



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

September 29, 2015 Government Records Council Meeting

Thomas H. Martin, Jr.
Complainant

Complaint No. 2014-337

v.

Bedminster Township Police Department (Somerset)
Custodian of Record

At the September 29, 2015 public meeting, the Government Records Council (“Council”) considered the September 22, 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 did not unlawfully deny access to the requested records, as they are exempt from disclosure under the Attorney General’s Internal Affairs and Policy and Procedures. N.J.S.A. 47:1A-6; O’Shea v. Twp. or W. Milford, 410 N.J. Super. 371 (App. Div. 2009); Wares v. Twp. of W. Milford, GRC Complaint No. 2014-274 (May 2015); Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (June 2010). Because the records are exempt as noted, the GRC declines to address whether other exemptions advanced by the Custodian apply to the Complainant’s OPRA request.

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 September, 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: October 5, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2015 Council Meeting**

**Maurice Diaz-Young¹
Complainant**

GRC Complaint No. 2014-377

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hard copies of:

“On September 17, 2014, I (Maurice Young #848234C) was charged with *010 – Participating in an activity related to a security threat group. I would like to request all repots [sic], documents from all agencies involved in this matter.”

Custodian of Records: John Falvey

Request Received by Custodian: September 29, 2014

Response Made by Custodian: October 1, 2014; October 9, 2014

GRC Complaint Received: November 14, 2014

Background³

Request and Response:

On or around September 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records. On October 1, 2014, the Custodian responded in writing, making available twenty-four (24) pages of responsive documents pending payment for copying costs. However, the Custodian denied access to other responsive records based on the following:

- N.J.S.A. 47:1A-1.1(7) – “[e]mergency or security information or procedures which, if disclosed, would jeopardize the security or the building or facility or persons therein.”
- Executive Order No. 26 (Governor McGreevey); Executive Order No. 47 (Governor Christie); N.J.A.C. 10A:22-2.3(a)(5) – a report or record relating to an identified individual which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement is

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.

exempt from disclosure under OPRA.

- EO No. 47 (Christie); N.J.A.C. 10:22-2.3(a)(4) – copies of medical/mental health records cannot be fulfilled through the Open Public Records Act.
- N.J.A.C. 10A:22-2.3(b) – “an inmate shall not be permitted to inspect, examine, or obtain copies of documents concerning any other inmate.”

On October 9, 2014, the Custodian received payment for the copying costs and provided the Complainant with the responsive records.

Denial of Access Complaint:

On October 14, 2014, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant argued that two (2) responsive records were unlawfully withheld: specifically, the Special Investigations Division (“SID”) Evidence Review Form (“SID Form 011”) and letter correspondence (“the letter”) between the Complainant and another inmate. The Complainant also claimed that he was provided an SID Form 011 in a previous OPRA request as evidence that he was unlawfully denied access.

Statement of Information

On November 21, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the withheld records were a two (2) page SID Form 011 and a two (2) page letter between inmates allegedly detailing illegal activity. The Custodian further certified that both records were denied pursuant to N.J.S.A. 47:1A-1.1(7), N.J.A.C. 10A:22-2.3(a)(5), and N.J.A.C. 10A:22-2.3(b).

The Custodian certified that the SID Form 011 contains an analysis of the also denied letter. The analysis details the methods and intelligence gathering capabilities used to identify the letter as correspondence amongst the Complainant and a fellow inmate, specifically as fellow members of a gang. The Custodian also certified that the SID Form 011 describes the letter’s contents, allegedly relating to an assault authorized by the Complainant’s gang. The Custodian argued that revealing the analysis, which contains intelligence gathering methods and identities of inmates, would jeopardize the safety and security of prison personnel and fellow inmates.

Additionally, the Custodian argued that the letter should be withheld from disclosure for the same reasons as the SID Form 011. The Custodian stated that the letter describes an assault authorized by the Complainant’s gang and reveals the Complainant’s and other inmates’ identities. The Custodian contended that release of the letter could subject inmates to abuse and retaliation from fellow inmates or the public outside the prison.

The Custodian further argued that the Courts have long deferred to the Department of Corrections (“DOC”) when deciding matters pertaining to the safety and security of the prison system. The Custodian stated 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 stated that the Courts have noted 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. N.J. Dep’t of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999). See also Florence v. Bd. of Chosen Freeholders Burlington Cnty., 132 S.Ct. 1510, 1515 (2012) (“[m]aintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face[.]”).

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 further 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 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.

OPRA also provides that:

[OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . 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) (emphasis added).

The Complainant argued that he requested all documents responsive his request and that he was provided the same withheld records in a previous OPRA request. Conversely, the Custodian contended that he lawfully denied access to the SID Form 011 and the letter pursuant to OPRA statute and DOC regulations.

In Cordero v. N.J. Dep’t of Corr., GRC Complaint No. 2012-209 (June 2013), the complainant sought access to an SID report detailing the use of narcotics canines with prison visitors and subsequent investigations thereafter. The report also contained the identities of civilians and inmates. The Council agreed with the Custodian that disclosing the SID report would jeopardize the safety and security of personnel, inmates, and visitors. The Council also

held that disclosing the report detailing the search and investigation methods could lead to potential exploitation by inmates and undermine established safety and security measures.

In the instant matter, the GRC is satisfied that disclosure of either responsive record could pose a significant risk to the safe and secure operation of the New Jersey State Prison (“NJSP”) for the reasons expressed by the Custodian. *See* N.J.S.A. 47:1A-1.1. Similar to the SID report sought in Cordero, the SID Form 011 contains investigative and intelligence-gathering methods that could be exploited by inmates if subject to disclosure. Furthermore, because the report and the letter contain the Complainant’s and other inmates’ identities, disclosure would create a substantial risk of retaliation and directly conflict with DOC regulations. *See* N.J.A.C. 10A:22-2.3(a)(5) and N.J.A.C. 10A:22-2.3(b). The provisions of OPRA cannot abrogate exemptions made pursuant to promulgated regulations via a state agency. N.J.S.A. 47:1A-9.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the SID Form 011 and letter in response to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. The records contain “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. Furthermore, disclosure would be contrary to standing DOC regulations prohibiting inmates from obtaining records concerning other inmates, or would jeopardize the safety and security of a correctional facility. N.J.S.A. 47:1A-9(a), N.J.A.C. 10A:22-2.3(a)(5), and N.J.A.C. 10A:22-2.3(b).

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 SID Form 011 and letter in response to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. The records contain “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. Furthermore, disclosure would be contrary to standing Department of Corrections regulations prohibiting inmates from obtaining records concerning other inmates, or would jeopardize the safety and security of a correctional facility. N.J.S.A. 47:1A-9(a), N.J.A.C. 10A:22-2.3(a)(5), and N.J.A.C. 10A:22-2.3(b).

Prepared By: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

September 22, 2015