



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

December 20, 2013 Government Records Council Meeting

Quashawn Sheridan
Complainant

Complaint No. 2013-122

v.

New Department of Corrections
Custodian of Record

At the December 20, 2013 public meeting, the Government Records Council (“Council”) considered the December 10, 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:

1. The Custodian has not unlawfully denied access to the documents requested in Item #1; on the contrary, the Custodian has provided evidence to support his certification that the records responsive to this portion of the Complainant’s OPRA request were disclosed. N.J.S.A. 47:1A-6; Bent v. Township of Stafford Police Department, GRC Complaint No. 2004-07 (March 11, 2004).
2. The Custodian lawfully denied access to the documents requested in Item #2 based on the exemptions to OPRA listed at N.J.A.C. 10A:22-2.3(a)(4) and the alternative procedures available at N.J.A.C. 10A:22-2.7.
3. The Custodian lawfully denied access to the documents requested in Item #3 based on Executive Order No. 26 (McGreevey 2002). N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9.

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 20th Day of December, 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: December 23, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 20, 2013 Council Meeting**

**Quashawn Sheridan¹
Complainant**

GRC Complaint No. 2013-122

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint:

1. Copies of all Remedy request Forms from the month of August 1, 2011 to February 17, 2013;
2. A copy of my complete medical/dental record to be sent to me
3. Copies of my complete Account state pay monthly forms to be forwarded to me

Custodian of Record: John Falvey

Request Received by Custodian: March 28, 2013

Response Made by Custodian: April 2, 2013; April 8, 2013; April 11, 2013

GRC Complaint Received: April 26, 2013

Background³

Request and Response:

On March 28, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 2, 2013, three (3) business days later, the Custodian responded in writing. The Custodian stated that, regarding item number one (1) (“Item #1”), the OPRA Liaison at Northern State Prison (“OPRA liaison”) would advise the Complainant within seven (7) business days of any releasable documents responsive to the request. The Custodian denied the request for items number two (2) (“Item #2”) and three (3) (“Item #3”) based on OPRA exemptions for personal medical and financial records, respectively. The Custodian’s response also described two available alternate channels by which the Complainant could obtain the documents sought in Item #2 and Item #3.

On April 8, 2013, the Department of Corrections (“DOC”) wrote the Complainant acknowledging receipt of his records request and stating that the responsive records would be

¹ No legal representation listed on record.

² No legal representation listed on record.

³ 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.

made available upon payment of the \$0.15 copying fee. On April 11, 2013, the OPRA liaison provided copies of a portion of the requested records and deducted the copying fee from the Complainant's account.

Denial of Access Complaint:

On April 26, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he requested, and was charged for, his medical and dental records using the appropriate form but never received them. The Complainant states that he has not been able to obtain the sought "Remedy request" forms.

Statement of Information:

On May 28, 2013, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that he received the Complainant's OPRA request on March 28, 2013, and that responses were provided on April 2, 2013, April 8, 2013, and April 11, 2013.

The Custodian states that because the remedy forms responsive to Item #1 are maintained at the facility where the forms were filed, the request was assigned to the OPRA liaison. The Custodian certifies that the DOC, through the OPRA liaison, provided the responsive records on April 11, 2013.

The Custodian further states that Item #2 consisted of copies of the Complainant's medical and dental records, and that this portion of the OPRA request was denied on April 2, 2013. The Custodian contends that these records are exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(4), which exempts information related to medical history, diagnosis, treatment, or evaluation. The Custodian asserts that the availability of medical records to inmates is proscribed by N.J.A.C. 10A:22-2.7, which requires the use of Medical Records Form MR-022, and that the Complainant was advised of this condition.

The Custodian additionally states that Item #3 consisted of the Complainant's "complete account state pay monthly forms," and that this portion of the OPRA request was denied on April 2, 2013. The Custodian asserts that these documents are exempt from disclosure as "[i]nformation describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities . . ." Executive Order No. 26 (McGreevey 2002) ("EO 26"). The Custodian states that the Complainant was advised to request this information from the Business Manager pursuant to N.J.A.C. 10A:2-2.1(b).

The Custodian contends that there was no denial of access with regards to Item #1, and that the Denial of Access Complaint reflects the Complainant's disapproval of records provided to him through channels that are not affected by the Department of Correction's obligations under OPRA. The Custodian further contends that he lawfully denied access to Item #2 and Item #3.

Analysis⁴

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.

Item #1

In Bent v. Twp. of Stafford Police Dep’t., GRC Complaint No. 2004-07 (March 11, 2004), the GRC evaluated a custodian’s certification that all records responsive to the complainant’s request had been provided. The GRC found that “in the absence of compelling evidence of [a] lack of truthfulness on the part of a [c]ustodian, the Council will not engage in speculative fact-finding when that [c]ustodian has certified as to the truthfulness of his or her response.” Id.

Here, on April 2, 2013, the Custodian informed the Complainant in writing that the OPRA liaison at Northern State Prison would advise him within seven (7) business days of any releasable copies of remedy request forms from August 1, 2011 to February 17, 2013. The Custodian certified that the OPRA liaison provided the responsive records on April 11, 2013. Further, the Custodian’s SOI stated that the three (3) responsive remedy request forms were provided. The record, in turn, indicates that on April 8, 2013, the Complainant authorized the prepayment of \$0.15, based on the fee structure described at N.J.A.C. 10A:1-1.4, for the copying costs associated with his OPRA request, and that on April 11, 2013, the OPRA liaison deducted such funds following delivery of the documents.

Therefore, the Custodian has not unlawfully denied access to the documents requested in Item #1; on the contrary, the Custodian has provided evidence to support his certification that the records responsive to this portion of the Complainant’s OPRA request were disclosed. N.J.S.A. 47:1A-6; Bent, GRC 2004-07.

Item #2

OPRA states that its provisions shall not abrogate any exemption of a public or government record from access made pursuant to any other statute, or regulation, promulgated under the authority of any statute or EO of the Governor. N.J.S.A. 47:1A-9. Title 10A Corrections of the New Jersey Administrative Code incorporates the provisions of OPRA and also states that “[a]ny information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation” shall not be considered government records subject to public access. N.J.A.C. 10A:22-2.3(a)(4). Rather, “[i]n accordance with N.J.A.C. 13:35-6.5, an inmate

⁴ 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.

may obtain a copy of his or her medical records by submitting a written request, on Form MR-022, to the Medical Department.” N.J.A.C. 10A:22-2.7(a).

Here, the Custodian denied the Complainant’s OPRA request that “my complete medical/dental record be sent to me[.]” The Complainant’s request falls squarely within the exemption outlined for “[a]ny information relating to medical . . . diagnosis, treatment or evaluation.” N.J.A.C. 10A:22-2.3(a)(4). Notably, the Custodian also stated in his response to the Complainant that the latter may, in accordance with N.J.A.C. 10A:22-2.7(a), use Form MR-022 to make a request for medical records from his correctional facility. The documents submitted by the Complainant indicate that he, in fact, made such a request using Form MR-022 on March 5, 2013.

Therefore, the Custodian lawfully denied access to the documents requested in Item #2 based on the exemptions to OPRA listed at N.J.A.C. 10A:22-2.3(a)(4) and the alternative procedures available at N.J.A.C. 10A:22-2.7.

Item #3

As noted, OPRA allows for any exemptions of public or government records promulgated under the authority of any EO of the Governor. N.J.S.A. 47:1A-9. EO 26 provides that “[i]nformation 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[]” shall not be considered government records subject to public access under OPRA. Additionally, and as the Custodian noted in both his original response and his SOI, the “Business Manager of the correctional facility shall be responsible for maintaining inmate accounts and recordkeeping . . . [and] shall be responsible for providing an inmate with a monthly statement containing each financial transaction processed.” N.J.A.C. 10A:2-2.1(a)-(b).

Here, the Custodian denied the Complainant’s request for a copy of “my complete Account State pay monthly forms” based on EO 26. The Complainant’s State pay account is information of the type contemplated by EO 26 and, as such, is not considered a government record subject to public access through OPRA. Thus, the Council will not order its disclosure. The Complainant, however, may obtain the sought records outside of the framework established by OPRA. Under N.J.A.C. 10A:2-2.1(a)-(b), the Complainant may request a copy of his inmate account statement by submitting same to his correctional institute’s business office.

Therefore, the Custodian lawfully denied access to the documents requested in Item #3 based on EO 26. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has not unlawfully denied access to the documents requested in Item #1; on the contrary, the Custodian has provided evidence to support his certification that the records responsive to this portion of the Complainant’s OPRA request were

disclosed. N.J.S.A. 47:1A-6; Bent v. Township of Stafford Police Department, GRC Complaint No. 2004-07 (March 11, 2004).

2. The Custodian lawfully denied access to the documents requested in Item #2 based on the exemptions to OPRA listed at N.J.A.C. 10A:22-2.3(a)(4) and the alternative procedures available at N.J.A.C. 10A:22-2.7.
3. The Custodian lawfully denied access to the documents requested in Item #3 based on Executive Order No. 26 (McGreevey 2002). N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9.

Prepared By: Robert T. Sharkey, Esq.
Staff Attorney

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

December 10, 2013