



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

October 28, 2014 Government Records Council Meeting

Quadree Smith
Complainant

Complaint No. 2014-97

v.

NJ Department of Corrections
Custodian of Record

At the October 28, 2014 public meeting, the Government Records Council (“Council”) considered the October 21, 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 detainer dated January 29, 2004 because he certified, and the record indicates, 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 28th Day of October, 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 30, 2014



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 28, 2014 Council Meeting**

**Quadree Smith¹
Complainant**

GRC Complaint No. 2014-97

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hard copies of:

November 12, 2013 OPRA Request

“Copies of all detainers lodged against Quadree Smith 458269/142555C by any state and federal law enforcement agencies against NJDOC.”

January 30, 2014 OPRA Request

“Requesting copy of actual detainer shown on face sheet report. Order Type: CM; INFO #: USMS 26084050; Issued Date: 01/29/2004; Status: 2C; Code: 11-3; Offense: Murder; Issued By: USD.

The following detainer was lodged against Quadree Smith #458269, SBI# 142555C.”

Custodian of Record: John Falvey

Request Received by Custodian: November 12, 2013; January 30, 2014

Response Made by Custodian: November 21, 2013; December 3, 2013; December 23, 2013; January 31, 2014

GRC Complaint Received: March 4, 2014

Background³

Request and Response:

On November 12, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 21, 2013, the Custodian responded, in writing, seeking additional ten (10) business days to respond.

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.

On December 3, 2014, the Custodian responded to the Complainant, in writing, stating that there were five (5) pages of responsive records to his request. The Custodian further stated that the Complainant needed to fill out and submit a form to deduct a copying fee of \$0.25 from his inmate account prior to delivery of the records. On December 23, 2014, the Custodian submitted a letter to the Complainant in writing, acknowledging receipt of payment for the copying costs and enclosed the requested records therein.

On January 30, 2014, the Complainant submitted a second (2nd) OPRA request seeking the above-mentioned records. On January 31, 2014, the Custodian responded, in writing, stating that there was a one (1) page record responsive to the Complainant's request. The Custodian added that the date of the responsive record is July 27, 2010, and not January 29, 2004. Further, the Custodian stated that he had already provided the Complainant with said document in response to his OPRA request of November 12, 2013. The Custodian also requested payment of \$0.05 for copying costs.

Denial of Access Complaint:

On March 4, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the document is not responsive to his request, and the date of the request record should be January 29, 2004. The Complainant claimed that the detainer he seeks with the alleged date is listed on his "face time sheet."

Statement of Information:

On April 28, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that in response to the Complainant's January 30, 2013 OPRA request, he located a one (1) page document that contained the same U.S. Marshal Service ("USMS") number as was listed in the request. Additionally, the Custodian certified that the issue date of the responsive record was July 27, 2010, and not January 29, 2004, as listed in the request. The Custodian certified that no responsive records exist that precisely match the Complainant's request.

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, in light of a custodian's certification that no records responsive to the request 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 federal detainer with USMS number 26084050 and dated January 29, 2004 exists. Additionally, the Complainant failed to provide any evidence in the record to rebut the Custodian's certification.

The Custodian has borne his burden of proof that he lawfully denied access to the requested detainer dated January 29, 2004 because he certified, and the record indicates, 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 detainer dated January 29, 2004 because he certified, and the record indicates, 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.
Acting Executive Director

October 28, 2014