



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

April 26, 2016 Government Records Council Meeting

Charles Brown
Complainant

Complaint No. 2015-195

v.

NJ Department of Corrections
Custodian of Record

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the March 22, 2016 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 borne his burden of proof that he lawfully denied access to the portion of the Complainant’s request seeking “custody status reports.” N.J.S.A. 47:1A-6. The request is invalid as overly broad. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), and N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 177 (App. Div. 2007).
2. The requested psychiatric reports, 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). The Custodian therefore lawfully denied access to the records. N.J.S.A. 47:1A-6; Riley v. NJDOC, GRC Complaint No. 2013-345 (July 2014), Groelly v. NJDOC, GRC Complaint No. 2010-294 (June 2012) and McLawhorn v. NJDOC, 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 26th Day of April, 2016

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: May 2, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 26, 2016 Council Meeting**

**Charles Brown¹
Complainant**

GRC Complaint No. 2015-195

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint:

1. Copies of all DOC Objective Classification - Initial Instrument
2. Custody Reports
3. All “psychic reports” for custody status from 010/9/15 – 020/4/15
4. From OC-001 Request for Override Approval by the Director, Division of Operations

Custodian of Record: John Falvey

Request Received by Custodian: March 26, 2015; April 8, 2015

Response Made by Custodian: March 26, 2015; April 9, 2015

GRC Complaint Received: June 24, 2015

Background³

Request and Response:

On March 19, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian, seeking the above-mentioned records. On March 26, 2015, the Custodian responded, seeking clarification from the Complainant as to whether he merely sought generic forms or whether he sought records related to himself. The Custodian also asked for clarification regarding the reports sought in item #2. By letter, which was received by the Custodian on April 8, 2015, the Complainant responded on April 1, 2015, stating that all records requested in items #1, 3, and 4 related to himself and that item #2 sought “all custody reports [dealing] with classification status report.”

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.

On April 9, 2015, the Custodian wrote to the Complainant, granting access in part and denying in part. The Custodian stated that with respect to items #1 and #4, the OPRA Liaison at Northern State Prison would advise the Complainant within seven (7) business days of the appropriate fees incurred for any releasable documents responsive to the request. The Custodian denied the request for item #2, noting that the request was overly broad and invalid, the Complainant's clarification notwithstanding, pursuant to MAG Entertainment LLC v. Division of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). The Custodian denied access to request item #3, advising that mental health records are exempt from disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(4), which exempts "any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation."

Denial of Access Complaint:

On June 19, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted his need for the requested documents, which he stated pertain to his request for custody reclassification. The Complainant noted that he responded to the Custodian's request for clarification and stated that the documents requested pertained to himself. The Complainant only challenged the denials as to items #2 and #3 of the request. The Complainant made no additional legal arguments.

Statement of Information:

On July 23, 2015, the Custodian filed a Statement of Information ("SOI"), noting that the Complainant had only challenged the Department's denial with respect to items #2 and #3 of the request.⁴ The Custodian certified that he received the Complainant's OPRA request on March 26, 2015, and responded in writing by seeking clarification on that same day. The Custodian averred that he received a clarification letter on April 8, 2015, and responded to the request in writing, denying request items #2 and #3 on April 9, 2015.

The Custodian asserted that the denial of item #2 was appropriate, as that portion of the request sought "all custody reports that deal with classification status report." The Custodian certified that he denied this request pursuant to MAG. He explained that classification is how the Department determines/conducts inmate evaluation, custody level assignment, and correctional facility assignment. The Custodian noted that program assignments, treatment programs offered, custody status, housing assignments, the information considered, and the weight certain information is given is all based on "a plethora of information provided by various sources." He further stated there exists no record called a "custody status report" but that he understood the Complainant to be asking for all custody reports that were considered in determining various aspects of his inmate classification. The Custodian stated that the request "would encompass any report written by any custody official that was considered in making any decision by the Classification Department" and is therefore overly broad.

The Custodian argued that the denial of item #3 was proper, pursuant to N.J.A.C. 10A:22-2.3(a)(4), which exempts "[a]ny information relating to medical, psychiatric or

⁴ The Custodian certified that Items #1 and #4 were referred to the Northern State Prison OPRA Liaison for fulfillment.

psychological history, diagnosis treatment or evaluation.” The Custodian further stated the GRC previously upheld denials of access to mental health records pursuant to the exemption in Riley v. NJDOC, GRC Complaint No. 2013-345 (July 2014), Groelly v. NJDOC, GRC Complaint No. 2010-294 (June 2012), and McLawhorn v. NJDOC, GRC Complaint No. 2012-292 (July 2013).

Analysis

Unlawful Denial of Access

Item #2: Custody Reports

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 New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.”* N.J.S.A. 47:1A-1.

MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549 (emphasis added).

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . In short, OPRA does not

countenance open-ended searches of an agency's files.” Id. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁵ Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Additionally, in N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 177 (App. Div. 2007), the court held that a requestor is required to “submit the request with information that is essential to permit the custodian to comply with its obligations.”

In the instant matter, item #2 of the Complainant’s request sought “all custody reports that deal with classification status report.” The Custodian explained that the Department’s classification process was based on “a plethora of information provided by various sources” and that while there exists no record called a “custody status report,” he understood the Complainant to be asking for all custody reports that were considered in determining various aspects of his inmate classification. The Custodian additionally certified that the request “would encompass any report written by any custody official that was considered in making any decision by the Classification Department.” The Custodian certified that he denied the request pursuant to MAG, as the request was overly broad.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the portion of the Complainant’s request seeking “custody reports.” N.J.S.A. 47:1A-6. The request is invalid as overly broad. *See* MAG, 375 N.J. Super. at 546, 549, and N.J. Builders Ass’n, 390 N.J. Super. at 177, 180.

Item #3: “Psychic Reports”

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 . . .

⁵ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

N.J.A.C. 10A:22-2.3(a)(4).

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 previously held that mental health records are exempt from disclosure pursuant to EO 26, even when complainants sought their own records. In Riley, GRC 2013-345, the complainant sought access to his personal mental health records. The Council held that:

[T]he 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.

Id. at 3.

The Council similarly held in McLawnhorn, GRC 2012-292, and Groelly, GRC 2010-294, 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 copies of his personal psychiatric reports. The Custodian responded in a timely manner, denying access to the responsive records pursuant to 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 Riley, the Custodian lawfully denied access to the requested records because they are medical, psychiatric, or psychological reports that are exempt from disclosure. *See also* McLawnhorn, GRC 2012-292 and Groelly, GRC 2010-294.

Therefore, the requested psychiatric reports, 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). The Custodian therefore lawfully denied access to the records. N.J.S.A. 47:1A-6; Riley, GRC 2013-345; Groelly, GRC 2010-294; McLawnhorn, GRC 2012-292.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne his burden of proof that he lawfully denied access to the portion of the Complainant's request seeking "custody status reports." N.J.S.A. 47:1A-6. The request is invalid as overly broad. See MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), and N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 177 (App. Div. 2007).
2. The requested psychiatric reports, 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). The Custodian therefore lawfully denied access to the records. N.J.S.A. 47:1A-6; Riley v. NJDOC, GRC Complaint No. 2013-345 (July 2014), Groelly v. NJDOC, GRC Complaint No. 2010-294 (June 2012) and McLawhorn v. NJDOC, GRC Complaint No. 2012-292 (July 2013).

Prepared By: Husna Kazmir
Staff Attorney

March 22, 2016⁶

⁶ This complaint could not be adjudicated at the Council's March 29, 2016 meeting due to lack of a quorum.