



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**June 28, 2016 Government Records Council Meeting**

King Victorious  
Complainant

Complaint No. 2014-71

v.

NJ Department of Corrections  
Custodian of Record

At the June 28, 2016 public meeting, the Government Records Council (“Council”) considered the June 21, 2016 Supplemental 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 based on the foregoing, it would appear that the Custodian has established in the request for reconsideration that either: 1) the Council’s decision was based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Custodian established that the complaint should be reconsidered based on mistake or illegality. Thus, the Custodian’s request for reconsideration should be granted. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). The Council should therefore rescind its Order requiring the Custodian to disclose to the Complainant the statements given by two other inmates. Further, as there was no unlawful denial of access, there is no need to consider a knowing or willing denial.

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 28<sup>th</sup> Day of June, 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: June 30, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***Reconsideration***  
**Supplemental Findings and Recommendations of the Executive Director**  
**June 28, 2016 Council Meeting**

**King Victorious (f/k/a Daniel Delgado)<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2014-71**

**v.**

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

**Records Relevant to Complaint:**

Item No. 1: Affidavit signed by Complainant for case captioned “José Vega v. New Jersey Department of Corrections.”

Item No. 2: Written statement by inmate Juan Rosario.

Item No. 3: Written statement by inmate José Vega.

**Custodian of Record:** John Falvey

**Request Received by Custodian:** December 16, 2013

**Response Made by Custodian:** December 26, 2013; January 9, 2014; February 6, 2014

**GRC Complaint Received:** February 6, 2014

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

**September 30, 2014 Council Meeting:**

At its September 30, 2014 public meeting, the Council considered the September 23, 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 found that:

1. The Custodian lawfully denied access to the requested affidavit because it is a document concerning another inmate and exempt from disclosure. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(b).

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Deputy Attorney General Gregory Bueno.

<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.

King Victorious (f/k/a Daniel Delgado) v. State of New Jersey Department of Corrections, 2014-71 –Supplemental Findings and Recommendations of the Executive Director (Reconsideration)

2. The Custodian has not borne his burden of proving that he lawfully denied access to the two (2) requested witness statements because these records do not concern any inmates other than the Complainant. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(b). The Custodian shall disclose to the Complainant copies of the two (2) responsive witness statements.
3. **The Custodian shall comply with item number two (2) above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>4</sup> to the Executive Director.<sup>5</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

#### Procedural History:

On October 1, 2014, the Council distributed its September 30, 2014 Interim Order to all parties. On October 7, 2014, the Custodian requested five (5) additional business days to comply with the Council’s Order. On October 8, 2014, the GRC granted the Custodian’s request for an extension until October 15, 2014. On October 15, 2014, the Custodian’s Counsel filed a request that the Council reconsider its September 30, 2014 Interim Order based on a mistake or illegality.

#### Analysis

#### Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council, and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Custodian’s Counsel filed the request for reconsideration of the Council’s September 30, 2014 Interim Order on October 15, 2014, or the tenth (10<sup>th</sup>) business day following the receipt of the Order.

---

<sup>4</sup> “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

<sup>5</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

King Victorious (f/k/a Daniel Delgado) v. State of New Jersey Department of Corrections, 2014-71 –Supplemental Findings and Recommendations of the Executive Director (Reconsideration)

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401.

In The Matter Of the Petition of Comcast Cablevision of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Custodian’s Counsel listed two bases on which the Council should reconsider its order. First, Custodian’s Counsel argues that the New Jersey Department of Corrections (“NJDOC”) previously provided the Complainant with the inmates’ statements outside of OPRA. NJDOC provided the records on or about October 10, 2014, following a determination that the Complainant, in connection to his prison disciplinary hearing, had a due process right to the statements. Counsel argued that the issue of disclosure was moot because the statements were disclosed.

Custodian’s Counsel argued, additionally or in the alternative, that compliance with the Council’s Interim Order would violate NJDOC’s regulation N.J.A.C. 10A:22-2.3(b), which provides in part that “[an] inmate shall not be permitted to . . . obtain copies of documents concerning any other inmate.” Counsel then stated that the inmates’ statements contain information regarding inmates other than the Complainant. Counsel contended that “[d]ocuments that concern inmates within the NJDOC’s custody are often quite sensitive . . . and include other inmate information that the Council has deemed cannot be produced to another inmate.” *Citing Werner v. NJ Dep’t. of Corr.*, GRC Complaint No. 2011-153 (September 2012)’ McLawhorn v NJ Dep’t of Corr., GRC Complaint No. 2012-292 (July 2013). As such, Custodian’s Counsel asserted that the Council erred when it concluded that the witness statements of inmates Rosario and Vega did not concern any inmates other than the Complainant.

The GRC has previously found that release of inmate records, which contained the complainant’s and other inmates’ identities, would create a substantial risk of retaliation, directly conflicting with DOC regulations. Diaz-Young v. NJ Dep’t of Corr., GRC Complaint No. 2014-377 (September 2015), *citing* N.J.A.C. 10A:22-2.3 (b). *Also citing* Cordero v. NJ Dep’t of Corr., GRC Complaint No. 2012-209 (June 2013). *See also* I Be Allah v. NJ Dep’t of Corr., GRC Complaint No. 2015-293 (May 2016).

Here, after reconsidering the matter, including reviewing the Custodian's October 15, 2014 Certification and argument of his counsel and applicable case law, the Council agrees that it erred in determining that the witnesses' statements did not concern "inmates other than the Complainant."

Statements were made by two inmates, both of whom were witnesses to a certain incident involving the Complainant and were called to testify at the Complainant's disciplinary proceeding. During the GRC's review of the matter, the GRC requested a clarification of the record by asking the Custodian:

1. Did the Custodian deny access to the two (2) responsive inmate witness statements because the content of the statements concerns an inmate or inmates other than the Complainant?
2. Or, did the Custodian deny access to the two (2) responsive inmate witness statements because the statements were authored by inmates other than the Complainant?

In response, the Custodian replied that "the two inmate statements in question were denied pursuant to N.J.A.C. 10A:22-2.3(b) because they were authored and signed by two other inmates." Consequently, the Council found that the records, although authored by other inmates, related only to the Complainant and did not implicate the prohibition on the disclosure of documents concerning other inmates to an inmate-requestor pursuant to N.J.C.A. 10A:22-2.3.

The Council may reconsider and alter a decision based on a mistake, such as instances where the Council perhaps "did not consider the significance of probative, competent evidence." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). Here, the attempt by the GRC to clarify the matter erroneously took the focus off the real issue, *i.e.* whether the responsive statements did in fact pertain to other inmates. Specifically, the Custodian, in support of his request for reconsideration, certifies that "the contents of those statements also *concern the inmates who provided them*" (emphasis added). *See* Certification of John Falvey dated October 15, 2014, ¶ 4. Moreover, if the records concerned other inmates, the records would not be disclosable under OPRA pursuant to NJDOC's regulations. N.J.S.A. 47:1A-9. N.J.A.C. 10A:22-2.3(b).

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. *See* Cummings, 295 N.J. Super. at 384. Here, the Complainant has established that there was a mistake because the Council did not fully consider the significance of the probative competent evidence in the Custodian's SOI but instead mistakenly placed the emphasis on the Custodian's response to the Council's request for clarification. In the instant matter, the clarification clouded the facts and misdirected the GRC's focus: the Custodian stated that documents were withheld because they were made and signed by inmates other than the Complainant. However, the relevant issue is instead whether the statements pertain to other inmates. Therefore, the Council's September 30, 2014 Interim Order was founded on an incorrect basis, and the records are exempt from disclosure pursuant to NJDOC's regulations. DeRobertis v. Twp. of Montclair, GRC Complaint No. 2012-199 (October 2013). *See also*

Ciccarone v. State of N.J., GRC Complaint No. 2013-280 (November 2015). N.J.A.C. 10A:22-2.3 (b). Diaz-Young, GRC 2014-377; Cordero, GRC 2012-209.

Based on the foregoing, it would appear that the Custodian has established in the request for reconsideration that either: 1) the Council's decision was based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Custodian established that the complaint should be reconsidered based on mistake or illegality. Thus, the Custodian's request for reconsideration should be granted. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). The Council should therefore rescind its Order requiring the Custodian to disclose to the Complainant the statements given by two other inmates.<sup>6</sup> Further, as there was no unlawful denial of access, there is no need to consider a knowing or willing denial.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends that, based on the foregoing, it would appear that the Custodian has established in the request for reconsideration that either: 1) the Council's decision was based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Custodian established that the complaint should be reconsidered based on mistake or illegality. Thus, the Custodian's request for reconsideration should be granted. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). The Council should therefore rescind its Order requiring the Custodian to disclose to the Complainant the statements given by two other inmates. Further, as there was no unlawful denial of access, there is no need to consider a knowing or willing denial.

Prepared By: Ernest Bongiovanni  
Staff Attorney

June 21, 2016<sup>7</sup>

---

<sup>6</sup> During pendency of the reconsideration, the Complainant asked the GRC whether he would be required to return the documents that were disclosed to him in the event the GRC chose to reverse its decision. The GRC notes that the Interim Order applies only to OPRA, not to documents disclosed outside of OPRA or provided as due process.

<sup>7</sup> This matter was scheduled to be adjudicated on December 15, 2015, but the Council held the matter at that time on the advice of legal counsel.



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

INTERIM ORDER

September 30, 2014 Government Records Council Meeting

King Victorious (f/k/a Daniel Delgado)  
Complainant

Complaint No. 2014-71

v.

NJ Department of Corrections  
Custodian of Record

At the September 30, 2014 public meeting, the Government Records Council (“Council”) considered the September 23, 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:

1. The Custodian lawfully denied access to the requested affidavit because it is a document concerning another inmate and exempt from disclosure. See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(b).
2. The Custodian has not borne his burden of proving that he lawfully denied access to the two (2) requested witness statements because these records do not concern any inmates other than the Complainant. See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(b). The Custodian shall disclose to the Complainant copies of the two (2) responsive witness statements.
3. **The Custodian shall comply with item number two (2) above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

<sup>1</sup> “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.





Interim Order Rendered by the  
Government Records Council  
On The 30<sup>th</sup> Day of September, 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: October 1, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 30, 2014 Council Meeting**

**King Victorious (f/k/a Daniel Delgado)<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-71**

**v.**

**State of New Jersey Department of Corrections (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

Item No. 1: Affidavit signed by Complainant for case captioned “Jose Vargas v. New Jersey Department of Corrections.”

Item No. 2: Written statement by inmate Juan Roasario.

Item No. 3: Written statement by inmate Jose Vega.

**Custodian of Record:** John Falvey

**Request Received by Custodian:** December 16, 2013

**Response Made by Custodian:** December 26, 2013; January 9, 2014; February 6, 2014

**GRC Complaint Received:** February 6, 2014

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

**Request and Response:**

On December 16, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 26, 2013, seven (7) business days later, the Custodian responded in writing seeking an extension of time to respond until January 10, 2014. On January 9, 2014, the Custodian responded by denying access to the records at issue here based on the section of the Department of Corrections’ (“DOC’s”) regulations exempting records concerning other inmates. The Custodian also made available nineteen (19) other pages of responsive documents to the Complainant following his payment of the copying costs. On February 6, 2014, the Custodian provided said documents.

---

<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.

King Victorious (f/k/a Daniel Delgado) v. N.J. Department of Corrections, GRC Complaint No. 2014-71 – Findings and Recommendations of the Executive Director

### Denial of Access Complaint:

On February 6, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that he was denied access to the two (2) page affidavit that he prepared and the two (2) witness statements submitted by the above named individuals. The Complainant argues that his request do not implicate Executive Order No. 26 (McGreevey 2002) (“EO 26”), Executive Order No. 47 (Christie 2010) (“EO 47”), N.J.A.C. 10A:22-2.3(a)(4)-(5), and N.J.A.C. 10A:22-2.3(b). The Complainant states that he prepared and signed the requested affidavit. Further, the Complainant notes that the witness statements he seeks were prepared by witnesses the Complainant called.

### Statement of Information:

On March 13, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the request on December 26, 2013 and responded on December 26, 2013 by seeking ten (10) additional business days to respond. The Custodian further certified that he responded again to the Complainant on January 9, 2014 and February 6, 2014, first predicating the provision of responsive records on his receipt of copying costs and then, after the Complainant paid, disclosing the records for which no exemptions were claimed.

The Custodian states that he made nineteen (19) of twenty seven (27) pages of responsive records available to the Complainant, and that the Complainant is contesting the denial of three (3) records totaling five (5) pages. The Custodian argues that he properly denied access to each of these records based on N.J.A.C. 10A:22-2.3(b), which states in relevant part that “[a]n inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.” *Id.* The Custodian contends that, though the affidavit is signed by the Complainant, it is a record that is being used as evidence in a civil case against DOC in which the plaintiff is an inmate at New Jersey State Prison and, therefore, it is a record concerning another inmate. Additionally, the Custodian avers that the requested witness statements are similarly exempt because two (2) inmates prepared and signed the documents.

### Additional Document Submissions:

On August 11, 2014, the GRC requested clarification from the Custodian regarding his application of N.J.A.C. 10A:22-2.3(b) by seeking a response to the following questions:

1. Did the Custodian deny access to the two (2) responsive inmate witness statements because the content of the statements concerns an inmate or inmates other than the Complainant?
2. Or, did the Custodian deny access to the two (2) responsive inmate witness statements because the statements were authored by inmates other than the Complainant?

On August 12, 2014, the Custodian certified that “the two inmate statements in question were denied pursuant to N.J.A.C. 10A:22-2.3(b) because they were authored and signed by two other inmates.”

## 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.

Further, “[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; 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).

In turn, N.J.A.C. 10A:22-2.3(b) provides that “[a]n inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.” *Id.* In applying this exemption, for example, the Council has previously found that the custodian for DOC lawfully denied access to an inmate’s request for court orders and newspaper articles regarding all DOC prisoners who legally changed their names over the course of a specified time period. *See Werner v. N.J. Dep’t of Corr.*, GRC Complaint No. 2011-153 (September 2012).

Relatedly, the Council has repeatedly held under a similar section of the New Jersey Administrative Code that inmates’ requests for records relating medical, psychiatric, or psychological treatment are properly denied even when an inmate requests his or her own records. *See, e.g., McLawhorn v. N.J. Dep’t of Corr.*, GRC Complaint No. 2012-292 (July 2013); Groelly v. N.J. Dep’t of Corr., GRC Complaint No. 2010-194 (June 2012); Hamilton v. N.J. Dep’t of Corr., GRC Complaint No. 2007-196 (March 2008); Kamau v. N.J. Dep’t of Corr., GRC Complaint No. 2004-175 (February 2005).

Here, the Complainant requested an affidavit he prepared in connection with another inmate’s civil suit and two (2) witness statements authored by other inmates. “Concerning” is most frequently defined as “relating to” or “regarding.” *See Concerning Definition, Dictionary.com*, <http://dicionary.reference.com/browse/concerning> (last visited Aug. 12, 2014); *Concerning Definition, The Law Dictionary*, <http://thelawdictionary.org/concerning-concerned> (last visited Aug. 12, 2014); *Concerning Definition, Merriam-Webster*, <http://www.merriam-webster.com/dicionary/concerning> (last visited Aug. 12, 2014). The affidavit requested by the Complainant was prepared by him to be used as evidence in a lawsuit filed by another inmate. This document, created for the plaintiff-inmate, thus on its face concerns, or relates to, “any other inmate” under N.J.A.C. 10A:22-2.3(b). That the Complainant himself authored the document does not make the record subject to disclosure. *Cf. McLawhorn*, GRC 2012-292; Groelly, GRC 2010-194; Hamilton, GRC 2007-196; Kamau, GRC 2004-175 (finding no unlawful denial of access to complainants’ own medical records).

In contrast, the Custodian certified that he denied access to the requested witness statements not because they concern inmates other than the Complainant, but because “they were authored and signed by two other inmates.” In this instance, these inmates prepared the witness statements upon the Complainant’s request and to be used in the Complainant’s court proceedings. Thus, these records relate to the Complainant and do not implicate the prohibition on the disclosure of documents concerning “any other inmate” to an inmate-requestor under N.J.A.C. 10A:22-2.3(b).

Therefore, the Custodian has borne his burden of proving that he lawfully denied access to the requested affidavit because it is a document concerning another inmate and exempt from disclosure. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(b). However, the Custodian has not borne his burden of proving that he lawfully denied access to the two (2) requested witness statements because these records do not concern any inmates other than the Complainant. *See* Id. The Custodian shall disclose to the Complainant copies of the two (2) responsive witness statements.

### **Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian lawfully denied access to the requested affidavit because it is a document concerning another inmate and exempt from disclosure. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(b).
2. The Custodian has not borne his burden of proving that he lawfully denied access to the two (2) requested witness statements because these records do not concern any inmates other than the Complainant. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(b). The Custodian shall disclose to the Complainant copies of the two (2) responsive witness statements.
3. **The Custodian shall comply with item number two (2) above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>4</sup> to the Executive Director.<sup>5</sup>**

---

<sup>4</sup> “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

<sup>5</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the King Victorious (*f/k/a* Daniel Delgado) v. N.J. Department of Corrections, GRC Complaint No. 2014-71 – Findings and Recommendations of the Executive Director

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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

Approved By: Dawn R. SanFilippo, Esq.  
Acting Executive Director

September 23, 2014

---

record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.  
King Victorious (f/k/a Daniel Delgado) v. N.J. Department of Corrections, GRC Complaint No. 2014-71 – Findings and Recommendations of the Executive Director