



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

April 26, 2016 Government Records Council Meeting

Robert Cosme
Complainant

Complaint No. 2015-268

v.

NJ Department of Corrections
Custodian of Record

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the March 22, 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 it finds no competent, credible evidence to show that further responsive records exist beyond those already provided. Therefore, the Custodian has borne his burden of proof that he did not unlawfully deny access, as all responsive records have been provided. Burns v. Borough of Manasquan (Monmouth), GRC Complaint No. 2005-68 (September 2005); Pusterhofer v. NJ 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 26th Day of April, 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: May 2, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Robert Cosme¹
Complainant**

GRC Complaint No. 2015-268

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: For the period from January 28, 2014, to February 10, 2015, letters sent to Commissioner Gary Lanigan, the Bureau of Operations, the Cumberland County Prosecutor, the Attorney General, the Division of Law and Public Safety, External Affairs, the Special Investigation Division (“S.I.D.”), and the Administrator at Southern State Correctional Facility (SSCF) “on my behalf and my counsel’s regarding the [physical] assault of Robert Cosme on 1/28/15.”

Custodian of Record: John Falvey
Request Received by Custodian: April 13, 2015
Response Made by Custodian: April 21, 2015
GRC Complaint Received: August 21, 2015

Background³

Request and Response:

On April 13, 2015 the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 21, 2015, the Custodian responded in writing, stating that he would provide responsive records after receiving the Complainant’s payment for copying charges. On June 16, 2015, after receipt of the Complainant’s payment, the Custodian disclosed responsive records, six (6) pages of which are relevant to the instant Complaint. Other records, both requested and received, are not at issue.

Denial of Access Complaint:

On August 21, 2015 the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant acknowledged that the Custodian

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.

provided various correspondences. However, the Complainant contended that there were additional responsive records that the Custodian failed to provide.

Statement of Information:

On September 14, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 13, 2015. The Custodian also certified that his search included contacting the OPRA Liaison at SSCF, the Inmate Correspondence Unit, and the SID. The Custodian further stated that the SSCF would have records of letters received by the Complainant or by others on his behalf, that Inmate Correspondence tracks all incoming correspondence sent to the “Central Office,” and that letters by the Complainant or on his behalf would be stored with the SID. The Custodian certified that he responded in writing on April 21, 2015, advising the Complainant of the responsive records and providing him a bill for same. The Custodian stated that he received the Complainant’s payment on June 16, 2015, and released on that same day all responsive records, including four letters, consisting of six pages, to the Complainant. The Custodian contended that the Complainant “feels additional responsive records have been withheld,” but “after a reasonable search, it appears no additional records were located.” Citing the GRC’s previous holdings in Pusterhofer v. NJ Department of Education and Akers v Buena Vista Township (citations omitted), the Custodian argued that access is not denied when records, other than those already provided to the Complainant, cannot be located.

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.

In Burns v. Borough of Manasquan (Monmouth), GRC Complaint No. 2005-68 (September 2005), the custodian stated that one (1) record responsive to the complainant’s March 2, 2005 OPRA request was provided and that no other responsive records existed. However, the complainant believed that more responsive records existed. The GRC requested the custodian to certify whether all responsive records had been provided. The custodian responded by certifying that the record provided to the complainant was, in fact, the only responsive record. The GRC held that the custodian had borne the burden of proving that she provided all responsive records and that the record contained no credible evidence to refute the certification.

Similarly here, the Custodian proved that he made a reasonable search and has certified that he has provided all responsive records in his purview. The Complainant has not provided any credible evidence to refute the certification. Indeed, in addition to the detailed, extensive search the Custodian undertook, as stated in his certification, the evidence of record shows no

reason for the Department of Corrections to maintain letters that the Complainant had sent to either the Prosecutor or the Ombudsman.

Therefore, the GRC finds no competent, credible evidence to show that further responsive records exist beyond those already provided. Therefore, the Custodian has borne his burden of proof that he did not unlawfully deny access, as all responsive records have been provided. Burns, GRC 2005-68; Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find no competent, credible evidence to show that further responsive records exist beyond those already provided. Therefore, the Custodian has borne his burden of proof that he did not unlawfully deny access, as all responsive records have been provided. Burns v. Borough of Manasquan (Monmouth), GRC Complaint No. 2005-68 (September 2005); Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Ernest Bongiovanni
Staff Attorney

March 22, 2016⁴

⁴ This complaint was prepared for adjudication at the Council's March 29, 2016 meeting; however, the complaint could not be adjudicated due to lack of a quorum.