



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

February 28, 2023 Government Records Council Meeting

Charles Williams
Complainant

Complaint No. 2021-289

v.

NJ Department of Corrections
Custodian of Record

At the February 28, 2023 public meeting, the Government Records Council (“Council”) considered the February 21, 2023 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 requested ledger information is not subject to access under OPRA because it is exempt under EO 26 and N.J.A.C. 10A:22-2.3(a)(4) and (b). N.J.S.A. 47:1A-9(a); Brunson v. N.J. Dep’t of Corr., GRC Complaint No. 2015-357 (February 2017); Helm v. N.J. Dep’t of Corr., GRC Complaint No. 2018-114 (February 2020); Farra’D v. N.J. Dep’t of Corr., GRC Complaint No. 2010-47 (October 2011). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

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 28th Day of February 2023

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 6, 2023



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 28, 2023 Council Meeting**

**Charles Williams¹
Complainant**

GRC Complaint No. 2021-289

v.

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

Records Relevant to Complaint: Hardcopies via U.S. mail of “any and all ledgers enumerating” all transactions applying a \$10.00 credit to each eligible inmate account as part of the “COVID-19 vaccine incentive program”, redacting all personally identifying information.

Custodian of Record: John Falvey
Request Received by Custodian: October 20, 2021
Response Made by Custodian: October 20, 2021
GRC Complaint Received: November 12, 2021

Background³

Request and Response:

On October 4, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 20, 2021, the Custodian responded in writing denying the subject OPRA request under N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(4) and (b), and Executive Order No. 26 (Gov. McGreevey, 2002) (“EO 26”).

Denial of Access Complaint:

On November 12, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s denial of access arguing that he was not seeking any personal information. The Complainant argued that he sought ledgers showing the “source” of all transactions applying the credit and not the destination. The Complainant requested that the GRC compel the New Jersey Department of Corrections (“DOC”) to disclose the responsive ledgers with all personal information redacted.

¹ No legal representation listed on record.

² Represented by Deputy Attorney Raajen V. Bhaskar.

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.

Statement of Information:

On December 16, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on October 20, 2021 and responded on the same day denying access to the requested information. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(4) and (b); EO 26.

The Custodian contended that his denial of access was lawful under the cited exemptions. The Custodian argued that by their very nature disclosure of the ledgers would describe “finances, income, assets bank balances or financial activities of other inmates.” The Custodian further argued that disclosure would also reveal other inmates’ medical histories, diagnoses, treatments, or evaluations. The Custodian argued that based on forgoing, the requested records are *per se* exempt under EO 26 and DOC’s regulations. The Custodian also noted that because the Complainant is an inmate, he is prohibited from obtaining any documents concerning other inmates.

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:

The provisions of this act . . . 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).]

DOC’s regulations provide that:

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq. . . . the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq. . . . (4) Any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation . . . An 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(a)(4); (b).]

EO 26 provides that:

The following records shall not be considered to be government records subject to public access pursuant to OPRA . . . [i]nformation relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation . . . [i]nformation describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed.

[Id.]

Thus, DOC regulations exempt access to information related medical treatment are not government records. N.J.A.C. 10A:22-2.3(a)(4). See Brunson v. N.J. Dep't of Corr., GRC Complaint No. 2015-357 (February 2017); Mozer v. N.J. Dep't of Corr., GRC Complaint No. 2018-5, *et seq.* (August 2019). It is further noted that the language contained in N.J.A.C. 10A:22-2.3(a)(4) is consistent with longstanding language contained in EO 26.

Regarding inmates' ability to obtain other inmate information, in Helm v. N.J. Dep't of Corr., GRC Complaint No. 2018-114 (February 2020), the complainant sought reports and statements concerning himself and another inmate about an incident. The custodian denied access under, among other exemptions, N.J.A.C. 10A:22-2.3(b). The Council agreed, holding that a lawful denial of access occurred because the responsive records related to other inmates (citing Werner v. N.J. Dep't of Corrections, GRC Complaint No. 2011-153 (September 2012) and Edwards v. N.J. Dep't of Corrections, GRC Complaint No. 2014-08 (September 2014)).

Further, in Farra'D v. N.J. Dep't of Corr., GRC Complaint No. 2010-47 (October 2011), the custodian denied the complainant's OPRA requested for a copy of his own "Inmate Payment on Obligations" summary. The Council determined that the requested record was exempt from disclosure pursuant to EO 26 applicable to OPRA through N.J.S.A. 47:1A9(a). See also Sheridan v. N.J. Dep't of Corr., GRC Complaint No. 2013-122 (December 2013).

In the instant complaint, the Complainant's OPRA request sought ledgers identifying all credit transactions for inmates participating in the "COVID-19 vaccine incentive program", with personal information redacted. The Custodian responded denying access to same under N.J.S.A. 47:1A-9, EO 26, and N.J.A.C. 10A:22-2.3(a)(4) and (b). This complaint followed, wherein the Complainant argued that he was seeking proof that the credits were applied and not to whom. In the SOI, the Custodian maintained his position that the responsive records were exempt from disclosure under the cited exemptions.

Upon review, the GRC agrees that the exemptions apply to the records sought and the Custodian lawfully denied access to the requested records. Specifically, the request clearly seeks access to payments made to inmates, which constitutes "[i]nformation regarding" each inmate's finances exempt from disclosure under EO 26. Additionally, by the Complainant's own description, the credits are connected to the described vaccination program and thus obviously

classifies as “[i]nformation regarding” medical treatment which is exempt from disclosure under both EO 26 and N.J.A.C. 10A:22-2.3(a)(4). Further, the ledger clearly relates to other inmates: DOC’s regulations are clear that an inmate cannot have access to “documents concerning any other inmate.” Also, as this requested ledger information is inextricably tied to these exemptions, the GRC does not agree that redaction would allow for disclosure. Instead, the facts of the instant complaint are on point with all prior case law regarding the disclosability of this type of information. Brunson, GRC 2015-357; Helm, GRC 2018-114; Farra’D, GRC 2010-47, where the complainant sought a record of his own financial activity. Thus, the requested account record is exempt under DOC’s regulations and EO 26. N.J.S.A. 47:1A-9(a).

Therefore, the requested ledger information is not subject to access under OPRA because it is exempt under EO 26 and N.J.A.C. 10A:22-2.3(a)(4) and (b). N.J.S.A. 47:1A-9(a); Brunson, GRC 2015-357; Helm, GRC 2018-114; Farra’D, GRC 2010-4. Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the requested ledger information is not subject to access under OPRA because it is exempt under EO 26 and N.J.A.C. 10A:22-2.3(a)(4) and (b). N.J.S.A. 47:1A-9(a); Brunson v. N.J. Dep’t of Corr., GRC Complaint No. 2015-357 (February 2017); Helm v. N.J. Dep’t of Corr., GRC Complaint No. 2018-114 (February 2020); Farra’D v. N.J. Dep’t of Corr., GRC Complaint No. 2010-47 (October 2011). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

February 21, 2023