



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 23, 2016 Government Records Council Meeting

Agustin Garcia
Complainant

Complaint No. 2015-75

v.

NJ Office of the Public Defender
Custodian of Record

At the February 23, 2016 public meeting, the Government Records Council (“Council”) considered the February 16, 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 the Custodian has borne his burden of proving a lawful denial of access, as the records are exempt from disclosure, and the Complainant provided no proof of a law, court order, or permission by the State Office of the Public Defender, which would provide an exception to the statutory exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Gaines v. N.J. Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013); Lumumba v. N.J. Office of the Pub. Defender, GRC Complaint No. 2014-193 (January 2015). *See also* Bangala v. NJ Office of the Pub. Defender, GRC Complaint No. 2015-262 (November 2015), and Lemon v. NJ Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 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 23rd Day of February, 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: February 25, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 23, 2016 Council Meeting**

**Agustin Garcia¹
Complainant**

GRC Complaint No. 2015-75

v.

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

Records Relevant to Complaint: Hard copies of:

1. Post-Conviction Relief (“PCR”) petition and/or correspondence, dated May 30, 2004, sent by the Complainant to the Criminal Division Manager and Public Defender Hellen Godby.
2. Correspondence, sent September 2013, from Assistant Public Defender Jodi Fegruson to the Complainant, referencing the PCR petition. Copy of inter-office correspondence and all other government records concerning a previous OPRA request.
3. Copy of any government record within public defender’s file acknowledging receipt or record of receipt of the PCR petition.
4. Any government record, including inter-office correspondence, regarding the May 30, 2004 PCR filing.
5. From April 1, 2004, to present, existing record or inventory log or related government record providing details of documents concerning Bergen County Indictment No. 00-06-1368-I.

Custodian of Record: Kevin Walker

Request Received by Custodian: January 7, 2015

Response Made by Custodian: January 7, 2015

GRC Complaint Received: March 20, 2015

Background³

Request and Response:

On January 7, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the Custodian responded in writing, denying the request and citing an exemption under N.J.S.A. 47:1A-5(k).

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.

The Custodian further stated that he had no authorization by law, court order, or the Office of the Public Defender (“OPD”) to produce the records.

Denial of Access Complaint:

On March 20, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the records sought would assist him in other legal proceedings. While acknowledging the exemption claimed by the Custodian, he argued that the exemption does not apply when the requestor is a client of the Office of the Public Defender (“OPD”) and the subject of the records.

Statement of Information:

On April 14, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian argued that his denial of access was lawful because OPRA exempts access to OPD files “that relate to the handling of any case.” N.J.S.A. 47:1A-5(k). The Custodian further noted that OPRA provides for no exceptions permitting an OPD client to obtain access to his or her own file absent a court order or permission from the State Public Defender. To his knowledge, there was no such order or permission. Also, the Custodian noted that the GRC recently addressed a similar request 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, 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 further provides that “[t]he files maintained by the Office of the Public Defender 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).

In Gaines v. NJ Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013), the complainant sought access to attorney time sheets in his record. The Custodian denied access pursuant to N.J.S.A. 47:1A-5(k) but still located and produced responsive records in furtherance of the OPD’s ethical duty to its clients. The Council found that the Custodian’s denial of access was lawful based upon the plain language of N.J.S.A. 47:1A-5(k), which prohibits access to OPD’s files unless authorized by statute, court order, or the State Public Defender. In advancing his complaint, the complainant failed to produce evidence of any such authorization.

Similarly here, the Complainant sought records contained in the Public Defender's files concerning his PCR petition.⁴ The Custodian denied access to the Complainant's OPRA request, citing the statutory exemption under OPRA. The OPRA statute explicitly states that "[t]he files maintained by the Office of the Public Defender 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). Like the complainant in Gaines, the Complainant here failed to provide any evidence of a law, court order, or State Public Defender authorization. *See also* Lumumba v. N.J. Office of the Pub. Defender, GRC Complaint No. 2014-193 (January 2015).

Accordingly, the Custodian has borne his burden of proving a lawful denial of access, as the records are exempt from disclosure, and the Complainant provided no proof of a law, court order, or permission by the State Office of the Public Defender, which would provide an exception to the statutory exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Gaines, GRC 2012-261. Lumumba, GRC 2014-193. *See also* Bangala v. NJ State Office of the Pub. Defender, GRC Complaint No. 2016-262 (November 2015), and Lemon v. NJ Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving a lawful denial of access, as the records are exempt from disclosure, and the Complainant provided no proof of a law, court order, or permission by the State Office of the Public Defender, which would provide an exception to the statutory exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(k); Gaines v. N.J. Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013); Lumumba v. N.J. Office of the Pub. Defender, GRC Complaint No. 2014-193 (January 2015). *See also* Bangala v. NJ Office of the Pub. Defender, GRC Complaint No. 2015-262 (November 2015), and Lemon v. NJ Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).

Prepared By: Ernest Bongiovanni
Staff Attorney

February 16, 2016

⁴ Part of the Complaint asked for "all existing interoffice correspondence and/or government records" concerning a previous OPRA request, which arguably might not form part of the Public Defender's files relating to their handling of the Complainant's case. However, at a minimum, that portion of the OPRA request was clearly overbroad and thus invalid. MAG Entm't LLC v. Div. of ABC, 379 N.J. Super. 534, 546 (App. Div. 2005). *See also* DeAppolonia v. Borough of Deal, (Monmouth) GRC Complaint No. 2008-82 (September 2009), and Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011).