublished opinion of the Appellate Division.

LaShaun Fitch v. Monmouth County Prosecutor's Office, 2017-6 – Findings and Recommendations of the Council Staff

Janeczko that, “[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete.”

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) (emphasis added). To this end, Executive Order No. 9 (Gov. Hughes, 1988)(“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); EO 9.

In the current matter, there is no evidence in the record supporting that investigative reports or handwritten notes from the prosecutor are required by law to be made. Thus, the records meet the first prong of the criminal investigatory test. Further, the evidence of record fully supports that such reports relate to a criminal investigation as defined by the Complainant, asserting that the files relate to any criminal record held by the MCPO. Thus, the requested reports satisfy the second prong of the criminal investigatory test (held on file by a law enforcement agency and relating to a criminal investigation). It follows that the responsive investigative reports and prosecutor’s handwritten notes are not subject to disclosure under OPRA. N.J.S.A. 47:1A-1.1.

Additionally, a portion of the Complainant’s November 2, 2016 OPRA request sought pre-sentencing reports and criminal rap sheets. The Custodian argued in the SOI that, among other reasons, some of the records were exempt as criminal investigatory records. N.J.S.A. 47:1A-1.1. Above, the GRC has set forth how each of these records is exempt from disclosure under OPRA. That reasoning includes statutory and regulatory exemptions, as well as precedential case law.

Accordingly, the Custodian lawfully denied access to the portion of the Complainant’s November 2, 2016 and November 30, 2016 OPRA requests seeking pre-sentencing reports, investigative reports, prosecutor’s handwritten notes and criminal rap sheets. N.J.S.A. 47:1A-6. Specifically, pre-sentencing reports are exempt as ACD material. See Pitts, GRC 2013-299. Further, investigative reports and prosecutor’s handwritten notes in this instance fall within the definition of a criminal investigatory records because they are not required to be made by law and pertain to a criminal investigation. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. at 541.

Finally, EO 9 provides that criminal rap sheets are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a).

Grand Jury Tally-Sheets/Judge's Notes

OPRA also provides that “[t]he provisions of this act . . . shall not abrogate any exemption . . . made pursuant to . . . any *Rules of Court* . . .” N.J.S.A. 47:1A-9(a) (emphasis added).

Here, part of the Complainant’s November 2, 2016 OPRA request sought “Grand Jury Tally-Sheets.” R. 3:6-5 states that, regarding the record of each grand juror’s vote on indictments and presentments, “the record shall not be made public except on order of the Assignment Judge.” Thus, New Jersey Court Rules supports the Custodian’s contention that tally-sheets are exempt from access under OPRA. N.J.S.A. 47:1A-9(a).

Additionally, the Complainant’s November 30, 2016 OPRA request sought in part the handwritten notes of the judge who sat during his trial. The Custodian certified that such records are not in the possession of the MCPO. Notwithstanding whether MCPO possesses such records, R. 1:38(b)(1) explicitly exempts notes maintained by a judge in the course of performing official duties from public access.

Therefore, the Custodian lawfully denied access to the portion of the Complainant’s November 2, 2016 OPRA request seeking grand jury tally-sheets, and the portion of the Complainant’s November 30, 2016 OPRA request seeking the judge’s handwritten notes. N.J.S.A. 47:1A-6. Specifically, R. 3:6-5 exempts such grand jury tally-sheets from disclosure except on order from the Assignment Judge. N.J.S.A. 47:9(a). Additionally, R. 1:38(b)(1) exempts notes maintained by a judge while performing official duties from public access. Id.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. Because a portion of the Complainant’s November 2, 2016 OPRA request seeking “all criminal records” and “indictments” pertaining to the Complainant 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 Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep’t, Custodian of Records, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. v. New Jersey 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. Because the portion of the Complainant’s November 30, 2016 OPRA request seeking “background information” on jurors does not specify government records but seeks information, that portion of the request is invalid. MAG Entm’t, LLC v. Div. of

Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005 Bent v. Twp. of Stafford Police Dep't, Custodian of Records, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

3. The Custodian lawfully denied access to the portion of the Complainant's OPRA November 2, 2016 and November 30, 2016 OPRA requests seeking pre-sentencing reports, investigative reports, prosecutor's handwritten notes and criminal rap sheets. N.J.S.A. 47:1A-6. Specifically, pre-sentencing reports are exempt as "inter-agency, intra-agency advisory, consultative, or deliberative" material. See Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2013-299 (September 2014). Further, investigative reports and prosecutor's handwritten notes in this instance fall within the definition of a criminal investigatory records because they are not required to be made by law and pertain to a criminal investigation. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541 (2017). Finally, Executive Order No. 9 (Gov. Hughes, 1988) provides that criminal rap sheets are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a).
4. The Custodian lawfully denied access to the portion of the Complainant's November 2, 2016 OPRA request seeking grand jury tally-sheets, and the portion of the Complainant's November 30, 2016 OPRA request seeking the judge's handwritten notes. N.J.S.A. 47:1A-6. Specifically, R. 3:6-5 exempts such grand jury tally-sheets from disclosure except on order from the Assignment Judge. N.J.S.A. 47:9(a). Additionally, R. 1:38(b)(1) exempts notes maintained by a judge while performing official duties from public access. Id.

Prepared By: Samuel A. Rosado
Staff Attorney

March 19, 2019