



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 31, 2019 Government Records Council Meeting

John Mandich
Complainant

Complaint No. 2016-326

v.

NJ Department of Corrections
Custodian of Record

At the January 31, 2019 public meeting, the Government Records Council (“Council”) considered the January 22, 2019 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 lawfully denied access to the handwritten letter in accordance with N.J.A.C. 10A:22-2.3(a)(7). N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). However, the Custodian unlawfully denied access to the remaining “[p]arole [r]ecords.” Notwithstanding, the GRC declines to order disclosure of those records because the Custodian disclosed same to the Complainant on January 15, 2019.
2. The Custodian lawfully denied access to the withheld medical records, mental health records, substance abuse records, pre-sentence investigation reports, criminal investigation reports, criminal histories, and records pertaining to other inmates. N.J.S.A. 47:1A-6. Specifically, the medical, mental, and health records are exempt under N.J.A.C. 10A:22-2.3(a)(4). See Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017). Further, pre-sentence reports are exempt as “inter-agency, intra-agency advisory, consultative, or deliberative” material under N.J.S.A. 47:1A-1.1. See Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014). The criminal investigatory reports, absent any indication that they were required to be made by law, are exempt under N.J.S.A. 47:1A-1.1. See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017). Also, criminal histories are exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(6). Finally, the records pertaining to other inmates are also expressly exempt under the New Jersey Department of Corrections’ regulations. N.J.A.C. 10A:22-2.3(b).
3. The Custodian unlawfully denied access to five (5) of the six (6) parole records withheld from the Complainant during on-site inspection. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to the remainder of all records withheld during the inspection. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3, *et seq.* Additionally, the evidence of record does not indicate that the Custodian’s violation of



OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 31st Day of January, 2019

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 5, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
January 31, 2019 Council Meeting**

**John Mandich¹
Complainant**

GRC Complaint No. 2016-326

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: On-site inspection of the Complainant's classification file.

Custodian of Record: John Falvey
Request Received by Custodian: November 16, 2016
Response Made by Custodian: November 22, 2016
GRC Complaint Received: December 30, 2016

Background³

Request and Response:

On November 5, 2016, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On November 22, 2016, the Complainant was granted access to inspect his classification file.

Denial of Access Complaint:

On December 30, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant contended that during his inspection, DOC employee Mario Viera withheld "approximately one[-]inch worth of records" as exempt. The Complainant further alleged that Mr. Viera withheld disciplinary reports as confidential, citing "his discretion" as the reason for not allowing inspection.

Statement of Information:

On March 3, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on November 16, 2016. The Custodian certified that the responsive file was located at the Complainant's place of incarceration. The

¹ No legal representation listed on record.

² Represented by Deputy Attorney Adam Robert Gibbons.

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.

Custodian certified that the Complainant conducted an inspection of “all non-exempt records” contained in the file on November 22, 2016.

The Custodian contended that he lawfully denied the Complainant inspection of the following multiple exempt records:

- Medical records
- Mental health records
- Substance abuse records
- Parole records
- Pre-sentence investigation reports
- Criminal investigation reports
- Criminal histories
- Records pertaining to other inmates

The Custodian contended that each of the withheld records were exempt from disclosure under New Jersey State statutes, OPRA provisions, DOC regulations, and prevailing case law. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)-(b).

Regarding the withheld portions of the Complainant’s disciplinary file, the Custodian certified that it contained five (5) witness statements from other inmates, as well as the corresponding “Investigation of Alleged Infraction” documents. The Custodian contended that these records were exempt from disclosure under N.J.A.C. 10A:22-2.3(b), which prohibits inmates from obtaining records regarding other inmates. See Victorious v. N.J. Dep’t of Corr., GRC Complaint No. 2014-71 (June 2016). Regarding the pre-sentence investigation reports, the Custodian noted that the Council already determined same were exempt from disclosure. See Baker v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2014-262 (May 2015). Regarding the parole records, the Custodian argued that same were exempt under N.J.A.C. 10A:22-2.3(a)(7), which exempted records of another agency possessed by DOC when made confidential by rule or law of the other agency.

Regarding the remaining records, the Custodian averred that DOC’s regulations expressly exempted same. See N.J.A.C. 10A:22-2.3(a)(3) (substance abuse records); N.J.A.C. 10A:22-2.3(a)(4) (medical and mental health records); N.J.A.C. 10A:22-2.3(a)(6) (criminal history records).

Additional Submissions:

On January 8, 2019, the GRC sought additional information from the Custodian. Therein, the GRC stated that the records identified as withheld from disclosure included “[p]arole [r]ecords.” The GRC stated that this term did not adequately allow for a determination of whether those records were exempt under N.J.S.A. 10A:22-2.3(a)(7). Thus, the GRC requested that the Custodian respond to the following:

1. Please identify those withheld records that fall within the “[p]arole [r]ecords” designation.
2. Please provide a specific lawful basis for each fitting within the portion of N.J.A.C. 10A:22-2.3(a)(7) that provides that records may be withheld when they “are made confidential by a rule of that department or agency allocated to that department adopted pursuant to [OPRA], and Executive Order No. 9 (Gov. Hughes 1963) or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.

The GRC requested that the Custodian provide a response in the form of a legal certification by close of business on January 11, 2019.

On January 14, 2019, Custodian's Counsel submitted a letter to the GRC identifying six (6) records totaling sixteen (16) pages. Counsel stated that the first record, a hand-written letter from another individual to a parole officer detailing a threatening encounter with the Complainant, was exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(5). Counsel stating that the remaining five (5) records were initially withheld under multiple exemptions. Counsel averred that upon further review, the Custodian would disclose said records to the Complainant with any confidential information redacted. On the same day, the GRC acknowledged receipt of Counsel's letter and noted that the Custodian was required to respond in the form of a legal certification. The GRC also requested that the Custodian identify on what date he sent (or intended to send) the five (5) parole records to the Complainant.

On January 15, 2019, the Custodian responded to the GRC's request for additional information. The Custodian certified to the veracity of Custodian Counsel's January 14, 2019 letter. Further, the Custodian affirmed that he mailed the five (5) records referred to in the letter to the Complainant on this day.

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).

Parole Records

DOC's regulations exempt access to:

Records of another department or agency allocated to that department in the possession of [DOC] when those records are made confidential by a rule of that department or agency allocated to that department adopted pursuant to [OPRA], and Executive Order No. 9 (1963) or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure

[N.J.A.C. 10A:22-2.3(a)(7).]

In the instant complaint, the Complainant disputed the withholding of multiple records during his on-site inspection. In the SOI, the Custodian identified a number of records withheld from the Complainant, inclusive of “[p]arole [r]ecords.” The Custodian argued in the SOI that said records were exempt under N.J.A.C. 10A:22-2.3(a)(7). That exemption allows DOC to deny access to records exempt under regulations of the sending/receiving agency.

On January 8, 2019, based on the qualifier contained within N.J.A.C. 10A:22-2.3(a)(7), the GRC asked the Custodian to identify those records contained within the term “[p]arole [r]ecords.” Further, the GRC asked the Custodian to identify the relevant exemptions that applied in conformance with N.J.A.C. 10A:22-2.3(a)(7). In response, the Custodian identified six (6) records withheld from the Complainant. The Custodian cited to an exemption for the first, a handwritten letter from an inmate regarding a threatening encounter with the Complainant. N.J.A.C. 10A:22-2.3(a)(5) (exempting access to records related to an identified individual if disclosure would “would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement”). Regarding the remaining five (5) records, the Custodian affirmed that he denied access under N.J.A.C. 10A:22-2.3(a)(3), (4), and (6). However, the Custodian certified that upon further review, he disclosed the records (with redactions) to the Complainant on January 15, 2019.

After considering the submissions of the parties, the GRC is persuaded that the Custodian lawfully denied access to the handwritten letter. The Custodian’s description of the letter adequately fits within the exemption cited: the letter was written by an individual detailing an encounter with the Complainant that resulted in them fearing for their safety. Thus, said record clearly falls within N.J.A.C. 10A:22-2.3(a)(5). However, the Custodian unlawfully denied access to the remainder of the “[p]arole [r]ecords,” as evidenced by his second review and disclosure of same to the Complainant on January 15, 2019.

Accordingly, the Custodian lawfully denied access to the handwritten letter in accordance with N.J.A.C. 10A:22-2.3(a)(7), N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). However, the Custodian unlawfully denied access to the remaining “[p]arole [r]ecords.” Notwithstanding, the GRC declines to order disclosure of those records because the Custodian disclosed same to the Complainant on January 15, 2019.

Remaining Withheld Records

Regarding medical and mental health records, such are encompassed within the category of medical and 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) is consistent with longstanding language contained in Executive Order 26 (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.

Moreover, in Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017) (on appeal from Spillane v. N.J. State Parole Bd., GRC Complaint No. 2014-169)(March 2015)), the Superior Court of New Jersey, Appellate Division upheld the Council’s determination that the custodian lawfully denied access to complainant’s mental health records

under OPRA. In reaching its conclusion, the court reasoned that the language of EO 26 and State Parole Board regulations at N.J.A.C. 10A:71-2.2 “rendered the report exempt from disclosure under OPRA.” Id. at 6. Further the court dismissed complainant’s assertion that he was entitled to access because the report was about him: “OPRA provides a vehicle for public access to government records. OPRA does not afford appellant a right of personal access to government records that are subject to OPRA’s exceptions or exemptions.” Id. (citations omitted). See also Groelly v. N.J. Dep’t of Corr., GRC Complaint No. 2010-294 (June 2012); McLawhorn v. N.J. Dep’t of Corr., GRC Complaint No. 2012-292 (July 2013); Riley v. N.J. Dep’t of Corr., GRC Complaint No. 2013-345 (July 2014); Brunson v. N.J. Dep’t of Corr., GRC Complaint No. 2015-357 (February 2017).

Regarding substance abuse records maintained by DOC, N.J.A.C. 10A:22-2.3(a)(3) provides that a “record, which consists of any alcohol, drug or other substance abuse information, testing, assessment, evaluation, report, summary, history, recommendation or treatment, including any assessment instruments” is exempt from disclosure.

Regarding pre-sentence reports, the Council has previously held that same were exempt from disclosure under the “inter-agency, intra-agency advisory, consultative, or deliberative [(“ACD”)]” material exemption. See Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014) (citing State v. DeGeorge, 113 N.J. Super. 542, 544 (App. Div. 1971)); Baker v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2014-262 (May 2015).

Regarding investigative reports, OPRA defines a criminal investigatory record as “a record which is not required by law to be made, maintained, or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.” N.J.S.A. 47:1A-1.1. Therefore, for a record to be considered exempt from disclosure under OPRA as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1, that record must meet both prongs of a two-prong test. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009).

The New Jersey Supreme Court considered this two-prong test in N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017), on appeal from N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70 (App. Div. 2015). In the appeal, the Court affirmed that OPRA’s criminal investigatory records exemption applies to police records which originate from a criminal investigation. However, the court stated that “to qualify for the exception — and be exempt from disclosure — a record (1) must not be ‘required by law to be made,’ and (2) must ‘pertain[] to a criminal investigation.’ N.J.S.A. 47:1A-1.1.” Id. at 564.

The Court made it clear that if the first prong cannot be met because such a record is required by law to be made, then that record “cannot be exempt from disclosure under OPRA’s criminal investigatory records exemption. N.J.S.A. 47:1A-1.1.” Id. at 365. Although the Court agreed with the Appellate Division’s analysis in O’Shea, 410 N.J. Super. at 382, that a clear statement of policy to police officers from the State Attorney General has “the force of law for police entities,” it refused to conclude that records retention schedules adopted by the State Records Committee meet OPRA’s “required by law” standard.

The Court also noted that even if a record is not required by law to be made, it must still be found to pertain to a criminal investigation. The Court reiterated the Appellate Division's observation that "some police records relate to an officer's community-caretaking function; others to the investigation of a crime." Id. at 569 (citing N. Jersey Media Grp., Inc., 441 N.J. Super. at 105).⁴ Therefore, the Court reasoned that determining whether such records pertain to a criminal investigation requires a "case-by-case analysis." However, the Court pointed out that police records that stem from "an investigation into *actual or potential* violations of criminal law," such as "detailed investigative reports and witness statements," will satisfy the second prong of OPRA's criminal investigatory records exemption. Id. (emphasis added).

The Council has also long held that once a record is determined to be a criminal investigatory record, it is exempt from access. See Janeczko v. N.J. Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), holding that "criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed."⁵ Moreover, with respect to concluded investigations, the Council pointed out in Janeczko that, "[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete."

Regarding criminal history background information, colloquially known as criminal rap sheets, DOC's regulations expressly exempt access to "[c]omprehensive criminal history information (rap sheet) . . .". N.J.A.C. 10A:22-2.3(a)(6). Such an exemption is in line with Executive Order No. 9 (Gov. Hughes, 1988) ("EO 9"), which provides that "criminal records required to be made, maintained[,] and kept pursuant to [N.J.S.A. 53:1-20.1] and [N.J.S.A. 53:1-20.2]" are exempt from disclosure. Id. at 2(f). EO 9 is relevant regarding rap sheets because N.J.S.A. 53:1-20.1 requires this information be collected and submitted into the criminal history background check database through the State Bureau of Identification ("SBI"). Additionally, N.J.S.A. 53:1-20.2 provides that bureaus of identification are established in "the office of the sheriff and . . . prosecutors . . ." Id.

Finally, regarding records pertaining to other inmates, DOC's regulations provide that "[a]n inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate." N.J.A.C. 10A:22-2.3(b). These types of records were addressed in Edwards v. N.J. Dep't of Corr., GRC Complaint No. 2014-8 (September 2014) and Victorious v. N.J. Dep't of Corr., GRC Complaint No. 2014-71 (June 2016). In each complaint, the Council upheld the custodian's denial of access to records concerning other inmates pursuant to N.J.S.A. 47:1A-9 and N.J.A.C. 10A:22-2.3(b).

In the matter before the Council, the Custodian identified the remaining withheld records as medical, mental, and substance abuse records, pre-sentence reports, criminal investigatory reports, criminal histories (also known as "rap sheets"), and records pertaining to other inmates. Each of the regulatory provisions, portions of the OPRA statute, and relevant case law above supports the Custodian's denial of these records during the on-site inspection. Further, the

⁴This is instructive for police agencies because it underscores the fact that their role in society is multi-faceted; hence, not all of their duties are focused upon investigation of criminal activity. And only those records created in their capacity as criminal investigators are subject to OPRA's criminal investigatory records exemption.

⁵The GRC's ruling was affirmed in an unpublished opinion of the Appellate Division.

categorical description of the records is sufficient to reach a determination that same are exempt from disclosure under OPRA. For these reasons, the GRC is satisfied that no lawful denial of access occurred.

Accordingly, the Custodian lawfully denied access to the withheld medical records, mental health records, substance abuse records, pre-sentence investigation reports, criminal investigation reports, criminal histories, and records pertaining to other inmates. N.J.S.A. 47:1A-6. Specifically, the medical, mental, and health records are exempt under N.J.A.C. 10A:22-2.3(a)(4). See Spillane, 2017 N.J. Super. Unpub. LEXIS 2392. Further, pre-sentence reports are exempt as ACD material under N.J.S.A. 47:1A-1.1. See Pitts, GRC 2013-299. The criminal investigatory reports, absent any indication that they were required to be made by law, are exempt under N.J.S.A. 47:1A-1.1. See N. Jersey Media Grp., Inc., 229 N.J. 541 (2017). Also, criminal histories are exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(6). Finally, the records pertaining to other inmates are also expressly exempt under DOC's regulations. N.J.A.C. 10A:22-2.3(b).

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the instant matter, the Custodian unlawfully denied access to five (5) of the six (6) parole records withheld from the Complainant during on-site inspection. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to the remainder of all records withheld during the inspection. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3, et seq. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian lawfully denied access to the handwritten letter in accordance with N.J.A.C. 10A:22-2.3(a)(7). N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). However, the Custodian unlawfully denied access to the remaining “[p]arole [r]ecords.” Notwithstanding, the GRC declines to order disclosure of those records because the Custodian disclosed same to the Complainant on January 15, 2019.
2. The Custodian lawfully denied access to the withheld medical records, mental health records, substance abuse records, pre-sentence investigation reports, criminal investigation reports, criminal histories, and records pertaining to other inmates. N.J.S.A. 47:1A-6. Specifically, the medical, mental, and health records are exempt under N.J.A.C. 10A:22-2.3(a)(4). See Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017). Further, pre-sentence reports are exempt as “inter-agency, intra-agency advisory, consultative, or deliberative” material under N.J.S.A. 47:1A-1.1. See Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014). The criminal investigatory reports, absent any indication that they were required to be made by law, are exempt under N.J.S.A. 47:1A-1.1. See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017). Also, criminal histories are exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(6). Finally, the records pertaining to other inmates are also expressly exempt under the New Jersey Department of Corrections’ regulations. N.J.A.C. 10A:22-2.3(b).
3. The Custodian unlawfully denied access to five (5) of the six (6) parole records withheld from the Complainant during on-site inspection. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to the remainder of all records withheld during the inspection. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3, *et seq.* Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Acting Executive Director

January 22, 2019