



**State of New Jersey**  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**JON S. CORZINE**  
*Governor*

**JOSEPH V. DORIA, JR.**  
*Commissioner*

**FINAL DECISION**

**June 11, 2009 Government Records Council Meeting**

Charles X. Glenn  
Complainant

Complaint No. 2008-125]

v.

New Jersey State Parole Board  
Custodian of Record

At the June 11, 2009 public meeting, the Government Records Council (“Council”) considered the May 20, 2009 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 this complaint should be dismissed because of the Complainant’s inability to participate in the mediation process due to his death on April 14, 2009.

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 11<sup>th</sup> Day of June, 2009

Robin Berg Tabakin, Chair  
Government Records Council

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

Janice L. Kovach



Government Records Council

**Decision Distribution Date: June 16, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 11, 2009 Council Meeting**

**Charles X. Glenn<sup>1</sup>  
Complainant**

**GRC Complaint No. 2008-125**

v.

**New Jersey State Parole Board<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Audiotape copy of Complainant's March 19, 2003 State Parole Board Hearing.
2. Audiotape copy of Complainant's November 5, 2003 State Parole board Hearing.

**Request Made:** March 9, 2008

**Response Made:** April 8, 2008

**Custodian:** Thomas Renahan

**GRC Complaint Filed:** June 2, 2008<sup>3</sup>

**Background**

**March 9, 2008**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**April 8, 2009<sup>4</sup>**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the thirteenth (13<sup>th</sup>) business day following receipt of such request. The Custodian states that access to the audiotape responsive to request Item No. 1 will be made available upon the Complainant's payment of a \$200 deposit so that the New Jersey State Parole Board ("NJSPB") can create a transcript of the audiotape.

The Custodian states that access to the audiotape responsive to request Item No. 2 is denied because the audiotape recording is no longer available and cannot be provided per the Complainant's request.

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

<sup>2</sup> Represented by DAG Ellen M. Hale, on behalf of the NJ Attorney General.

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> The evidence of record shows that the Complainant's request was received by the Custodian on March 19, 2008.

**June 2, 2008**

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching a copy of the Custodian’s April 8, 2008 response.<sup>5</sup>

The Complainant states that he submitted an OPRA request to the Custodian on March 9, 2008. The Complainant states that he received the Custodian’s April 8, 2008 written response on April 9, 2008. The Complainant states that the Custodian agreed to provide access to the record requested in Item No. 1 after the Complainant paid a \$200 deposit for transcription of the audiotape, the only medium in which the NJSPB would provide access to the requested audiotape.

The Complainant asserts that the Custodian’s response is a clear violation of OPRA. The Complainant avers that audiotapes are within the definition of a government record pursuant to N.J.S.A. 47:1A-1.1. specifically as an “information stored electronically or by sound-recording or in a similar device or copy thereof that has been made, maintained or kept on file in the course of...official business...” *Id.* The Complainant contends that if the Custodian believed that the requested audiotapes were not considered government records, then the Custodian would not have offered the alternative of providing a transcript of the audiotape responsive to request Item No. 1.

The Complainant agrees to mediate this complaint.

**July 21, 2008**

Offer of Mediation sent to the Custodian.

**July 22, 2008**

The Custodian agrees to mediate this complaint.

**July 24, 2008**

Complaint referred to mediation.

**April 17, 2009**

Complaint referred back from mediation upon notification of the Complainant’s death on April 14, 2009.

**Analysis**

**Whether this complaint should be dismissed due to Complainant’s death?**

The instant complaint was referred to mediation on July 24, 2008 and referred back to the GRC on April 17, 2009 upon notification of the Complainant’s death on April 14, 2009.

N.J.S.A.47:1A-7 states that the duties of the GRC include establishing “an informal mediation program to facilitate the resolution of disputes regarding access to government records.” Additionally, OPRA provides that:

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<sup>5</sup> The Complainant re-typed the Custodian’s response in its entirety and attached a certification to the effect that it is a true copy of the Custodian’s response.

“[m]ediation shall be an *informal, nonadversarial process* having the *objective* of helping the parties reach a *mutually acceptable, voluntary agreement*. The mediator shall *assist the parties in identifying issues*, foster *joint problem solving*, and explore *settlement alternatives*.” (Emphasis added.) N.J.S.A. 47:1A-7.d.

The death of the Complainant on April 14, 2009 made reaching a “mutually acceptable, voluntary agreement” impossible due to the fact that the deceased Complainant can no longer participate in the mediation process. Therefore, this complaint should be dismissed based upon the Complainant’s inability to participate in the mediation process due to his death on April 14, 2009.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because of the Complainant’s inability to participate in the mediation process due to his death on April 14, 2009.

Prepared By: Frank F. Caruso  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

May 20, 2009