



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

February 21, 2017 Government Records Council Meeting

Alphonso Brunson
Complainant

Complaint No. 2015-357

v.

NJ Department of Corrections
Custodian of Record

At the February 21, 2017 public meeting, the Government Records Council (“Council”) considered the February 14, 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 the requested mental health records, which can be categorized as medical, psychiatric, or psychological records, are exempt from disclosure as records that contain “information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation . . .” N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(4); Executive Order 26 (Gov. McGreevey, 2002). Therefore, the Custodian lawfully denied access to said records. *See also* Hamilton v. NJ Department of Corrections, GRC Complaint No. 2007-196 (March 2008); Groelly v. New Jersey Department of Corrections, GRC Complaint No. 2010-294 (June 2012); and McLawhorn v. NJ DOC, 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 21st Day of February, 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 23, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 21, 2017 Council Meeting**

**Alphonso Brunson¹
Complainant**

GRC Complaint No. 2015-357

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Copies of psychiatric reports from or between the dates of June/July 1999 while housed on 3-EE, concerning mental stress and psychological difficulties while under double lock housing status.

Custodian of Record: John Falvey

Request Received by Custodian: June 30, 2015; August 12, 2015

Response Made by Custodian: June 30, 2015; August 12, 2015

GRC Complaint Received: November 13, 2015

Background³

Request and Response:

On an unknown date, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.⁴ The Custodian received the request on June 30, 2015, and responded in writing on that same day, denying the request because OPRA exempts from disclosure medical and mental health records. N.J.S.A. 47:1A-9; N.J.A.C. 10A:22-2.3(a)(4)(“any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation”).

On July 8, 2015, the Complainant wrote to the Custodian, arguing that the denial was erroneous and impinged on the Complainant’s rights under the New Jersey Constitution, Article 1, paragraph 5, as well as his rights under the Fourteenth Amendment of the United States Constitution. He again requested the above-mentioned records. The Custodian received the correspondence on August 12, 2015, and responded in writing on that same day. He advised the Complainant that the records sought were exempt from disclosure under OPRA but advised the

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.

⁴ The Complainant did not list a date on the request form.

Complainant that he could attempt to access them by “submitting form MR-022 to the Medical Department at your facility.”

Denial of Access Complaint:

On November 13, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to specify any harm or risk to institutional security. He further argued that the Custodian’s reliance on N.J.A.C. 10A:22-2.3(4) as a basis for exemption conflicted with N.J.A.C. 10A:22-2.7(d) 1-2.2, which affords inmates copies of their medical records upon request. He additionally asserted that the denial of access conflicted with the Freedom of Information Act and Privacy Act.

Statement of Information:

On December 21, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 30, 2015, and follow up letter on August 12, 2015. The Custodian certified that he responded in writing on June 30, 2015, denying the request, and responded again on August 12, 2015, reiterating that he could not disclose the records pursuant to OPRA and suggesting an alternate route for the Complainant.

The Custodian argued that the denial of access was lawful pursuant to N.J.A.C. 10A-22-2.3(a)(4), which exempts “[a]ny information relating to medical, psychiatric or psychological history, diagnosis treatment or evaluation.” He noted that the GRC has previously upheld the Department’s denial of mental health records pursuant to this exemption in Riley v. NJ DOC, GRC Complaint No. 2013-345 (July 2014); Groelly v. NJ DOC, GRC Complaint No. 2010-294 (June 2012); and McLawhorn v. NJ DOC, GRC Complaint No. 2012-292 (July 2013).

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.

Further “[t]he 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).

Here, the Complainant requested copies of his own psychiatric reports. The Custodian timely responded to the Complainant’s request, informing the Complainant that his request was

denied 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.

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

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

Mental health records are encompassed within the category of psychiatric or psychological records, and psychiatric or psychological records are not government records subject to disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(4). Therefore, the Custodian did not err in his reliance upon N.J.A.C. 10A:22-2.3(a)(4) to deny access to the requested records. *See also* Executive Order No. 26 (Gov. McGreevey, 2002), which exempts “[i]nformation relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation”

The Council has repeatedly held that medical, psychiatric, or psychological records were exempt from disclosure pursuant to Executive Order 26, even when a complainant was seeking his personal records. In Hamilton v. NJ Department of Corrections, GRC Complaint No. 2007-196 (March 2008), the Council upheld the custodian’s denial of the complainant’s medical records regarding dental implants. Subsequently, in Groelly v. New Jersey Department of Corrections, GRC Complaint No. 2010-294 (June 2012), where the complainant sought access to his personal medical, psychiatric and psychological reports, the Council held:

the [records] requested by the Complainant are exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a) and Executive Order No. 26, paragraph 4.b.1 (Governor McGreevey, 2002) as “information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.” As such, the Custodian lawfully denied access to said records

Like the complainant in Hamilton and Groelly, the Complainant here is also seeking access to his personal medical records. Further, as in the Council decisions cited by the Custodian, the requested records here are also medical, psychiatric, or psychological reports that are exempt from disclosure.

Therefore, the requested mental health records, which can be categorized as medical, psychiatric, or psychological records, are exempt from disclosure as records that contain “information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation” N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(4); Executive Order 26 (Gov. McGreevey, 2002). Therefore, the Custodian lawfully denied access to said records. *See also* Hamilton, GRC 2007-196; Groelly, GRC 2010-294; and McLawhorn, GRC 2012-292.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the requested mental health records, which can be categorized as medical, psychiatric, or psychological records, are exempt from disclosure as records that contain “information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation . . .” N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(4); Executive Order 26 (Gov. McGreevey, 2002). Therefore, the Custodian lawfully denied access to said records. *See also* Hamilton v. NJ Department of Corrections, GRC Complaint No. 2007-196 (March 2008); Groelly v. New Jersey Department of Corrections, GRC Complaint No. 2010-294 (June 2012); and McLawhorn v. NJ DOC, GRC Complaint No. 2012-292 (July 2013).

Prepared By: Husna Kazmir
Staff Attorney

February 14, 2017