



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**

**November 18, 2014 Government Records Council Meeting**

Antonio Merritt  
Complainant

v.

NJ Department of Corrections  
Custodian of Record

Complaint No. 2014-170

At the November 18, 2014 public meeting, the Government Records Council (“Council”) considered the November 10, 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 proof that he lawfully denied access to the requested C-24 forms dated between January, 2009 and July, 2009 because he certified, and the record reflects, that no responsive documents exist. N.J.S.A. 47:1A-6; See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

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 18<sup>th</sup> Day of November, 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: November 20, 2014**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 18, 2014 Council Meeting**

**Antonio Merritt<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-170**

**v.**

**State of NJ Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies of:

“I am requesting all ‘outgoing property’ ‘C-24’ forms from January 2009 to July 2009.”

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** March 11, 2014  
**Response Made by Custodian:** March 20, 2014; March 31, 2014  
**GRC Complaint Received:** April 14, 2014

**Background<sup>3</sup>**

**Request and Response:**

On March 11, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 20, 2014, seven (7) business days later, the Custodian responded, in writing, seeking a ten (10) business day extension to respond. On March 31, 2014, the Custodian responded, in writing, stating that he was unable to locate any “C-24” forms on file for the requested time period. The Custodian added that a “CO-24” form dated July 20, 2012 was located and notified the Complainant of the copying costs should he wish to have a copy.

**Denial of Access Complaint:**

On April 14, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that C-24 forms should exist for the requested time period, claiming that he completed the form during that time for when his wife picked up his property at New Jersey State Prison.

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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 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.

Statement of Information:

On May 14, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that a search yielded no responsive records for the time period the Complainant requested. The Custodian further certified that the search yielded one CO-24 form for the Complainant, but dated July 20, 2012.

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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. *See Pusterhofer v. N.J. Dep’t of Educ.*, GRC Complaint No. 2005-49 (July 2005). Here, the Custodian certified that no C-24 forms dated between January, 2009 and July, 2009 exist. Additionally, the Complainant failed to provide any evidence to rebut the Custodian’s certification.

The Custodian has borne his burden of proof that he lawfully denied access to the requested C-24 forms dated between January, 2009 and July, 2009 because he certified, and the record reflects, that no responsive documents exist. N.J.S.A. 47:1A-6; *See Pusterhofer*, GRC No. 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the requested C-24 forms dated between January, 2009 and July, 2009 because he certified, and the record reflects, that no responsive documents exist. N.J.S.A. 47:1A-6; *See Pusterhofer v. N.J. Dep’t of Educ.*, GRC Complaint No. 2005-49 (July 2005).

Prepared By: Samuel A. Rosado, Esq.  
Staff Attorney

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

November 10, 2014