



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

April 29, 2014 Government Records Council Meeting

Victor M. Bermudez III
Complainant
v.
Cumberland County
Custodian of Record

Complaint No.: 2013-249

At the April 29, 2014 public meeting, the Government Records Council (“Council”) considered the April 22, 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 that the Custodian has borne his burden of proving that he lawfully denied access to portions of the requested two (2) efficacy studies because the documents contain safety and security information exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Perry v. New Jersey Department of Corrections, GRC Complaint No. 2012-237 (June 2013); Durham v. New Jersey Department of Corrections, GRC Complaint No. 2012-35 (March 2013); Fischer v. New Jersey Department of Corrections, GRC Complaint No. 2005- 171 (February 2006). Further, the record indicates that although the Custodian had no obligation to disclose the studies, he initially turned over a redacted copy of the March Study and allowed the Complainant to review an unredacted copy. Moreover, the Custodian has since disclosed a redacted copy of the May Study to Complainant.

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 29th Day of April, 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: May 2, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2014 Council Meeting**

**Victor M. Bermudez III¹
Complainant**

GRC Complaint No. 2013-249

v.

**Cumberland County²
Custodial Agency**

Records Relevant to Complaint: “[T]he last 2 efficacy studies on the Cumberland County Jail in whatever form it currently is, completed, incomplete, partial, or beginning stages.”

Custodian of Record: Omarey Williams

Request Received by Custodian: July 26, 2013

Response Made by Custodian: July 30, 2013

GRC Complaint Received: September 6, 2013

Background³

Request and Response:

On July 26, 2013, the Complainant, a Cumberland County corrections officer, submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 30, 2013, two (2) business days later, the Custodian responded in writing disclosing a study dated March 18, 2013 (“March Study”) but stating that redactions had been made based on OPRA’s exemption for security measures. *See N.J.S.A. 47:1A-1.1.* The Custodian also, however, allowed the Complainant to review an unredacted copy of the March Study.

Denial of Access Complaint:

On September 6, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contends that the provisions of *N.J.S.A. 47:1A-1.1* do not apply here. Further, the Complainant states that he received a redacted copy of the March Study from the Custodian, but that he has also separately obtained a study

¹ The Complainant is represented by Stuart Alterman, Esq. (Marlton, N.J.).

² The Custodian is represented by Theodore E. Baker, Esq. (Brigeton, N.J.).

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.

dated May 22, 2013 (“May Study”).⁴ The Complainant argues that his OPRA request was not met because the Custodian disclosed only the March Study to him and not the May Study.

Statement of Information:

On October 31, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s OPRA request on July 26, 2013 and responded in writing on July 30, 2013 disclosing a redacted copy of the March Study.

The Custodian asserts that the requested jail security and staffing study was properly redacted based on N.J.S.A. 47:1A-1.1, which exempts “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software.” The Custodian states that the prison warden withheld the unredacted study from the Complainant to prevent the unauthorized or uncontrolled dissemination of the security document. The Custodian notes that the warden did allow the Complainant to read the unredacted version prior to the disclosure of a redacted copy of the report.

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 states that a “government record” shall not include either “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,” or “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software” N.J.S.A. 47:1A-1.1.

With respect to correctional facilities, the Council has determined that where a complainant sought access to policies and post orders for a section of East Jersey State Prison, the custodian properly denied access pursuant to N.J.S.A. 47:1A-1.1 because the evidence of record revealed “. . . that the requested information contains procedures for emergencies [and] where officers . . . are located” Fischer v. N.J. Dep’t of Corr., GRC Complaint No. 2005-171 (February 2006). The Council further held that disclosure of staff schedules could pose a significant risk to the safe and secure operation of a correctional institution because, for example, “an inmate seeking to conduct criminal actions, disruptive behavior, or contraband-related offenses would be given an advantage by having intimate knowledge of the daily assignment of personnel” Durham v. N.J. Dep’t of Corr., GRC Complaint No. 2012-35 (March 2013). Thus, such records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. *Id.* Similarly, the Council found that because a custodian certified that the disclosure of Special Custody Reports

⁴ The Complainant is the union representative of PBA Local 231 Cumberland County Corrections Officers.

would compromise the safety of the prison, the reports did not constitute government records under N.J.S.A. 47:1A-1.1. Perry v. N.J. Dep't of Corr., GRC Complaint No. 2012-237 (June 2013).

Here, the Complainant sought the last two (2) efficacy studies done on the Cumberland County Jail. The record indicates that the Custodian initially disclosed a redacted copy of the March Study, but allowed the Complainant to review an unredacted version. The record also shows that the Complainant possesses an unredacted copy of the May Study. The Custodian disclosed a redacted copy of the May Study with his SOI. The Complainant is thus in possession of both a redacted copy of the March Study, and redacted and unredacted copies of the May Study.

As in Perry, the Custodian has certified that the redacted material contains sensitive security information that, if disseminated, would create a risk to the safety of persons and property. Perry, GRC 2012-237. Likewise, a review of the disclosed, redacted May Study makes clear that the studies describe in detail proposed alterations to the prison's security measures, staffing levels, staff placement within the prison, and other sensitive information. The disclosure and potential dissemination of such information could pose a significant risk to the safe and secure operation of the correctional institution. Fischer, GRC. 2005- 171; Durham, GRC 2012-35.

Therefore, the Custodian has borne his burden of proving that he lawfully denied access to portions of the requested two (2) efficacy studies because the documents contain safety and security information exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Perry, GRC 2012-237; Durham, GRC 2012-35; Fischer, GRC. 2005- 171. Further, the record indicates that although the Custodian had no obligation to disclose the studies, he initially turned over a redacted copy of the March Study and allowed the Complainant to review an unredacted copy. Moreover, the Custodian has since disclosed a redacted copy of the May Study to Complainant.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving that he lawfully denied access to portions of the requested two (2) efficacy studies because the documents contain safety and security information exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Perry v. New Jersey Department of Corrections, GRC Complaint No. 2012-237 (June 2013); Durham v. New Jersey Department of Corrections, GRC Complaint No. 2012-35 (March 2013); Fischer v. New Jersey Department of Corrections, GRC Complaint No. 2005- 171 (February 2006). Further, the record indicates that although the Custodian had no obligation to disclose the studies, he initially turned over a redacted copy of the March Study and allowed the Complainant to review an unredacted copy. Moreover, the Custodian has since disclosed a redacted copy of the May Study to Complainant.

Prepared By: Robert T. Sharkey, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Senior Counsel
April 22, 2014