



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
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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**

Michael S. Janowski  
Complainant

Complaint No. 2012-240

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 did not unlawfully deny the Complainant access to his medical records for the period of time which he was at the Steps Program. The Custodian properly concluded that the Complainant’s records request, related to “medical, psychiatric or psychological history, diagnosis, treatment or evaluation,” and thus were exempt from production pursuant to OPRA. N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(4). Henry Little v. New Jersey Department of Corrections, GRC Complaint No. 2012-70 (April 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 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**

**Michael S. Janowski<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-240**

v.

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

**Records Relevant to Complaint:** Medical records from the Bo-Robinson Steps (“Steps Program”) program, from April 7, 2011 to May 2, 2011, including but not limited to: physical order sheets; nursing progress notes; sick call request slips; diagnostic reports; medical summaries and medication. The Complaint requested copies as opposed to site inspection of the documents.

**Request Made:** May 14, 2012

**Response Made:** May 15, 2012

**GRC Complaint Filed:** August 13, 2012<sup>3</sup>

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

**Request and Response:**

On May 14, 2012, (“Complainant”) submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On May 15, 2012, the 1<sup>st</sup> business day following receipt of said request,<sup>5</sup> Custodian of Records for the Department of Corrections (“Custodian”) responded in writing denying access to the responsive records. N.J.S.A. 10A:22-2.3(a)(4).<sup>6</sup> The Custodian informed the Complainant that he could request a copy of his records by submitting an Inmate Request for Copies of Medical Records Form (MR-022) at his correction facility.

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

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The GRC received the Denial of Access Complaint on August 13, 2013.

<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.

<sup>5</sup> The Custodian certifies in the Statement of Information that he received the OPRA request on May 14, 2012.

<sup>6</sup> The Custodian further provided that Governor Christie signed Executive Order No. 47 approving regulation 10A:22-2.3(a)(4), which was adopted on February 7, 2011.

### Denial of Access Complaint:

On August 13, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputes the Custodian’s denial of access which indicates that the Custodian advised him to submit an MR-022 Form.

### Statement of Information:

On August 27, 2012, the Custodian filed a Statement of Information (“SOI”) The Custodian certifies that the New Jersey Department of Corrections (“DOC”) received the Complainant’s OPRA request on May 14, 2012. The Custodian certifies that at the time of the request the Complainant’s medical records were maintained at Bayside State Prison. The Custodian further certifies that the “inmate medical records are maintained with the inmate’s file located at the inmate’s place of incarceration.” The Custodian argues that he denied the Complainant’s request pursuant to N.J.S.A. 47:1A-9(a); and Executive Order #47 (Gov. Christie 2010) pursuant to N.J.C.A. 10A:22-2.3(a)(4) which exempts records containing “any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.”

## Analysis<sup>7</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. “[A]ll government records shall be subject to public access unless exempt.” Bent v. Township of Stafford, 381 N.J. Super. 30, 36 (App. Div. 2005).

OPRA provides that “the act shall not abrogate any exemption of a public record or government record from public access heretofore made . . . ; 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[.]” N.J.S.A. 47:1A-9(a).

“The New Jersey Administrative Code, section 10A:202.203 further provides that:

- (a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq. . . . the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.: . . .

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<sup>7</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.

\* \* \*

(4) Any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.” N.J.A.C. 10A:22-2.3.

The GRC, in Henry Little v. New Jersey Department of Corrections, upheld the Custodian’s denial of medical records to an inmate. GRC Complaint No. 2012-70 (April 2012). In the Little matter, the complainant submitted an OPRA request seeking copies of his own medical and evaluation reports from Menlo Park Diagnostic Center, and New Jersey State Prison. The GRC held that “the . . . Custodian lawfully denied access to the requested records because the Complainant’s . . . request [sought] medical and psychological records which were specifically exempt from public access.” (*citations omitted*).

Here at, the Complainant requested medical reports for the period of time in which he was a resident at the Steps Program. The Custodian, in response, denied access of the medical records as sought as they related to “medical, psychiatric or psychological history, diagnosis, treatment or evaluation.” N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(4).

The Custodian did not unlawfully deny the Complainant access to his medical records for the period of time which he was at the Steps Program. The Custodian properly concluded that the Complainant’s records request, related to “medical, psychiatric or psychological history, diagnosis, treatment or evaluation,” and thus were exempt from production pursuant to OPRA. N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(4). Henry Little v. New Jersey Department of Corrections, GRC Complaint No. 2012-70 (April 2012).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny the Complainant access to his medical records for the period of time which he was at the Steps Program. The Custodian properly concluded that the Complainant’s records request, related to “medical, psychiatric or psychological history, diagnosis, treatment or evaluation,” and thus were exempt from production pursuant to OPRA. N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(4). Henry Little v. New Jersey Department of Corrections, GRC Complaint No. 2012-70 (April 2012).

Prepared By: Dawn R. SanFilippo, Esq.  
Senior Counsel

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

June 18, 2013