



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

Terry Lemon
Complainant

Complaint Nos. 2015-297

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 because the responsive records relate to the Office of the Public Defender’s representation of the Complainant in a case, the Custodian has borne his burden of proving a lawful denial of access. 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); Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2014-313 (March 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**

**Terry Lemon¹
Complainant**

GRC Complaint No. 2015-297

v.

**New Jersey Office of the Public Defender²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. Terry Lemon, Mercer County, Prosecutor's Plea Forms pursuant to N.J.S.A. R. 3:9-3.
2. Terry Lemon Public Defender trial attorney Mr. David R. Oakley, Esq[.], hand-written notes.
3. Terry Lemon Entire Mercer County Public Defender's files.

Custodian of Record: Kevin Walker, Esq.

Request Received by Custodian: August 31, 2015

Response Made by Custodian: August 31, 2015

GRC Complaint Received: September 21, 2015

Background³

Request and Response:

On August 26, 2015, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On August 31, 2015, the Custodian responded in writing, denying access to the records as they are contained within a file of an Office of the Public Defender's ("OPD") client or relate to that client, citing N.J.S.A. 47:1A-5(k).

Denial of Access Complaint:

On September 21, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant disputed the Custodian's denial of

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.

access, arguing that since he is seeking access to his own file, N.J.S.A. 47:1A-5(k) should not apply.

Statement of Information:

On November 2, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 31, 2015, and responded on the same day. The Custodian certified that he denied access to the requested records under N.J.S.A. 47:1A-5(k).

The Custodian argued that his denial of access was lawful because N.J.S.A. 47:1A-5(k) exempts access to OPD records relating to the handling of any case. 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. The Custodian also noted that the GRC recently addressed similar requests 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, GRC 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 provides that “[t]he files maintained by [OPD] 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). *See also Gaines*, GRC No. 2012-261 (holding that responsive records relating to OPD’s representation of the complainant were exempt from disclosure under OPRA).

Here, the Complainant sought draft notes from his public defender, plea forms, and his entire case file with the OPD. The Custodian subsequently denied the Complainant access to the responsive records under N.J.S.A. 47:1A-5(k).

Based on the foregoing, the GRC is satisfied that the Custodian’s denial of access was lawful because the plain language of N.J.S.A. 47:1A-5(k) exempts access to all OPD client records and contains no exceptions for persons attempting to access their own files. Moreover, the Complainant explicitly requested his entire case file with OPD. In addition, the Complainant has not provided any evidence of a law, court order, or State Public Defender authorization that would allow him to access his records under OPRA.

Thus, because the responsive records pertain to the Office of the Public Defender's representation of the Complainant in a case, the Custodian has borne his burden of proving a lawful denial of access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Gaines, GRC No. 2012-261; Gaines, GRC No. 2014-313.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the responsive records relate to the Office of the Public Defender's representation of the Complainant in a case, the Custodian has borne his burden of proving a lawful denial of access. 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); Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2014-313 (March 2015).

Prepared By: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph Glover
Executive Director

November 10, 2015