



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

March 31, 2015 Government Records Council Meeting

Herman Gaines
Complainant

v.

NJ Office of the Public Defender
Custodian of Record

Complaint No. 2014-313

At the March 31, 2015 public meeting, the Government Records Council (“Council”) considered the March 24, 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 because the responsive records pertain to the Office of the Public Defender’s representation of the Complainant in a case, the Custodian has borne his burden of proving a lawful denial of access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013).

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 31st Day of March, 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: April 2, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 31, 2015 Council Meeting**

**Herman Gaines¹
Complainant**

GRC Complaint No. 2014-313

v.

**New Jersey Office of the Public Defender²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of:

1. Letter from the Complainant to Ingrid Yurchenco dated December 16, 2008.
2. Letter from the Complainant to Karen Andrews dated December 16, 2008.
3. Letter from the Complainant to Yvonne Smith-Segars dated December 19, 2008.
4. Letter from the Complainant to Ronald Appleby dated March 15, 2009.
5. Letter from the Complainant to Ray Black dated March 18, 2009.
6. Letter from the Complainant to Yvonne Smith-Segars dated April 2, 2009.

Custodian of Record: Dale Jones

Request Received by Custodian: July 10, 2014

Response Made by Custodian: July 10, 2014

GRC Complaint Received: September 8, 2014

Background³

Request and Response:

On July 8, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 10, 2014, the Custodian responded in writing seeking clarification as to whether the requested records pertain to the Office of the Public Defender’s (“OPD”) representation of the Complainant. On July 17, 2014, the Complainant confirmed that the letters sought were in connection with the OPD’s representation of himself in Indictment No. 00-06-00300-I (Promis Gavel No. 00000144/002). On July 28, 2014, the Custodian responded denying access to the requested records under N.J.S.A. 47:1A-5(k).

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.

Denial of Access Complaint:

On September 8, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s denial of access, but provided no additional arguments.

Statement of Information:

On September 25, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 10, 2014 and sought clarification on the same day. The Custodian certified that, after receiving the Complainant’s clarification on July 28, 2014, he immediately responded denying access to the requested records under N.J.S.A. 47:1A-5(k).

The Custodian argued that his denial of access was lawful because N.J.S.A. 47:1A-5(k) exempts access to OPD records relating to the handling of any case. The Custodian further noted that OPRA provides for no exceptions permitting an OPD client to obtain access to his or her own file without obtaining a court order or permission from the State Public Defender. Also, the Custodian noted that the GRC recently addressed a similar request in Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013).

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 “[t]he files maintained by [OPD] that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.” N.J.S.A. 47:1A-5(k). *See also Gaines*, GRC 2012-261 (holding that responsive records relating to OPD’s representation of the complainant were exempt from disclosure under OPRA).

Here, the Complainant sought letters that he sent to OPD staff. In a July 17, 2014 letter to the Custodian, the Complainant confirmed that the letters related to a matter in which the OPD was representing him. The Custodian subsequently denied the Complainant access to the responsive records under N.J.S.A. 47:1A-5(k).

Based on the foregoing, the GRC is satisfied that the Custodian’s denial of access was lawful because the plain language of N.J.S.A. 47:1A-5(k) exempts access to all OPD records and contains no exceptions for persons attempting to access their own files. Further, the Complainant verified that the records related to a case in which OPD was representing him. In addition, the

Complainant has not provided any evidence of a law, court order, or State Public Defender authorization that would allow him to access his records under OPRA.

Thus, because the responsive records pertain to the OPD's representation of the Complainant in a case, the Custodian has borne his burden of proving a lawful denial of access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Gaines, GRC 2012-261.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the responsive records pertain to the OPD's representation of the Complainant in a case, the Custodian has borne his burden of proving a lawful denial of access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013).

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

Approved By: Dawn R. SanFilippo
Deputy Executive Director

March 24, 2015