



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Acting Commissioner

FINAL DECISION

May 27, 2010 Government Records Council Meeting

Suzanne Venezia
Complainant

Complaint No. 2009-314

v.

New Jersey Department of Corrections
Custodian of Record

At the May 27, 2010 public meeting, the Government Records Council (“Council”) considered the May 20, 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 because the Custodian certified that there are no records responsive to the Complainant’s request, and because there is no credible evidence in the record to refute the Custodian’s certification, the Custodian did not unlawfully deny the Complainant access to the records relevant to the complaint pursuant to N.J.S.A. 47:1A-1.1. See Pusterhofer v. NJ Department of Education, GRC Complaint No. 2005-49 (July 2005).

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 27th Day of May, 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: June 3, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 27, 2010 Council Meeting**

**Suzanne Venezia¹
Complainant**

GRC Complaint No. 2009-314

v.

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

Records Relevant to Complaint: All jail records for the Complainant while she was incarcerated at the Monmouth County Correctional Institution from August 30, 2009 through August 31, 2009.³

Request Made: September 24, 2009

Response Made: September 28, 2009

Custodian: Michelle Hammel

GRC Complaint Filed: November 24, 2009⁴

Background

September 24, 2009

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.

September 28, 2009

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the second (2nd) business day following receipt of such request. The Custodian states that access to the requested records is denied because the New Jersey Department of Corrections ("NJDOC") has no records responsive to the Complainant's request. The Custodian suggests that the Complainant contact the Monmouth County Correctional Institution to try to obtain any releasable records responsive to the Complainant's request.

October 5, 2009

E-mail from the Custodian to the Complainant. In reply to a telephone call from the Complainant to the Custodian questioning the status of the Complainant's OPRA

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Complainant also provided her inmate booking number and Social Security number to facilitate record retrieval.

⁴ The GRC received the Denial of Access Complaint on said date.

request the Custodian states that a response to said request was mailed to the Complainant on September 28, 2009.

October 5, 2009

Letter from the Complainant to the Custodian. The Complainant states that she received correspondence from the Custodian which denied the Complainant's OPRA request because the NJDOC does not maintain records on inmates who have not been sentenced. The Complainant states that she contacted the Monmouth County Correctional Institution and was told that the only way she could obtain records from their facility was by serving them with a subpoena. The Complainant states that she does not understand why OPRA does not contain a provision providing for disclosure of records on inmates that have not been sentenced. The Complainant states that she will contact the GRC regarding the Custodian's denial of access to the records she requested.

October 16, 2009

Letter from the Complainant to the Custodian. The Complainant states that she enclosed a copy of a subpoena for records from the Monmouth County Correctional Institution.

October 21, 2009

Letter from the Custodian to the Complainant. The Custodian informs the Complainant that the Custodian received the Complainant's letter containing what was purported to be a subpoena issued by the Brielle Municipal Court for records concerning the Complainant while she was incarcerated at the Monmouth County Correctional Institution. The Custodian informs the Complainant that the NJDOC does not maintain records for inmates at county correctional facilities and only maintains a record of State sentenced inmates. The Custodian states that it is for this reason the Complainant's request for the records was denied.

November 24, 2009

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:⁵

- Complainant's OPRA request dated September 24, 2009
- Letter from Complainant to the Custodian and the Monmouth County Correctional Institution dated October 5, 2009
- Letter from the Complainant to the Custodian dated October 16, 2009

The Complainant states that she filed her OPRA request on September 24, 2009 and received a written response from the Custodian dated September 28, 2009. The Complainant states that her records request was denied because the Custodian informed her that the NJDOC only maintains a record of State sentenced inmates and does not maintain records for inmates at county correctional facilities. The Complainant further states that she contacted the Monmouth County Correctional Institution in order to obtain

⁵ The Complainant also attached several pages of documents which purported to reflect service of a *Subpoena Duces Tecum* for jail records issued under authority of the Brielle Borough Municipal Court upon the Monmouth County Correctional Institution dated October 16, 2009. This material is not relevant to the Complainant's Denial of Access Complaint.

the requested records from them but that they told her she would have to obtain a subpoena demanding the records. The Complainant contends the NJDOC and the Monmouth County Correctional Institution are both avoiding responsibility for disclosing the requested records to her.

The Complainant does not agree to mediate this complaint.

November 25, 2009

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

December 1, 2009

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated September 24, 2009
- Custodian’s response to the OPRA request dated September 28, 2009
- E-mail from the Custodian to the Complainant dated October 5, 2009
- Letter from the Complainant to the Custodian and the Monmouth County Correctional Institution dated October 5, 2009
- Letter from the Complainant to the Custodian dated October 16, 2009
- Letter from the Custodian to the Complainant dated October 21, 2009

The Custodian certifies that no documents responsive to the Complainant’s request are made, maintained or kept on file by the NJDOC. The Custodian also certifies that no records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that she received the Complainant’s OPRA request upon which this complaint is based on September 24, 2009 and that she responded in writing to said request on September 28, 2009, October 5, 2009 and October 21, 2009.⁶

The Custodian cites N.J.S.A. 47:1A-1.1., which defines a government record as “...any [material] that has been made, maintained or kept on file...or that has been received in the course of his or its official business...” and certifies that the NJDOC has no such government records responsive to the Complainant’s request.

The Custodian certifies that she informed the Complainant that the documents the Complainant requested could not be provided because they were not made, maintained or kept on file with the NJDOC. The Custodian also certifies that she provided the Complainant with the address of the Monmouth County Correctional Institution, which is the facility in which the Complainant was incarcerated.

The Custodian certifies that on or about October 5, 2009 the Complainant called the Custodian and requested a response to her OPRA request. The Custodian certifies that she e-mailed the Complainant a copy of the Custodian’s September 28, 2009

⁶ The Custodian’s initial written response to the Complainant’s request was September 28, 2009. The correspondence dated October 5, 2009 and October 21, 2009 refers back to the September 28, 2009 response.

response to the Complainant's OPRA request. The Custodian also certifies that the Complainant sent a letter to the Custodian dated October 5, 2009, wherein the Complainant states that she received correspondence from the Custodian which denied the Complainant's OPRA request. The Custodian further certifies that on October 16, 2009 the Complainant sent what purported to be a subpoena for the requested records. The Custodian avers that on October 21, 2009 she sent a letter to the Complainant and again informed the Complainant that the NJDOC has no records relating to the Complainant's stay in the Monmouth County Jail.

December 26, 2009

Letter from the Complainant to the GRC. The Complainant recapitulates the procedural history of the OPRA request in this complaint, as well as GRC Complaint No. 2009-315.⁷ The Complainant states that because she made both the NJDOC and the Monmouth County Correctional Institution aware of each other's responses she assumed that one of the two (2) agencies would have disclosed a copy of the requested records to her. The Complainant further states that on December 5, 2009 she received the Custodian's SOI in the instant matter and asserts that the Custodian's submission "testifies to the fact that the NJDOC gave me erroneous information about obtaining my records, and in no way facilitated my search for records."⁸

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.

⁷ This complaint was filed against the Monmouth County Correctional Institution for the same records.

⁸ Other subsequent correspondence was received from the Complainant which is not relevant to this complaint or restates the facts/assertions already presented to the GRC.

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.

In the instant complaint, the Custodian certified that she informed the Complainant that there were no records responsive to the Complainant’s request because the NJDOC only maintains a record of State sentenced inmates and does not maintain records for inmates at county correctional facilities. The evidence of record reveals that the Complainant was incarcerated at the Monmouth County Correctional Institution, which is a county correctional facility.

Pursuant to N.J.S.A. 47:1A-1.1, a government record is only responsive to an OPRA request if it has “been made, maintained or kept on file...or has been received in the course of [the public agency’s] official business ...” The Council has held that if a custodian has sufficiently borne his/her burden of proving that there is no record responsive to the Complainant’s request, the Custodian could not have unlawfully denied access.

In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the Complainant sought a copy of a telephone bill from the custodian in an effort to obtain proof that a phone call was made to him by an official from the Department of Education. The custodian provided a certification in his submission to the GRC that averred that the requested record was nonexistent. The Council subsequently determined that “[t]he Custodian has certified that the requested record does not exist. Therefore, the requested record can not (sic) be released and there was no unlawful denial of access.”

Therefore, because the Custodian certified that there are no records responsive to the Complainant’s request, and because there is no credible evidence in the record to refute the Custodian’s certification, the Custodian did not unlawfully deny the Complainant access to the records relevant to the complaint pursuant to N.J.S.A. 47:1A-1.1. See Pusterhofer, supra.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian certified that there are no records responsive to the Complainant’s request, and because there is no credible evidence in the record to refute the Custodian’s certification, the Custodian did not unlawfully deny the Complainant access to the records relevant to the complaint pursuant to N.J.S.A. 47:1A-1.1. See Pusterhofer v. NJ Department of Education, GRC Complaint No. 2005-49 (July 2005).

Prepared By: John E. Stewart
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.
Executive Director

May 20, 2010