



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**November 9, 2022 Government Records Council Meeting**

Rigoberto Mejia Amaya  
Complainant

Complaint No. 2021-93

v.

NJ Department of Corrections  
Custodian of Record

At the November 9, 2022 public meeting, the Government Records Council (“Council”) considered the October 27, 2022 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. Mr. Viera’s May 6, 2021 response was insufficient because he failed to provide a specific legal basis for denying access to records responsive to four (4) of the listed JPAY inquiries in the Complainant’s March 28, 2021 OPRA request. N.J.S.A. 47:1A-5(g); Morris v. Trenton Police Dep’t, GRC Complaint No. 2007-160 (May 2008); and Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008). However, the GRC declines to order disclosure of records responsive to ten (10) of the listed JPAY inquiries since Mr. Viera certified that he disclosed same to the Complainant on May 6, 2021.
2. Notwithstanding Mr. Viera’s insufficient response, the records responsive to JPAY inquiries #NSP19038639, #NSP20002432, and #NSP20021497 were lawfully denied since they contain information pertaining to the Complainant’s medical or mental health, and therefore exempt from access under N.J.A.C. 10A:22-2.3(a)(4), applicable to OPRA under N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6; Robinson v. N.J. Dep’t of Corr., GRC Complaint No. 2012-129 (May 2013). Furthermore, the records responsive to JPAY inquiry #NSP20042408 was lawfully denied since it contains records pertaining to another inmate, and therefore exempt from access under N.J.A.C. 10A:22-2.3(b), also applicable to OPRA under N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6; Edwards v. N.J. Dep’t of Corr., GRC Complaint No. 2014-8 (September 2014).
3. Although Mr. Viera’s responses were insufficient, he located and provided to the Complainant all responsive records subject to disclosure under OPRA. Additionally, the evidence of record does not indicate that Mr. Viera’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Mr. Viera’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 9<sup>th</sup> Day of November 2022

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 15, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 9, 2022 Council Meeting**

**Rigoberto Mejia Amaya<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-93**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies via U.S. mail of the following JPAY inquiries: #NSP2004392; #NSP20042408; #NSP20021497; #NSP20031970; #NSP20012943; #NSP20011561; #NSP20002432; #NSP20064904; #NSP19057321; #NSP19041856; #NSP19038639; #EJSP19011370; #EJSP19006213; #EJSP19001922.

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** March 28, 2021  
**Response Made by Custodian:** May 6, 2021  
**GRC Complaint Received:** May 4, 2021

**Background<sup>3</sup>**

**Request and Response:**

On or about March 28, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 15, 2021, the Complainant received a letter from the Custodian that responsive records were provided in response to OPRA request #18795 on March 3, 2021.

**Denial of Access Complaint:**

On May 4, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the OPRA request at issue sought records pertaining to JPAY inquiries separate from those listed in OPRA request #18795. The Complainant contended the Custodian misunderstood his OPRA request and denied access as a result. The Complainant included in his complaint a copy of OPRA request #18795, the March 3,

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Deputy Attorney General Stephanie M. Mersch. Previously represented by Deputy Attorney General Suzanne Davies.

<sup>3</sup> 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.

2021 response he received from the Custodian regarding OPRA request #18795, and the April 15, 2021 correspondence.

Supplemental Response:

On May 6, 2021, Mario Viera at Northern State Prison (“NSP”) responded on the Custodian’s behalf to the Complainant in writing providing records responsive to ten (10) of the JPAY inquiries listed in the OPRA request at issue.<sup>4</sup>

Statement of Information:<sup>5</sup>

On September 26, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on March 28, 2021. The Custodian also certified that the request was forwarded to Mr. Viera at NSP. The Custodian certified that Mr. Viera responded to the Complainant on May 6, 2021, granting access to responsive records.

The Custodian also included a certification from Mr. Viera. Mr. Viera certified he provided the Complainant with ten (10) pages of records responsive to ten (10) of the listed JPAY inquiries. Mr. Viera certified that four (4) of the JPAY inquiries were not provided as they did not show up in NSP’s database: #NSP19038639, #NSP20002432, #NSP20021497, #NSP20042408.

The Custodian initially asserted that JPAY was a private company under contract with the New Jersey Department of Corrections (“NJDOC”) to provide e-mail communications for inmates. The Custodian asserted the requested records at issue were inquiries sent by the Complainant or other inmates through the JPAY system. The Custodian therefore argued that any responsive records were not maintained by NJDOC and therefore not government records under OPRA. N.J.S.A. 47:1A-1.1. The Custodian specifically asserted that inquiry #NSP20042408 was a “trouble ticket” created when an inmate reaches out to JPAY with a concern over its services. The Custodian argued that those submissions do not go to any NJDOC department but to the company itself, and therefore was not made, maintained, or kept on file with NJDOC.

The Custodian next argued that even if JPAY records were subject to OPRA, there was no unlawful denial of access to the four (4) withheld JPAY inquiries. The Custodian asserted that three (3) of the inquiries: #NSP19038639, #NSP20002432, and #NSP20021497, all contained the Complainant’s medical or mental health information in communications directed to NJDOC’s medical department. The Custodian thus argued those records were exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(4) which exempts medical information from OPRA. The Custodian also asserted that inquiry #NSP20042408 was issued not by the Complainant but another inmate, and

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<sup>4</sup> The Custodian provided a copy of a “OPRA Records Request Payment Notification and Authorization” sheet which includes the Complainant’s signature as well as Mr. Viera’s. The sheet authorized a payment of \$0.50 for copies of records.

<sup>5</sup> The Custodian initially filed an SOI on August 12, 2021. However, the SOI did not address the OPRA request at issue, but instead addressed OPRA request #18795. On September 8, 2022, the GRC requested the Custodian resubmit the SOI to address the OPRA request at issue.

was therefore exempt under N.J.A.C. 10A:22-2.3(b), which prohibits inmates from obtaining records pertaining to other inmates.

## Analysis

### Sufficiency of Response

In Morris v. Trenton Police Dep't, GRC Complaint No. 2007-160 (May 2008), the complainant requested several records. The custodian, without further elaboration, stated that access to the requested records was denied. The Council stated, in finding that the custodian violated OPRA, “the Custodian’s failure to supply the requester with a detailed lawful basis for denial violates N.J.S.A. 47:1A-5(g).” Subsequently, in Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008), the Council stated, upon finding that the custodian’s written response was insufficient, “N.J.S.A. 47:1A-5(g) provides that if a custodian is ‘unable to comply with a request for access, then the custodian shall indicate the specific basis’ for noncompliance.”

Here, the Custodian certified that he received the Complainant’s OPRA request on March 28, 2022. The Custodian certified that the request was forwarded to Mr. Viera at NSP. Mr. Viera certified that he responded to the Complainant on May 6, 2022, providing records responsive to ten (10) of the fourteen (14) JPAY inquiries identified in the request. In the SOI, the Custodian argued that the records withheld in response to the four (4) JPAY inquiries were properly denied pursuant to NJDOC regulations.

Upon review of the evidence, the GRC is satisfied that Mr. Viera provided an insufficient response. Specifically, there is no evidence in the record demonstrating that Mr. Viera informed the Complainant why responsive records were not provided for four (4) of the listed JPAY inquiries or provide any basis for denial.

Therefore, Mr. Viera’s May 6, 2021 response was insufficient because he failed to provide a specific legal basis for denying access to records responsive to four (4) of the listed JPAY inquiries in the Complainant’s March 28, 2021 OPRA request. N.J.S.A. 47:1A-5(g); Morris, GRC 2007-160; and Rader, GRC 2007-239. However, the GRC declines to order disclosure of records responsive to ten (10) of the listed JPAY inquiries since Mr. Viera certified that he disclosed same to the Complainant on May 6, 2021.

### 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.

Additionally, OPRA provides that its provisions “. . . 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).

To this end, NJDOC’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;

[N.J.A.C. 10A:22-2.3(a)(4).]

Further, NJDOC’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).

Here, the Complainant requested documents responsive to fourteen (14) JPAY inquiries. Although the Custodian responded to the Complainant stating that records were previously provided in response to a separate request, Mr. Viera at NSP responded to the Complainant providing ten (10) documents responsive to ten (10) of the JPAY inquiries. In the SOI, the Custodian argued that four (4) of the JPAY inquiries were not provided pursuant to NJDOC regulations. Specifically, the Custodian certified that JPAY inquiries #NSP19038639, #NSP20002432, and #NSP20021497 contained medical or mental health information provided by the Complainant to NJDOC’s medical department. Additionally, the Custodian certified that JPAY inquiry #NSP20042408 pertained to a “trouble ticket” submitted to JPAY by another inmate.

The GRC’s case law in recognizing exemptions contained in NJDOC’s regulations as a lawful denial of access under OPRA is extensive. See Robinson v. N.J. Dep’t of Corr., GRC Complaint No. 2012-129 (May 2013) (holding that the custodian lawfully denied access to a preliminary incident report under DOC’s regulations); Riley v. N.J. Dep’t of Corr., GRC Complaint No. 2013-345 (July 2014) (holding that the custodian lawfully denied access to mental health records under N.J.A.C. 10A:22-2.3(a)(4)); Edwards v. N.J. Dep’t of Corr., GRC Complaint No. 2014-8 (September 2014) (holding that the complainant could not have access to records pertaining to the person accused of assaulting him under N.J.A.C. 10A:22-2.3(b)).

Based upon the prevailing case law and the evidence of record, the GRC is satisfied that the Custodian lawfully denied records responsive to JPAY inquiries NSP19038639, #NSP20002432, and #NSP20021497 as records containing medical information are expressly exempt under N.J.A.C. 10A:22-2.3(a)(4). See Robinson, GRC 2012-129. Further, the Custodian lawfully denied access to records responsive to JPAY inquiry #NSP20042408 as NJDOC regulations expressly prohibit inmates from obtaining records pertaining to other inmates. N.J.A.C. 10A:22-2.3(b). Moreover, the Complainant failed to provide contrary evidence to the Custodian’s certification.

Accordingly, notwithstanding Mr. Viera's insufficient response, the records responsive to JPAY inquiries #NSP19038639, #NSP20002432, and #NSP20021497 were lawfully denied since they contain information pertaining to the Complainant's medical or mental health, and therefore exempt from access under N.J.A.C. 10A:22-2.3(a)(4), applicable to OPRA under N.J.S.A. 47:1A-9(a), N.J.S.A. 47:1A-6; Robinson, GRC 2012-129. Furthermore, the records responsive to JPAY inquiry #NSP20042408 was lawfully denied since it contains records pertaining to another inmate, and therefore exempt from access under N.J.A.C. 10A:22-2.3(b), also applicable to OPRA under N.J.S.A. 47:1A-9(a), N.J.S.A. 47:1A-6; Edwards, GRC 2014-8.

### **Knowing & Willful**

OPRA states that “[a] public official, officer, employee or custodian who knowingly and 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. 1983)); 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)).

Here, although Mr. Viera's responses were insufficient, he located and provided to the Complainant all responsive records subject to disclosure under OPRA. Additionally, the evidence of record does not indicate that Mr. Viera's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Mr. Viera'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 Executive Director respectfully recommends the Council find that:

1. Mr. Viera's May 6, 2021 response was insufficient because he failed to provide a specific legal basis for denying access to records responsive to four (4) of the listed

JPAY inquiries in the Complainant's March 28, 2021 OPRA request. N.J.S.A. 47:1A-5(g); Morris v. Trenton Police Dep't, GRC Complaint No. 2007-160 (May 2008); and Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008). However, the GRC declines to order disclosure of records responsive to ten (10) of the listed JPAY inquiries since Mr. Viera certified that he disclosed same to the Complainant on May 6, 2021.

2. Notwithstanding Mr. Viera's insufficient response, the records responsive to JPAY inquiries #NSP19038639, #NSP20002432, and #NSP20021497 were lawfully denied since they contain information pertaining to the Complainant's medical or mental health, and therefore exempt from access under N.J.A.C. 10A:22-2.3(a)(4), applicable to OPRA under N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6; Robinson v. N.J. Dep't of Corr., GRC Complaint No. 2012-129 (May 2013). Furthermore, the records responsive to JPAY inquiry #NSP20042408 was lawfully denied since it contains records pertaining to another inmate, and therefore exempt from access under N.J.A.C. 10A:22-2.3(b), also applicable to OPRA under N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6; Edwards v. N.J. Dep't of Corr., GRC Complaint No. 2014-8 (September 2014).
3. Although Mr. Viera's responses were insufficient, he located and provided to the Complainant all responsive records subject to disclosure under OPRA. Additionally, the evidence of record does not indicate that Mr. Viera's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Mr. Viera'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: Samuel A. Rosado  
Staff Attorney

October 27, 2022