



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

November 17, 2015 Government Records Council Meeting

Ashuku Kumasi Bangala
Complainant

Complaint Nos. 2015-262

v.

NJ Office of the Public Defender
Custodian of Record

At the November 17, 2015 public meeting, the Government Records Council (“Council”) considered the November 10, 2015 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 proving a lawful denial of access to the responsive records, as the records are exempt from disclosure and the Complainant provided no proof of a law, court order, or permission by the State Office of the Public Defender, which would provide an exception to the statutory exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013); Lumumba v. N.J. Office of the Pub. Defender, GRC Complaint No. 2014-193 (January 2015).

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 17th Day of November, 2015

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: November 19, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 17, 2015 Council Meeting**

**Ashuku Kumasi Bangala¹
Complainant**

GRC Complaint No. 2015-262

v.

**NJ Office of the Public Defender²
Custodial Agency**

Records Relevant to Complaint: Hard copies of:

The bills of Michael J. Sluka, Mark E. Tabkmen, David A. Gies, Charles H. Landesman, and Ingrid L. Yurchenco, for their services provided to the requestor, and for which they were compensated.

Custodian of Record: Kevin Walker
Request Received by Custodian: July 29, 2015
Response Made by Custodian: July 30, 2015
GRC Complaint Received: September 10, 2015

Background³

Request and Response:

On July 29, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 30, 2015, the Custodian responded in writing, denying the request and citing an exemption under N.J.S.A. 47:1A-5(k). The Custodian further stated that he had no authorization by law, court order, or the Office of the Public Defender (“OPD”) to produce the records.

Denial of Access Complaint:

On September 10, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the records sought would assist him in other legal proceedings. While acknowledging the exemption claimed by the

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.

Custodian, he argued that the exemption does not apply when the requestor is an OPD client and the subject of the records.

Statement of Information:

On September 23, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian argued that his denial of access was lawful because OPRA exempts access to OPD files “that relate to the handling of any case.” N.J.S.A. 47:1A-5(k). The Custodian further noted that OPRA provides for no exceptions permitting an OPD client to obtain access to his or her own file without obtaining a court order or permission from the State Public Defender. He stated there was no such order or permission. Also, the Custodian noted that the GRC recently addressed a similar request in Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013), and Gaines v. NJ Office of the Pub. Defender, Complaint No. 2014-313 (March 2015).

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.

OPRA further provides that “[t]he files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.” N.J.S.A. 47:1A-5(k).

In Gaines v. NJ Office of the Public Defender, GRC Complaint No. 2012-261 (August 2013), the complainant sought access to attorney time sheets in his record. The Custodian denied access pursuant to N.J.S.A. 47:1A-5(k) but still located and produced responsive records in furtherance of the OPD’s ethical duty to its clients. The Council found that the Custodian’s denial of access was lawful based upon the plain language of N.J.S.A. 47:1A-5(k), which prohibits access to OPD’s files unless authorized by statute, court order, or the State Public Defender. The complainant failed to produce evidence of any such authorization.

Similarly here, the Complainant, also known as “Nathaniel Troupe,” sought all the bills of the five people who provided services in his post-conviction relief proceedings. The Custodian denied access to the Complainant’s OPRA request, citing the statutory exemption under OPRA. The OPRA statute explicitly states that “[t]he files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.” N.J.S.A. 47:1A-5(k). Like the complainant in Gaines, the Complainant here failed

to provide any evidence of a law, court order, or State Public Defender authorization. *See also*, Lumumba v. N.J. Office of the Pub. Defender, GRC Complaint No. 2014-193 (January 2015).

Accordingly, the Custodian has borne his burden of proving a lawful denial of access to the responsive records, as the records are exempt from disclosure and the Complainant provided no proof of a law, court order, or permission by the State Office of the Public Defender, which would provide an exception to the statutory exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Gaines, GRC 2012-261. Lumumba, GRC 2014-193.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving a lawful denial of access to the responsive records, as the records are exempt from disclosure and the Complainant provided no proof of a law, court order, or permission by the State Office of the Public Defender, which would provide an exception to the statutory exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013); Lumumba v. N.J. Office of the Pub. Defender, GRC Complaint No. 2014-193 (January 2015).

Prepared By: Ernest Bongiovanni
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

November 10, 2015