



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

October 25, 2011 Government Records Council Meeting

Quddoos Farra'D
Complainant

Complaint No. 2010-47

v.

New Jersey Department of Corrections
Custodian of Record

At the October 25, 2011 public meeting, the Government Records Council ("Council") considered the October 18, 2011 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 although the Custodian failed to bear her burden pursuant to N.J.S.A. 47:1A-6, of proving a lawful denial of access to the Complainant's Inmate Payment on Obligations summary from February 29, 2008 to January 11, 2010 by not citing a correct legal reason for denying the Complainant access to said records, the GRC determined that the requested records are exempt from disclosure pursuant to Executive Order No. 26 (McGreevey 2002) applicable to OPRA by operation of N.J.S.A. 47:1A-9.a.

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 25th Day of October, 2011

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: October 28, 2011



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 25, 2011 Council Meeting**

**Quddoos Farra'D¹
Complainant**

GRC Complaint No. 2010-47

v.

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

Records Relevant to Complaint: Copy of Inmate Payment on Obligations summary for the Complainant from February 29, 2008 until January 11, 2010.

Request Made: January 11, 2010

Response Made: January 27, 2010

Custodian: John Falvey³

GRC Complaint Filed: March 8, 2010⁴

Background

January 11, 2010

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

January 27, 2010

Custodian's response to the OPRA request.⁵ The Custodian responds in writing to the Complainant's OPRA request on the first (1st) business day following receipt of such request. The Custodian states that access to the requested record is denied because N.J.S.A. 47:1A-1 et seq. provides that "information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law are exempt from disclosure."⁶

¹ No legal representation listed on record.

² Represented by DAG Ellen Hale, on behalf of the NJ Attorney General.

³ Deirdre Fedkenheuer was the Custodian who responded to the Complainant's OPRA request.

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

⁵ The Custodian certified in the SOI that she received the Complainant's OPRA request on January 26, 2010.

⁶ The Custodian also informs the Complainant in her response that he may obtain the records by filing a request via *N.J.A.C. 10A*. The evidence of record indicates that the Custodian did not provide a more specific citation to *N.J.A.C. 10A*; the GRC notes that the Title cited refers to regulations promulgated by the New Jersey Department of Corrections.

March 8, 2010

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

- Inmate Payments on Obligations (5 pages) for the Complainant dated February 29, 2008
- Custodian’s response to the OPRA request dated January 27, 2010

The Complainant states that he is an inmate at the East Jersey State Prison and that sometime during the month of January 2010 he requested a copy of his Inmate Payment on Obligations record for the period February 29, 2008 to January 11, 2010. The Complainant further states that the Custodian denied him access to the record for arbitrary and capricious reasons. The Complainant contends that he had previously requested and received a copy of the same record for an earlier period of time and attaches a copy of said record as Exhibits A through E of his Denial of Access Complaint.

March 25, 2010

Offer of Mediation sent to both parties.

March 25, 2010

E-mail from the Custodian to the GRC. The Custodian informs the GRC that account statements such as the one requested by the Complainant are not government records subject to disclosure pursuant to N.J.S.A. 47:1A-1 et. seq., which provides that “information describing a natural person’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law are exempt from disclosure.” For this reason, the Custodian states that she has referred inmates seeking account statement records to do so via *N.J.A.C. 10A*. The Custodian asks the GRC if, based on her response to the OPRA request, the complaint still needs to be mediated.

March 25, 2010

E-mail from the GRC to the Custodian. The GRC informs the Custodian that her citation to N.J.S.A. 47:1A-1 et seq. is in error; OPRA does not contain the substantive language of the provision which the Custodian relied upon in her e-mail to the GRC dated March 25, 2010. As such, the GRC informs the Custodian that the provision cannot be relied upon as a lawful basis to deny access to the requested record under OPRA. The GRC asks the Custodian if the language she asserts is part of N.J.S.A. 47:1A-1 et seq. may be language from a Department of Correction’s regulation or proposed regulation. The GRC also asks the Custodian to research the origin of the cited authority because the Custodian may be able to rely on such authority to deny access to a record pursuant to N.J.S.A. 47:1A-9.

The GRC also informs the Custodian that she cannot deny a request for a record under OPRA by advising the requestor to obtain the information sought through other means. The GRC further informs the Custodian that she must cite a legal reason for denying a record requested under OPRA, but that there is nothing in OPRA to prevent her from then suggesting to the requestor an alternative means for obtaining the record.

The GRC informs the Custodian that after a Denial of Access Complainant is filed, the GRC offers mediation to the parties as an option under OPRA for settling the complaint. The GRC further informs the Custodian that if mediation is declined by either party the GRC will adjudicate the complaint.

March 29, 2010

The Custodian declines mediation.

April 5, 2010

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

April 12, 2010

E-mail from the Custodian’s Counsel. Counsel requests a five (5) business day extension of time for the Custodian to complete and submit the SOI.

April 12, 2010

E-mail from the GRC to the Custodian’s Counsel. The GRC approves a five (5) business day extension of time for the Custodian to complete and submit the SOI.

April 20, 2010

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated January 11, 2010
- Custodian’s response to the OPRA request dated January 27, 2010

The Custodian certifies that she did not conduct a search for the record responsive to the Complainant’s request because it is exempt from disclosure pursuant to OPRA which provides that “information describing a natural person’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness are exempt from disclosure.” N.J.S.A. 47:1A-1 et seq. The Custodian also certifies that the record that may have been responsive to the request must be retained by the agency for ten (10) years and was not 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 for a copy of his Inmate Payment on Obligations on January 26, 2010. The Custodian further certifies that she responded to the Complainant’s request on January 27, 2010, denying access to the requested record because pursuant to N.J.S.A. 47:1A-1 et seq., financial statements, bank balances and financial history are exempt from disclosure.

The Custodian’s Counsel asserts that the Custodian received the Complainant’s OPRA request on January 26, 2010 and responded to the request on January 27, 2010 which was within the statutorily mandated seven (7) business day period for responding to an OPRA request.

Counsel further asserts that the Custodian determined the Complainant’s request sought financial information. Counsel argues that pursuant to N.J.S.A. 47:1A-1 et seq.,

“information describing a natural person’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness are exempt from disclosure.” As such, Counsel asserts that the Custodian informed the Complainant that the record he requested is exempt from disclosure pursuant to OPRA and requests that the Complainant’s complaint be dismissed.

Counsel states that the Custodian did inform the Complainant that he could request a copy of his account statement by submitting a request pursuant to *N.J.A.C. 10A* to the business office located at his institution.

August 6, 2010

The Complainant agrees to mediate this complaint.

August 19, 2010

Letter from the GRC to the Complainant. The GRC informs the Complainant that the Custodian declined to mediate the complaint therefore mediation is not an option for this complaint.

Analysis

Whether the Custodian unlawfully denied access to the requested record?

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.

OPRA further provides that:

“[t]he provisions of this act...shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to...any other statute; resolution of either or both Houses of the

Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order” N.J.S.A. 47:1A-9.a.

Executive Order No. 26 provides that:

“...[t]he following records shall not be considered to be government records subject to public access pursuant to N.J.S.A. 47:1A-1. et seq., as amended and supplemented...Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed.” Executive Order No. 26 (McGreevey 2002).

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.

The Custodian responded to the Complainant’s January 11, 2010 OPRA request in a timely manner by denying access to the requested record pursuant to N.J.S.A. 47:1A-1 et seq., which the Custodian certified provides as follows:

“information describing a natural person’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law are exempt from disclosure.”

The purported provision of OPRA cited by the Custodian does not exist. The GRC informed the Custodian that her citation to the alleged provision of OPRA as a legal reason for denying the Complainant access to the requested record was erroneous. Moreover, the GRC asked the Custodian to check the cited provision to see if it may have been language from a Department of Correction’s regulation or proposed regulation or another law exempting a record from public access because such other legal provision would be operable under OPRA if coupled with N.J.S.A. 47:1A-9.

The Custodian replied to the GRC by certifying that the reason the Complainant was denied access to the requested record was because such record was exempt from disclosure pursuant to that provision of OPRA which specifically exempts from disclosure, *inter alia*, “information describing a natural person’s finances.” However, no such provision exists in OPRA.

Because the Custodian and Custodian’s Counsel failed and refused to provide the GRC with a correct citation to the legal provision the Custodian relied upon in order to deny the Complainant access to the requested records, the GRC of its own volition researched the language the Custodian cited. The GRC found that under Executive Order

No. 26 (McGreevey 2002), information describing a natural person's finances and liabilities is exempt from public access, except as otherwise required by law to be disclosed.

Accordingly, although the Custodian failed to bear her burden pursuant to N.J.S.A. 47:1A-6. of proving a lawful denial of access to the Complainant's Inmate Payment on Obligations summary from February 29, 2008 to January 11, 2010 by not citing a correct legal reason for denying the Complainant access to said records, the GRC determined that the requested records are exempt from disclosure pursuant to Executive Order No. 26 (McGreevey 2002) applicable to OPRA by operation of N.J.S.A. 47:1A-9.a.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that although the Custodian failed to bear her burden pursuant to N.J.S.A. 47:1A-6. of proving a lawful denial of access to the Complainant's Inmate Payment on Obligations summary from February 29, 2008 to January 11, 2010 by not citing a correct legal reason for denying the Complainant access to said records, the GRC determined that the requested records are exempt from disclosure pursuant to Executive Order No. 26 (McGreevey 2002) applicable to OPRA by operation of N.J.S.A. 47:1A-9.a.

Prepared By: John E. Stewart, Esq.

Approved By: Catherine Starghill, Esq.
Executive Director

October 18, 2011