



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**

**January 31, 2017 Government Records Council Meeting**

Walter Hastings  
Complainant

v.

NJ Department of Corrections  
Custodian of Record

Complaint No. 2015-220

At the January 31, 2017 public meeting, the Government Records Council (“Council”) considered the January 24, 2017 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 because the Complainant sought a record generated on behalf of a public employer in connection with a grievance filed against an employee, the requested investigative report is exempt from disclosure pursuant to N.J.S.A. 47:1A-10. See Gonzalez v. Cnty. of Hudson, GRC Complaint No. 2011-212 (August 2012), and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004). As such, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Furthermore, because the report is exempt from public access pursuant to N.J.S.A. 47:1A-10, the Council declines to address any other claimed exemption raised by the Custodian.

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 31<sup>st</sup> Day of January, 2017

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: February 3, 2017**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 31, 2017 Council Meeting**

**Walter Hastings<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-220**

v.

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

**Records Relevant to Complaint:** “I am requesting a copy of a [sic] alleged investigation by SID regarding forged documents at a hearing held at Southwood prison by C. Ralph.”

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** May 29, 2015  
**Response Made by Custodian:** June 8, 2015  
**GRC Complaint Received:** July 20, 2015

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

**Request and Response:**

On May 25, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.<sup>4</sup> On June 8, 2015, the Custodian responded in writing, denying access and claiming that the record contains information regarding a public employee grievance (N.J.S.A. 47:1A-1.1), personnel and pension records (N.J.S.A. 47:1A-10), and an ongoing investigation (N.J.S.A. 47:1A-3(a)). The Custodian also denied access to the record pursuant to Department of Corrections (“DOC”) regulations N.J.A.C. 10A:22-2.3(a)(2) and (5).

**Denial of Access Complaint:**

On July 20, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that the requested record stemmed from a complaint he filed against C. Ralph and the resulting investigative report

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

<sup>2</sup> No 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.

<sup>4</sup> The Custodian also references an OPRA request received and responded to on June 16, 2015, seeking the same records as those at issue. However, the Complainant refers only to the OPRA request received on May 29, 2015.

conducted by the Special Investigations Division (“SID”). The Complainant claimed that the Custodian has not provided any information regarding the investigation.

### Statement of Information:

On August 5, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 29, 2015. The Custodian then certified that he responded in writing on June 8, 2015, denying access to the responsive record on grounds of containing information regarding a public employee grievance (N.J.S.A. 47:1A-1.1), personnel and pension records (N.J.S.A. 47:1A-10), and an ongoing investigation (N.J.S.A. 47:1A-3(a)). The Custodian also denied access to the record pursuant to Department of Corrections (“DOC”) regulations N.J.A.C. 10A:22-2.3(a)(2) and (5).

The Custodian certified that the responsive record is a four (4) page investigative report that details allegations of misconduct made against a DOC employee and the process of the investigation, research conducted, and the identities of interviewed witnesses. The Custodian argued that this report directly falls under the OPRA exemption regarding grievances filed against a public employee and records related to employee misconduct, citing Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004). The Custodian also cited Allen v. Cnty. of Warren, GRC Complaint No. 2003-155 (March 2004), where the Council held that records related to an employee harassment complaint were exempt pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-10. The Custodian further referenced Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010), which held disciplinary records exempt, and Wares v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2014-330 (June 2015), which found that external grievances or complaints against an employee were exempt.

Furthermore, the Custodian argued that the report is exempt pursuant to DOC regulations N.J.A.C. 10A:22-2.3(a)(2) and (5), which determine the confidentiality of SID investigation reports and records relating to an identified individual, which would jeopardize the safety and security of any person or correctional facility if disclosed. The Custodian claimed that disclosure of the responsive record would detrimentally affect the safe administration of investigations into employee misconduct. The Custodian contended that witnesses, inmates, and other employees might be less cooperative during investigations if they knew their participation could be made public. Additionally, public disclosure of the investigative process may give employees a tactical advantage in concealing misconduct from current or future investigations.

## 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.

Regarding requests for personnel information, OPRA mandates that:

[T]he personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access[.]

[N.J.S.A. 47:1A-10.]

The Council has previously adjudicated complaints in which the requested records were external complaints filed against police officers. In Merino, GRC 2003-110, the Council held that:

The Complainant's request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian. N.J.S.A. 47:1A-10 provides in pertinent [part] that "the personnel or pension records of any individual in the possession of a public agency, *including but not limited to* records relating to *any grievance filed by or against an individual*, shall not be considered a public record and shall not be made available for public access" [emphasis added]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.

In Gonzalez v. Cnty. of Hudson, GRC Complaint No. 2011-212 (August 2012), the complainant sought the complete investigative report conducted by an outside law firm against the county sheriff and members of the sheriff's administration. Id. The law firm initiated the investigation due to a complaint filed by the complainant. Id. The Council held that the Custodian lawfully denied access since the investigation report was generated on behalf of an employer in connection with a grievance filed against an employee. Id. (citing N.J.S.A. 47:1A-10).

In the instant matter, the Complainant sought any information regarding an investigation into a DOC employee stemming from allegations of misconduct. Similar to the custodian in Gonzalez, the Custodian certified that the responsive record is an investigative report created by SID, which handles complaints filed against DOC employees, and is therefore exempt pursuant to N.J.S.A. 47:1A-10 and Gonzalez, GRC 2011-212. The Complainant has failed to submit evidence refuting the Custodian's certification.

Therefore, because the Complainant sought a record generated on behalf of a public employer in connection with a grievance filed against an employee, the requested investigative report is exempt from disclosure pursuant to N.J.S.A. 47:1A-10. *See* Gonzalez, GRC 2011-212, and Merino, GRC 2003-110. As such, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Furthermore, because the report is exempt from public access pursuant to N.J.S.A. 47:1A-10, the Council declines to address any other claimed exemption raised by the Custodian.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant sought a record generated on behalf of a public employer in connection with a grievance filed against an employee, the requested investigative report is exempt from disclosure pursuant to N.J.S.A. 47:1A-10. See Gonzalez v. Cnty. of Hudson, GRC Complaint No. 2011-212 (August 2012), and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004). As such, there was no unlawful denial of access. N.J.S.A. 47:1A-6. Furthermore, because the report is exempt from public access pursuant to N.J.S.A. 47:1A-10, the Council declines to address any other claimed exemption raised by the Custodian.

Prepared By: Samuel A. Rosado  
Staff Attorney

January 24, 2017