



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

October 30, 2018 Government Records Council Meeting

Michael Lasane
Complainant

Complaint No. 2016-324

v.

NJ Department of Corrections
Custodian of Record

At the October 30, 2018 public meeting, the Government Records Council (“Council”) considered the October 23, 2018 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 Complainant’s OPRA request seeking purchase orders, invoices, and installation instructions regarding top bunks placed in Unit-3 FF at New Jersey State Prison. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. 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 30th Day of October, 2018

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: November 1, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
October 30, 2018 Council Meeting**

**Michael Lasane¹
Complainant**

GRC Complaint No. 2016-324

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of:

1. Purchase order for top bunks in Unit 3-FF at New Jersey State Prison (“NJSP”).
2. Invoice for top bunks in Unit 3-FF at NJSP.
3. Manufacturer’s installation instructions for the top bunks in Unit 3-FF at NJSP.

Custodian of Record: John Falvey
Request Received by Custodian: November 29, 2016
Response Made by Custodian: November 29, 2016
GRC Complaint Received: December 20, 2016

Background³

Request and Response:

On an unknown date,⁴ the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 29, 2016, the Custodian responded in writing extending the response timeframe ten (10) business days. On December 8, 2016, the Custodian responded in writing denying the request on the basis that no responsive records existed.

Denial of Access Complaint:

On December 20, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant challenged the Custodian’s response that no records existed. The Complainant contended that it NJSP would have needed a purchase

¹ No legal representation listed on record.

² Represented by Deputy Attorney Nicole E. Adams.

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

⁴ The Complainant stated in his Denial of Access Complaint that he sent the request on November 8, 2016. The Custodian also did not include a copy of the original request as part of the Statement of Information.

order and invoice to buy the bunks. The Complainant noted that the bunks were installed in 2014 and 2015; thus, it was likely that these records were kept by NJSP and the New Jersey Department of Corrections (“DOC”) as a matter of fiscal accounting.

Regarding the installation instructions, the Complainant argued that he previously received notice from an NJSP administrator that the bunks were installed based on standards set by the manufacturer. The Complainant asserted that he also saw the boxes the bunks were delivered in. The Complainant thus argued that there is sufficient evidence to establish that written standards were provided to NJSP.

Statement of Information:

On January 6, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on November 29, 2016 and immediately sought a ten (10) business day extension in writing. The Custodian certified that he responded in writing on December 8, 2016 advising that no records existed.

The Custodian certified that he was informed that “no specific records” were located. The Custodian argued that the GRC should uphold his denial of access as lawful based on prior case law. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). The Custodian argued that here, the Complainant provided no evidence contradicting his response and certification.

Additional Submissions:

On September 26, 2018, the GRC sought additional information from the Custodian. Therein, the GRC stated that the evidence of record was unclear as to how the Custodian arrived at a conclusion that no records responsive to the subject OPRA request existed. The GRC thus sought a certification responding to the following:

1. What search did the Custodian conduct to locate the records requested by the Complainant? Please provide a detailed account of the response received indicating that no records existed, if said response contained more detail.
2. Did DOC keep accounting records regarding purchases of furniture placed in its facilities, or is this handled by another department within the State?
3. Were the bunks in question purchased in a similar timeframe to their installation?

The GRC stated that the Custodian’s response was due by close of business on October 1, 2018.

On October 1, 2018, the Custodian responded to the GRC’s request for additional information. Therein, the Custodian affirmed that upon receipt of the request, he contacted DOC’s Business Office to perform a search for responsive records. The Custodian certified that the Business Office, upon completion of a search, informed him that no responsive records were located.

The Custodian certified that New Jersey Dep't of Treasury ("Treasury") dealt with the bunks in question, but he was unaware of the whether they were purchased in a similar time frame to installation. The Custodian further certified that in December 2017, Treasury informed him that the Complainant submitted an OPRA request for records related to the subject OPRA request. The Custodian affirmed that Treasury disclosed said records to the Complainant in response to that OPRA request.

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, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer, GRC 2005-49. Here, the Complainant's OPRA request sought invoices and purchase orders regarding top bunks placed in Unit-3 FF. The Custodian denied access to the Complainant's OPRA request, stating he "has been advised that no records were located." The Complainant disputed this in the Denial of Access Complaint; however, in the SOI, the Custodian certified that no records existed.

In order to clarify the Custodian's response, the GRC sought additional information regarding his search and the purchase of the bunks. In response to the GRC's request for additional information, the Custodian provided more detail as to his search and who handled the purchase and installation of the bunks. Specifically, the Custodian certified that the Business Office conducted the search and informed him that no records existed. Further, the Custodian certified that Treasury exclusively handled the bunks, but he did not know if they were purchased in a similar time frame to installation. Finally, the Custodian noted that upon submitting an OPRA request directly to Treasury, the Complainant received records regarding the bunks.

All of the above substantiates the Custodian's denial on the basis that no records existed within DOC. Thus, while the Complainant made some compelling arguments in the Denial of Access Complaint, the GRC is satisfied that the additional information the Custodian provided in his supplemental certification supports the denial of the Complainant's OPRA request. Additionally, there is no evidence in the record to refute that the Custodian did not possess the responsive records.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request seeking purchase orders, invoices, and installation instructions regarding top bunks placed in Unit-3 FF at NJSP. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request seeking purchase orders, invoices, and installation instructions regarding top bunks placed in Unit-3 FF at New Jersey State Prison. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

October 23, 2018