



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

January 28, 2014 Government Records Council Meeting

Bernard S. Reid
Complainant

Complaint No. 2013-165

v.

New Jersey Department of Corrections
Custodian of Record

At the January 28, 2014 public meeting, the Government Records Council (“Council”) considered the January 21, 2014 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 Internal Management Procedure 101 for “North Compound Close Custody Housing Unit” is 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. *See Fischer v. NJ Department of Corrections*, GRC Complaint No. 2005-171 (February 2006).

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 28th Day of January, 2014

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: January 30, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 28, 2014 Council Meeting**

**Bernard S. Reid¹
Complainant**

GRC Complaint No. 2013-165

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hardcopy and inspection of the Internal Management Procedure 101 (“IMP No. 101”) for “North Compound Close Custody Housing Unit” as required to be disclosed under N.J.A.C. 10A:4-3.1(a)(2).

Custodian of Record: John Falvey, Esq.
Request Received by Custodian: May 1, 2013
Response Made by Custodian: May 10, 2013
GRC Complaint Received: June 3, 2013

Background³

Request and Response:

On April 22, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 10, 2013, the Custodian responded in writing denying access to the responsive record 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 June 3, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputes the Custodian’s denial of access arguing that under the New Jersey Department of Corrections’ (“DOC”) regulations, the Complainant is entitled to IMP No. 101. The Complainant contends that the Custodian misapplied N.J.S.A. 47:1A-1.1. In addition, the Complainant argues that DOC regulations were

¹ No legal representation listed on record.

² No legal representation listed on record.

³ 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.

meant to increase fairness for inmates submitting OPRA requests and the Custodian's denial of access is contrary to this intent.

The Complainant requests that the GRC determine whether the Custodian unlawfully denied access to the responsive record and whether this denial constitutes a knowing and willful violation of OPRA under the totality of the circumstances.

Statement of Information:

On July 23, 2013, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that he received the Complainant's OPRA request on May 1, 2013 and responded on May 10, 2013 denying access to same.

The Custodian certifies that IMP No. 101 consists of thirteen (13) pages and specifies all safety and security measures taken by staff including the physical setup of units, searches and inmate movements. In addition, the Custodian affirms that inmates in Close Custody Housing are there because they require more direct observation on a daily basis.

The Custodian asserts that the Courts have long deferred to DOC when making safety and security decisions. The Custodian argues 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 notes 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. NJ Dep't. of Corrections, 324 N.J. Super. 576, 584 (App. Div. 1999). The Custodian asserts that the record could be used to defeat security measures and harm staff or other inmates. Moreover, the Custodian notes, via the powers afforded the Commissioner of DOC, that the record is designated "confidential." N.J.S.A. 30:1B-6(g).⁴ Accordingly, the Custodian contends that disclosure of IMP No. 101 would jeopardize the safe and secure operations of NJ State Prison.

Analysis

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 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

⁴ The Complainant submitted a letter on August 15, 2013 asserting common law, civil rights and constitutional violations. The GRC has no authority to adjudicate such issues. N.J.S.A. 47:1A-7.

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.

Further, in Fischer v. NJ Department of Corrections, GRC Complaint No. 2005-171 (February 2006), the complainant requested “existing policies/post orders” for an area of East State Jersey Prison, stating that he is an employee of that area. The custodian denied access to the records stating that the records constituted emergency and security information “. . . which, if disclosed, jeopardize security of the building or facility or persons therein . . .” In the SOI, the Custodian’s Counsel noted that the “ACSU” was utilized to house inmates removed from general population for disciplinary or other security reasons. The Council agreed with the Custodian’s denial of access, 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).

The Complainant here sought IMP No. 101 for “North Compound Close Custody Housing Unit” and noted that he had a right to the record per DOC regulations. N.J.A.C. 10A:4-3.1(a)(2). However, the regulation provides that an inmate has the right “. . . to be informed of the . . . procedures . . .” Id. The plain language of the regulation does not provide that an inmate shall be given access to the actual document setting forth said procedures. Thus, the GRC is not convinced that N.J.A.C. 10A:4-3.1(a)(2) requires disclosure of the responsive record to the Complainant.

Additionally, the facts here are similar to those in Fischer. In both cases, the complainants sought procedures for a unit within a prison facility and were denied access under N.J.S.A. 47:1A-1.1. Here, as in Fischer, the GRC is satisfied that disclosure of IMP No. 101 to the Complainant 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 procedures found in IMP No. 101. 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 IMP No. 101 for “North Compound Close Custody Housing Unit” is 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. See Fischer, GRC 2005-171.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving that Internal Management Procedure 101 for “North Compound Close Custody Housing Unit” is 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. *See Fischer v. NJ Department of Corrections*, GRC Complaint No. 2005-171 (February 2006).

Prepared By: Frank F. Caruso
Senior Case Manager

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

January 21, 2014