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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5116-14T3

JERMAINE A. WILLIAMS,

Complainant-Appellant,

v.

PASSAIC COUNTY PROSECUTOR'S
OFFICE,

Custodian of Record-
Respondent.

Telephonically argued February 13, 2017 –
Decided February 23, 2017

Before Judges Sabatino and Currier.

On appeal from State of New Jersey, Government
Records Council, Complaint No. 2014-297.

Jermaine A. Williams, argued the cause pro se.

Christopher W. Hsieh, Chief Assistant
Prosecutor, argued the cause for respondent
Passaic County Prosecutor's Office (Camelia M.
Valdes, Passaic County Prosecutor, attorney;
Mr. Hsieh, of counsel and on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent Government Records
Council (Debra A. Allen, Deputy Attorney
General, on the statement in lieu of brief).

PER CURIAM

Appellant Jermaine A. Williams was convicted in 2001 of felony murder and other crimes relating to a robbery and shooting in Paterson that occurred on September 26, 1999. He was sentenced to an aggregate term of life imprisonment, plus an additional five years. His conviction was upheld on direct appeal, except for a remand to amend the judgment of conviction to reflect the merger of a weapons count. See State v. Williams, No. A-3568-01 (App. Div. Feb. 24, 2004), aff'd, 181 N.J. 544 (2004). His petition for post-conviction relief ("PCR") was denied, and this court affirmed that denial. See State v. Williams, No. A-1494-06 (App. Div. Sept. 25, 2008), certif. denied, 197 N.J. 259 (2008). Appellant presently is pursuing an appeal of the trial court's denial of his subsequent PCR petition. That appeal (A-1676-16), in which appellant is self-represented, is currently in the briefing stages.

On July 2, 2014, appellant submitted a request to the Passaic County Prosecutor's Office under the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 to -13, for "a copy of the 911 transcript" for a 9-1-1 call that was made to the Paterson Police Department on September 26, 1999. Apparently, appellant believes the 9-1-1 call might contain information that could support his pending appeal for the most recent PCR denial.

On August 1, 2014, the records custodian for the Prosecutor's Office denied the request, asserting that her office was not in possession of the requested documents. Appellant then filed a Denial of Access Complaint with the Government Records Council ("GRC") on August 14, 2014. He provided with his request a copy of pages from a trial transcript dated September 10, 2001, that suggest that the 9-1-1 recording was then in existence.

The custodian filed a Statement of Information ("SOI") with the GRC on October 15, 2014. The custodian certified that since petitioner had requested a "copy of the 911 transcript," she interpreted that to be a request for a transcript of the 9-1-1 recording and not the 9-1-1 recording itself. The custodian certified that her office was not in possession of such a transcript from the 9-1-1 recording.

On May 26, 2015, the GRC issued its final administrative determination. The agency concluded that appellant's request was properly denied by the custodian because no "responsive record" existed.

As a matter of law, the GRC correctly determined that the Prosecutor's Office does not have an obligation under OPRA to provide a requestor with a copy of a record that does not exist, or an obligation to create such a new record from information in its possession. See N.J.S.A. 47:1A-6. See also Sussex Commons

Assocs., LLC v. Rutgers, 210 N.J. 531, 544 (2012); MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). Given the Prosecutor's Office's representation that it does not possess a transcript of the 9-1-1 audio recording, its denial of appellant's request was lawful. The GRC's final agency decision upholding the denial is therefore affirmed.


During the oral argument on appeal, appellant clarified that if a transcript of the 9-1-1 recording does not exist, he would still like, as an alternative, to have either a copy of the recording or the ability to listen to the recording. In that scenario, he would then determine whether he would want to somehow make arrangements to have it transcribed. Counsel for the Prosecutor's Office responded that it would search to determine if such a 9-1-1 recording still exists, and, if so, it would provide appellant with an appropriate response if he filed a new OPRA application clarifying his request. Appellant advised that he plans to submit such a new request in the future.

Accordingly, our ruling today does not foreclose appellant from pursuing such a course of action, with the Prosecutor's Office retaining its rights to assert in response any pertinent content-based exemptions under the statute, if the recording is located. See N.J.S.A. 47:1A-5. Nor do we address here the allocation of any special costs that may be involved in converting an audio

cassette from 1999, if it still exists, to a reproduced medium suitable to provide appellant with access. See N.J.S.A. 47:1A-5(d).

Affirmed, without prejudice to appellant presenting a new or revised OPRA request to the Prosecutor's Office. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.


CLERK OF THE APPELLATE DIVISION