



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

FINAL DECISION

April 25, 2012 Government Records Council Meeting

Shawn Smith
Complainant

Complaint No. 2010-310

v.

New Jersey Department of Corrections
Custodian of Record

At the April 25, 2012 public meeting, the Government Records Council (“Council”) considered the April 18, 2012 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 although the New Jersey Department of Corrections has already submitted a Statement of Information, in order to prevent the unnecessary expenditure of administrative resources by the GRC to process this matter for the benefit of the parties, said complaint should be dismissed pursuant to Swindell v. New Jersey Department of Environmental Protection and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993) because the GRC cannot contact the Complainant and because the Complainant has made no attempt to contact the GRC regarding this complaint. *See also* Siddeeq v. New Jersey Department of Corrections, GRC Complaint No. 2009-182 and 2009-183 (November 2009) and Smith v. New Jersey Department of Treasury, GRC Complaint No. 2010-263 (February 2012).

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, 2012

Robin Berg Tabakin, Chair
Government Records Council



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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: April 30, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 25, 2012 Council Meeting**

**Shawn Smith¹
Complainant**

GRC Complaint No. 2010-310

v.

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

Records Relevant to Complaint:

Request dated September 16, 2010

1. Copy of N.J.S.A. 10A:4-3.1 that was given to New Jersey prisoners on January 1, 2005.
2. Copy of the Inmate Handbook given to inmates at the Bayside State Prison in January 2005.
3. Copy of prisoner excessive force complaints by prison guards at Bayside State Prison.
4. Copies of all complaints made to the New Jersey Department of Treasury related to excessive force used on inmates at Bayside State Prison on January 1, 2005, other than those complaints made by the Complainant.
5. Copies of the tort claims that were received by the Bureau of Risk Management, Tort and Contract Unit, arising from a Bayside State Prison disturbance on January 1, 2005, other than those filed by the Complainant.

Request dated October 14, 2010

1. Copies of all complaints, other than the Complainant's complaint, for an incident that occurred in trailer number 4 at the Bayside State Prison on January 1, 2005.
2. Records forwarded from Executive Robert Baals to the Cumberland County Prosecutor regarding an incident that occurred in trailer number 4 at the Bayside State Prison on January 1, 2005.
3. Copy of the records maintained by the Department of Corrections regarding an incident that occurred in trailer number 4 at the Bayside State Prison on January 1, 2005, including the names of all involved inmates and the Attorney General assigned to handle the complaints.

Request dated October 15, 2010

1. Copies of the records that list the names of all interviewed inmates regarding an incident that occurred in trailer number 4 at the Bayside State Prison on January 1, 2005.

¹ No legal representation listed on record.

² No legal representation listed on record.

2. Copies of transfer orders containing the names of all inmates who were transferred from Bayside State Prison to Trenton State prison and interviewed by the Special Investigation Division about an incident that occurred in trailer number 4 at the Bayside State Prison on January 1, 2005

Request Made: September 16, 2010, October 14, 2010 and October 15, 2010³

Response Made: October 6, 2010, October 20, 2010 and October 20, 2010

Custodian: John Falvey⁴

GRC Complaint Filed: November 23, 2010⁵

Background

September 16, 2010

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter referencing OPRA.

October 6, 2010

Custodian's response to the September 16, 2010 OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the sixth (6th) business day following receipt of such request.⁶ The Custodian states that the Custodian will need ten (10) additional business days to determine which records are responsive to the Complainant's request and to calculate any copying charges.

October 12, 2010

Letter from the Custodian to the Complainant. The Custodian informs the Complainant that the Custodian located a two (2) page record responsive to request item number 1 in the Complainant's September 16, 2010 OPRA request. The Custodian informs the Complainant that the Inmate Handbook is revised every two years and the older edition is not maintained; therefore no record responsive to request item number 2 exists. The Custodian also informs the Complainant that request item number 3 requires the Custodian to conduct research and correlate data; therefore it is not a valid OPRA request pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Custodian further informs the Complainant that request items No. 4 and No. 5 require the Custodian to conduct research and correlate data; therefore they are not valid OPRA requests pursuant to MAG, *supra*; moreover, the Custodian states that the requests are also denied because inmates are not permitted to obtain records of other inmates. The Custodian informs the Complainant that the total for copying charges is \$0.10 and that once the Complainant remits payment for copying charges, the Custodian will disclose the records responsive to request item number 1.

³ The Complainant also included an OPRA request dated September 17, 2010; however, that same request was the request that formed the basis for GRC Complaint No. 2010-278

⁴ Deirdre Fedkenheuer was the Custodian at the time the Complaint was filed.

⁵ The GRC received the Denial of Access Complaint on said date.

⁶ The Custodian certifies in the Statement of Information that the Custodian received the Complainant's OPRA request on September 28, 2010.

October 14, 2010

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter not referencing OPRA.

October 15, 2010

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter not referencing OPRA.

October 20, 2010

Records Request Payment Notification and Authorization sent from the Custodian to the Complainant. The Records Request Payment Notification and Authorization acknowledges payment for copying charges from the Complainant to the Custodian in the amount of \$0.10 for request item No. 1 of the Complainant's September 16, 2010 request and also serves as a transmittal form for disclosing the requested records from the Custodian to the Complainant.

October 20, 2010

Custodian's response to the October 14, 2010 OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the same day the Custodian received the request.⁷ The Custodian states that Complainant's request items No. 1 and No. 3 are denied because inmates are not permitted to obtain records of other inmates and also because the request is overly broad and does not specifically identify a government record pursuant to MAG, *supra*. The Custodian further states that Complainant's request item No. 2 is denied because the request is overly broad and does not specifically identify a government record pursuant to MAG, *supra*.

October 20, 2010

Custodian's response to the October 15, 2010 OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the same day the Custodian received the request.⁸ The Custodian states that request items No. 1 and No. 2 are denied because inmates are not permitted to obtain records of other inmates and that the request is overly broad and does not specifically identify a government record pursuant to MAG, *supra*.

November 23, 2010

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching the Custodian's letter to the Complainant dated October 14, 2010.⁹

The Complainant states that he was denied records on numerous occasions. The Complainant states that the Custodian denied him access to request item Nos. 1, 2, 3, 5

⁷ The Custodian certifies in the Statement of Information that the Custodian received the Complainant's OPRA request on October 20, 2010.

⁸ The Custodian certifies in the Statement of Information that the Custodian received the Complainant's OPRA request on October 20, 2010.

⁹ The Complainant also attached a written response to an OPRA request from the New Jersey Department of Treasury to the Complainant dated September 1, 2010, but said written response is not relevant to this complaint.

and 8. The Complainant states that he is “getting the runaround.” The Complainant asserts that the Custodian is not authorized to decide which records may be disclosed and which records may be denied. The Complainant cites to Kuehne Chemical Company v. North Jersey District Water Supply Commission, 300 N.J. Super. 433 (App. Div. 1997), in support of his assertion which the Complainant quotes as holding that “[t]he law does not allow for the custodian to judge what should be disclosed and New Jersey has (sic) tradition of openness and hostility to secrecy in government and public policy favors access to sufficient information to enable (sic) public to understand and evaluate reasonableness of public bodies (sic) action.”

The Complainant next argues that the Custodian unlawfully withheld from disclosure request item No. 4 under N.J.S.A. 47:1A-10. The Complainant asserts that this section of OPRA has an exception for the date of a person’s separation, as well as the reason for separation. The Complainant contends that Administrator Greg Bartowski was separated from his position at Bayside State Prison and reassigned to Mountainview Correctional Facility; therefore, the Complainant contends that the Custodian should have disclosed the requested records to him.

The Complainant contends that request items No. 6 and No. 7 do exist and are government records that should have been disclosed.¹⁰

The Complainant agrees to mediate this complaint.

April 6, 2011

Offer of Mediation sent to the Custodian; the Custodian did not respond to the Offer of Mediation.

April 6, 2011

E-mail from the GRC to the Custodian. The GRC informs the Custodian that the Complainant failed to attach copies of his OPRA requests to his complaint and asks the Custodian to provide the GRC with copies of the requests if the Custodian has said requests on file.

April 7, 2011

Facsimile from the Custodian to the GRC. The Custodian sends the GRC copies of the Complainant’s OPRA requests which formed the basis of the Complainant’s complaint.

March 6, 2012

Request for the Statement of Information (“SOI”) sent to the Custodian.

March 13, 2012

Custodian’s SOI with the following attachments:

¹⁰ The Complainant does not address the Custodian’s denial of the records in request item number 9. The Complainant also argues that his OPRA request made to the New Jersey Department of Treasury (Agency Request No. C52794) was unlawfully denied; however, that OPRA request did not form the basis for the instant complaint, and as such, will not be analyzed herein.

- Complainant's OPRA request dated September 16, 2010
- Custodian's response to the OPRA request dated October 6, 2010
- Letter from the Custodian to the Complainant dated October 12, 2010
- Complainant's OPRA request dated October 14, 2010
- Complainant's OPRA request dated October 15, 2010
- Records Request Payment Notification and Authorization dated October 20, 2010
- Custodian's response to the OPRA request dated October 20, 2010
- Custodian's response to the OPRA request dated October 20, 2010

The Custodian certifies that no search was required to locate the records disclosed to the Complainant and that no search was necessary for all other records determined to be responsive to the Complainant's request because those records were lawfully denied. The Custodian certifies that inmate complaints are destroyed ten (10) years after the Department of Corrections jurisdiction ends, incident reports are destroyed after three (3) years, litigation records are destroyed after final disposition, and Inmate Handbooks are destroyed when superseded by revised editions in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that the Custodian received the Complainant's September 16, 2010 OPRA request on September 28, 2010. The Custodian further certifies that the Custodian sent a written response to the Complainant on October 6, 2010, wherein the Custodian informed the Complainant that the Custodian would need ten (10) additional business days to determine which records might be responsive to the Complainant's request and to calculate any copying charges. The Custodian certifies that the Custodian subsequently sent a letter to the Complainant dated October 12, 2010, wherein the Custodian informed the Complainant that the record responsive to request item No. 1 contained two (2) pages and would therefore cost the Complainant \$0.10 for copying charges. The Custodian certifies that the Custodian informed the Complainant that once the Complainant remitted payment for the copying charges, the Custodian would disclose said records.¹¹ The Custodian certifies that the Inmate Handbook is revised every two years and the older edition is not maintained; therefore the Custodian certifies the Custodian informed the Complainant that no record responsive to request item No. 2 exists. The Custodian also certifies that the Custodian informed the Complainant that request item No. 3 requires the Custodian to conduct research and correlate data; therefore it is not a valid OPRA request pursuant to MAG, *supra*. The Custodian further certifies that the Custodian informs the Complainant that request item Nos. 4 and 5 requires the Custodian to conduct research and correlate data; therefore they are not valid OPRA requests pursuant to MAG, *supra*. The Custodian certifies that the Custodian informed the Complainant that the record was also denied because inmates are not permitted to obtain records of other inmates.¹²

The Custodian certifies that the Complainant authorized payment for copying two (2) pages of records responsive to request item No. 1 of the Complainant's September 16,

¹¹ The Custodian certified in the SOI that the record responsive to request item number 1 was information from *N.J.A.C. 10A:4-3.1*, not *N.J.S.A. 10A:4-3.1* as stated by the Complainant.

¹² The Custodian certified in the SOI that, with respect to the records responsive to request items number 4 and 5, *N.J.A.C. 10A:22-2.3(b)* prohibits inmates from obtaining records of other inmates.

2010 OPRA request. The Custodian further certifies that the Custodian disclosed said records to the Complainant on October 20, 2010.

The Custodian certifies that the Custodian received the Complainant's October 14, 2010 OPRA request on October 20, 2010. The Custodian further certifies that the Custodian sent a written response to the Complainant on October 20, 2010, wherein the Custodian informed the Complainant that request item Nos. 1 and 3 are denied because inmates are not permitted to obtain records of other inmates and also because the request is overly broad and does not specifically identify a government record pursuant to MAG, *supra*. The Custodian also certifies that the Custodian informed the Complainant that request item No. 2 is denied because the request is overly broad and does not specifically identify a government record pursuant to MAG, *supra*.

The Custodian certifies that the Custodian received the Complainant's October 15, 2010 OPRA request on October 20, 2010. The Custodian certifies that the Custodian sent a written response to the Complainant on October 20, 2010, wherein the Custodian informed the Complainant that request items request item Nos. 1 and 2 are denied because inmates are not permitted to obtain records of other inmates and because the request is overly broad and does not specifically identify a government record pursuant to MAG, *supra*.

December 9, 2011¹³

Letter from the GRC to the Complainant. The GRC states that it recently sent the Complainant correspondence that was returned to the GRC as undeliverable. The GRC states that according to DOC's records, the Complainant was released from Southwoods State Prison on April 21, 2011.

The GRC requests that the Complainant advise whether the GRC can continue to contact him at his previous address. The GRC states that as an alternative, the Complainant may provide a new current address.

December 28, 2011¹⁴

The GRC's letter to the Complainant dated December 9, 2011 is returned for insufficient address and failure to forward.

Analysis

Whether the Council should dismiss this complaint?

OPRA provides that:

“[t]he Government Records Council shall...receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian...” N.J.S.A. 47:1A-7.b.

¹³ See Smith v. New Jersey Department of Treasury, GRC Complaint No. 2010-263 (February 2012).

¹⁴ See Smith v. New Jersey Department of Treasury, GRC Complaint No. 2010-263 (February 2012).
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The GRC has attempted to contact the Complainant with no success at the only two (2) addresses for the Complainant known by the GRC and the Department of Corrections.

In Swindell v. New Jersey Department of Environmental Protection and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993), the petitioner appealed the assessment of a penalty pursuant to the Waterfront Development Statute. In response to said appeal, the Office of Administrative Law scheduled a mandatory early settlement conference at which the petitioner failed to appear. In the Administrative Law Judge's ("ALJ") Initial Decision, the ALJ found that:

“[a]fter having given petitioner Swindell every opportunity to contact either the deputy attorney general or this tribunal to afford an explanation for his nonappearance and noncontact regarding this matter subsequent to the filing of his appeal, I **FIND** that petitioner Swindell has unilaterally disregarded his obligations in this matter even though it was he who initiated the process in the first instance. In the process, I **FIND** that petitioner Swindell has, for reasons unknown to this tribunal, caused the expenditure of unnecessary funds in order to prepare for a defense of his appeal, as well as the administrative costs generated at the Office of Administrative Law in order to process this matter for the benefit of the parties.” *Id.*

Similarly in this complaint, the GRC has made several attempts to contact the Complainant with no success and the Complainant has failed to make any attempt to contact the GRC as requested.

Therefore, although the Department of Corrections has already submitted an SOI, in order to prevent the unnecessary expenditure of administrative resources by the GRC to process this matter for the benefit of the parties, said complaint should be dismissed pursuant to Swindell, supra, because the GRC cannot contact the Complainant and because the Complainant has made no attempt to contact the GRC regarding this complaint. *See also* Siddeeq v. New Jersey Department of Corrections, GRC Complaint No. 2009-182 and 2009-183 (November 2009) and Smith v. New Jersey Department of Treasury, GRC Complaint No. 2010-263 (February 2012).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that, although the New Jersey Department of Corrections has already submitted a Statement of Information, in order to prevent the unnecessary expenditure of administrative resources by the GRC to process this matter for the benefit of the parties, said complaint should be dismissed pursuant to Swindell v. New Jersey Department of Environmental Protection and Energy, Bureau of Coastal and Land Use Enforcement, OAL Docket No. ESA 5675-92 (Initial Decision 1993) because the GRC cannot contact the Complainant and because the Complainant has made no attempt to contact the GRC regarding this complaint. *See also* Siddeeq v. New Jersey Department of Corrections, GRC Complaint No. 2009-182

and 2009-183 (November 2009) and Smith v. New Jersey Department of Treasury, GRC
Complaint No. 2010-263 (February 2012).

Prepared By: John E. Stewart, Esq.

Approved By: Catherine Starghill, Esq.
Executive Director

April 18, 2012