



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**

**February 23, 2016 Government Records Council Meeting**

Abdiel F. Avila  
Complainant

Complaint No. 2015-154

v.

NJ Department of Corrections  
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 has borne his burden of proof that he lawfully denied access to the requested record, described in the Complainant’s June 14, 2011 OPRA request, because he certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer 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 23<sup>rd</sup> 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**

**Abdiel F. Avila<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-154**

v.

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

**Records Relevant to Complaint:** All records on the “involuntary bankruptcy” proceeding for Debtor: ABDIEL F. AVILA, case no. 06-004645-001; all “orders” and “records”

**Custodian of Record:** Deirdre Fedkenheuer,<sup>3</sup> John Falvey

**Request Received by Custodian:** June 22, 2011; July 27, 2011

**Response Made by Custodian:** June 28, 2011; July 27, 2011; August 9, 2011

**GRC Complaint Received:** June 1, 2015

**Background<sup>4</sup>**

**Request and Response:**

On June 14, 2011, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 28, 2011, the Custodian responded in writing, seeking clarification as “several individuals, including the department’s Special Legal Advisor,” had reviewed the request and found it unclear and overly broad, pursuant to MAG Entertainment v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). The Custodian stated that the request would remain pending for the next 30 days. On July 27, 2011, the Custodian received an amended request containing clarifying information. This request sought a “‘copy’ of the Federal Order, from the U.S. Bankruptcy Court, that gave the ‘Commissioner of Corrections’ to be ‘custodian,’ trustee receiver, or agent appointed of the property (personal property/corpus) of the debtor: Abdiel F. Avila” (*sic*), related to Case No. 06-004645-001.

On July 27, 2011, the Custodian wrote to the Complainant, requesting an additional ten (10) business days in which to respond to the request. On August 9, 2011, the Custodian wrote to

---

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

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> Ms. Fedkenheuer was the Custodian at the time of the request. Mr. Falvey is the current Custodian.

<sup>4</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.

the Complainant, advising that he had received additional information regarding the request. The Custodian stated that inquiries were made to “several units” within the DOC that may have possibly maintained information regarding the request and determined that the DOC has no records on file responsive to the request. The Custodian accordingly denied the request and advised the Complainant that he may wish to contact the appropriate court of jurisdiction regarding his request.

#### Denial of Access Complaint:

On May 22, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the DOC has been withholding evidence, “causing a deprivation of liberty rights, disclosure of documents necessary for final settlement of all claims.” The Complainant additionally alleged that the Custodian “did not indicate the specific basis for denial.” The Complainant asserted the denial of access in this case was improper.

#### Statement of Information:

On June 18, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the office received the Complainant’s OPRA request on June 22, 2011 and responded on June 28, 2011, seeking additional information. In response, the Complainant submitted clarifying information on July 27, 2011. The Custodian certified that the then-Custodian’s search included a check of the Complainant’s file and files maintained by the Classification Department and the Business Office at New Jersey State Prison (“NJSP”).

The Custodian certified that the NJSP’s OPRA Liaison reported that no responsive records were located after a search of various entities within the prison that would maintain such a record. The Custodian averred that on August 9, 2011, the DOC informed the Complainant that no records were located. The Custodian cited the GRC’s prior decision in Pusterhofer, GRC Complaint No. 2005-49 (July 2005), holding that there is no unlawful denial of access when there are no records responsive to a 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 GRC 2005-49. Here, the Custodian certified that the Complainant was advised that the appropriate court may be in possession of the requested records and that the DOC has no

responsive records. Additionally, the Complainant offered no information to refute the Custodian's certification.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the requested record, described in the Complainant's June 14, 2011 OPRA request, because he certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer, GRC 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 record, described in the Complainant's June 14, 2011 OPRA request, because he certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer GRC Complaint No. 2005-49 (July 2005).

Prepared By: Husna Kazmir  
Staff Attorney

February 23, 2016