



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**

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

Elonzio Odums  
Complainant

v.

NJ Department of Corrections  
Custodian of Record

Complaint No. 2015-261

At the June 28, 2016 public meeting, the Government Records Council (“Council”) considered the June 21, 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:

1. Because a portion of the Complainant’s request seeks information rather than a specifically identifiable government record, that portion of the request is invalid pursuant to MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian has therefore lawfully denied access to Complainant’s request. N.J.S.A. 47:1A-6.
2. The Custodian has borne his burden of proof that he lawfully denied access to the requested Daily Activity Reports pursuant to N.J.S.A. 47:1A-1.1. Such denial is also lawfully consistent with N.J.A.C. 10A:22-2.3(a)(4), N.J.A.C. 10A:22-2.3(a)(5), and N.J.A.C. 10A:22-2.3(b). See also Russo v. NJ Dep’t of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999).
3. The Custodian has borne his burden of proof that he lawfully denied access to the requested items described in the Complainant’s June 2, 2015 OPRA request because he certified that no responsive records exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep’t. of Educ., GRC 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 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**

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

**Elonzio Odums<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-261**

**v.**

**NJ Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

June 2, 2015 OPRA Request

Copies of:

- 1) Names and reports of unknown DOC officers assigned to transport Elonzio (NMI) Odums, #870008, SBI 955877A, at approximately 10 PM. 02/15-02/16-2015. From: Inspira Medical Center, Vineland, 1505 W. Sherman Ave., Vineland, NJ 08360 to South Woods State Prison, 215 Burlington Road, Bridgeton, NJ 08302.
- 2) “Communication and/or reports between officers assigned to transport inmate and their superiors (name unknown – please provide)”
- 3) Regarding mode of transport sent, DOC restriction to wheelchair accessible transport only, the suspension of restriction by higher authority (Lt. name unknown – please provide), report of injuries suffered by inmate during transport

July 8, 2015 OPRA Request

Copies of:

- 1) Reports by unknown officers assigned to transport Elonzio Odums, #870008, SBI 955877A, approximately 10 PM. 02/15-02/16, 2015. From: Inspira Medical Center, Vineland, 1505 W. Sherman Ave., Vineland, NJ 08360 to South Woods State Prison, 215 Burlington Road, Bridgeton, NJ 08302
- 2) DOC Reports of injuries suffered by the inmate in transportation
- 3) DOC report of suspension of restriction regarding transport in wheelchair accessible vehicle by invalid inmate

**Custodian of Record:** John Falvey

**Request Received by Custodian:** June 10, 2015; July 16, 2015

**Response Made by Custodian:** June 19, 2015; June 22, 2015; July 21, 2015

**GRC Complaint Received:** August 21, 2015

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

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

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

### **Request and Response:**

On June 2, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 19, 2015, the seventh business day following receipt of the request, the Custodian responded in writing, requesting an additional ten (10) business days in which to locate potential records. On June 22, 2015, the Custodian responded to the request, denying in part.

With respect to the portion of item 1 seeking “names,” the Custodian informed the Complainant that this request could not be fulfilled pursuant to MAG Ent’mt LLC v. Div. of Alcohol Beverages Control, 375 N.J. Super. 534 (App. Div. 2005), as it was a request for information and not an identifiable record. The Custodian thereafter informed the Complainant that the search for the portion of item 1 seeking “reports” resulted in “two pages of a Daily Activity Report.” The Custodian denied this record, stating that it was exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1’s restriction regarding “emergency or security information or procedures for any buildings which, if disclosed, would jeopardize security of the building or facility or person therein” and due to the records containing “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property.” The Custodian additionally denied the request pursuant to N.J.A.C. 10A:22-2.3(a)(4) (any information relating to medical, psychiatric, or psychological history); N.J.A.C. 10A:22-2.3(a)(5) (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); and N.J.A.C. 10A:22-2.3(b)(any inmate shall not be permitted to inspect, examine, or obtain copies of documents concerning any other inmate). With respect to items 2 and 3, the Custodian noted that no responsive records were located.

On July 8, 2015, the Complainant submitted an additional OPRA request, which the Custodian received on July 16, 2015. The request again sought the above records and listed other items. The Custodian responded on July 21, 2015, repeating his statements from the June 22, 2015 letter regarding item 1. The Custodian further reiterated that no responsive records were located with regards to items 2 and 3.

### **Denial of Access Complaint:**

On August 17, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant made no additional legal arguments and merely asserted that he was unlawfully denied access to the requested records.

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<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.

### Statement of Information:

On September 3, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s two OPRA requests on June 10, 2015, and July 16, 2015, respectively. The Custodian certified that his office undertook a search for the responsive records and located two (2) Daily Activity Reports, each consisting of one page and respectively dated February 10, 2015, and February 16, 2015. The Custodian certified that he first responded in writing on June 19, 2015, seeking an extension of ten (10) business days, and ultimately denied the request on June 22, 2015. The Custodian responded to the second request, which he argued in substance was identical to the first, on July 21, 2015, reiterating his earlier denial.

The Custodian certified that the responsive record, consisting of two one-page reports, generally contained information detailing security/custody issues and Departmental responses to significant events. The Custodian averred that the portion of the request seeking “names of unknown DOC officers” was denied as it consisted a request for information and not an identifiable government record pursuant to MAG.

The Custodian additionally certified that the two Daily Activity Reports were denied pursuant to the safety and security exemptions contained in N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(4) pertaining to information related to medical treatment; N.J.A.C. 10A:22-2.3(a)(5) pertaining a report related to an identifiable person which could create a security risk if released; and N.J.A.C. 10A:22-2.3(b), prohibiting inmates from inspecting, examining, or obtaining copies of documents concerning other inmates.

The Custodian averred that he responded to what was “essentially a duplicate request” for the same records on July 21, 2015, denying accessing to the Daily Activity Reports for the same reasons as earlier stated. The Custodian further explained that the Daily Activity Reports contain security concerns, medical emergencies, and other noteworthy events from the day. The Custodian certified that the reports give insight into how Custody Staff respond to emergencies and any steps undertaken to alleviate risks created by these emergencies.

The Custodian additionally argued that releasing the records could allow inmates access to operational methods, which could then be used to undermine staff responses to critical events. The Custodian also suggested that inmates could then circumvent security measures to engage in violent, unsafe, or unlawful activity. The Custodian additionally explained that the responsive records contained no information related to the Complainant but instead identified events related to other inmates. The Custodian stated that these other incidents all described a medical condition, staff response, and course of care given for each incident.

The Custodian noted that Courts have long deferred to the DOC when making decisions about safety and security, granting the DOC “broad discretionary powers” to promulgate regulations aimed at maintaining security and order inside correctional facilities. Jenkins v. Fauver, 108 N.J. 239, 252 (1987). See also Russo v. N.J. Dep’t of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999). The Custodian further noted that the GRC has previously, on many occasions, held that reports and records relating to internal security are exempt. See Perry v. NJ

DOC, GRC Complaint No. 2012-237; Reid v. NJ DOC, GRC Complaint No. 2013-165; Smith v. NJ DOC, GRC Complaint No. 2013-337; Hayes v. NJ DOC, GRC Complaint No. 2014-286; and Kimpton v. NJ DOC, GRC Complaint No. 2014-333. The Custodian concluded that release of the daily activity reports would pose the same security risks identified in previous cases.

## 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.

#### Item 1: Names of Unknown DOC Officers

### Validity of Request

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 New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.*

MAG, 375 N.J. Super. at 546 (emphasis added).

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile, and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL

litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549 (emphasis added).

The Court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt . . . . In short, OPRA does not countenance open-ended searches of an agency’s files.” Id. at 549 (emphasis added). Bent, 381 N.J. Super. at 37;<sup>4</sup> NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In the instant matter, a portion of item 1 of the Complainant’s request sought names of unknown DOC officers. Although the Complainant identified a date and incident in which these officers were involved, the Complainant did not identify any specific government record. Instead, this portion of the Complainant’s request sought information.

Therefore, because a portion of the Complainant’s request seeks information rather than a specifically identifiable government record, that portion of the request is invalid pursuant to MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151. The Custodian has therefore lawfully denied access to Complainant’s request. N.J.S.A. 47:1A-6.

#### Item 1: Report Related to Incident

OPRA exempts from public access emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein. N.J.S.A. 47:1A-1.1. Also, the Council has previously addressed whether OPRA’s security exemption applies to records maintained by the Department of Corrections. The Council has previously recognized that, in accordance with N.J.S.A. 30:1B-6(g), the NJDOC 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).

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).

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<sup>4</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

In the instant matter, the Complainant's request sought a copy of any existing reports concerning a specific incident in February 2015. The Custodian certified that he located a record responsive to the request, consisting of two one-page Daily Activity Reports. The Custodian certified that the Daily Activity Reports contained security concerns, medical emergencies, and other noteworthy events from the day; offered insight into how custody staff respond to emergencies and any steps undertaken to alleviate risks created by these emergencies; and additionally contained no information related to the Complainant but instead identified events related to other inmates. The Custodian stated that these other incidents all described a medical condition, staff response, and course of care given for each incident. The Custodian certified that the contents of the record could allow inmates access to operational methods, which could then be used to undermine staff responses to critical events or allow inmates to circumvent security measures to engage in violent, unsafe, or unlawful activity. Therefore, the Custodian's decision to deny access to the reports pursuant to: (a) the safety and security exemptions contained in N.J.S.A. 47:1A-1.1, (b) the regulations outlined in N.J.A.C. 10A:22-2.3(a)(4) (pertaining to information related to medical treatment), (c) N.J.A.C. 10A:22-2.3(a)(5) (pertaining to a report related to an identifiable person which could create a security risk if released), and (d) N.J.A.C. 10A:22-2.3(b) (prohibiting inmates from inspecting, examining, or obtaining copies of documents concerning other inmates) did not constitute an unlawful denial of access.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the requested Daily Activity Reports pursuant to N.J.S.A. 47:1A-1.1. Such denial is also lawfully consistent with N.J.A.C. 10A:22-2.3(a)(4), N.J.A.C. 10A:22-2.3(a)(5), and N.J.A.C. 10A:22-2.3(b). See also Russo v. NJ Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999).

### Items 2 and 3

The Council has previously found that, in light of a custodian's certification that no records responsive to the request exist, and where no evidence exists in the record to refute the custodian's certification, no unlawful denial of access occurred. See Pusterhofer v. NJ Dep't. of Educ., GRC 2005-49 (July 2005). Here, the Custodian certified that after conducting a search for the requested items, it was found that no such records exist.

Therefore, the Custodian has borne his burden of proof that he lawfully denied access to the requested items described in the Complainant's June 2, 2015 OPRA request because he certified that no responsive records exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

## **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because a portion of the Complainant's request seeks information rather than a specifically identifiable government record, that portion of the request is invalid pursuant to MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div.



2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian has therefore lawfully denied access to Complainant's request. N.J.S.A. 47:1A-6.

2. The Custodian has borne his burden of proof that he lawfully denied access to the requested Daily Activity Reports pursuant to N.J.S.A. 47:1A-1.1. Such denial is also lawfully consistent with N.J.A.C. 10A:22-2.3(a)(4), N.J.A.C. 10A:22-2.3(a)(5), and N.J.A.C. 10A:22-2.3(b). See also Russo v. NJ Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999).
3. The Custodian has borne his burden of proof that he lawfully denied access to the requested items described in the Complainant's June 2, 2015 OPRA request because he certified that no responsive records exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't. of Educ., GRC 2005-49 (July 2005).

Prepared By: Husna Kazmir  
Staff Attorney

June 21, 2016