



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

January 31, 2017 Government Records Council Meeting

Edward L. Robinson
Complainant

Complaint No. 2015-341

v.

NJ Office of the Public Defender
Custodian of Record

At the January 31, 2017 public meeting, the Government Records Council (“Council”) considered the January 24, 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 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 records from his own case file with OPD. In addition, the Complainant provided no evidence of a law, court order, or the State Public Defender’s authorization that would allow him to access his records under OPRA.

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 31st Day of January, 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 3, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 31, 2017 Council Meeting**

**Edward L. Robinson¹
Complainant**

GRC Complaint No. 2015-341

v.

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

Records Relevant to Complaint: “Any/all documentation related to my pre-trial plea bargain negotiations regarding two (2) separate indictments I had open in Passaic County Criminal Court. 96-06-0627 and 96-07-0674 (1998).”

Custodian of Record: Kevin Walker
Request Received by Custodian: October 14, 2015
Response Made by Custodian: October 14, 2015
GRC Complaint Received: November 2, 2015

Background³

Request and Response:

On October 3, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 14, 2015, the Custodian responded in writing, denying the request and noting that the records requested were contained in a file or files relating to the representation of an Office of the Public Defender client. N.J.S.A. 47:1-5(k).

Denial of Access Complaint:

On November 2, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he sought the requested records because he believed his trial attorney did not inform him of every plea bargain presented by the State. He stated that his trial attorney’s position was now being scrutinized “by the Ethics Committee” and that he required the responsive records in order to preserve his constitutional right to competent representation. The Complainant made no additional legal arguments.

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.

Statement of Information:

On December 16, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on October 14, 2015, and responded in writing on that same day. He certified that the request was denied because the Office of the Public Defender (“OPD”) has a specific statutory exemption for materials contained in case files. He certified that the documents requested are contained in OPD’s litigation files and that N.J.S.A. 47:1A-5(k) provides that files maintained by the OPD, relating 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.” The Custodian argued that under this statutory scheme, there exist no exceptions permitting an OPD client to have access to his or her own file without obtaining a court order or the permission of the State Public Defender.

The Custodian also noted that previous GRC decisions have found OPD’s denial on such grounds to be lawful. See Lemon v. NJ Office of the Public Defender, GRC Complaint No. 2015-297 (November 2015); Gaines v. NJ Office of the Public Defender, GRC Complaint Nos. 2012-261 (August 2013); and Gaines v. NJ Office of the Public Defender, 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).

In Lemon v. NJ Office of the Public Defender, GRC Complaint No. 2015-297 (November 2015), the Complainant sought records, including plea forms, related to his own case file. The GRC held that based on the plain language of N.J.S.A. 47:1A-5(k), and without evidence of a law, court order, or State Public Defender authorization, the Custodian’s denial of access was lawful.

Here, the Complainant sought copies of documentation related to his plea-bargains from his 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). Additionally, the Complainant provided no

evidence of a law, court order, or State Public Defender authorization allowing him access to his records under OPRA.

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 records from his own case file with OPD. In addition, the Complainant provided no evidence of a law, court order, or the State Public Defender's authorization that would allow him to access his records under OPRA.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that 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 records from his own case file with OPD. In addition, the Complainant provided no evidence of a law, court order, or the State Public Defender's authorization that would allow him to access his records under OPRA.

Prepared By: Husna Kazmir
Staff Attorney

January 24, 2017