



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

Nelson Deleon
Complainant

v.

Camden County
Custodian of Record

Complaint No. 2015-420

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 Custodian has borne her burden of proof that she lawfully denied access to the requested records, because she certified that the records were destroyed pursuant to existing retention schedules. She certified that her office was therefore not in possession of any such directives at the time of the Complainant’s request, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. Pusterhofer, GRC 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 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**

**Nelson Deleon¹
Complainant**

GRC Complaint No. 2015-420

v.

**Camden County²
Custodial Agency**

Records Relevant to Complaint: Copy of “sign in loot log for January 7, 1998. I was transfer[sic] from Camden County Jail to Camden Police Department for questioning by Det. Kevin Tunstall and Invaída-Marcial. I need a copy of the time that this transaction took place ...”

Custodian of Record: Maria Efstratiades
Request Received by Custodian: May 28, 2015
Response Made by Custodian: June 8, 2015
GRC Complaint Received: December 30, 2015

Background³

Request and Response:

On May 20, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 8, 2015, the Custodian responded in writing, advising the Complainant that no records were found as “the department keeps these records for seven years.”

Denial of Access Complaint:

On December 30, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was denied access to the requested records but made no additional legal arguments.

Statement of Information:

¹No legal representation listed on record.

² Represented by Howard Goldberg, Esq. (Camden, NJ).

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.

On February 3, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 28, 2015. The Custodian certified that, upon receipt of the request, she forwarded the request to Captain Karen Taylor at Camden County Corrections (“Department”). The Custodian averred that Captain Taylor’s office searched for the records and reported that no responsive records were located and that the Department “keeps these records for seven years.”

The Custodian certified that she responded in writing on June 8, 2015, denying the request as no responsive records were located. On February 5, 2016, the Custodian submitted a supplemental attachment to her SOI. She certified that Captain Taylor had informed her office that the Department maintains records on active/current inmates and an archive on former inmates for a period of three years from the time the inmate is released. She certified that the County’s position is that no records responsive to the Complainant’s request exist, because the Department follows a systematic disposition of their records based on the State’s Records Retention Schedule.

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, and where no evidence exists in the record to refute the custodian’s certification, no unlawful denial of access occurred. See Pusterhofer, GRC 2005-49 (July 2005). Here, the Custodian certified in her SOI that that her search consisted of e-mailing Captain Taylor, who confirmed that no records responsive to the request were located. In the attachment to her SOI, the Custodian averred that after speaking to Captain Taylor, it was determined that the County Correctional Facility maintains inmate records for a period of three years from the time the inmate is released, in accordance with State records retention requirements. She noted that the Complainant’s request sought records related to 1998. She therefore certified that records responsive to the request do not exist.

Therefore, the Custodian has borne her burden of proof that she lawfully denied access to the requested records, because she certified that the records were destroyed pursuant to existing retention schedules. She certified that her office was therefore not in possession of any such directives at the time of the Complainant’s request, and the Complainant failed to submit any 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 her burden of proof that she lawfully denied access to the requested records, because she certified that the records were destroyed pursuant to existing retention schedules. She certified that her office was therefore not in possession of any such directives at the time of the Complainant's request, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. Pusterhofer, GRC 2005-49 (July 2005).

Prepared By: Husna Kazmir
Staff Attorney

January 24, 2017