



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

June 30, 2015 Government Records Council Meeting

Brian F. Paladino
Complainant

Complaint No. 2014-241

v.

NJ Department of Corrections
Custodian of Record

At the June 30, 2015 public meeting, the Government Records Council (“Council”) considered the June 23, 2015 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 Custodian lawfully denied the Complainant’s access to the responsive records, as the Complainant was a resident inmate at the time of the request and had insufficient funds in his account to pay the associated copying costs. Moreover, the Complainant submitted a payment that did not originate from his inmate account. Such a denial of access is lawfully consistent with the procedures prescribed in DOC Internal Management Procedure FMB.ACC.017 - OPRA Billing Procedures, and the authority granted by N.J.S.A. 47:1A-9(b), N.J.S.A. 30:1B-6(e), and N.J.S.A. 30:1B-6(g). *See also Harris v. NJ Dep’t of Corrections*, GRC Complaint No. 2011-65 (August 2012).

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 June, 2015

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 2, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2015 Council Meeting**

**Brian J. Paladino¹
Complainant**

GRC Complaint No. 2014-241

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: On-site examination and copies of:

“[A]ll adjudications, reports that were relied on and evidence inventoried as well as any investigation reports related to the listed proceedings[.]”

The Complainant then listed thirteen (13) disciplinary proceedings from August 29, 2010, through January 3, 2012.

Custodian of Records: John A. Falvey

Request Received by Custodian: April 16, 2014

Response Made by Custodian: April 16, 2015; April 23, 2014

GRC Complaint Received: June 27, 2014

Background³

Request and Response:

On April 16, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records. On April 16, 2014, the Custodian responded in writing, seeking a ten (10) business day extension of time to respond. On April 23, 2014, the Custodian responded in writing, stating that copies of the requested records would be made available upon receipt of \$47.40 to cover copying costs. On June 5, 2014, the Custodian returned to the Complainant an OPRA Records Request Payment Notification and Authorization Form (“Payment Form”) and advised the Complainant that he had insufficient funds in his account to pay for the copying costs.

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.

Denial of Access Complaint:

On June 27, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that because he is seeking legal material, he should be considered indigent and thus not required to pay for copying costs pursuant to N.J.A.C. 10A:6-2.7(a) and (c).

The Complainant urged the Council to find that the Custodian unlawfully denied access to the requested records and that the Custodian’s denial rose to the level of a knowing and willful violation of OPRA.

Statement of Information:

On July 22, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s request on April 16, 2014 and sought a ten (10) business day extension of time to respond. The Custodian also certified that the Complainant had received an on-site inspection of the records on March 26, 2014, and submitted this OPRA request for copies of those records.

The Custodian argued that N.J.A.C. 10A:6-2.7 applies to document requests for legal material. However, the Custodian argued that “legal material,” as defined under N.J.A.C. 10A:1-2.2, does not apply to requests made under OPRA. The Custodian further stated that N.J.A.C. 10A:6 provides the process by which inmates can request copies of legal material. Thus, the Custodian contended that the Complainant cannot claim indigence and is therefore obligated to pay for the copying costs when making a request pursuant to OPRA.

Additional Submissions

On August 4, 2014, the GRC received a letter from the Complainant, responding to the Custodian’s Statement of Information. The Complainant alleged that the Custodian’s denial is a punitive measure for pursuing an appeal. He explained that obtaining photocopies of legal material via N.J.A.C. 10A:6-2.6 requires the inmate to already possess the documents in question. Therefore, the Complainant contended that he is unable to utilize that process to obtain photocopies of the requested records. Additionally, the Complainant attached a document wherein he appealed from a New Jersey Department of Corrections’ (“NJDOC”) decision that states he does not qualify as indigent for purposes of pursuing an OPRA request. There, the NJDOC responded to the Complainant with “[f]inal decision. You are not indigent.”

On January 6, 2015, the GRC received an additional letter from the Complainant. To that letter, he attached correspondence, dated November 24, 2014, from the NJDOC. By that correspondence, the Custodian returned a \$47.40 money order that the Complainant had remitted for copying costs. The Custodian stated that NJDOC policy⁴ does not allow third party payments of OPRA copying costs.

⁴ Internal Management Procedure, FMB.ACC.017.

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.

Moreover, OPRA provides that:

The provisions of this act, P.L. 2001, c. 404 (C. 47:1A-5 et al.), shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

N.J.S.A. 47:1A-9(b).

New Jersey law provides that the NJDOC Commissioner, as administrator and chief executive officer of the department, shall:

Formulate, adopt, issue and promulgate, in the name of the department such rules and regulations for the efficient conduct of the work and general administration of the department, the institutions or non-institutional agencies within its jurisdiction, its officers and employees as may be authorized by law.

N.J.S.A. 30:1B-6(e).

Furthermore, applicable New Jersey law states that the NJDOC Commissioner shall:

Determine all matters of policy and regulate the administration of the institutions or non-institutional agencies within his jurisdiction, correct and adjust the same so that each shall function as an integral part of a general system. The rules, regulations, orders and directions promulgated by the commissioner for this purpose shall be accepted and enforced by the executive having charge of any institution or group of institutions or non-institutional agencies or any phase of the work within the jurisdiction of the department.

N.J.S.A. 30:1B-6(g).

The GRC has previously held that the NJDOC may deny access to an inmate’s request for records pending payment of copying costs pursuant to internal policy. In Harris v. NJ Dep’t of Corrections, GRC Complaint No. 2011-65 (August 2012), the complainant-inmate attempted to have a relative pay copying costs on her behalf. The Custodian returned the payment, citing

NJDOC Internal Management Procedure FMB.ACC.017, which states that inmates are responsible for all costs associated with OPRA requests. Further, payments are processed via proper completion of the Payment Form, which the complainant in Harris failed to do. The Council held that, consistent with N.J.S.A. 47:1A-9(b), N.J.S.A. 30:1B-6(e), and N.J.S.A. 30:1B-6(g), the NJDOC's internal policy requiring copying costs to originate from an inmate's account is lawful.

The facts in this matter parallel those of Harris. On June 5, 2014, the Custodian returned the Complainant's Payment Form, as he had insufficient funds in his account to pay the \$47.40 in copying costs associated with his OPRA request. On November 24, 2014, the Custodian submitted a letter to the Complainant, returning a check from the Complainant's associate stating that NJDOC policy does not allow for third-party payment of ORPA copy costs pursuant to Internal Management Procedure FMB.ACC.017.

The Custodian lawfully denied the Complainant's access to the responsive records, as the Complainant was a resident inmate at the time of the request and had insufficient funds in his account to pay the associated copying costs. Moreover, the Complainant submitted a payment that did not originate from his inmate account. Such a denial of access is lawfully consistent with the procedures prescribed in DOC Internal Management Procedure FMB.ACC.017 - OPRA Billing Procedures, and the authority granted by N.J.S.A. 47:1A-9(b), N.J.S.A. 30:1B-6(e), and N.J.S.A. 30:1B-6(g). *See also* Harris, GRC No. 2011-65.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied the Complainant's access to the responsive records, as the Complainant was a resident inmate at the time of the request and had insufficient funds in his account to pay the associated copying costs. Moreover, the Complainant submitted a payment that did not originate from his inmate account. Such a denial of access is lawfully consistent with the procedures prescribed in DOC Internal Management Procedure FMB.ACC.017 - OPRA Billing Procedures, and the authority granted by N.J.S.A. 47:1A-9(b), N.J.S.A. 30:1B-6(e), and N.J.S.A. 30:1B-6(g). *See also* Harris v. NJ Dep't of Corrections, GRC Complaint No. 2011-65 (August 2012).

Prepared By: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

June 23, 2015