



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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VINCENT P. MALTESE, Chairman
COMMISSIONER SUSAN BASS LEVIN
ACTING COMMISSIONER LUCILLE DAVY
ROBIN BERG TABAKIN
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

April 25, 2007 Government Records Council Meeting

Darryl Conquest
Complainant

Complaint No. 2007-75

v.

NJ Department of Corrections
Custodian of Record

At the April 25, 2007 public meeting, the Government Records Council (“Council”) considered the April 18, 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 the Custodian did not unlawfully deny the Complainant access to the record requested because the evidence shows that the requested record is not made, maintained or kept on file by the New Jersey Department of Corrections. N.J.S.A. 47:1A-1.1.

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 25th Day of April, 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, Secretary
Government Records Council

Decision Distribution Date: May 1, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 25, 2007 Council Meeting**

**Darryl Conquest¹
Complainant**

GRC Complaint No. 2007-75

v.

**New Jersey Department of Corrections²
Custodian of Records**

Records Relevant to Complaint: The Complainant's Sentencing Statement given by Judge Greenberg on June 1, 1976.

Request Made: February 26, 2007

Response Made: February 28, 2007

Custodian: Michelle Hammel

GRC Complaint Filed: March 8, 2007

Background

February 26, 2007

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the record relevant to this complaint listed above.

February 28, 2007

Custodian's response to the OPRA request. The Custodian responded to the Complainant's OPRA request on the second (2nd) business day following receipt of such request.³ The Custodian denies the request for records because the records requested are not made, maintained, or kept on file by the New Jersey Department of Corrections.

March 8, 2007

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching a letter from the Custodian to the Complainant dated February 28, 2007.

The Complainant declares that the record requested is a public record and should be provided to the Complainant.

¹ No attorney is listed in the file.

² DAG Lisa Puglisi, on behalf of the NJ Attorney General.

³ This letter was erroneously addressed to a Mr. Abdul-Aziz, although the Complainant's correct State Bureau of Identification ("SBI") number was listed on the letter. There is no dispute that Complainant did actually receive this letter on March 1, 2007, two (2) days after the Complainant's February 26, 2007 OPRA request.

March 13, 2007

Offer of Mediation sent to both parties. The Complainant agrees to mediate this complaint. The Custodian declines mediation and requests that the GRC begin a full investigation of this complaint.

March 19, 2007

Letter from Custodian to Complainant. The Custodian again informs the Complainant that the request for his sentencing statement has been denied because the New Jersey Department of Corrections does not make, maintain or keep these records on file. The Custodian suggests that the Complainant request these records directly from the Atlantic County Criminal Courthouse in Mays Landing.

March 21, 2007

Request for the Statement of Information sent to the Custodian.

March 28, 2007

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

- Complainant's OPRA records request dated February 26, 2007,
- Letter from the Custodian to the Complainant dated February 28, 2007,
- Complainant's Payment Notification and Authorization dated March 1, 2007, and
- Letter from Custodian to Complainant dated March 19, 2007.

The Custodian certifies that the Complainant's OPRA request was answered on February 28, 2007. The Custodian certifies that she denied the Complainant's request for the judge's statement from the Complainant's hearing because the New Jersey Department of Corrections does not maintain the record requested. The Custodian certifies that upon being denied access to the requested record the Complainant was given the name of the custodial agency that maintains the record responsive so that he may request the record from said custodial agency.

Analysis

Whether the Custodian unlawfully denied access to the Complainant's Statement of Sentencing?

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.

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 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 declares that the record requested is a public record and should be provided to the Complainant.

The Custodian certifies that the Complainant’s OPRA request was answered on February 28, 2007. The Custodian certifies that the Complainant’s request for the judge’s statement at the Complainant’s hearing was denied because the New Jersey Department of Corrections does not maintain the record requested. Lastly, the Custodian certifies that upon being denied access to the requested record the Complainant was given the name of the custodial agency that maintains the record responsive so that he may request the record from said facility.

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. 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.

In the Complaint now before the GRC, the Custodian did not unlawfully deny the Complainant access to the record requested because the Custodian legally certified that the requested record is not made, maintained or kept on file at the New Jersey Department of Corrections. N.J.S.A. 47:1A-1.1.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny the Complainant access to the record requested because the evidence shows that the requested record is not made, maintained or kept on file by the New Jersey Department of Corrections. N.J.S.A. 47:1A-1.1.

Prepared By:

Rebecca Steese
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

April 18, 2007