



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 10, 2020 Government Records Council Meeting

Taysin Jones
Complainant

Complaint No. 2019-183

v.

NJ Department of Corrections
Custodian of Record

At the November 10, 2020 public meeting, the Government Records Council (“Council”) considered the October 27, 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 the Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s June 24, 2019 OPRA request seeking records pertaining to “institutional violence disciplinary reports” and “restoration of commutation credits records.” N.J.S.A. 47:1A-6. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005); Stolte v. N.J. State Police, GRC Complaint No. 2015-33, *et seq.* (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 10th Day of November 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: November 13, 2020

New Jersey is an Equal Opportunity Employer • Printed on Recycled paper and Recyclable

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 10, 2020 Council Meeting**

**Taysin Jones¹
Complainant**

GRC Complaint No. 2019-183

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. “All my records of my history of institutional violence disciplinary reports.”
2. “My 75% restoration of my commutation credits records.”

Custodian of Record: John Falvey
Request Received by Custodian: June 24, 2019
Response Made by Custodian: June 24, 2019
GRC Complaint Received: August 29, 2019

Background³

Request and Response:

On May 20, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 24, 2019, Danielle Weber responded on behalf of the Custodian in writing stating that the request could not be fulfilled because the information was no longer on file.

Denial of Access Complaint:

On August 29, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he requested the records to challenge his Southern State Prison’s “history of violence score” of seven (7) points stemming from an alleged incident occurring on September 2, 2005. The Complainant asserted that the records would show that he was never charged with an infraction, which affected his classification. The Complainant also asked how he could be penalized for infractions if there was no record of them as asserted by the Custodian.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Erica R. Heyer.

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.

Taysin Jones v. New Jersey Department of Corrections, 2019-183 – Findings and Recommendations of the Executive Director

Statement of Information:

On October 4, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 24, 2019. The Custodian certified that the search included looking through New Jersey Department of Corrections (“DOC”) records related to institutional violence reports and restoration of commutation credits from 2005. The Custodian certified that Ms. Weber responded in writing on June 24, 2019, stating that the records were no longer on file.

The Custodian asserted that an agency cannot comply with an OPRA request if the requested records did not exist. See Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 38-39 (App. Div. 2005); Michelson v. Wyatt, 379 N.J. Super. 611, 618 (App. Div. 2005). The Custodian also asserted that the GRC has previously held that a custodian did not unlawfully deny access when the Custodian certified that no responsive records exist. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

The Custodian argued that the Complainant sought records stemming from his incarceration from fourteen (14) years prior. The Custodian argued that the DOC conducted a diligent search and confirmed it did not possess records responsive to the request. The Custodian included an excerpt from DOC’s Records Retention and Destruction Schedule to assert that DOC retained the responsive records only until DOC’s jurisdiction had ended, or ten (10) years. The Custodian therefore asserted that the requested records would have been destroyed in accordance with the applicable records retention schedule and could not be provided.

The Custodian also noted that the Complainant failed to proffer evidence contradicting his certification. Thus, the Custodian asserted that DOC did not unlawfully deny access to the Complainant’s request and requested that the complaint be dismissed.

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. In Stolte v. N.J. State Police, GRC Complaint No. 2015-33, *et seq.* (November 2015), the complainant requested in part an accident report stemming from incident occurring fourteen (14) years prior. The custodian certified that the New Jersey State Police (“NJSP”) could not locate the accident report, but also certified that the report would have been destroyed pursuant to NJSP’s Records Retention and Destruction Schedule, as accident reports were maintained for a period of five (5) years. The Council found that the custodian did not unlawfully deny access based upon the

certification that no responsive records exist since the records would have been destroyed in accordance with the retention schedules.

Further, N.J.A.C. 1:1-15.2(a) and (b) state that official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. The Appellate Division has held that it was appropriate for an administrative agency to take notice of an appellant's record of convictions because judicial notice could have been taken of the records of any court in New Jersey, and appellant's record of convictions were exclusively in New Jersey. See Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95 (App. Div. 1974).

In the instant matter, the Complainant requested records pertaining to an alleged incident from 2005 while incarcerated. Ms. Weber responded, and the Custodian certified in the SOI, that no responsive records exist after conducting a search. Like the custodian in Stolte, the Custodian also certified that the requested records would have been destroyed in accordance with DOC's retention schedule, since the records were retained for a period of ten (10) years or when DOC's jurisdiction ended. In that regard, the GRC takes judicial notice of DOC's Offender Search ("Search"). The Search indicates that the Complainant is currently housed in East Jersey State Prison.⁴ However, the date the Complainant was in custody was March 8, 2019, suggesting he was released from DOC between the date of the alleged incident and his current incarceration. Furthermore, since the alleged incident occurred fourteen (14) years ago, the evidence is sufficient to show that the Custodian did not unlawfully deny access. Additionally, the Complainant failed to provide any evidence to contradict the Custodian's certification.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's June 24, 2019 OPRA request seeking records pertaining to "institutional violence disciplinary reports" and "restoration of commutation credits records." N.J.S.A. 47:1A-6. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. See Pusterhofer, GRC 2005-49; Stolte, GRC 2015-33, *et seq.*

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's June 24, 2019 OPRA request seeking records pertaining to "institutional violence disciplinary reports" and "restoration of commutation credits records." N.J.S.A. 47:1A-6. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no responsive records exist. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005); Stolte v. N.J. State Police, GRC Complaint No. 2015-33, *et seq.* (November 2015).

Prepared By: Samuel A. Rosado
Staff Attorney

October 27, 2020

⁴ "Offender Details." New Jersey Department of Corrections, https://www20.state.nj.us/DOC_Inmate/details?x=1324664&n=0 (last accessed October 27, 2020).
Taysin Jones v. New Jersey Department of Corrections, 2019-183 – Findings and Recommendations of the Executive Director