



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

April 30, 2013 Government Records Council Meeting

John McGill
Complainant

Complaint No. 2012-90

v.

New Jersey Department of Corrections
Custodian of Record

At the April 30, 2013 public meeting, the Government Records Council (“Council”) considered the April 23, 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 since the Complainant is seeking records containing information about the victim of the Complainant’s crime(s), the records responsive to the Complainant’s OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2. Thus, the Custodian lawfully denied access to the responsive records. The GRC declines to address whether Executive Order No. 26 (Gov. McGreevey, 2002) applies to the responsive records because they are already deemed exempt pursuant to N.J.S.A. 47:1A-2.2.

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 30th Day of April, 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: May 2, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 30, 2013 Council Meeting**

**John McGill¹
Complainant**

GRC Complaint No. 2012-90

v.

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

Records Relevant to Complaint: Copy via U.S. mail of a cancelled check for restitution payments made in reference to 11:56:32 1 on the Complainant's inmate account statement and the document showing to whom the final payment was made.

Request Made: February 24, 2012

Response Made: March 1, 2012

GRC Complaint Filed: April 3, 2012³

Background⁴

Request and Response:

On February 24, 2012, the Complainant submitted his Open Public Records Act ("OPRA") request to the New Jersey Department of Corrections ("DOC"). On March 1, 2012, the Custodian responded the same day he received the request,⁵ denying access to the responsive record pursuant to N.J.S.A. 47:1A-1 et seq., which provides that victim's records are exempt from disclosure. N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On April 3, 2012, the Complainant filed this complaint with the Government Records Council ("GRC") disputing the Custodian's denial of access.

¹ No legal representation listed on record.

² John Falvey, Esq., 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 in the Statement of Information that he received the Complainant's OPRA request on March 1, 2012

Statement of Information:

On July 3, 2012, the Custodian submitted his Statement of Information (“SOI”) certifying that he received the Complainant’s OPRA request on March 1, 2012. The Custodian certifies that the responsive records were located at the Business Manager’s Office at East Jersey State Prison (“EJSP”). The Custodian certifies that he responded on March 1, 2012 denying access to the Complainant’s OPRA request and advising that victim’s records are exempt from disclosure. The Custodian certifies that he further advised that the Complainant contact the Business Manager at EJSP who would provide certain records not available under OPRA.

The Custodian certifies that the Complainant is currently incarcerated on charges of murder (N.J.S.A. 2C:11-3), theft by deception (N.J.S.A. 2C:20-4) and forgery (N.J.S.A. 2C:21-1). The Custodian certifies that the records at issue, a cancelled check and account ledger, relate to the identity of the victim receiving restitution payments from the Complainant. The Custodian asserts that not only are the records exempt as victims’ records pursuant to N.J.S.A. 47:1A-1.1, but the records are also exempt pursuant to Executive Order No. 26 (Gov. McGreevey, 2002)(“EO 26”) which exempts a natural person’s financial records from disclosure.

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.

“Victims’ records” are defined under OPRA as:

“... an individually-identifiable file or document *held by a victims' rights agency* which pertains directly to a victim of a crime except that a victim of a crime shall have access to the victim's own records” (Emphasis added.) N.J.S.A. 47:1A-1.1.

Here, the Complainant disputes the Custodian’s denial of access to a cancelled check and account ledger pursuant to N.J.S.A. 47:1A-1.1. In the SOI, the Custodian also added that EO 26 prohibits the disclosure of a person’s financial records. The Custodian further certified that the records relate to restitution payments made to the victim of a crime committed by the Complainant.

The Custodian has not made the argument that DOC is a “... victims’ rights agency ...” which is defined under OPRA as “...a public agency, or part thereof, the primary responsibility of which is providing services ... to victims of crimes.” *Id.* Further, there is no evidence in the record to indicate that DOC falls within the definition of a victims’ rights agency.

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.

Notwithstanding the Custodian's initial denial of access, the Council is permitted to raise additional defenses regarding the disclosure of records pursuant to Paff v. Township of Plainsboro, Docket No. A-2122-05T2 (App. Div. 2007).⁷ In Paff, the complainant challenged the GRC's authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that the Open Public Meetings Act ("OPMA") prohibited the disclosure of the redacted portions to the requested executive session minutes. The Council affirmed the custodian's denial to portions of the executive session minutes but for reasons other than those cited by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian's cited basis for denial was lawful. The Court held that:

"[t]he GRC has an independent obligation to 'render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to' OPRA...The GRC is not limited to assessing the correctness of the reasons given for the custodian's initial determination; it is charged with determining if the initial decision was correct."

The Court further stated that:

"[a]side from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998)(citing Isko v. Planning Bd. Of Livingston, 51 N.J. 162, 175 (1968)(lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), certif. denied, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. Super. 110, 121 (App. Div. 1956)(question for reviewing court is propriety of action reviewed, not the reason for the action), aff'd, 24 N.J. 139 (1957)." *Id.*

Regarding this complaint, OPRA prohibits a convicted person from accessing records relating to the victim of the person's crime:

"[n]otwithstanding the provisions of [OPRA] or the provisions of any other law to the contrary, where it *shall appear that a person who is convicted of any indictable offense* under the laws of this State, any other state or the United States is seeking government records *containing personal information pertaining to the person's victim or the victim's family, including* but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or *any other identifying information*, the right of access provided for in [OPRA] shall be denied." (Emphasis added.) N.J.S.A. 47:1A-2.2.

⁷ On appeal from Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

Thus, although the Custodian has failed to establish that the DOC is a victims' rights agency as defined under OPRA, the GRC is satisfied that N.J.S.A. 47:1A-2.2 applies to the records at issue herein. Specifically, the Complainant is an incarcerated individual seeking records that pertain to restitution made to a victim of crimes he committed. This is supported by the evidence on the record, including the Complainant's Denial of Access Complaint in which the Complainant listed EJSP as his address. Additionally, the Custodian certified that the records at issue pertain to restitution payments made to a victim.

Therefore, since the Complainant is seeking records containing information about the victim of the Complainant's crime(s), the records responsive to the Complainant's OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2. Thus, the Custodian lawfully denied access to the responsive records. The GRC declines to address whether EO 26 applies to the responsive records because they are already deemed exempt pursuant to N.J.S.A. 47:1A-2.2.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that since the Complainant is seeking records containing information about the victim of the Complainant's crime(s), the records responsive to the Complainant's OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2. Thus, the Custodian lawfully denied access to the responsive records. The GRC declines to address whether Executive Order No. 26 (Gov. McGreevey, 2002) applies to the responsive records because they are already deemed exempt pursuant to N.J.S.A. 47:1A-2.2.

Prepared By: Frank F. Caruso
Senior Case Manager

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

April 23, 2013