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Although it is posted on the internet, this opinion is binding only on the
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-2722-16T2

AARON LYNN,

Complainant-Appellant,

v.

MIDDLESEX COUNTY PROSECUTOR'S
OFFICE,

Custodian of Record-
Respondent.

Submitted January 24, 2018 – Decided February 16, 2018

Before Judges Currier and Geiger.

On appeal from the New Jersey Government
Records Council, Complaint No. 2015-186.

Aaron Lynn, appellant pro se.

Thomas F. Kelso, Middlesex County Counsel,
attorney for respondent Middlesex County
Prosecutor's Office (Jeanne-Marie Scollo,
Deputy County Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent Government Records Council
(Melissa H. Raksa, Assistant Attorney General,
of counsel; Cameryn J. Hinton, Deputy Attorney
General, on the statement in lieu of brief).

PER CURIAM

Appellant Aaron Lynn appeals from the January 31, 2017 final decision of respondent Government Records Council (GRC), determining appellant's blanket request for a class of documents from respondent Middlesex County Prosecutor's Office's (MCPO) homicide investigation file to be invalid under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13. The GRC further determined the photographs requested by appellant, from MCPO's file, are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and Executive Order No. 69 (May 15, 1997), 29 N.J.R. 2729(a) (Jul. 7, 1997). For the reasons that follow, we affirm.

Lynn submitted an OPRA request to the MCPO for "a list of all document[s] inside the Prosecutor's entire file, involving Indictment [No.] 97-09-01245. Also all photographs obtained."

On June 4, 2015, MCPO Records Custodian, James E. O'Neill, provided Lynn with a copy of the judgment of conviction entered under Indictment No. 97-09-1245 but otherwise denied Lynn's OPRA request. In his written response, O'Neill explains

it was determined that there were no other records that would be considered public documents under N.J.S.A. 47:1A-1.1, et seq. The documents maintained in the file include such items as police reports, investigatory records, and statements of witnesses.

These types of documents are considered criminal investigatory records and are protected under N.J.S.A. 47:1A-1.1, et seq
. . . .

It also should be noted that N.J.S.A. 47:1A-1.1, et seq. exempts photographs from public release as they are not considered public records."

On June 18, 2015, Lynn filed a denial of access complaint with the GRC. On June 30, 2015, MCPO responded to the complaint by submitting its Statement of Information (SOI). The SOI reiterates MCPO denied access to the records and photographs because N.J.S.A. 47:1A-1.1 "exempts release of criminal investigatory records to the public[,]" and N.J.A.C. 13:49-3.1 "prohibits the public release of autopsy reports that are commonly maintained in criminal investigations of homicides." MCPO also provided a "complete inventory of documents maintained in this file." A copy of the SOI, including the inventory of documents, was served on Lynn. Lynn did not respond to the SOI or provide further information to the GRC.

On January 24, 2017, the Executive Director issued his findings and recommendations to the GRC. The Executive Director recommended the GRC find that:

1. Because a portion of the Complainant's June 3, 2015 OPRA request seeking "all documents" pertaining to a specific indictment 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 ABC, 375

N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Ass'n v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Abdur-Raheem v. NJ Div. of Criminal Justice, GRC Complaint No. 2014-171 (June 2015); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Based on the foregoing, the Council need not address whether this portion of the request is exempt as criminal investigatory records.

2. The photographs sought in the Complainant's OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, Executive Order [No.] 69 (Gov. Whitman 1997), and N.J.S.A. 47:1A-9(a). See Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009). Accordingly, the Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6.

On January 31, 2017, the GRC issued its final decision, adopting the entirety of the Executive Director's findings and recommendations. This appeal followed.

On appeal, Lynn argues the denial of his OPRA request "based on the criminal investigatory records exemption should be reversed where the investigations have long since been concluded and the said records have already been released into the public sphere via a public jury trial." We are unpersuaded by this argument.

Our scope of review of final administrative agency actions is limited. In re Herrmann, 192 N.J. 19, 27 (2007). "An

administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Id. at 27-28. "[A] presumption of reasonableness attaches to the action of an administrative agency and the party who challenges the validity of that action has the burden of showing that it was arbitrary, unreasonable or capricious." Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980). Nonetheless, we "are not bound by an agency interpretation of a strictly legal issue, when that interpretation is inaccurate or contrary to legislative objectives." G.S. v. Dep't of Human Servs., 157 N.J. 161, 170 (1999) (citations omitted).

The general purpose of OPRA is "to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). To achieve this purpose, OPRA provides that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest." N.J.S.A. 47:1A-1. This appeal involves two of those codified exceptions.

Although OPRA broadly defines the term "government record," it expressly provides it "shall not include . . . criminal investigatory records." N.J.S.A. 47:1A-1.1. "'Criminal investigatory record' means 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." Ibid.

The police were not required by statute or regulation to make and maintain the criminal records pertaining to the homicide investigation in question. See State v. Marshall, 148 N.J. 89, 272-73 (explaining no law or regulation requires that results of criminal investigation be made, maintained or filed); The Daily Journal v. Police Dep't of Vineland, 351 N.J. Super. 110, 120 (App. Div. 2002) (holding criminal investigative reports by police are not required by law or regulation to be made, maintained, or kept on file, for purposes of their release under predecessor to OPRA); River Edge Sav. and Loan Ass'n v. Hyland, 165 N.J. Super. 540, 545 (App. Div. 1979). Therefore, the documents sought by Lynn fall within the exemption from OPRA's disclosure requirement for criminal investigatory records.¹

¹ Although homicide investigation records are required to be maintained under guidelines issued by the Attorney General, see infra, "administrative directives of the Attorney General . . .

The photographs sought by Lynn are also exempt from disclosure under OPRA. Executive Order No. 69 provides "photographs and similar criminal investigation records that are required to be made, maintained or kept by any State or local government agency" are not public records. Homicide investigation records are required to be retained until the expiration of the defendant's sentence. Administrative Directive No. 2010-1, "Attorney General Guidelines for the Retention of Evidence" (March 9, 2010). Lynn is still serving his sentence.² OPRA "shall not abrogate any exemption of a public record or government record from public access . . . pursuant to . . . any . . . Executive Order of the Governor." N.J.S.A. 47:1A-9(a); see Slaughter v. Government Records Council, 413 N.J. Super. 544, 550 (App. Div. 1998).

Additionally, Lynn's OPRA request was invalid because it failed to "reasonably identify" the documents sought. See Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). OPRA does not "authorize a party to make a blanket request for every document a public agency has on file." Ibid. (citation omitted). "Thus, OPRA requires a party requesting access to a

are not the equivalent of either a statute or a . . . regulation." North Jersey Media Group, Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70, 102 (App. Div. 2015) (citations omitted), remanded on unrelated issue, 223 N.J. 555 (2017).

² Lynn is an inmate at Northern State Prison.

public record to specifically describe the document sought." Gannett N.J. Partners LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005) (citing MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005)); accord Spectraserv, Inc. v. Middlesex Cnty. Utilities Auth., 416 N.J. Super. 565, 578 (App. Div. 2010) (finding OPRA request for "an entire project file" improper because it failed to identify specific documents). Accordingly, "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." Bent, 381 N.J. Super. at 37. Lynn's blanket request for all documents and photographs in the Prosecutor's entire file did not meet this requirement.

For the first time on appeal, Lynn argues he was denied a list of all documents in the prosecutor's file. Lynn did not raise this issue before the GRC. Issues not presented to the agency should not be considered on appellate review "unless the questions so raised on appeal go to the jurisdiction of the [lower tribunal] or concern matters of great public interest." Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div.

1959)). Because this issue does not fall into either category, we decline to reach it.

Lynn's request was not a proper request for public records under OPRA, and the documents it sought, other than the judgment of conviction, are exempt from disclosure. Consequently, Lynn has not demonstrated the final agency decision rendered by the GRC was arbitrary, capricious, or unreasonable or lacks fair support in the record. We find no basis to overturn its decision.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION