



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

February 21, 2017 Government Records Council Meeting

Antoin Anderson
Complainant

Complaint No. 2015-270

v.

NJ Department of Corrections
Custodian of Record

At the February 21, 2017 public meeting, the Government Records Council (“Council”) considered the February 14, 2017 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 July 7, 2015 OPRA request, because he certified, and the record reflects, that no responsive record exists, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; 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 21st Day of February, 2017

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 23, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 21, 2017 Council Meeting**

**Antoin Anderson¹
Complainant**

GRC Complaint No. 2015-270

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hard copies of:

1. “The Agreement of Transfer for 6/4/14 [East Jersey State Prison (“EJSP”)] to [Northern State Prison (“NSP”)] and the Statement of Reasons regarding the transfer to [NSP].”
2. “A copy of the final notice of decision to the inmate, in accordance to [*sic*] N.J.A.C. 10A:9-7.2(h), N.J.A.C. 10A:9-7.2(f), (g).”

Custodian of Record: John Falvey
Request Received by Custodian: July 7, 2015
Response Made by Custodian: July 13, 2015
GRC Complaint Received: August 10, 2015

Background³

Request and Response:

On or around June 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 13, 2015, the Custodian responded in writing, stating that he was informed by staff members at NSP that no responsive records exist. 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 August 25, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant claimed that the information requested

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.

is a procedural process mandated by the New Jersey Administrative Code and that to deny him access to the records is in violation of his due process rights. The Complainant raised no additional arguments, legal or otherwise.

Statement of Information:

On September 4, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the office received the Complainant’s OPRA request on July 7, 2015, and responded on July 13, 2015, stating that no responsive records exist. The Custodian certified that the request was referred to the NSP’s OPRA Liaison, stating that any responsive records would be maintained with the inmate’s file at NSP.

The Custodian certified that the NSP’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 cited the GRC’s prior decision in Pusterhofer v. NJ Dep’t of Educ., 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 no responsive records were located after the NSP’s OPRA Liaison conducted a search of the Complainant’s inmate file. 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 July 7, 2015 OPRA request, because he certified, and the record reflects, that no responsive record exists, and the Complainant provided no 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 the Custodian has borne his burden of proof that he lawfully denied access to the requested record, described in the Complainant’s July 7, 2015 OPRA request, because he certified, and the record reflects, that no responsive record exists, and the Complainant provided no competent, credible evidence to

refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ., GRC
Complaint No. 2005-49 (July 2005).

Prepared By: Samuel A. Rosado
Staff Attorney

February 14, 2017