



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
Commissioner

FINAL DECISION

June 25, 2013 Government Records Council Meeting

Walter A. Tormasi
Complainant

Complaint No. 2012-206 and 2012-207

v.

New Jersey Department of Corrections
Custodian of Record

At the June 25, 2013 public meeting, the Government Records Council ("Council") considered the June 18, 2013 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's response to request item Nos. 2, 3 and 4, advising that he would not address same since access to the responsive record was previously granted, implicated the Council's holding in Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006). However, because the Custodian further advised that he would disclose the responsive record upon payment of the appropriate copy costs, the Custodian did not unlawfully deny access to said record because he is not required to disclose same until receipt of payment. Reid v. NJ Department of Corrections, GRC Complaint No. 2010-83 (October 2011); Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
2. The Custodian initially responded in writing advising that no records responsive to request item Nos. 6, 7 and 8 existed. The Custodian also certified in the SOI that the OPRA Liaison for NJSP could not locate any records, thus no records responsive exist. Moreover, since there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. Because request item No. 9 failed to identify the specific government records sought and would have forced the Custodian to research his records in order to locate any documents meeting the criterion set forth in said requests, the Complainant's request item is overly broad and invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No.



2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to any records. N.J.S.A. 47:1A-6.

4. The Custodian has borne his burden of proving that the records responsive to the Complainant's May 11, May 12 and May 13 OPRA requests (item Nos. 1 and 5) and the May 18, 2012 OPRA request, are exempt from disclosure as "... emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein." N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. The Council need not determine whether the other exemptions cited by the Custodian apply since the records are exempt under OPRA.

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 June, 2013

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

Steven Ritardi, Esq., Acting Chair
Government Records Council

Decision Distribution Date: June 27, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 25, 2013 Council Meeting**

**Walter A. Tormasi¹
Complainant**

GRC Complaint Nos. 2012-206 and 2012-207²

v.

**New Jersey Department of Corrections³
Custodian of Records**

Records Relevant to Complaint: Hardcopies via U.S. mail of:⁴

May 11, 2012 OPRA request: All New Jersey State Prison (“NJSP”) “Traffic Control Logs” issued every Friday in 2007 and 2008.

May 12, 2012 OPRA request:

1. All Logician Electronic Medical Record (“EMR”) software manuals.
2. All manuals regarding the New Jersey Department of Corrections’ (“DOC”) EMR system, including all manuals for all programs interfaced with said EMR system such as ITAG manuals.
3. All EMR policies and procedures.

May 13, 2012 OPRA request:

1. All NJSP operating procedures regarding Traffic Control.
2. All NJSP operating procedures for scheduling inmates for medical appointments including, but not limited to, scheduling methods, criterion for scheduling priority and identification of staff having scheduling authority.
3. All NJSP operating procedures for bypassing “Traffic Control Logs” including procedures for bypassing through hospital passes (including Forms M-7 and M-90), through telephone calls to Traffic Control and housing officers, and through other methods.
4. All policies and procedures regarding Forms G-73, M-7 and M-90.
5. Documents indicating that medical personnel including Ms. Lucile Roach were authorized to issue, or cause to be issued, Forms G-73, M-7 and M-90.

¹ No legal representation listed on record.

² The GRC has consolidated these complaints for adjudication because of the commonality of the parties and issues herein.

³ John Falvey, Esq., Custodian of Records. No legal representation listed on record.

⁴ The Complainant’s May 11, May 12 and May 13, 2012 OPRA requests are the subject of GRC Complaint No. 2012-207. The Complainant’s May 18, 2012 OPRA request is the subject of GRC Complaint No. 2012-206.

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May 18, 2012 OPRA request:

1. All medical tracking and staging logs/rosters memorializing requests for optometry care at NJSP in 2007 and 2008.
2. All scheduling requests, scheduling lists, scheduling rosters and scheduling forms (including G-73 forms) submitted by Ms. Roach at NJSP in 2007 and 2008.
3. All policies and procedures for escorting close-custody inmates to medical appointments at NJSP.

Request Made: May 11, 2012, May 12, 2012, May 13, 2012 and May 18, 2012

Response Made: June 1, 2012 and June 8, 2012

GRC Complaint Filed: July 5, 2012⁵

Background⁶

Request and Response:

May 11, May 12, and May 13, 2012 OPRA requests:

On May 11, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) seeking the above-listed records. On May 12, 2012, the Complainant submitted a second (2nd) OPRA request seeking the above-listed records. On May 13, 2012, the Complainant submitted a third (3rd) OPRA request seeking the above-listed records. On June 1, 2012, the sixth (6th) business day following receipt of said request,⁷ the Custodian responded in writing requesting ten (10) additional business days to respond. On June 8, 2012, the Custodian consolidated all three (3) requests, numbering each item 1 through 9, and responded as follows:

1. Disclosure of these records is exempt as “emergency or security information or procedures which, if disclosed, would jeopardize the security of the building or facility or persons therein.” N.J.S.A. 47:1A-1.1. Additionally, inmates are not permitted to “... obtain copies of documents concerning any other inmate.” N.J.A.C. 10A:22-2.3(b).
2. This request item is a duplicate request with DOC tracking No. 8315 for records awaiting disclosure upon receipt of payment and as such will not be addressed as part of this response.
3. See response to item No. 2.
4. See response to item No. 2.
5. Disclosure of these records is exempt as “emergency and security information ...” N.J.S.A. 47:1A-1.1.
6. No responsive records exist.
7. See response to item No. 6.

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

⁶ 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.

⁷ The Custodian certifies in the Statement of Information that he received the Complainant’s OPRA requests on May 23, 2012.

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8. See response to item No. 6.
9. This request item seeking “documents” is an invalid request because it does not identify specific government records. Additionally, any responsive records would be exempt from disclosure as personnel records. N.J.S.A. 47:1A-10.

May 18, 2012 OPRA request:

On May 18, 2012, the Complainant submitted a fourth (4th) OPRA request seeking the above-listed records. On June 8, 2012, the sixth (6th) business day following receipt of said request,⁸ the Custodian responded in writing denying access to the Complainant’s OPRA request under OPRA and DOC regulations. N.J.S.A. 47:1A-1.1, *N.J.A.C. 10A:22-2.3(b)*.

Denial of Access Complaint:

On July 5, 2012, the Complainant filed these Denial of Access Complaints with the Government Records Council (“GRC”).

May 11, May 12, and May 13, 2012 OPRA requests:

The Complainant disputes the Custodian’s denial of access to his OPRA requests. Regarding item Nos. 1 and 5, the Complainant contends the Custodian unlawfully denied his OPRA request because the Custodian never offered to have the records sent to an outside source. The Complainant asserts that sending the responsive records to his previous attorney would eliminate the Custodian’s security concerns as well as render *N.J.A.C. 10A:22-2.3(b)* moot.

Regarding item Nos. 2, 3 and 4, the Complainant contends that he never received a response from the Custodian assigned DOC tracking No. 8315. The Complainant contends that the Custodian should disclose the responsive records.

Regarding item Nos. 6, 7, and 8, the Complainant contends that the Custodian unlawfully denied access to these records because he failed to establish that he adequately searched for the responsive records before responding that none existed.

Regarding item No. 9, the Complainant contends that his request very specifically sought internal operating procedures and not personnel records.

May 18, 2012 OPRA request:

Regarding the May 18, 2012 OPRA request, the Complainant contends the Custodian unlawfully denied his OPRA request because the Custodian never offered to have the records sent to an outside source. The Complainant asserts that sending the responsive records to his previous attorney would eliminate the Custodian’s security concerns as well as render *N.J.A.C. 10A:22-2.3(b)* moot.

⁸ The Custodian certifies in the Statement of Information that he received the Complainant’s OPRA request on May 31, 2012.

Statement of Information:

On September 3, 2012, the Custodian filed a Statement of Information (“SOI”) for both complaints.

May 11, May 12, and May 13, 2012 OPRA requests:

The Custodian certifies that he received all three (3) OPRA requests on May 23, 2012. The Custodian certifies that he responded on June 1, 2012, seeking an extension of time before ultimately denying access to the Complainant’s OPRA requests. The Custodian certifies that the records responsive to the Complainant’s OPRA request item Nos. 1, 2, 3, 4 and 5 are located at NJSP and Central Office. The Custodian further certifies that no records responsive to item Nos. 5, 6 and 7 were found at NJSP or Central Office. The Custodian further certifies that no records for item No. 9 were located because the request item was overly broad and thus invalid.

The Custodian certifies that item No. 1 sought logs detailing the movement of prisoners throughout the institution, including timing of movement, staff allocations, locations of movement and the identities of inmates being moved. The Custodian certifies that item No. 5 sought procedures regarding the movement of inmates. The Custodian contends that this information could be used to exploit facility weaknesses to plot escapes, assaults, or other prohibited activity. The Custodian thus argues that he lawfully denied access to this request item as disclosure “... would jeopardize the security of the building or facility or persons therein.” N.J.S.A. 47:1A-1.1.

The Custodian further argues that the Courts have long deferred to DOC when making safety and security decisions. The Custodian states that DOC has “broad discretionary power” to promulgate regulations aimed at maintaining security and order inside correctional facilities. Jenkins v. Fauver, 108 N.J. 239, 252 (1987). The Custodian states that the Courts note that “[p]risons are dangerous places, and the courts must afford appropriate deference and flexibility to administrators trying to manage this volatile environment.” Russo v. N.J. Dept. of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999). *See also* Florence v. Board of Chosen Freeholders Burlington County, 132 S.Ct 1510, 1515 (2012)(holding that “[m]aintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face[.]”) The Custodian states that the Council has previously upheld a denial of access to policies and post orders for a portion of East Jersey State Prison based on safety and security concerns. Fischer v. NJ Department of Corrections, GRC Complaint No. 2005-171 (February 2006).

The Custodian further notes that the records responsive to item No. 1 contain names of inmates. The Custodian certifies that the Complainant is prohibited from possessing the responsive records because “an inmate shall not be permitted to inspect, examine, or obtain copies of documents concerning any other inmates.” N.J.A.C. 10A:22-2.3(b).

The Custodian certifies that item Nos. 2, 3 and 4 sought the same record for which access was granted on May 29, 2012, in response to an unrelated OPRA request.⁹ The Custodian certifies that the responsive record is a 37 page User Manual that the Complainant was offered pending payment of the appropriate copy cost. Reid v. NJ Department of Corrections, GRC Complaint No. 2010-83 (October 2011); Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). The Custodian contends that he did not deny access to the responsive records since previous case law permits custodians to withhold records until receipt of copy costs.

The Custodian certifies that the OPRA Liaison at NJSP was unable to locate any records responsive to item Nos. 6, 7 and 8; therefore, no records responsive exist and the Custodian did not unlawfully deny access to same.

The Custodian certifies that item No. 9 seeks “documents” indicating that certain medical personnel were authorized to issue certain forms. The Custodian contends that the item does not reasonably identify government records and would require DOC to conduct research in order to locate the responsive records. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

May 18, 2012 OPRA request:

The Custodian certifies that he received the OPRA request on May 31, 2012. The Custodian certifies that he denied access to the Complainant’s request on June 8, 2012. The Custodian certifies that all records are maintained at NJSP and Central Office.

The Custodian certifies that the records responsive to item No. 1 are inmate tracking logs and rosters detailing the movement of prisoners throughout NJSP that reveal timing or movements, staff allocations, locations of movements and identifies the inmates being moved. The Custodian certifies that the logs would also reveal which inmates are receiving optometry care. The Custodian contends that this information must be kept confidential in order to prevent inmates from exploiting security weaknesses to plot escapes, assaults, or other prohibited activity. The Custodian further contends that inmates are also prohibited from inspecting or possessing records related to other inmates. The Custodian argues that the responsive records are exempt under OPRA and DOC regulations. N.J.S.A. 47:1A-1.1, N.J.C.A. 10A:22-2.3(b). The Custodian further reiterates that Courts have long deferred to DOC when making safety and security decisions. Jenkins, *supra*; Russo, *supra*. *See also* Florence, *supra*; Fischer, *supra*.

The Custodian notes that the records responsive to item No. 1 contain names of inmates, which the Complainant is prohibited from possessing because “an inmate shall not be permitted to inspect, examine, or obtain copies of documents concerning any other inmates.” N.J.A.C. 10A:22-2.3(b). The Custodian further notes that the records would reveal those inmates receiving medical care, the disclosure of which would violate the “Health Insurance Portability and Accountability Act” (“HIPAA”).

⁹ The Complainant’s May 6, 2012 OPRA request is currently the subject of GRC Complaint No. 2012-203. Walter A. Tormasi v. New Jersey Department of Corrections, 2012-206 & 2012-207 – Findings and Recommendations of the Executive Director

The Custodian certifies that the records responsive to item No. 2 are inmate requests, inmate schedules, inmate rosters and scheduling forms submitted by Ms. Roach. The Custodian certifies that the records deal with scheduling and moving inmates for medical services that would reveal movement of inmates, movement schedules, staff involved in movement and the number of inmates moved. The Custodian certifies that the records responsive to item No. 3 are policies and procedures for escorting close custody inmates to medical appointments at NJSP. The Custodian contends that for the reasons stated regarding item No. 1, the Custodian lawfully denied access to the records responsive to request item Nos. 2 and 3.

The Custodian further contends that sending the responsive records to the Complainant's previous attorney will not alleviate DOC's security concerns since access to the records would have been denied regardless of the identity of the requestor. The Custodian further asserts that the previous attorney would also be obligated to share the exempt information with the Complainant.

Analysis¹⁰

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.

May 11, May 12 and May 13 OPRA requests, item Nos. 2, 3 and 4:

A custodian is required to respond in writing to an OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Moreover, in Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006), the complainant filed numerous OPRA requests for the same records in each request. The custodian responded to the complainant stating that the records were previously provided to the complainant in 2002 and 2003 on repeated occasions. The Council held that "the fact that the records were previously provided to the Complainant on several occasions is not a lawful basis to deny access to the records requests."

However, the facts here differ from Caggiano, *supra*, because although the Custodian noted the access to the responsive record was granted pursuant to another OPRA request pending payment of copy cost and that same would not be addressed here, the Custodian said he would disclose the record once the Complainant remitted payment. Ultimately, even though the Custodian denied the Complainant's request items here, the record was still made available to the Complainant pending payment. *See* Reid v. NJ Department of Corrections, GRC Complaint No. 2010-83 (October 2011); Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

¹⁰ There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

Therefore, the Custodian's response to request item Nos. 2, 3 and 4, advising that he would not address same since access to the responsive record was previously granted, implicated the Council's holding in Caggiano, *supra*. However, because the Custodian further advised that he would disclose the responsive record upon payment of the appropriate copy costs, the Custodian did not unlawfully deny access to said record because he is not required to disclose same until receipt of payment. Reid, *supra*; Paff, *supra*.

May 11, May 12 and May 13 OPRA requests, item Nos. 6, 7 and 8:

In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought a copy of a telephone bill from the custodian in an effort to obtain proof that a phone call was made to him by an official from the Department of Education. The custodian provided a certification in his submission to the GRC that the requested record was nonexistent and the complainant submitted no evidence to refute the custodian's certification. The Council subsequently determined that "[t]he Custodian has certified that the requested record does not exist. Therefore, the requested record cannot (sic) be released and there was no unlawful denial of access." *Id.*

Here, the Custodian initially responded in writing advising that no records responsive to request item Nos. 6, 7 and 8 existed. The Custodian also certified in the SOI that the OPRA Liaison for NJSP could not locate any records, thus no records responsive exist. Moreover, since there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer, *supra*.

May 11, May 12 and May 13 OPRA requests, item No. 9:

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, *supra*, at 546. The Court reasoned that:

"[m]ost significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." [Emphasis added]. *Id.* at 549.

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.* See also Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),¹¹ New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Here, the Complainant argued in the Denial of Access Complaint that request item No. 9 very specifically sought internal operating procedures and not personnel records. Conversely, the Custodian contended that the Complainant’s request item seeking “documents” indicating that certain medical personnel were authorized to issue forms failed to identify government records and would require research. MAG, *supra*.

The Complainant’s request item seeking “documents” failed to identify a particular type of government records. The Complainant’s requests identify a non-specific class of records, “documents,” that would force the Custodian to look at every single record maintained by DOC to determine whether they met the criterion set forth by the Complainant.

Therefore, because request item No. 9 failed to identify the specific government records sought and would have forced the Custodian to research his records in order to locate any documents meeting the criterion set forth in said requests, the Complainant’s request item is overly broad and invalid under OPRA. MAG, *supra*; Bent, *supra*; NJ Builders, *supra*; Schuler, *supra*. Thus, the Custodian did not unlawfully deny access to any records. N.J.S.A. 47:1A-6.

May 11, May 12 and May 13 OPRA requests, item Nos. 1 and 5 and May 18, 2012 OPRA request:

OPRA provides that:

A government record shall not include the following information which is deemed to be confidential ... emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.

N.J.S.A. 47:1A-1.1.

OPRA further provides that:

The provisions of [OPRA] 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)(Emphasis added.)

¹¹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).
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DOC's promulgated regulations provide that:

[T]he following records shall not be considered government records subject to public access ... [a] report or record relating to an identified individual, which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement ... An 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(a) – (b).

Here, the Complainant argued that sending the responsive records to his previous attorney would render the Custodian's denial of access as moot. Conversely, the Custodian argued that he lawfully denied access to all records responsive to the pertinent OPRA request items based on OPRA and DOC regulations. The Custodian further noted that the Courts have often given deference to DOC safety and security decisions, which has been recognized by the Council. Fischer, *supra*. The Custodian also argued that providing the records to the Complainant's previous attorney would not alleviate DOC's security concerns since the attorney would be obligated to share the exempt information with the Complainant.

In Fischer, *supra*, the complainant requested "existing policies/post orders" for an area of East State Jersey Prison, noting that he is an employee of that area. The custodian denied access to the records noting that the records constituted emergency and security information "... which, if disclosed, jeopardize security of the building or facility or persons therein ..." The Council agreed, holding that "...regardless of whether the Complainant is an employee of the department, the records are not disclosable pursuant to OPRA." *Id.* See also Durham v. NJ Dept. of Corrections, GRC Complaint No. 2012-35 (March 2013).

Similar to its holding in Durham, *supra*, the GRC is satisfied that disclosure of the records could pose a significant risk to the safe and secure operation of the NJSP for the reasons expressed by the Custodian. An inmate seeking to exploit facility weaknesses to plot escapes, assaults, or other prohibited activity would be given an advantage by having intimate knowledge of the daily assignment of personnel, movement of inmates, and staff allocation conducive to planning these actions accordingly. Thus, the responsive records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

Therefore, the Custodian has borne his burden of proving that the records responsive to the Complainant's May 11, May 12 and May 13 OPRA requests (item Nos. 1 and 5) and the May 18, 2012 OPRA request, are exempt from disclosure as "... emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein." N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. The Council need not determine whether the other exemptions cited by the Custodian apply since the records are exempt under OPRA.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's response to request item Nos. 2, 3 and 4, advising that he would not address same since access to the responsive record was previously granted, implicated the Council's holding in Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006). However, because the Custodian further advised that he would disclose the responsive record upon payment of the appropriate copy costs, the Custodian did not unlawfully deny access to said record because he is not required to disclose same until receipt of payment. Reid v. NJ Department of Corrections, GRC Complaint No. 2010-83 (October 2011); Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
2. The Custodian initially responded in writing advising that no records responsive to request item Nos. 6, 7 and 8 existed. The Custodian also certified in the SOI that the OPRA Liaison for NJSP could not locate any records, thus no records responsive exist. Moreover, since there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. Because request item No. 9 failed to identify the specific government records sought and would have forced the Custodian to research his records in order to locate any documents meeting the criterion set forth in said requests, the Complainant's request item is overly broad and invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the Custodian did not unlawfully deny access to any records. N.J.S.A. 47:1A-6.
4. The Custodian has borne his burden of proving that the records responsive to the Complainant's May 11, May 12 and May 13 OPRA requests (item Nos. 1 and 5) and the May 18, 2012 OPRA request, are exempt from disclosure as "... emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein." N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. The Council need not determine whether the other exemptions cited by the Custodian apply since the records are exempt under OPRA.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

June 18, 2013