



**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**

**July 28, 2015 Government Records Council Meeting**

Kojo Muata  
Complainant

Complaint No. 2014-362

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 proof that he lawfully denied access to the requested mailroom log book listing described in the Complainant’s August 27, 2014 OPRA request because he certified that no responsive record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

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 28<sup>th</sup> 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**

**Kojo Muata<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-362**

v.

**NJ Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copy of mailroom log book, listing actual weight and time a particular package was mailed from New Jersey State Prison (“NJSP”) on or about December 17, 2012.

**Custodian of Record:** John Falvey

**Request Received by Custodian:** September 4, 2014

**Response Made by Custodian:** September 15, 2014; September 18, 2014

**GRC Complaint Received:** October 27, 2014

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

**Request and Response:**

On August 27, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 15, 2014, the Custodian responded in writing, requesting an additional ten (10) business days to respond. On September 18, 2014, the Custodian responded in writing, informing the Complainant that no responsive records were available.

**Denial of Access Complaint:**

On October 22, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant made no other legal arguments concerning the denial of his request.

**Statement of Information:**

On November 7, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on September 4, 2014. The Custodian noted that the request sought the mailroom log book that lists the actual weight and

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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.

time a particular package was mailed from NJSP on or about December 17, 2012. The Custodian noted that at the time of the request, the Complainant was an inmate at East Jersey State Prison in Woodbridge, NJ.

The Custodian certified that on September 15, 2014, the seventh business day following receipt of the request, he wrote to the Complainant to request an additional ten business days to locate the responsive records. Noting that any responsive records would be maintained in the mailroom at NJSP, the Custodian contacted the Mailroom Sergeant to search for the records. The Sergeant informed the Custodian that no records responsive to the request existed. The Sergeant additionally noted that outgoing legal correspondence sent out by the inmate population is not recorded. The Custodian certified that he responded in writing to the Complainant on September 18, 2014, informing him that no responsive records were located.

The Custodian argued that, pursuant to Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), no denial of access occurs when there are no records responsive to a request and that in this matter, the Complainant has not been denied access because no records located related to his request were located.

### **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.

The Council has previously found that, in light of a custodian’s certification that no records responsive to the request exist, and where no evidence exists in the record to refute the custodian’s certification, no unlawful denial of access occurred. *See Pusterhofer*, GRC 2005-49 (July 2005). Here, the Custodian certified that after contacting the Mailroom Sergeant, who would have knowledge of such records, it was found that no such mailroom log book listing exists. Rather, the Sergeant informed the Custodian that outgoing legal correspondence sent out by the inmate population is not recorded.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the requested mailroom log book listing described in the Complainant’s August 27, 2014 OPRA request because he certified that no responsive record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the requested mailroom log book

listing described in the Complainant's August 27, 2014 OPRA request because he certified that no responsive record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Husna Kazmir  
Staff Attorney

Reviewed By: Joseph D. Glover  
Executive Director

July 21, 2015