



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

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**July 29, 2014 Government Records Council Meeting**

David Riley  
Complainant

Complaint No. 2013-345

v.

NJ Department of Corrections  
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 22, 2014 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 the requested mental health records, which can be categorized as medical, psychiatric or psychological records, are exempt from disclosure as records which contain “. . . information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation . . .” N.J.A.C. 10A:22-2.3(a)(4), applicable to OPRA under N.J.S.A. 47:1A-9(a). As such, the Custodian lawfully denied access to said records. N.J.S.A. 47:1A-6; Groelly v. New Jersey Department of Corrections, GRC Complaint No. 2010-294 (June 2012); McLawhorn v. New Jersey Dep’t of Corrections, GRC Complaint No. 2012-292 (July 2013).

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 29<sup>th</sup> Day of July, 2014

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: July 31, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
July 29, 2014 Council Meeting**

**David Riley<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-345**

**v.**

**New Jersey Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Paper copies via U.S. mail of the Complainant's mental health records.

**Custodian of Record:** John Falvey, Esq.

**Request Received by Custodian:** Various dates.

**Response Made by Custodian:** Various dates.

**GRC Complaint Received:** November 25, 2013

**Background<sup>3</sup>**

**Request and Response:**

On March 19, 2013, the Complainant submitted two (2) Open Public Records Act ("OPRA") requests to the Custodian seeking the above-mentioned records. On March 20, 2013, the Custodian responded in writing denying access to the responsive records under Executive Order No. 47 (Gov. Christie, 2010)("EO 47") and N.J.A.C. 10A:22-2.3(a)(4) allowing for any medical, psychiatric or psychological information to be exempt under OPRA.

The Complainant requested the same records on March 28, 2013, October 21, 2013, October 31, 2013 and November 14, 2013. The Custodian responded on April 2, 2013, October 21, 2013, November 1, 2013 and November 14, 2013, denying access to the requested records for the reasons originally stated in his March 20, 2013 response.

**Denial of Access Complaint:**

On November 25, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant stated that he sought his mental health

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> 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.

records from July 2010 to November 2013 on multiple occasions and was denied access under OPRA. The Complainant asserted that he needed these records for a lawsuit.

Statement of Information:

On January 29, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received six (6) separate requests from the Complainant for the same mental health records and responded timely on each occasion denying access to said records under N.J.A.C. 10A:22-2.3(a)(4).

The Custodian stated that the GRC has twice considered the disclosability of mental health records. *See Groelly v. New Jersey Dep’t of Corrections*, GRC Complaint No. 2010-294 (June 2012); *McLawhorn v. New Jersey Dep’t of Corrections*, GRC Complaint No. 2012-292 (July 2013). The Custodian stated that on both occasions, the Council found that the NJ Department of Corrections (“DOC”) lawfully denied access to such records under N.J.A.C. 10A:22-2.3(a)(4). The Custodian argued that the GRC should hold accordingly in this complaint.

**Analysis**

**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.

Further, OPRA provides that:

The provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; 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)

Additionally, DOC’s regulations provide that:

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq. .

. . (4) Any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation . . .

N.J.A.C. 10A:22-2.3(a)

Mental health records are encompassed within the category of psychiatric or psychological records that are not government records subject to disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(4). Additionally, the language contained in N.J.A.C. 10A:22-2.3(a)(4), although a DOC regulation, is consistent with longstanding language contained in paragraph 4 of Executive Order 26 (Gov. McGreevey, 2002)(“EO 26”), which provides in relevant part that “[t]he following records shall not be . . . subject to public access pursuant to [OPRA] . . . [i]nformation relating to medical, psychiatric, or psychological history, diagnosis, treatment or evaluation.” Id.

The Council has held that mental health records are exempt from disclosure pursuant to EO 26, even when a complainant sought their own records. In Groelly, GRC 2010-294, the complainant sought access to his personal medical, psychiatric and psychological reports. The Council held that:

[T]he [records] requested by the Complainant are exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a) and [EO 26] as “information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.” As such, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6.

Id. at 7.

The Council similarly held in McLawhorn, GRC 2012-292, that the custodian lawfully denied access to the responsive mental health records under N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(4).

In the matter currently before the Council, the Complainant requested his mental health records on multiple occasions. The Custodian responded in a timely manner to each of the Complainant’s requests, denying access to the responsive records because EO 26 approved N.J.A.C. 10A:22-2.3(a)(4), which exempts from disclosure any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation. Thus, similar to the facts of Groelly, the Custodian lawfully denied access to the requested records because they are medical, psychiatric or psychological reports that are exempt from disclosure. *See also* McLawhorn, GRC 2012-292.

Therefore, the requested mental health records, which can be categorized as medical, psychiatric or psychological records, are exempt from disclosure as records which contain “. . . information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation . . .” N.J.A.C. 10A:22-2.3(a)(4), applicable to OPRA under N.J.S.A. 47:1A-9(a). As such, the Custodian lawfully denied access to said records. N.J.S.A. 47:1A-6; Groelly, GRC 2010-294; McLawhorn, GRC 2012-292.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the requested mental health records, which can be categorized as medical, psychiatric or psychological records, are exempt from disclosure as records which contain “. . . information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation . . .” N.J.A.C. 10A:22-2.3(a)(4), applicable to OPRA under N.J.S.A. 47:1A-9(a). As such, the Custodian lawfully denied access to said records. N.J.S.A. 47:1A-6; Groelly v. New Jersey Department of Corrections, GRC Complaint No. 2010-294 (June 2012); McLawhorn v. New Jersey Dep’t of Corrections, GRC Complaint No. 2012-292 (July 2013).

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Dawn R. SanFilippo, Esq.  
Acting Executive Director

July 22, 2014