



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

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ACTING COMMISSIONER LUCILLE DAVY  
ROBIN BERG TABAKIN  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

**FINAL DECISION**

**February 28, 2007 Government Records Council Meeting**

Toni Catrell  
Complainant

Complaint No. 2006-121

v.

NJ Department of Corrections  
Custodian of Record

At the February 28, 2007 public meeting, the Government Records Council ("Council") considered the February 21, 2007 Supplemental 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 based on the Custodian's February 8, 2007 certification, the Custodian has complied with the Council's January 31, 2007 Interim Order by certifying that she sent the Complainant a letter dated February 5, 2007 which indicated that the requested records are three (3) pages and will be provided to the Complainant upon payment receipt of \$2.25. (The Custodian has also indicated to the GRC that the records being made available to the Complainant include redactions that have not been challenged as the Complainant has not yet picked up the records).

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 28<sup>th</sup> Day of February, 2007



Vincent P. Maltese, Chairman  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Robin Berg Tabakin, Vice Chairman & Secretary  
Government Records Council

**Decision Distribution Date: March 7, 2007**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
February 28, 2007 Council Meeting**

**Toni Catrell<sup>1</sup>  
Complainant**

*GRC Complaint No. 2006-121*

v.

**NJ Department of Corrections<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Copy of names on inmate's visit list, as well as their relationship to inmate.
2. Copy of inmate's criminal record of offenses.
3. Copy of items ordered by inmate from the prison commissary, as well as amount of money in inmate's account.
4. Copy of inmate's work record in prison, type of work, and wages.
5. Copy of any offenses committed in prison by inmate.

*Request Made: March 28, 2006*

*Response Made: April 4, 2006*

*Custodian: Michelle Hammel*

**GRC Complaint Filed: June 8, 2006**

**Background**

January 31, 2007

At the January 31, 2007 public meeting, the Government Records Council ("Council") considered the January 24, 2007 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 did not unlawfully deny access to the inmate's visitors list pursuant to N.J.S.A. 47:1A-1 and Avin v. Borough of Ramsey, GRC Complaint No. 2004-181 (March 2005), due to the privacy interests

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

<sup>2</sup> Represented by DAG Lisa A. Puglisi, on behalf of the NJ Attorney General.

- implicated and the possibility that unsolicited contact would occur between the Complainant and the individuals on the requested list.
2. According to Buttimore v. NJ Department of Law & Public Safety, GRC Complaint No. 2005-92 (March 2006), the Custodian did not unlawfully deny access to the inmate's criminal record of offenses because the Department of Corrections' proposed OPRA rules are valid and exempt those records from public access.
  3. According to Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006), the Custodian did not unlawfully deny access to the items ordered by the inmate from the prison commissary and the balance in the inmate's commissary account because the Complainant did not request identifiable government records.
  4. The Custodian did not unlawfully deny the Complainant access to the inmate's prison work wages pursuant to Executive Order 26. Pursuant to Paragraph 4 of Executive Order 26, "information 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" are exempt from disclosure.
  5. The Custodian unlawfully denied the Complainant access to the inmate's work record and type of work. There is no applicable disclosure exemption for this information provided in OPRA. Thus, the Custodian did not bear her burden of proof for such denial pursuant to N.J.S.A. 47:1A-6. **Therefore, the Custodian shall provided the inmate's work record and type of work to the Complainant within five (5) business days from receipt of the Council's Interim Order, and simultaneously provide certified confirmation of compliance to the Executive Director.**
  6. The Custodian certified that the Department of Corrections does not have any records responsive to the offenses committed in prison by the inmate identifying any offenses the inmate committed in prison.
  7. **The Custodian shall comply with "5." above within five (5) business days from receipt of this Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.**

### **February 2, 2007**

Council's Interim Order distributed to the parties.

### **February 8, 2007**

Custodian's certification pursuant to NJ Court Rules. The Custodian certifies that she sent the Complainant a letter dated February 5, 2007 which indicated that the requested records are three (3) pages and will be provided upon payment of \$2.25.

## **Analysis**

**Whether the Custodian complied with the Council's January 31, 2007 Interim Order?**

The Custodian certifies that she sent the Complainant a letter dated February 5, 2007 which indicated that the requested records are three (3) pages and will be provided to the Complainant upon payment receipt of \$2.25. (The Custodian has also indicated to the GRC that the records being made available to the Complainant include redactions that have not been challenged as the Complainant has not yet picked up the records).

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that based on the Custodian's February 8, 2007 certification, the Custodian has complied with the Council's January 31, 2007 Interim Order by certifying that she sent the Complainant a letter dated February 5, 2007 which indicated that the requested records are three (3) pages and will be provided to the Complainant upon payment receipt of \$2.25. (The Custodian has also indicated to the GRC that the records being made available to the Complainant include redactions that have not been challenged as the Complainant has not yet picked up the records).

Prepared By:

Tiffany L. Mayers  
Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

February 21, 2006

**INTERIM ORDER****January 31, 2007 Government Records Council Meeting**

Toni Catrell  
Complainant

Complaint No. 2006-121

v.

NJ Department of Corrections  
Custodian of Record

At the January 31, 2007 public meeting, the Government Records Council (“Council”) considered the January 24, 2007 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 did not unlawfully deny access to the inmate’s visitors list pursuant to N.J.S.A. 47:1A-1 and Avin v. Borough of Ramsey, GRC Complaint No. 2004-181 (March 2005), due to the privacy interests implicated and the possibility that unsolicited contact would occur between the Complainant and the individuals on the requested list.
2. According to Buttimore v. NJ Department of Law & Public Safety, GRC Complaint No. 2005-92 (March 2006), the Custodian did not unlawfully deny access to the inmate’s criminal record of offenses because the Department of Corrections’ proposed OPRA rules are valid and exempt those records from public access.
3. According to Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006), the Custodian did not unlawfully deny access to the items ordered by the inmate from the prison commissary and the balance in the inmate’s commissary account because the Complainant did not request identifiable government records.
4. The Custodian did not unlawfully deny the Complainant access to the inmate’s prison work wages pursuant to Executive Order 26. Pursuant to Paragraph 4 of Executive Order 26, “information 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” are exempt from disclosure.
5. The Custodian unlawfully denied the Complainant access to the inmate’s work record and type of work. There is no applicable disclosure exemption for this information provided in OPRA. Thus, the Custodian did not bear her burden of proof for such denial pursuant to N.J.S.A. 47:1A-6. **Therefore, the Custodian shall provided the inmate’s work record and type of work to the Complainant within five (5) business days from receipt of the Council’s Interim Order, and simultaneously**

**provide certified confirmation of compliance to the Executive Director.**

6. The Custodian certified that the Department of Corrections does not have any records responsive to the offenses committed in prison by the inmate identifying any offenses the inmate committed in prison.
7. **The Custodian shall comply with "5." above within five (5) business days from receipt of this Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.**

Interim Order Rendered by the  
Government Records Council  
On The 31<sup>st</sup> Day of January, 2007

Vincent P. Maltese, Chairman  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Robin Berg Tabakin, Vice Chairman & Secretary  
Government Records Council

**Decision Distribution Date: February 2, 2007**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 31, 2007 Council Meeting**

Toni Catrell<sup>3</sup>

GRC Complaint No. 2006-121

**Complainant**

v.

**Department of Corrections<sup>4</sup>**  
*Custodian of Records*

**Records Relevant to Complaint:**

1. Copy of names on inmate's visit list, as well as their relationship to inmate.
2. Copy of inmate's criminal record of offenses.
3. Copy of items ordered by inmate from the prison commissary, as well as amount of money in inmate's account.
4. Copy of inmate's work record in prison, type of work, and wages.
5. Copy of any offenses committed in prison by inmate.

*Request Made: March 28, 2006*

*Response Made: April 4, 2006*

*Custodian: Michelle Hammel*

**GRC Complaint Filed:** June 8, 2006

**Background**

March 28, 2006

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests copies of the records listed above.

April 4, 2006

Custodian's response to the Complainant's OPRA request. The Custodian responded to the OPRA request four (4) business days following the date the request was

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<sup>3</sup> No legal representation listed.

<sup>4</sup> Represented by DAG Lisa A. Puglisi, on behalf of the NJ Attorney General.



received. The Custodian asserts that criminal history records, also known as rap sheets, are protected from disclosure under OPRA pursuant to the Department of Corrections' proposed Administrative Code Regulations. The Custodian also asserts that the request for a copy of names on the inmate's visit list and their relationship to the inmate are exempt from disclosure due to some privacy issues implicated in the release of an inmate's visitor's list. The Custodian then asks the Complainant to explain why the information is being sought so that the Custodian may conduct the appropriate analysis.

The Custodian also asserts that the request for any offenses committed in prison by the inmate is invalid under OPRA and therefore cannot be fulfilled. The Custodian explains that OPRA only requires a response to a request for specific records, not for information. The Custodian refers the Complainant to MAG Entertainment v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), and the Custodian states that if the Complainant wishes to request specific records, she must identify the records.

The Custodian asserts that the request for the inmate's work record in prison, type of work and wages, items ordered by the inmate from the commissary, as well as the amount of money in the inmate's account cannot be fulfilled. The Custodian informs the Complainant that records of information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness, except as otherwise required by law to be disclosed, are exempt from disclosure under OPRA.

June 8, 2006

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Letter to the Complainant from the Custodian dated April 4, 2006.
- Letter to the Custodian from the Complainant not dated.

The Complainant asserts that the requested information be provided because the inmate is the father of her child.

June 26, 2006

Offer of Mediation sent to both parties. No response was received from the Custodian.

**June 28, 2006**

The Complainant agrees to meditation.

**July 11, 2006**

Request for Statement of Information sent to the Custodian.

**July 20, 2006**

The Custodian's Counsel requests a two week extension to provide the Statement of Information.

**August 3, 2006**

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's March 28, 2006 OPRA request.
- Letter to the Custodian from the Complainant dated June 19, 2006.
- Letter to the Complainant from the Custodian dated April 4, 2006.
- Letter to the Complainant from the Custodian dated June 21, 2006.
- Certification of the Principal Procedures Analyst.

Inmate's Visitors List.

The Custodian asserts that as to the Complainant's request for the inmate's visit list, the Custodian is unable to fulfill the request without further information due to the privacy issues implicated in the release of an inmate's visitors list. The Custodian states that she had some concerns about releasing the visitors list to the Complainant, and that the release of this list may result in the Complainant's unsolicited contact with individuals on the visit list. The Custodian further states that this concern is due to the fact that on several occasions during the inmate's incarceration, the Complainant has contacted the Department of Corrections' custody staff to request special visits with the inmate, to inquire about why the visits were denied, and to obtain information about with whom the inmate has visits. The Custodian states that when the staff would not provide the Complainant with the requested information, the Complainant would become angry and verbally abusive toward the staff.

The Custodian also asserts that an inmate's visit list is a list of visitors submitted by the inmate to the Department of Corrections pursuant to N.J.A.C. 10A:18-6.2, which has been approved by the Administrator pursuant to N.J.A.C. 10A:18-6.3. Therefore, the Custodian asserts that this request was properly denied because the privacy interest of any individuals named on the list outweighs the requestor's interest in obtaining the information.

The Custodian further asserts that the Complainant telephoned the Department's Government Records Unit and spoke with the Principal Procedures Analyst. The Custodian states that the Complainant advised the Principal Procedures Analyst that the Complainant and the inmate have a child together, and that the Complainant wanted to know if the inmate is "bothering" with another female and asked, "isn't it my right?"

The Custodian attests that in Merino v. Ho-Ho-Kus, GRC Complaint No. 2003-121<sup>5</sup>, the GRC addressed a citizen's reasonable expectation of privacy pursuant to OPRA, finding that the New Jersey Appellate Division has held that the GRC must enforce OPRA's declaration to safeguard from public access a citizen's personal information with

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<sup>5</sup> This decision was decided on February 18, 2004.

which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy.<sup>6</sup> Serrano v. South Brunswick Township, 358 N.J. Super. 352, 368-369 (App. Div. 2003). The Custodian also attests that the New Jersey Supreme Court has indicated that privacy interests are affected where the disclosure of a person's address results in unsolicited contact, indicating that significant privacy concerns are raised where disclosure of the addresses "can invite unsolicited contact or intrusion based on the revealed information." Doe v. Portiz, 142 N.J. 1, 82 (1995). In conducting a balancing test, the Supreme Court ruled that the following factors should be considered:

<b>Questions</b>	<b>Custodian's Response</b>
<b>Type of record request:</b>	Name and relationship of visitors on inmate's visit list.
<b>The type of information it does or might contain:</b>	Name, relationship, address and partial social security number of visitors.
<b>The potential for harm in any subsequent nonconsensual disclosure:</b>	Jeopardizing the privacy of those on the inmate's visit list, including possible unsolicited contact.
<b>The injury from disclosure to the relationship in which the record was generated:</b>	Individuals will not trust that the Department of Corrections will protect their privacy interest.
<b>The adequacy of safeguards to prevent unauthorized disclosure:</b>	None, there is nothing to prevent further disclosure.
<b>The degree of need for access:</b>	Requestor merely wants to discover who her child's father is "bothering" with.
<b>Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access:</b>	OPRA

The Custodian acknowledges receiving a letter from the Complainant, which stated that the Complainant feels entitled to all of the requested information because the Complainant and inmate have a child together.

The Custodian attests to sending the Complainant a letter advising that pursuant to the balancing test, there were safety and security concerns regarding the release of the inmate's visitor's list. The Custodian further attests that the Department of Corrections has concerns that the Complainant may attempt unsolicited contact with individuals on

<sup>6</sup> See also Rich Berstein v. Borough of Wallington, GRC Complaint No. 2005-01, Final Decision (April 2005).

the visitor's list, due to the past behavior and recent explanation of why the Complainant wanted the visitor's list information.

Inmate's Criminal Record of Offenses.

The Custodian asserts that the Department of Corrections' proposed regulations, which are valid pursuant to Executive Order 21 (McGreevey 2002), prohibit the disclosure of a criminal history.

The Custodian asserts that under Executive Order 21 (McGreevey 2002), an agency's proposed rules pertaining to OPRA are considered viable prior to their adoption, which is a deviation from the rule promulgation procedures outlined under the Uniform Administrative Procedures Act, N.J.S.A. 52:14B-1 et. seq. The Superior Court Law Division has previously found that Executive Order 26 (McGreevey 2002), paragraph 6, continues to permit a department or agency within State Government to adopt rules and regulations prior to its final adoption. Therefore, pursuant to Paragraph 4 of Executive Order 21 (McGreevey 2002), public "agencies are hereby directed to handle all government records requests in a manner consistent with the rules as they have been proposed and published..." Thus, an agency's proposed regulations are viable and a custodian may rely on the agency's proposed regulations when determining how to respond to an OPRA request.<sup>7</sup>

The Custodian further asserts that the Department of Corrections' proposed rules state:

N.J.A.C. 10A:22-3.2. Records designated confidential

(a)(7) Comprehensive criminal history information ("rap sheet")

[Department of Corrections/Office of the Commissioner, Proposed Amendments: N.J.A.C. 10A:1-1.4 through 31-6.13, PRN 2002-228, July 1, 2002].

The Custodian states that pursuant to the proposed regulations, which have been deemed valid and in effect by an Executive Order, an inmate's criminal history is not a public record subject to disclosure under OPRA.

The Custodian also states that pursuant to Executive Order 26 (McGreevey 2002) Paragraph 4.d., "public records" does not include any records of a department or agency in the possession of another department or agency when those records are made confidential by regulation of that department or agency. The Custodian attests that in this case, an individual's criminal history is a State Police document that has been deemed confidential pursuant to the New Jersey Administrative Code. N.J.A.C. 13:59-1.2 prohibits disclosure of a person's criminal history except to governmental entities of the State, federal government, for official purposes; a person or non-governmental entity that seeks to directly engage the services of the subject; attorney-at-law licensed by any state

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<sup>7</sup> The Custodian asserts that the GRC has also followed this decision. See e.g., Vazquez v. Burlington County Custodian of Record, GRC Complaint No. 2005-193, Final Decision (February 2006).

for use in any contested docketed matter; private detectives licensed by the New Jersey Division of State Police, for the purposes of obtaining information in furtherance of the performance of their statutorily authorized functions; or to the individual named in the history. The Custodian further attests that the Complainant does not fall under any of these categories of persons or entities, and therefore, the State Police regulation prohibits dissemination of the inmate's criminal history. The Custodian then referenced to a prior GRC decision, Westfield Leader v. New Jersey Division of State Police, GRC Complaint No. 2004-152, Final Decision (July 2005).

Items Ordered by Inmate from Prison Commissary and Balance in Account.

The Custodian states that the Complainant's request for a copy of items ordered from the inmate commissary, as well as the amount of money in the inmate's account, are not disclosable public records pursuant to OPRA. The Custodian attests that inmate commissary purchases are not maintained according to individual inmates. Rather, the purchases are maintained according to date of purchase. The Custodian states, therefore, that it would require extensive research, including the review of every day's records, in order to determine whether the inmate had ordered any items on that particular day. The Custodian also states that the request could have been denied because to the extent any records were identified, it requires extensive research and compilation to determine whether the Department of Corrections had any records responsive to the request.

The Custodian states that the Appellate Division ruled that under OPRA, agencies are required to disclose only "identifiable" governmental records not otherwise exempt. Wholesale requests for general information to be analyzed, collated and compiled by the responding government entity are not encompassed therein. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). The Custodian states therefore, the Complainant has not identified the records being sought, e.g., the commissary list for a particular day, but rather the Complainant is requesting wholesale information.

Inmate's Work Record in Prison, Type of Work and Wages.

The Custodian asserts that the Complainant's request for the inmate's work record, type of work, and wages are not public records pursuant to disclosure under OPRA. The Custodian asserts that pursuant to Executive Order 26 (McGreevey 2002) any information "describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness" is not a public record subject to disclosure under OPRA.

Offenses Committed in Prison by Inmate.

The Custodian asserts that the request for any offenses committed in prison is a request for information, not a specific record. The Custodian asserts that upon further review of this matter, the Custodian determined that the inmate has not committed any disciplinary infractions while incarcerated. Therefore, the Custodian asserts that the Department of Corrections does not have any records responsive to the request for any offenses committed by the inmate in prison.

Further, the Custodian attests that Special Investigation Division reports (which details offenses) are confidential and will not be provided to the Complainant, but should the GRC wish to review the reports, the Department of Corrections will provide them for an *in camera* review.

### **October 17, 2006**

Letter from the GRC to the Complainant. The GRC stated it needed to ascertain the degree of need for access from the Complainant. Therefore, the GRC asked the Complainant the following questions:

1. Why do you need the requested record(s) or information?
2. How important is the requested record(s) or information to you?
3. Do you plan to redistribute the requested record(s) or information?  
Will you use the requested record(s) or information?

### **October 30, 2006**

Second letter from the GRC to the Complainant regarding the Complainant's need for access sent via certified mail.

### **November 29, 2006**

Letter from the Complainant to the GRC. The Complainant provided the following answers to the GRC's questions request regarding her need for access as follows:

<b>Questions</b>	<b>Complainant's Response</b>
<b>Why do you need the requested record(s) or information?</b>	The Complainant wishes to see the names on the list in order to know who visits the inmate.
<b>How important is the requested record(s) or information to you?</b>	The information is very important to the Complainant.
<b>Do you plan to redistribute the requested record(s) or information?</b>	The Complainant will not redistribute the information.
<b>Will you use the requested record(s) or information for unsolicited contact of the individuals named on the list?</b>	The Complainant will not use the information to make unsolicited contact with any individuals on the list.

## **Analysis**

## Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

OPRA also provides that:

“...a public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy...” N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA states that:

“...[t]he provisions of this act shall no abrogate any exemption of a public record or government record from public access heretofore 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-1.9.a.

Executive Order 21 also provides that:

“[i]n light of the fact that State departments and agencies have proposed rules exempting certain government records from public disclosure, and these regulations have been published for comment, but cannot be adopted prior to the effective date of OPRA, State agencies are hereby directed to handle all government records requests in a manner consistent with the rules as they have been proposed and published, and the records exempted from disclosure by those proposed rules are exempt from disclosure by this Order...” (McGreevey 2002).

Executive Order 26 provides that:

“...[t]he following records shall not be considered to be government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:... “information describing a natural person’s finances, income, assets, liability, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed.” (McGreevey 2002).

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

The Complainant asserts completing the OPRA request form on March 28, 2006, and receiving a response from the Custodian on April 4, 2006. The Complainant also asserts that the requested information should be provided because the inmate is the father of the Complainant’s child.

The Custodian certifies receiving the original request on March 28, 2006, and responding on April 4, 2006 within the time frame mandated under OPRA.

#### Inmate’s Visitors List.

The Custodian asserts that as to the Complainant’s request for the inmate’s visit list, the Custodian is unable to fulfill the request without further information due to the privacy issues implicated in the release of an inmate’s visitors list. The Custodian states that she had some concerns about releasing the visitors list to the Complainant, and that the release of this list may result in the Complainant’s unsolicited contact with individuals on the visit list. The Custodian further states that this concern is due to the fact that on several occasions during the inmate’s incarceration, the Complainant has contacted the Department of Corrections’ custody staff to request special visits with the inmate, to inquire about why the visits were denied, and to obtain information about with whom the inmate has visits. The Custodian states that when the staff would not provide the Complainant with the requested information, the Complainant would become angry and verbally abusive toward the staff.

The Custodian also asserts that an inmate’s visit list is a list of visitors submitted by the inmate to the Department of Corrections pursuant to N.J.A.C. 10A:18-6.2, which has been approved by the Administrator pursuant to N.J.A.C. 10A:18-6.3. Therefore, the Custodian asserts that this request was properly denied because the privacy interest of any individuals named on the list outweighs the requestor’s interest in obtaining the information.

The Custodian attests that in Merino v. Ho-Ho-Kus, GRC Complaint No. 2003-121 (Feb. 18, 2004), the GRC addressed a citizen’s reasonable expectation of privacy



pursuant to OPRA, finding that the New Jersey Appellate Division has held that the GRC must enforce OPRA's declaration to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy.<sup>8</sup> Serrano v. South Brunswick Township, 358 N.J. Super. 352, 368-369 (App. Div. 2003). The Custodian also attests that the New Jersey Supreme Court has indicated that privacy interests are affected where the disclosure of a person's address results in unsolicited contact, indicating that significant privacy concerns are raised where disclosure of the addresses "can invite unsolicited contact or intrusion based on the revealed information." Doe v. Portiz, 142 N.J. 1, 82 (1995). In conducting a balancing test, the Supreme Court ruled that the following factors should be considered:

<b>Questions</b>	<b>Custodian's Response</b>
<b>Type of record request:</b>	Name and relationship of visitors on inmate's visit list.
<b>The type of information it does or might contain:</b>	Name, relationship, address and partial social security number of visitors.
<b>The potential for harm in any subsequent nonconsensual disclosure:</b>	Jeopardizing the privacy of those on the inmate's visit list, including possible unsolicited contact.
<b>The injury from disclosure to the relationship in which the record was generated:</b>	Individuals will not trust that the Department of Corrections will protect their privacy interest.
<b>The adequacy of safeguards to prevent unauthorized disclosure:</b>	None, there is nothing to prevent further disclosure.
<b>The degree of need for access:</b>	Requestor merely wants to discover who her child's father is "bothering" with.
<b>Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access:</b>	OPRA

The Custodian did not unlawfully deny the Complainant access to the inmate's visitors list pursuant to N.J.S.A. 47:1A-1, which states that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy..." In a prior GRC decision, the Council found that the requested records should not be disclosed based on the specific facts in the

<sup>8</sup> See also Rich Bernstein v. Borough of Wallington, GRC Complaint No. 2005-01, Final Decision (April 2005).

case. In that case, the Complainant requested a list of all homeowners who took out a fire alarm and/or burglar alarm permit in the last 3 years. The Council considered the balancing test and found that the potential for harm to both those citizens who have applied for a burglar or fire alarm in the past three years, as well as those who have not outweighed the requestor's need for access, and that release of the names and home addresses would result in unsolicited contact between the Complainant and the individuals whose names and home addresses are being requested. See Avin v. Borough of Ramsey, GRC Complaint No. 2004-181 (March 2005).

Here, the Custodian made a certified statement that the Complainant wanted to know if the inmate is "bothering" with another female and asked, "isn't it my right?" Considering the facts of this case, there may be a possibility that unsolicited contact would occur between the Complainant and the individuals of the requested list. Therefore, the Custodian did not unlawfully deny access to the requested records pursuant to N.J.S.A. 47:1A-1 and Avin v. Borough of Ramsey, GRC Complaint No. 2004-181 (March 2005), due to the privacy interests implicated and the possibility that unsolicited contact would occur between the Complainant and the individuals on the requested list.

#### Inmate's Criminal Record of Offenses.

The Custodian asserts that as to the Complainant's request for the inmate's record of criminal offenses, the Department of Corrections' proposed regulations, which are valid pursuant to Executive Order 21 (McGreevey 2002), prohibit the disclosure of a criminal history.

The Custodian asserts that under Executive Order 21 (McGreevey 2002), an agency's proposed rules pertaining to OPRA are considered viable prior to their adoption, which is a deviation from the rule promulgation procedures outlined under the Uniform Administrative Procedures Act, N.J.S.A. 52:14B-1 et. seq. The Superior Court Law Division has previously found that Executive Order 26 (McGreevey 2002), paragraph 6, continues to permit a department or agency within State Government to adopt rules and regulations prior to its final adoption. Therefore, pursuant to Paragraph 4 of Executive Order 21, public "agencies are hereby directed to handle all government records requests in a manner consistent with the rules as they have been proposed and published..." Thus, an agency's proposed regulations are viable and a custodian may rely on the agency's proposed regulations when determining how to respond to an OPRA request.<sup>9</sup>

The Custodian further asserts that the Department of Corrections' proposed rules state:

N.J.A.C. 10A:22-3.2. Records designated confidential

(a)(7) Comprehensive criminal history information ("rap sheet")

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<sup>9</sup> The Custodian asserts that the GRC has also followed this decision. See e.g., Vazquez v. Burlington County Custodian of Record, GRC Complaint No. 2005-193, Final Decision (February 2006).

[Department of Corrections/Office of the Commissioner, Proposed Amendments: N.J.A.C. 10A:1-1.4 through 31-6.13, PRN 2002-228, July 1, 2002].

The Custodian states that pursuant to the proposed regulations, which have been deemed valid and in effect by an Executive Order, an inmate's criminal history is not a public record subject to disclosure under to OPRA.

The Custodian also states that pursuant to Executive Order 26 (McGreevey 2002) Paragraph 4.d., "public records" does not include any records of a department or agency in the possession of another department or agency when those records are made confidential by regulation of that department or agency. The Custodian attests that in this case, an individual's criminal history is contained in a State Police document that has been deemed confidential pursuant to the Code. N.J.A.C. 13:59-1.2 prohibits disclosure of a person's criminal history except to governmental entities of the State, federal government, for official purposes; a person or non-governmental entity that seeks to directly engage the services of the subject; attorney-at-law licensed by any state for use in any contested docketed matter; private detectives licensed by the New Jersey Division of State Police, for the purposes of obtaining information in furtherance of the performance of their statutorily authorized functions; or to the individual named in the history. The Custodian further attests that the Complainant does not fall under any of these categories of persons or entities, and therefore, the State Police regulation prohibits dissemination of the inmate's criminal history. The Custodian then referenced to a prior GRC decision, Westfield Leader v. New Jersey Division of State Police, GRC Complaint No. 2004-152, Final Decision (July 2005).

The Custodian did not unlawfully deny the Complainant access to the inmate's criminal records pursuant to Executive Order 21, which states that "...State departments and agencies have proposed rules exempting certain government records from public disclosure, and these regulations have been published for comment, but cannot be adopted prior to the effective date of OPRA, State agencies are hereby directed to handle all government records requests in a manner consistent with the rules as they have been proposed and published..." The Department of Corrections' proposed rule N.J.A.C. 10A:22-3.2 designates these records to be confidential. In the prior GRC decision Buttimore v. NJ Department of Law & Public Safety, GRC Complaint No. 2005-92 (March 2006), the Council found that pursuant to N.J.S.A. 47:1A-9.a, N.J.A.C. 13:1E-3.2(a)5 and the unpublished decision in Newark Morning Ledger Co., Publisher of the Star-Ledger v. Division of the State Police of the New Jersey Department of Law and Public Safety, Superior Court of New Jersey, Law Division - Mercer County, Docket No.: MER-L-1090-05 (Decided July 5, 2005), the proposed rule exempting the interview recommendation report from being disclosed pursuant to OPRA does apply.

Thus, according to Buttimore v. NJ Department of Law & Public Safety, GRC Complaint No. 2005-92 (March 2006), the Custodian did not unlawfully deny access to the requested records because the Department of Corrections' proposed OPRA rules are valid and exempt those records from public access.

Items Ordered by Inmate from Prison Commissary and Balance in Account.

The Custodian states that the Complainant's request for a copy of items ordered from the inmate commissary, as well as the amount of money in the inmate's account are not disclosable public records pursuant to OPRA. The Custodian attests that inmate commissary purchases are not maintained according to individual inmates. Rather, the purchases are maintained according to date of purchase. The Custodian states, therefore, that it would require extensive research, including the review of every day's records, in order to determine whether the inmate had ordered any items on that particular day. The Custodian also states that the request could have been denied because to the extent any records were identified, it requires extensive research and compilation to determine whether the Department of Corrections had any records responsive to the request.

The Custodian states that the Appellate Division ruled that under OPRA, agencies are required to disclose only "identifiable" governmental records not otherwise exempt. Wholesale requests for general information to be analyzed, collated and compiled by the responding government entity are not encompassed therein. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). The Custodian states, therefore, the Complainant has not identified the records being sought, e.g., the commissary list for a particular day, but rather the Complainant is requesting wholesale information.

The Custodian did not unlawfully deny the Complainant access to a copy of items ordered by the inmate from the prison commissary, as well as the amount of money in the inmate's account. The New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.*" (Emphasis added.) Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534, 546 (March 2005). The Court further held that "[u]nder OPRA, agencies are required to disclose only "identifiable" government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

In this complaint, the Complainant has not requested identifiable government records. Therefore, the Complainant's request is not a valid OPRA request. In a prior GRC decision, the Council found that the Custodian provided a lawful reason for the denial of access pursuant to the Custodian's burden of proof obligation established and mandated under N.J.S.A. 47:1A-6. The Council upheld that OPRA "is not intended as a research tool...to force government officials to identify and siphon useful information..." Therefore, the agency is not required to perform research to trace documents. See Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006).

Thus, according to Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006), the Custodian did not unlawfully deny access to the requested records because the Complainant did not request identifiable government records.

Inmate's Work Record in Prison, Type of Work and Wages.

The Custodian asserts that the Complainant's request for the inmate's work record, type of work and wages are not public records pursuant to disclosure under OPRA. The Custodian asserts that pursuant to Executive Order 26 (McGreevey 2002) any information "describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness" is not a public record subject to disclosure under OPRA.

The Custodian did not unlawfully deny the Complainant access to the inmate's wages pursuant to Executive Order 26. Pursuant to Paragraph 4 of Executive Order 26, such information is exempt from disclosure.

However, the Custodian unlawfully denied the Complainant access to the inmate's work record and type of work. There is no applicable disclosure exemption for this information provided in OPRA. Thus, the Custodian did not bear her burden of proof for such denial pursuant to N.J.S.A. 47:1A-6.

Offenses Committed in Prison by Inmate.

The Custodian asserts that the request for any offenses committed in prison is a request for information, not a specific record. The Custodian asserts that upon further review of this matter, the Custodian determined that the inmate has not committed any disciplinary infractions while incarcerated. Further, the Custodian certified that the Department of Corrections does not have any records responsive to the request for records identifying any offenses the inmate committed in prison.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

8. The Custodian did not unlawfully deny access to the inmate's visitors list pursuant to N.J.S.A. 47:1A-1 and Avin v. Borough of Ramsey, GRC Complaint No. 2004-181 (March 2005), due to the privacy interests implicated and the possibility that unsolicited contact would occur between the Complainant and the individuals on the requested list.
9. According to Buttimore v. NJ Department of Law & Public Safety, GRC Complaint No. 2005-92 (March 2006), the Custodian did not unlawfully deny access to the inmate's criminal record of offenses because the Department of Corrections' proposed OPRA rules are valid and exempt those records from public access.

10. According to Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006), the Custodian did not unlawfully deny access to the items ordered by the inmate from the prison commissary and the balance in the inmate's commissary account because the Complainant did not request identifiable government records.
11. The Custodian did not unlawfully deny the Complainant access to the inmate's prison work wages pursuant to Executive Order 26. Pursuant to Paragraph 4 of Executive Order 26, "information 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" are exempt from disclosure.
12. The Custodian unlawfully denied the Complainant access to the inmate's work record and type of work. There is no applicable disclosure exemption for this information provided in OPRA. Thus, the Custodian did not bear her burden of proof for such denial pursuant to N.J.S.A. 47:1A-6. **Therefore, the Custodian shall provided the inmate's work record and type of work to the Complainant within five (5) business days from receipt of the Council's Interim Order, and simultaneously provide certified confirmation of compliance to the Executive Director.**
13. The Custodian certified that the Department of Corrections does not have any records responsive to the offenses committed in prison by the inmate identifying any offenses the inmate committed in prison.
14. **The Custodian shall comply with "5." above within five (5) business days from receipt of this Interim Order and simultaneously provide certified confirmation of compliance to the Executive Director.**

Prepared By:

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Approved By:

Catherine Starghill, Esq.  
Executive Director

January 24, 2007