



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

July 26, 2016 Government Records Council Meeting

Shawn July
Complainant

Complaint No. 2015-6

v.

NJ Department of Corrections
Custodian of Record

At the July 26, 2016 public meeting, the Government Records Council (“Council”) considered the July 19, 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 has borne his burden of proof that he lawfully denied access to the requested SID special reports pursuant to N.J.S.A. 47:1A-1.1, and N.J.A.C. 10A:22-2.3(a)(1), N.J.A.C. 10A:22-2.3(a)(2), and N.J.A.C. 10A:22-2.3(b). Such denial is also lawfully consistent with the authority granted by N.J.S.A. 47:1A-9, N.J.S.A. 31:1B-1, and N.J.S.A. 30:1B-6(g). See also Russo v. NJ Dep’t of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999); Harris, GRC No. 2011-65; Reid v. NJ DOC (GRC Complaint No. 2013-165); Smith v. NJ DOC (GRC Complaint No. 2013-337).

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 July 26th Day of July, 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: July 29, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 26, 2016 Council Meeting**

**Shawn July¹
Complainant**

GRC Complaint No. 2015-6

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Copies of all special reports completed by S.I.D. and DOC custody staff regarding [the Complainant] being placed on Involuntary Protective Custody.

Custodian of Record: John Falvey
Request Received by Custodian: May 23, 2015
Response Made by Custodian: June 2, 2014
GRC Complaint Received: January 9, 2015

Background³

Request and Response:

On May 12, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 2, 2014, the Custodian replied in writing, denying the request based on the following exemptions:

- N.J.A.C. 10A:22-2.3(a)(1): Informant documents and statements.
- N.J.A.C. 10A:22-2.3(a)(2): Special Investigations Division investigations, provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility.
- 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.
- 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.

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.

- N.J.S.A. 47:1A-1.1: emergency or security information or procedures which, if disclosed, would jeopardize the security of the building or facility or persons therein

Denial of Access Complaint:

On January 5, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he is entitled access to “some” of the information requested but made no additional legal arguments.

Statement of Information:

On January 30, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 23, 2015. The Custodian certified that upon receipt, his office contacted the Special Investigations Division (“SID”) as the records dealt with the Involuntary Protective Custody (“IPC”) of the Complainant, and SID investigates IPC Placement. The Custodian certified that SID thereafter provided his office with reports dated May 8, 2014 (two pages), March 14, 2013 (two pages), and March 12, 2013 (four pages). The Custodian averred that he responded in writing to the Complainant’s OPRA request on June 2, 2014, the sixth business day following receipt, denying the records pursuant to N.J.A.C. 10A:22-2.3(a)(1); N.J.A.C. 10A:22-2.3(a)(2); N.J.A.C. 10A:22-2.3(b); and N.J.S.A. 47:1A-1.1.

The Custodian stated that the reports detail an SID investigation into a gang-related stabbing in prison, subsequent actions taken, and security recommendations. He certified that the reports contain names of other involved inmates, discuss intelligence gathered, sources, interviews conducted, investigative techniques, and Security Threat Group networks within the NJSP system. The Custodian argued that said reports could not be released because doing so would jeopardize the safe and secure running of the prison system by revealing intelligence gathering capabilities and put other inmates in jeopardy by exposing them to physical abuse, extortion, or some other form of retaliation.

The Custodian noted that, although not stated in his original denial, the report dated May 8, 2014, was also exempt pursuant to N.J.S.A. 47:1A-9. He certified that his office was informed that this particular report was provided to the Hearing Officer at an IPC Hearing for the Complainant on September 3, 2014. The Hearing Officer presiding over that hearing determined the report to be confidential and not to be released or shown to the Complainant. The Custodian noted that the Hearing Officer has authority pursuant to N.J.A.C. 10A:5-5.2 to designate records confidential.

The Custodian further argued that Courts have long deferred to the Department of Corrections (“DOC”) when making decisions about safety and security and that the DOC has “broad discretionary powers” to promulgate regulations aimed at maintaining security and order inside correctional facilities. Jenkins v. Fauver, 108 N.J. 239, 252 (1987). He noted that New Jersey Courts have found “[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. Board of Chosen Freeholders Burlington County, 132 S.Ct. 1510, 1515 (2012).

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).

The Council has previously recognized that, in accordance with N.J.S.A. 30:1B-6(g), the DOC Commissioner has broad discretionary powers to determine matters of public policy and regulate the institutions under his jurisdiction. See Harris v. NJ Dep't of Corr., GRC Complaint No. 2011-65 (2012) (citing N.J.S.A. 30:1B-6(g)). These powers include formulating and adopting policies pertaining to maintaining security and order within correctional institutions. See Jenkins v. Fauver, 108 N.J. 239, 252 (1987); Russo v. NJ Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999).

Here, the Custodian certified that the information contained in the requested records detailed SID investigation into a gang-related stabbing in prison, subsequent actions taken, and security recommendations. He certified that the reports contain names of other involved inmates, discuss intelligence gathered, sources, interviews conducted, investigative techniques, and Security Threat Group networks within the NJSP system. The Custodian argued that said reports could not be released because doing so would jeopardize the safe and secure running of the prison system by revealing intelligence gathering capabilities and put other inmates in jeopardy by exposing them to physical abuse, extortion, or some other form of retaliation. Therefore, the DOC Commissioner’s decision to deem such a record “confidential” is within the broad authority granted to him under N.J.S.A. 30:1B-6(g). See Russo, 324 N.J. Super. at 583-584; Reid v. NJ DOC (GRC Complaint No. 2013-165); Smith v. NJ DOC (GRC Complaint No. 2013-337).

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the requested SID special reports pursuant to N.J.S.A. 47:1A-1.1, and N.J.A.C. 10A:22-2.3(a)(1), N.J.A.C. 10A:22-2.3(a)(2), and N.J.A.C. 10A:22-2.3(b). Such denial is also lawfully consistent with the authority granted by N.J.S.A. 47:1A-9, N.J.S.A. 31:1B-1, and N.J.S.A. 30:1B-6(g). See also Russo v. NJ Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999); Harris, GRC No. 2011-65; Reid v. NJ DOC (GRC Complaint No. 2013-165); Smith v. NJ DOC (GRC Complaint No. 2013-337).

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 SID special reports pursuant to N.J.S.A. 47:1A-1.1, and N.J.A.C. 10A:22-2.3(a)(1), N.J.A.C. 10A:22-2.3(a)(2), and N.J.A.C. 10A:22-2.3(b). Such denial is also lawfully consistent with the authority granted by N.J.S.A. 47:1A-9, N.J.S.A. 31:1B-1, and N.J.S.A. 30:1B-6(g). See also Russo v. NJ Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999); Harris, GRC No. 2011-65; Reid v. NJ DOC (GRC Complaint No. 2013-165); Smith v. NJ DOC (GRC Complaint No. 2013-337).

Prepared By: Husna Kazmir
Staff Attorney

July 19, 2016