



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**

**January 30, 2015 Government Records Council Meeting**

Jose Pizarro  
Complainant

Complaint No. 2013-176

v.

NJ Department of Corrections  
Custodian of Record

At the January 30, 2015 public meeting, the Government Records Council (“Council”) considered the January 20, 2015 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 lawfully denied access to the requested records that were responsive to the Complainant’s OPRA request because N.J.A.C. 10A:22-2.3(b) prohibits the Complainant from either inspecting or obtaining records pertaining to another inmate. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). *See also* Werner v. NJ Dep’t of Corrections, GRC Complaint No. 2011-153 (September 2012); Edwards v. NJ Dep’t of Corrections, GRC Complaint No. 2014-08 (September 2014).

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 30<sup>th</sup> Day of January, 2015

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: February 4, 2015**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 30, 2015 Council Meeting**

**Jose Pizarro<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-176**

**v.**

**New Jersey Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via U.S. mail of:<sup>3</sup>

1. Statement made by Inmate Maldonado to Sergeant Thomas when served with a disciplinary infraction on March 12, 2013.
2. Name and statement made by Inmate Maldonado witness at “the hearing.”

**Custodian of Record:** John Falvey, Esq.  
**Request Received by Custodian:** May 9, 2013  
**Response Made by Custodian:** May 13, 2013  
**GRC Complaint Received:** June 10, 2013

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

**Request and Response:**

On April 27, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 13, 2013, the second (2<sup>nd</sup>) business day after receipt of the OPRA request, the Custodian responded in writing denying access to the requested records under N.J.A.C. 10A:22-2.3(b), which exempts access to records concerning other inmates.

**Denial of Access Complaint:**

On June 10, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that on March 20, 2013, he was the subject of a disciplinary hearing at which the requested records were presented as evidence.

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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 Complainant requested additional records that are not at issue in this complaint.

<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.

The Complainant contended that he is entitled to these records because the hearing officer relied on them in rendering a decision. The Complainant also noted that he planned to use same as part of a civil complaint.

Statement of Information:

On September 3, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 9, 2013 and responded in writing, on May 13, 2013, denying access to the requested records per N.J.A.C. 10A:22-2.3(b).

The Custodian first noted that the New Jersey Department of Corrections (“DOC”) is empowered to promulgate and enact rules and regulations that promote a safe and secure prison environment. The Custodian further noted that DOC has a safety and security interest in restricting inmate information from other inmates that could be used for extortion, intimidation and other nefarious purposes.

The Custodian certified that, at the time of the request, the Complainant was housed at Northern State Prison. The Custodian certified that the requested records consisted of statements made by Inmate Maldonado. The Custodian argued that, while Inmate Maldonado’s statements were used as part of the Complainant’s disciplinary hearing, the Complainant is not entitled to view or obtain copies of same.

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:

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).

Further, DOC regulations provide that “[a]n 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(b).

Here, the responsive records relate to another inmate whose statements were used at that Complainant's disciplinary hearing. The DOC's regulations are clear in that the Complainant, who was an inmate housed at Northern State Prison when he submitted his request, is not permitted to either inspect or obtain copies of records concerning other inmates. Id.

Therefore, the Custodian lawfully denied access to the requested records that were responsive to the Complainant's OPRA request because N.J.A.C. 10A:22-2.3(b) prohibits the Complainant of either inspecting or obtaining records pertaining to another inmate. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). *See also* Werner v. NJ Dep't of Corrections, GRC Complaint No. 2011-153 (September 2012); Edwards v. NJ Dep't of Corrections, GRC Complaint No. 2014-08 (September 2014).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the requested records that were responsive to the Complainant's OPRA request because N.J.A.C. 10A:22-2.3(b) prohibits the Complainant from either inspecting or obtaining records pertaining to another inmate. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). *See also* Werner v. NJ Dep't of Corrections, GRC Complaint No. 2011-153 (September 2012); Edwards v. NJ Dep't of Corrections, GRC Complaint No. 2014-08 (September 2014).

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

Approved By: Dawn R. SanFilippo, Esq.  
Acting Executive Director

January 20, 2015