



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

July 28, 2015 Government Records Council Meeting

Ralph Curtis Kimpton
Complainant

Complaint No. 2014-333

v.

NJ Department of Corrections
Custodian of Record

At the July 28, 2015 public meeting, the Government Records Council (“Council”) considered the July 21, 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 has borne his burden of proving that the records responsive to the Complainant’s September 1, 2014, OPRA request are exempt from disclosure as “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.” N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. See Jenkins v. Fauver, 108 N.J. 239, 252 (1987); Florence v. Bd. of Chosen Freeholders Burlington Cnty., 132 S.Ct. 1510, 1515 (2012); Tomasi v. N.J. Dep’t of Corr., GRC Complaint Nos. 2012-206 & 2012-207 (June 2013); and Russo v. N.J. Dep’t of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999).

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 July, 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 30, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 28, 2015 Council Meeting**

**Ralph Curtis Kimpton¹
Complainant**

GRC Complaint No. 2014-333

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: “[C]opies of any and all rules, regulations, policies and procedures pertaining to the security designation of ‘HIGH RISK.’ This is to include any and all information on its application, duration, and removal process.”

Custodian of Records: John Falvey

Request Received by Custodian: July 15, 2014

Response Made by Custodian: July 24, 2014; July 28, 2014

GRC Complaint Received: October 2, 2014

Background³

Request and Response:

On July 8, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records. On July 24, 2014, seven (7) business days after receipt, the Custodian sought an additional ten (10) business days to locate responsive records. On July 28, 2014, the Custodian responded in writing, denying access to the responsive records, as they contain “emergency or security related information or procedures which, if disclosed, would jeopardize the security or the building or facility or persons therein” and “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property.”

On September 1, 2014, the Complainant replied to the Custodian in writing to appeal the denial of access directly. On September 9, 2014, the Custodian responded to the Complainant, stating that if he wished to challenge the denial of access, he should either institute a proceeding in court or file a complaint with the Government Records Council (“GRC”).

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 October 6, 2014, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant argued that he has a right to review the policies, rules, regulations, and procedures utilized to classify inmates as High Risk. The Complainant contended that there is no information available to inmates explaining the basis for High Risk designation or how long it stays with the inmate. As a result, he posits, inmates are unable to challenge the designation.

Statement of Information

On October 24, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he located two (2) responsive records: a “Criteria for High Risk Security Designation” (2 pgs.), and “Internal Management Procedure for Enhanced Security Transport of Inmates” (9 pgs.).

Regarding the first record, the Custodian certified that the Classification Unit in the Department of Corrections (“DOC”) maintains the record for carrying out its duties. The Custodian certified that the record lays out the factors the Classification Unit uses when designating an inmate as High Risk and assigns values to various risk factors. Additionally, the Custodian certified that the record identifies the additional security measures taken with those inmates classified as High Risk. The Custodian thus argued that release of this record would help inmates avoid designation as High Risk, even when circumstances might warrant it, if they knew the specific factors the Classification Unit looks for when assigning inmates.

The Custodian then certified that the second record also lays out the criteria for classifying inmates as High Risk and outlines the security measures taken by custody personnel when transporting classified inmates inside and outside the facility. According to the Custodian, releasing the record would compromise sensitive information pertaining to the specific roles and procedures taken by staff when transporting High Risk inmates. The Custodian contended that inmates could use this information to undercut security procedures, leading to escape attempts and assaults on personnel.

The Custodian further argued that the Courts have long deferred to DOC when making safety and security decisions. The Custodian states that DOC has “broad discretionary power” to promulgate regulations aimed at maintaining security and order inside correctional facilities. Jenkins v. Fauver, 108 N.J. 239, 252 (1987). The Custodian stated that the Courts have noted that “[p]risons are dangerous places, and the courts must afford appropriate deference and flexibility to administrators trying to manage this volatile environment.” Russo v. N.J. Dep’t of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999). *See also* Florence v. Bd. of Chosen Freeholders Burlington Cnty., 132 S.Ct. 1510, 1515 (2012) (“[m]aintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face[.]”) The Custodian stated that the Council has previously upheld a denial of access to policies and post orders for a portion of East Jersey State Prison based on safety and security concerns. Fischer v. N.J. Dep’t of Corr., GRC Complaint No. 2005-171 (February 2006). Additionally, the Council upheld the denial of access to policies that dealt with the movement of inmates. Tomasi v. N.J. Dep’t of Corr., GRC

Complaint Nos. 2012-206 & 2012-207 (June 2013). *See also* Reid v. N.J. Dep't of Corr. GRC Complaint No. 2013-65 (January 2014); and Smith v. N.J. Dep't of Corr., GRC Complaint No. 2013-337 (July 2014).

Additional Submissions

On November 5, 2014, the Complainant submitted a response to the Custodian's SOI. The Complainant reiterated his right to know how and why he was designated as High Risk. The Complainant claimed that not knowing the basis for his classification denies him the means and opportunity to challenge it or have it removed. According to the Complainant, depriving his ability to challenge his classification is akin to depriving his due process rights.

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.

OPRA provides that:

A government record shall not include the following information which is deemed to be confidential . . . emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.

N.J.S.A. 47:1A-1.1.

The Complainant argued that he is entitled under due process to know the procedures and methodology used to classify inmates as High Risk so that he can challenge his designation. Conversely, the Custodian argued that he lawfully denied access to all records responsive to the pertinent OPRA request items based on OPRA and DOC regulations. The Custodian further noted that the Courts have often given deference to DOC safety and security decisions, which has been recognized by the Council. *See* Fischer, GRC No. 2005-71.

Similar to its holding in Tomasi, the GRC is satisfied that disclosure of either responsive record could pose a significant risk to the safe and secure operation of the New Jersey State Prison ("NJSP") for the reasons expressed by the Custodian. An inmate seeking to exploit facility weaknesses to plot escapes, assaults, or other prohibited activity would be given a significant advantage by having intimate knowledge of the factors used to designate inmates as High Risk. Inmates worthy of High Risk classification can use this information to minimize their risk factors artificially and undermine the increased security measures and personnel duties that

would otherwise be assigned to them during transfers. Thus, the responsive records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

Therefore, the Custodian has borne his burden of proof that the records responsive to the Complainant's September 1, 2014, OPRA request are exempt from disclosure as "emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein." N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. See Jenkins, 108 N.J. at 252; Florence, 132 S. Ct. at 1515; Tomasi, GRC Nos. 2012-206 & 2012-207; and Russo, 324 N.J. Super. at 584.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving that the records responsive to the Complainant's September 1, 2014, OPRA request are exempt from disclosure as "emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein." N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. See Jenkins v. Fauver, 108 N.J. 239, 252 (1987); Florence v. Bd. of Chosen Freeholders Burlington Cnty., 132 S.Ct. 1510, 1515 (2012); Tomasi v. N.J. Dep't of Corr., GRC Complaint Nos. 2012-206 & 2012-207 (June 2013); and Russo v. N.J. Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999).

Prepared By: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

July 21, 2015