



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

Anthony Walker
Complainant

Complaint No. 2016-7

v.

NJ Office of the Public Defender
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 the Custodian has borne his burden of proving a lawful denial of access to the responsive records, as the records are exempt from disclosure. The Complainant provided no proof of a law, court order, or permission by the State Office of the Public Defender, which would provide an exception to the statutory exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Lumumba v. NJ Office of the Pub. Defender, GRC Complaint No. 2014-193 (January 2015); Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013); Bangala v. NJ Office of the Pub. Defender, GRC Complaint No. 2015-262 (November 2015); Lemon v. NJ Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).

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: April 29, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Anthony Walker¹
Complainant**

GRC Complaint No. 2016-7

v.

**NJ Office of the Public Defender²
Custodial Agency**

Records Relevant to Complaint: Hard copies of:

1. The Complainant's pro-se motion to vacate the plea he filed on January 13, 2012.
2. The transcripts from the defendant's July 7, 2011 trial.
3. The protective custody order from "February/March 2010."
4. Letters, e-mails, or notes between defense counsel and the prosecutor.
5. Officer Alberto Alvarez's statement from the August 5, 2010 incident, Indictment No. 11-01-00162-I.
6. A printout from *Promis Gavel* of Court appearances and dates from February 2010 through March 2011.
7. All documents from the 1995 case I-3538-11-95, including incident reports and victim statements.³

Custodian of Record: Kevin Walker

Request Received by Custodian: February 27, 2015, November 10, 2015, November 30, 2015.

Response Made by Custodian: March 4, 2015, November 10, 2015, December 2, 2015.

GRC Complaint Received: January 11, 2016.

Background⁴

Request and Response:

On February 24, 2015, October 27, 2015, and November 15, 2015, the Complainant submitted Open Public Records Act ("OPRA") requests to the Custodian seeking the above-listed records. The Custodian responded in writing to each request, respectively on March 4,

¹ No legal representation listed on record.

² No legal representation listed on record.

³ Some combinations of these records, which are listed on the Complainant's "records denied" portion of his Complaint, were requested in various portions of the three requests. However, all records relevant to the instant complaint were included in the October 27, 2015 request. Other records requested are not at issue.

⁴ 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.

2015, November 10, 2015, and December 2, 2015. With each response, the Custodian denied the requests, stating that the records requested are contained in a file or files maintained by the Office of the Public Defender (“OPD”). The Custodian further stated that N.J.S.A. 47:1-5(k) provides that “the files maintained by the Office of the Public Defender shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order or the State Public Defender.” The Custodian further responded that he had received no such authorization to permit inspection.

Denial of Access Complaint:

On January 11, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the records sought would assist him with an application for post-conviction relief. The Complainant stated that he tried to obtain records of his own cases from OPD, but he contends that the Custodian’s response was inadequate and that much of the material sent to him was “useless.” He claimed that his use of the requested records did not pose a danger to any victims, who might have been part of the case. He argued that the exemption claimed by the OPD is not among any of the stated twenty one (21) exemptions found in the OPRA statutes.

Statement of Information:

On January 29, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian argued that his denial of access was lawful because OPRA exempts access to OPD files “that relate to the handling of any case.” N.J.S.A. 47:1A-5(k). The Custodian further noted that OPRA provides no exceptions that permit OPD clients to access their own files absent authorization by law, a court order, or permission from the State Public Defender. He stated that no such authorization, order, or permission applies to the instant matter. Also, the Custodian noted that the GRC recently addressed similar requests, citing Lemon v. NJ Office of the Public Defender and Gaines v. NJ Office of the Pub. Defender (citations omitted), where the GRC found the OPD’s denial of access to be lawful.

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 further provides that “[t]he files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.” N.J.S.A. 47:1A-5(k).

In Lumumba v. NJ Office of the Public Defender, GRC Complaint No. 2014-193 (January 2015), the complainant sought records pertaining to his indictment. Upon review, the Council found the custodian's denial of access lawful, based upon the plain language of N.J.S.A. 47:1A-5(k), which prohibits access to OPD's files unless authorized by law, court order, or the State Public Defender. The complainant failed to produce evidence of any such authorization.

Similarly here, the Complainant sought various records, which he says pertain to a 1995 case handled by the OPD on the Complainant's behalf. Like the Complainant in Lumumba, the Complainant seeks records that would likely be contained in the OPD's files. The Complainant argues that he already obtained some records from the OPD before filing his Complaint; however he deems their efforts inadequate. Nevertheless, the Complainant here failed to provide any evidence of any authority of law, court order, or OPD authorization, without which the records are exempt from disclosure under OPRA. See Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013). See also Bangala v. NJ Office of the Pub. Defender, GRC Complaint No. 2016-262 (November 2015), and Lemon v. NJ Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).

Accordingly, the Custodian has borne his burden of proving a lawful denial of access to the responsive records, as the records are exempt from disclosure. The Complainant provided no proof of a law, court order, or permission by the State Office of the Public Defender, which would provide an exception to the statutory exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Lumumba, GRC 2014-193, Gaines, 2012-261, Bangala, 2015-262, Lemon, 2015-297

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving a lawful denial of access to the responsive records, as the records are exempt from disclosure. The Complainant provided no proof of a law, court order, or permission by the State Office of the Public Defender, which would provide an exception to the statutory exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Lumumba v. NJ Office of the Pub. Defender, GRC Complaint No. 2014-193 (January 2015); Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013); Bangala v. NJ Office of the Pub. Defender, GRC Complaint No. 2015-262 (November 2015); Lemon v. NJ Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).

Prepared By: Ernest Bongiovanni
Staff Attorney

March 22, 2016⁵

⁵ This complaint was prepared for adjudication at the Council's March 29, 2016 meeting; however, the complaint could not be adjudicated due to lack of a quorum.