



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**

Misael Cordero  
Complainant

Complaint No. 2012-209

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 the Custodian has borne his burden of proving that the release of the requested record would jeopardize the security of the New Jersey State Prison or the persons therein and that the record is exempt from public access. N.J.S.A. 47:1A-1.1. See also Fischer v. New Jersey Department of Corrections, GRC Complaint No. 2005-171 (February 2006), and Durham v. New Jersey Department of Corrections, GRC Complaint No. 2012-35 (March 2013). As such, the Custodian lawfully denied access to the requested record.

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 25<sup>th</sup> 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**

**Misael Cordero<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-209**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of:

1. Any report or document dealing with, or connected to, a positive reading made by a K-9 unit dog on visitor Edwin Cordero, at New Jersey State Prison on May 21, 2011.
2. Any report or document concerning, or connected to, an alleged reinvestigation conducted on said incident on or about February 2012.

**Request Made:** March 22, 2012

**Response Made:** March 28, 2012

**GRC Complaint Filed:** July 16, 2012<sup>3</sup>

**Background**<sup>4</sup>

**Request and Response:**

On March 22, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On March 28, 2012, the date the Custodian received said request, the Custodian denied access to the records responsive on the basis that said records are exempt from disclosure 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.

**Denial of Access Complaint:**

On July 16, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the requested records do not pose a security risk to the safety of the New Jersey State Prison because the records relate to

---

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

<sup>2</sup> John Falvey, Custodian of Records. No legal representation listed on record.

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

<sup>4</sup> 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.

a past event. Additionally, the Complainant states that he was verbally informed of the incident by the visit hall sergeant and his brother, Edwin Cordero, on the day of the incident. The Complainant also states that the records are necessary to assist in his defense on a pending lawsuit related to the incident and the Complainant is representing himself in said matter. The Complainant asserts that N.J.A.C. 10A:22-2.5(c)(3) allows the records requested to be provided.

Statement of Information:

On June 25, 2012, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s OPRA request on March 28, 2012, and denied access to the requested records on the same date as emergency or security information which, if disclosed, would jeopardize the security of the building or facility or persons therein. N.J.S.A. 47:1A-1.1. The Custodian certifies that although the Complainant requested two (2) records, only one (1) responsive record exists, which is a two (2) page Special Investigations Division (“SID”) report dated May 21, 2011. The Custodian certifies that this report details the use of narcotics detection canines with respect to visitors and further details the investigative steps taken by the SID as a result of the use of the canine. The Custodian certifies that disclosing the responsive record would reveal how and when the Department of Corrections (“DOC”) uses narcotics canines and how DOC investigates the introduction of narcotics into prison. The Custodian certifies that the contents of the record could be used to exploit weaknesses in the detection and investigative process, and once practices are known, those wishing to smuggle narcotics into prison could plan around DOC’s security measures. The Custodian also certifies that the report identifies specific civilians and inmates and revealing said identities may jeopardize their safety.

Additionally, while not stated in his response to the OPRA request, the Custodian maintains that the responsive record is also exempt from public access because N.J.A.C. 10A:22-2.3(a)(2) exempts SID records and reports, provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility; N.J.A.C. 10A:22-2.3(a)(5) exempts 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; and N.J.A.C. 10A:22-2.3(b) provides that an inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.

Moreover, the Custodian asserts that the Complainant’s reliance on N.J.A.C. 10A:22-2.5(c)(3) is misplaced because said provision permits the disclosure of inmate records to attorneys in pending cases; however, the record at issue here is not an inmate record, but a SID investigative report.

## Analysis<sup>5</sup>

### 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.

OPRA exempts from public access 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. The Council has previously addressed whether OPRA’s security exemption applies to records maintained by DOC.

In Fischer v. New Jersey Department of Corrections, GRC Complaint No. 2005-171 (February 2006), the complainant sought access to all current and existing policies/post orders for East Jersey State Prison’s Administrative Close Supervision Unit. The custodian denied access to said records on the basis that their release would jeopardize the security of the prison. In the SOI, the custodian asserted that the requested records contain emergency and security information including when and how staff shift changes occur, when and how doors are opened, and when and how often prisoners’ cells are searched. The Council held that the custodian had borne the burden of proving that the records were exempt from disclosure under OPRA’s security exemption and lawfully denied access to said records.

In Durham v. New Jersey Department of Corrections, GRC Complaint No. 2012-35 (March 2013), the complainant sought access to the daily schedules of New Jersey State Prison staff and medical personnel. The custodian denied access to said records on the basis that their release would jeopardize the security of the prison. In the SOI, the custodian asserted that even with redactions, the schedules would reveal allocation of staff by time and location that an inmate could use to defeat security measures to conduct criminal actions, disruptive behavior or contraband-related offenses. The Council held that:

“the Custodian has borne his burden of proving that the responsive daily shift schedules 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’ pursuant to N.J.S.A. 47:1A-1.1.”

Here, the Custodian certified that the requested record details the use of narcotics detection canines with respect to visitors; details the investigative steps taken by the SID as a result of the use of the canine; indicates how and when DOC uses narcotics canines; and how DOC investigates the introduction of narcotics into prison. The Custodian certified that the contents of the record could be used to exploit weaknesses in the detection and investigative

---

<sup>5</sup> 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.

process, and once practices are known, those wishing to smuggle narcotics into prison could plan around DOC's security measures.

Therefore, the Custodian has borne his burden of proving that the release of the requested record would jeopardize the security of the New Jersey State Prison or the persons therein and that the record is exempt from public access. N.J.S.A. 47:1A-1.1. *See also* Fischer, supra, and Durham, supra. As such, the Custodian lawfully denied access to the requested record.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving that the release of the requested record would jeopardize the security of the New Jersey State Prison or the persons therein and that the record is exempt from public access. N.J.S.A. 47:1A-1.1. *See also* Fischer v. New Jersey Department of Corrections, GRC Complaint No. 2005-171 (February 2006), and Durham v. New Jersey Department of Corrections, GRC Complaint No. 2012-35 (March 2013). As such, the Custodian lawfully denied access to the requested record.

Prepared By: Dara L. Barry  
Communications Manager

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

June 18, 2013