



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

February 23, 2016 Government Records Council Meeting

David Marc Drukaroff
Complainant

Complaint No. 2014-379

v.

NJ State Parole Board
Custodian of Record

At the February 23, 2016 public meeting, the Government Records Council (“Council”) considered the February 16, 2016 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 record. N.J.A.C. 10A:71-2.2(a)(7), as made applicable under OPRA by N.J.S.A. 47:1A-9, exempts parole hearing records, including transcripts, from public disclosure. Only offenders are entitled to receive the transcripts of their own parole proceedings. However, under the same regulation, audio recordings of the hearings are only permitted to be used for transcription purposes and are otherwise confidential. Thus, there is no “waiver of confidentiality” caused by the Parole Board’s previous release of the transcript to either Mr. Long or to the Complainant, because the CD recordings of the parole hearings are confidential, even to the offenders.

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 23rd Day of February, 2016

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 25, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 23, 2016 Council Meeting**

**David Marc Drukaroff¹
Complainant**

GRC Complaint No. 2014-379

v.

**New Jersey State Parole Board²
Custodial Agency**

Records Relevant to Complaint: CD recording of parole hearings of Ronald Long

Custodian of Record: Dina I. Rogers
Request Received by Custodian: November 12, 2014
Response Made by Custodian: November 12, 2014
GRC Complaint Received: November 17, 2014

Background³

Request and Response:

On November 12, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the New Jersey State Parole Board (“Parole Board”) denied the request, stating that transcripts and recordings of the parole hearings of Ronald Long are confidential pursuant to N.J.A.C. 10A:71-2(a)7, and not subject to disclosure.

Denial of Access Complaint:

On November 17, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that Ronald Long had received the transcripts from his Parole hearings of February 5, 2014, and March 17, 2014, and found that large portions of the text of the hearings were missing because the words were not audible to the transcriber. The Complainant included a letter, dated November 5, 2014, to the Parole Board from Mr. Long, who requested a copy of the audio recordings of the proceedings. The letter listed the Complainant as the “purchaser of transcripts.” The Complainant also included letters between the Complainant and the Parole Board from August and September

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Christopher Josephson.

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.

2014, which showed that he paid for the transcripts provided to Mr. Long. The Complainant argued that the Parole Board waived confidentiality in the records because they had previously produced the transcripts after the Complainant had paid for them on behalf of Mr. Long.⁴ Furthermore, the Complainant argued that Mr. Long had the right to authorize the Complainant to obtain the transcripts, or the CDs to him and that since the CDs contain the same information as the transcript, the content was no longer confidential.⁵ He further argued that to deny the release of the CDs would deprive both Mr. Long and the courts the ability to understand what transpired at the hearings.

Statement of Information:

On December 12, 2014, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that she received the Complainant’s OPRA request on November 12, 2014, and that she responded on the same day. She further stated that the request was denied, as the audio recordings concerning Mr. Long’s Parole hearings are deemed confidential. She noted that the Complainant requested the audio records Mr. Long’s hearings, so that the Complainant could “hear what was actually said.” The Custodian cited to N.J.S.A. 47:1A-9, which provides for exemptions under OPRA, including those exempted “by any regulation promulgated under the authority of any statute or Executive Order[.]” She contended that the present request could not be honored under OPRA, as N.J.A.C. 10A:71-2.2(a)7 provides that “[t]he following records shall be deemed confidential and shall not be subject to public access: An electronic recording or a transcript of any proceeding of the [Parole] Board.”

The Custodian noted that the Complainant argued that Mr. Long “authorized” the Complainant to obtain the transcripts, and that by previously releasing the transcripts upon Complainant’s request, the Parole Board “waived” confidentiality in those documents. However, the Custodian stressed that the Board did not waive confidentiality, arguing that there is no provision for waiver of confidentiality in N.J.A.C. 10A:71-2.2(a)(7). As to the Complainant’s argument that Mr. Long was being “deprived,” the Custodian noted that the Parole Board authorizes an offender (in this case, Mr. Long) to obtain a transcript but that the audio tapes are confidential, even from the offender.

Additional Submissions:

On December 15, 2014, the Complainant wrote the GRC to advise that the CDs could be sent to Mr. Long rather than to him and that he didn’t understand how the State of New Jersey would be damaged by release of the CD.

⁴ The letter requesting the transcript, which included a payment by the Complainant, said the transcripts should be mailed to Mr. Long in the Northern State Prison and only sent to the Complainant in the event that the transcripts were “unable” to be sent to Mr. Long. There was no proof provided as to who actually received the transcripts.

⁵ The Complainant contends that he requested the CDs because the content might be different and that another person might be able to hear content that the transcriber could not.

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.

Records relating to parole hearings, *e.g.*, psychiatric reports are primarily not accessible under OPRA, even to those under consideration for parole. *See, e.g.* Spillane v. NJ State Parole Bd., GRC Complaint No. 2014-169 (March 2015). *See also* Groelly v. Dep’t of Corr., GRC Complaint No. 2012-1294 (June 2012).

In the present case, the Custodian did not unlawfully deny access to the requested record. N.J.A.C. 10A:71-2.2(a)(7), as made applicable under OPRA by N.J.S.A. 47:1A-9, exempts parole hearing records, including transcripts, from public disclosure. Only offenders are entitled to receive the transcripts of their own parole proceedings.⁶ However, under the same regulation, audio recordings of the hearings are only permitted to be used for transcription purposes and are otherwise confidential. Thus, there is no “waiver of confidentiality” caused by the Parole Board’s previous release of the transcript to either Mr. Long or to the Complainant, because the CD recordings of the parole hearings are confidential, even to the offenders.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the requested record. N.J.A.C. 10A:71-2.2(a)(7), as made applicable under OPRA by N.J.S.A. 47:1A-9, exempts parole hearing records, including transcripts, from public disclosure. Only offenders are entitled to receive the transcripts of their own parole proceedings. However, under the same regulation, audio recordings of the hearings are only permitted to be used for transcription purposes and are otherwise confidential. Thus, there is no “waiver of confidentiality” caused by the Parole Board’s previous release of the transcript to either Mr. Long or to the Complainant, because the CD recordings of the parole hearings are confidential, even to the offenders.

Prepared By: Ernest Bongiovanni
Staff Attorney

February 16, 2016

⁶ N.J.A.C. 5:105-2.1(b) provides that “[t]he right to institute a proceeding before the [Government Records] Council shall solely be the right of the requestor pursuant to N.J.S.A. 47:1A-6. . . .” While the Complainant sought the records under OPRA, and thus could and did institute a proceeding once access was denied, it should be made clear that Mr. Drukaroff filed the instant Complaint on his own behalf and that Mr. Long, who was free to make his own OPRA request, did not do so.