



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 26, 2020 Government Records Council Meeting

Roger Scott Helm
Complainant

Complaint No. 2018-114

v.

NJ Department of Corrections
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the February 19, 2020 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 Complainant’s April 9, 2018 OPRA request Item No. 1 because N.J.A.C. 10A:22-2.3(b) prohibits the Complainant from either inspecting or obtaining records pertaining to another inmate. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). See also Werner v. N.J. Dep’t of Corrections, GRC Complaint No. 2011-153 (September 2012); Edwards v. N.J. Dep’t of Corrections, GRC Complaint No. 2014-08 (September 2014). Because the records are exempt under N.J.A.C. 10A:22-2.3(b), the Council declines to address the other defenses raised by the Custodian.
2. The Custodian lawfully denied access to the Complainant’s April 9, 2018 OPRA request Item No. 2 seeking reports stemming from his protective custody hearing. N.J.S.A. 47:1A-6. New Jersey Department of Corrections regulations explicitly prohibit from access records relating to involuntary or voluntary protective custody. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(10).

Final Decision Rendered by the
Government Records Council
On The 26th Day of February 2020

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: March 3, 2020



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 26, 2020 Council Meeting**

**Roger Scott Helm¹
Complainant**

GRC Complaint No. 2018-114

v.

**N.J. Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hard copies of:³

1. All reports and statements from New Jersey Department of Corrections (“DOC”) and Special Investigations Division (“SID”) custody concerning the Complainant and inmate Brandon Fritts #1084818 from an incident occurring on December 17, 2017 to present.
2. All reports from the Complainant’s protective custody hearing on January 18, 2018, citing a SID report from January 9, 2018.

Custodian of Record: John Falvey
Request Received by Custodian: April 9, 2018
Response Made by Custodian: April 9, 2018
GRC Complaint Received: June 22, 2018

Background⁴

Request and Response:

On April 9, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 9, 2018, the Custodian responded in writing, denying access to request Item No. 1 as “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or person therein, and security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property.” N.J.S.A. 47:1A-1.1. The Custodian also denied access because the requested records “pertained to an investigation in progress by any public agency,” N.J.S.A. 47:1A-3(a). Further, the Custodian denied access due to the requested records containing “[SID] investigations records and reports, provided that redaction

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Francis Raso.

³ The Complaint requested other records not at issue in this matter.

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.

of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility,” N.J.A.C. 10A:22-2.3(a)(2). The Custodian denied access due to requested records “relating to an identified individual which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement,” N.J.A.C. 10A:22-2.3(a)(5). Finally, the Custodian also denied access to records “related to involuntary or voluntary protective custody,” N.J.A.C. 10A:22-2.3(a)(10), and the prohibition on inmates examining, inspecting, or obtaining copies of records pertaining to another inmate, N.J.A.C. 10A:22-2.3(b).

As for request Item No. 2, the Custodian denied access pursuant to records “related to involuntary or voluntary protective custody.” N.J.A.C. 10A:22-2.3(a)(10).

Denial of Access Complaint:

On June 22, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the statutes cited by the Custodian did not apply to his circumstance, or in the alternative the records could be provided without using names and personal information. The Complainant contended that the denial was depriving him of his rights.

Statement of Information:

On July 20, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 9, 2018. The Custodian certified that the SID maintained the requested records. The Custodian also certified that the protective custody reports were maintained within the Complainant’s classification folder at New Jersey State Prison (“NJSP”) in Trenton. The Custodian certified that he responded in writing on April 9, 2019, denying access to Item No. 1 on multiple grounds, and Item No. 2 under N.J.A.C. 10A:22-2.3(a)(10).

The Custodian certified that the Complainant, an inmate incarcerated at NJSP, was the victim of a stabbing by another inmate, Brandon Fritts, on December 30, 2017. The Custodian certified that SID launched an investigation shortly thereafter. The Custodian certified that the Federal Bureau of Prisons identified Mr. Fritts as a member of a white supremacist gang, which led to the commencement of a federal investigation by the United States Attorney’s Office. The Custodian certified that at the time the Complainant filed this complaint, both state and federal investigations remained ongoing.

The Custodian argued that he properly denied access to the Complainant’s request for records for the reasons set forth in his April 9, 2018 response. Specifically, the Custodian noted that OPRA provides that records related to an investigation in progress are exempt from disclosure, if such disclosure would be “inimical to the public interest.” N.J.S.A. 47:1A-3(a). The Custodian argued that the records contained confidential intelligence relating to gang-related activity in New Jersey’s correctional institutions, therefore disclosure would be inimical to the public interest as SID works to counter such activity. The Custodian also noted that because the records pertained

to a federal investigation, they were also barred from access by the Freedom of Information Act, 5 U.S.C.A. 552(b)(7)(A).

The Custodian also contended that because the records contained the identities of confidential informants and information on a white supremacist prison gang, disclosure would put those informants in jeopardy. N.J.A.C. 10A:22-2.3(a)(5) and N.J.A.C. 10A:22-2.3(a)(2). The Custodian also noted that the gang was classified as a security threat group, and therefore the records were not subject to disclosure under N.J.A.C. 10A:22-2.3(a)(11). Moreover, the Custodian asserted that the Complainant was seeking records pertaining to Mr. Fritts, another inmate, and was therefore not subject to disclosure under N.J.A.C. 10A:22-2.3(b).

The Custodian also asserted that disclosure of records responsive to request Item No. 1 would jeopardize the safety and security of persons or facilities. N.J.S.A. 47:1A-1.1. The Custodian contended that the New Jersey Supreme Court has granted the DOC broad permission to take measures to maintain such safety and security. See Gilleran v. Bloomfield, 227 N.J. 159 (2016). The Custodian argued that if an inmate obtained a copy of the requested reports, they could learn the identity of SID informants, what they disclosed, and factors SID consider when conducting an investigation. The Custodian also asserted that the responsive records would contain procedures implemented in a medical emergency.

Lastly, the Custodian contended that DOC regulations explicitly exempt from access all protective custody records under N.J.A.C. 10A:22-2.3(a)(10). The Custodian contended that he therefore properly denied access to the Complainant's OPRA request Item No. 2 seeking records pertaining to the Complainant's protective custody hearing.

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.

Request Item No. 1

OPRA provides that:

The 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) (emphasis added).]

Further, DOC 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).

Here, the responsive records relate to an investigation involving the Complainant, an inmate, and another inmate while incarcerated at NJSP. The DOC’s regulations at N.J.A.C. 10A:22-2.3(b) are clear in that the Complainant is not permitted to either inspect or obtain copies of records concerning other inmates. Id.

Therefore, the Custodian lawfully denied access to the Complainant’s April 9, 2018 OPRA request Item No. 1 because N.J.A.C. 10A:22-2.3(b) prohibits the Complainant from either inspecting or obtaining records pertaining to another inmate. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). See also Werner v. N.J. Dep’t of Corrections, GRC Complaint No. 2011-153 (September 2012); Edwards v. N.J. Dep’t of Corrections, GRC Complaint No. 2014-08 (September 2014). Because the records are exempt under N.J.A.C. 10A:22-2.3(b), the Council declines to address the other defenses raised by the Custodian.

Request Item No. 2

DOC regulations also provide that “[r]ecords related to involuntary or voluntary protective custody” are not government records subject to access under OPRA. N.J.A.C. 10A:22-2.3(a)(10).

Here, the Complainant’s OPRA request Item No. 2 sought all reports pertaining to his protective custody hearing. As with request Item No. 1, the DOC’s regulations at N.J.A.C. 10A:22-2.3(a)(10) are clear in that the requested records are not subject to access under OPRA.

Therefore, the Custodian lawfully denied access to the Complainant’s April 9, 2018 OPRA request Item No. 2 seeking reports stemming from his protective custody hearing. N.J.S.A. 47:1A-6. DOC regulations explicitly prohibit from access records relating to involuntary or voluntary protective custody. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(10).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian lawfully denied access to the Complainant’s April 9, 2018 OPRA request Item No. 1 because N.J.A.C. 10A:22-2.3(b) prohibits the Complainant from either inspecting or obtaining records pertaining to another inmate. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). See also Werner v. N.J. Dep’t of Corrections, GRC Complaint No. 2011-153 (September 2012); Edwards v. N.J. Dep’t of Corrections, GRC Complaint No. 2014-08 (September 2014). Because the records are exempt under N.J.A.C. 10A:22-2.3(b), the Council declines to address the other defenses raised by the Custodian.

2. The Custodian lawfully denied access to the Complainant's April 9, 2018 OPRA request Item No. 2 seeking reports stemming from his protective custody hearing. N.J.S.A. 47:1A-6. New Jersey Department of Corrections regulations explicitly prohibit from access records relating to involuntary or voluntary protective custody. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(10).

Prepared By: Samuel A. Rosado
Staff Attorney

February 19, 2020