



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

November 4, 2009 Government Records Council Meeting

Nashid A. Siddeeq
Complainant

Complaint No. 2009-182 and 2009-183

v.

New Jersey Department of Corrections
Custodian of Record

At the November 4, 2009 public meeting, the Government Records Council (“Council”) considered the September 23, 2009 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 to prevent the expenditure of unnecessary funds in order for the New Jersey Department of Corrections to prepare for a defense of these Denial of Access Complaints, as well as to prevent the expenditure of the administrative costs generated at the GRC to process this matter for the benefit of the parties, said complaints should be dismissed pursuant to Swindell v. New Jersey Department of Environmental Protection and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993) because the GRC cannot contact the Complainant and because the Complainant has not made attempts to contact the GRC regarding these complaints.

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 4th Day of November, 2009



Robin Berg Tabakin, Chair
Government Records Council

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

Janice L. Kovach, Secretary
Government Records Council

Decision Distribution Date: November 9, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 4, 2009 Council Meeting**

**Nashid A. Siddeeq¹
Complainant**

GRC Complaint Nos. 2009-182 and 2009-183

v.

**New Jersey Department of Corrections²
Custodian of Records**

Records Relevant to Complaint:

- GRC Complaint No. 2009-182:
 1. 2007 classification face sheet
 2. Judgment of conviction for current incarceration
- GRC Complaint No. 2009-183: Disciplinary hearing results held at C.R.A.F on December 8, 2008 for James Lannon.

Request Made: April 13, 2009 and May 5, 2009

Response Made: April 13, 2009 and May 5, 2009

Custodian: Michelle Hammel

GRC Complaints Filed: June 4, 2009³

Background

April 13, 2009

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

April 13, 2009

OPRA Liaison's response to the Complainant's first OPRA request. The OPRA Liaison responds in writing to the Complainant's OPRA request on the same business day she received such request. The OPRA Liaison states that the Complainant cannot access his face sheet from 2007. The OPRA Liaison states that the Complainant may only access his current, up to date face sheet.

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The GRC received the Denial of Access Complaint on said date.

May 5, 2009

Complainant's second Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter.

May 5, 2009

Custodian's response to the Complainant's second OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the same business day she received such request. The Custodian denies the Complainant's OPRA request on the basis that the Department of Corrections' regulations specifically exclude the release of records that may jeopardize the safety of any person or the safe and secure operation of a correctional facility and the Complainant's request pertains to another inmate.

June 4, 2009

Denial of Access Complaints⁴ filed with the Government Records Council ("GRC") with the following attachments:

- OPRA Liaison's response to the Complainant's first OPRA request dated April 13, 2009
- Custodian's response to the Complainant's second OPRA request dated May 5, 2009

The Complainant states that he submitted his first OPRA request on April 13, 2009. The Complainant states that the OPRA Liaison denied access to said request. The Complainant also states that the Custodian denied access to his second OPRA request on May 5, 2009. Additionally, the Complainant agrees to mediate these complaints.

June 25, 2009

Offer of Mediation sent to both parties.⁵

June 26, 2009

The Custodian declines mediation.

July 1, 2009

Returned mail from Mid-State Correctional Facility to GRC because the Complainant was released from jail with no forwarding address.

August 11, 2009

Letter from GRC to Complainant.⁶ The GRC states that the Department of Corrections informed the GRC that the Complainant's address has changed. The GRC asks the Custodian to indicate whether the GRC can continue to contact him at this present address, or to provide another current address.

⁴ The Complainant submitted a separate Denial of Access Complaint for each OPRA request at issue.

⁵ Although the Complainant indicated on his Denial of Access Complaints that he wished to participate in mediation, the Complainant failed to sign the Agreement to Mediate forms.

⁶ The GRC obtained the Complainant's last known address prior to incarceration from the Department of Corrections.

August 18, 2009

GRC's letter to the Complainant dated August 11, 2009 is returned because the residence is vacant with no forwarding address.

Analysis

Whether the Council should dismiss these Complaints?

OPRA provides that:

“[t]he Government Records Council shall...receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian...” N.J.S.A. 47:1A-7.b.

The GRC has attempted to contact the Complainant regarding this complaint with no success at the only two (2) addresses for the Complainant known by the GRC and the New Jersey Department of Corrections.

In Swindell v. New Jersey Department of Environmental Protection and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993), the petitioner appealed the assessment of a penalty pursuant to the Waterfront Development Statute. In response to said appeal, the Office of Administrative Law scheduled a mandatory early settlement conference at which the petitioner failed to appear. In the Administrative Law Judge's ("ALJ") Initial Decision, the ALJ found that:

“[a]fter having given petitioner Swindell every opportunity to contact either the deputy attorney general or this tribunal to afford an explanation for his nonappearance and noncontact regarding this matter subsequent to the filing of his appeal, I FIND that petitioner Swindell has unilaterally disregarded his obligations in this matter even though it was he who initiated the process in the first instance. In the process, I FIND that petitioner Swindell has, for reasons unknown to this tribunal, caused the expenditure of unnecessary funds in order to prepare for a defense of his appeal, as well as the administrative costs generated at the Office of Administrative Law in order to process this matter for the benefit of the parties.”

Similarly in this instant complaint, the GRC has made several attempts to contact the Complainant with no success and the Complainant has failed to make any attempt to contact the GRC regarding these Denial of Access Complaints, which the Complainant initiated on June 4, 2009.

Therefore, to prevent the expenditure of unnecessary funds in order for the New Jersey Department of Corrections to prepare for a defense of these Denial of Access Complaints, as well as to prevent the expenditure of the administrative costs generated at the GRC to process this matter for the benefit of the parties, said complaints should be dismissed pursuant to Swindell, *supra*, because the GRC cannot contact the Complainant

and because the Complainant has not made attempts to contact the GRC regarding these complaints.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that to prevent the expenditure of unnecessary funds in order for the New Jersey Department of Corrections to prepare for a defense of these Denial of Access Complaints, as well as to prevent the expenditure of the administrative costs generated at the GRC to process this matter for the benefit of the parties, said complaints should be dismissed pursuant to Swindell v. New Jersey Department of Environmental Protection and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993) because the GRC cannot contact the Complainant and because the Complainant has not made attempts to contact the GRC regarding these complaints.

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

September 23, 2009