



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

May 28, 2013 Government Records Council Meeting

Al-Quawi Wadud Robinson
Complainant

Complaint No. 2012-129

v.

New Jersey Department of Corrections
Custodian of Record

At the May 28, 2013 public meeting, the Government Records Council (“Council”) considered the May 21, 2013 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 the responsive preliminary incident report describes an inmate injury and the medical action taken, said report is exempt from disclosure because the report relates to medical treatment or evaluation. N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(4).

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 28th Day of May, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: June 11, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 28, 2013 Council Meeting**

**Al-Quawi Wadud Robinson¹
Complainant**

GRC Complaint No. 2012-129

v.

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

Records Relevant to Complaint: Copy of the Preliminary Incident Report dated January 17, 2012.

Request Made: March 13, 2012

Response Made: March 27, 2012

GRC Complaint Filed: April 26, 2012³

Background⁴

Request and Response:

On March 13, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On March 27, 2012, the third (3rd) business day following receipt of said request,⁵ Ms. Patricia Mansell, OPRA Liaison, denied the Complainant’s request relying on Executive Order No. 47 which approved regulation *N.J.A.C. 10A:22-2.3(a)(4)* which exempts “any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.” Ms. Mansell indicates that this regulation was later adopted as final on February 7, 2011.

Denial of Access Complaint:

On April 26, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that he requested a preliminary incident report. The Complainant asserts that the requested report is not a medical record, but a report of a written statement he provided to an employee of the New Jersey Department of

¹ No legal representation listed on record.

² John Falvey, Custodian of Records. No legal representation listed on record.

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

⁴ The parties may have submitted additional correspondence, or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

⁵ The Custodian certified that the NJ Department of Corrections received the Complainant’s OPRA request on March 22, 2012.

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Corrections (“DOC”). The Complainant also asserts that he is seeking a copy of this report because he is the victim referred to in the report.

Statement of Information:

On May 14, 2012, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that the responsive record to the Complainant’s request describes the nature of an injury and the medical course of treatment taken. The Custodian argues that the responsive record is exempt under OPRA pursuant to N.J.S.A. 47:1A-9, which exempts records contained in other state regulations. The Custodian also argues that *N.J.A.C.* 10A:22-2.3(a)(4) specifically exempts from government records “[a]ny information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.”

Analysis⁶

Unlawful Denial of Access

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.

OPRA also provides “[t]he provisions of [OPRA]...shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to...any ...regulation promulgated under the authority of any statute...” N.J.S.A. 47:1A-9(a).

DOC’s regulations designate certain government records as confidential, specifically, “[a]ny information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.” *N.J.A.C.* 10A:22-2.3(a)(4).

Here, the Complainant requested a preliminary incident report dated January 17, 2012. Ms. Mansell denied the Complainant access to the responsive record pursuant to *N.J.A.C.* 10A:22-2.3(a)(4). Although the Complainant asserted in his Denial of Access Complaint that the responsive record is not a medical report, but a written statement which he provided to an employee of DOC, the Custodian certified in the SOI that the responsive record describes the nature of an injury and the medical course of treatment taken.

Therefore, because the Custodian certified that the responsive preliminary incident report describes an inmate injury and the medical action taken, said report is exempt from disclosure because the report relates to medical treatment or evaluation. N.J.S.A. 47:1A-9(a) and *N.J.A.C.* 10A:22-2.3(a)(4).

⁶ There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.
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Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian certified that the responsive preliminary incident report describes an inmate injury and the medical action taken, said report is exempt from disclosure because the report relates to medical treatment or evaluation. N.J.S.A. 47:1A-9(a) and *N.J.A.C. 10A:22-2.3(a)(4)*.

Prepared By: Harlynn A. Lack, Esq.
Case Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

May 21, 2013