



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**

**May 23, 2017 Government Records Council Meeting**

Troy Holman  
Complainant

Complaint No. 2016-103

v.

NJ Department of Corrections  
Custodian of Record

At the May 23, 2017 public meeting, the Government Records Council (“Council”) considered the May 16, 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 Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving that he did not unlawfully deny access to the requested classification file because he certified that he disclosed all responsive records to the Complainant, and the Complainant has not provided any evidence to refute such certification. N.J.S.A. 47:1A-6. Further, the GRC’s powers do not include authority over the content of the classification file. *See* N.J.S.A. 47:1A-7(b); Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011); Kwanzaa v. NJ Dep’t of Corr., GRC Complaint No. 2004-167 (March 2005); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Toscano v. NJ Dep’t of Labor, GRC Complaint No. 2005-59 (September 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 23<sup>rd</sup> Day of May, 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: May 30, 2017**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 23, 2017 Council Meeting**

**Troy Holman<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-103**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** On-site inspection of the Complainant's classification file ("File").

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** January 12, 2016  
**Response Made by Custodian:** January 12, 2016  
**GRC Complaint Received:** April 15, 2016

**Background<sup>3</sup>**

**Request and Response:**

On January 5, 2016, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian, seeking the above-mentioned records. On January 12, 2016, the Custodian responded in writing, seeking an extension of time until February 5, 2016, to respond to the OPRA request. The Custodian noted that the OPRA Liaison for East Jersey State Prison ("EJSP") would be notified of the subject OPRA request.

On February 1, 2016, Liaison Parker-Foreman sent a memorandum to the Complainant, confirming that the Complainant was issued a pass for February 8, 2016, to report to the Social Services Department in order to inspect his File. On February 8, 2016, via "Signed Receipt of OPRA Request," the Complainant confirmed that he reviewed his File.

On February 11, 2016, the Complainant messaged the New Jersey Department of Corrections' ("DOC") grievance system, stating that he believed his File was missing all records from the last two (2) years. The Complainant stated that during inspection, Liaison Foreman-Parker had advised him to contact "Ms. Caulderon" regarding his concerns. The Complainant

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> 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.

noted that he believed his OPRA request was denied because of the absence of records from the File. On February 27, 2016, the Complainant again messaged the DOC grievance system reiterating that he believed the incomplete File resulted in a denial of access and stressing that he had not received an answer to his February 11, 2016 inquiry.

#### Denial of Access Complaint:

On April 15, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that at the time he inspected the File, it only contained records from 2007 through 2015. The Complainant asserted that Liaison Foreman-Parker advised that she did not know why the File was incomplete but that he should contact a “Ms. Caulderon” about the issue. The Complainant asserted that he received no responses until he contacted the Administrator; however, that response was “to be specific in [his] request.” The Complainant contended that the DOC unlawfully denied him access to “half of [his] File.” The Complainant argued that his OPRA request was sufficiently specific and that DOC should have provided him access to the entire File.

#### Statement of Information:<sup>4</sup>

On June 16, 2016, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that he received the Complainant’s OPRA request on January 12, 2016. The Custodian affirmed that the Complainant’s File was stored at EJSP. The Custodian certified that he transferred the OPRA request to EJSP on January 12, 2016, and responded to the Complainant in writing on the same day by obtaining an extension until February 5, 2016. The Custodian certified that the Complainant inspected his File on February 8, 2016. The Custodian affirmed that, after reviewing his File, the Complainant contacted staff, arguing that certain records were missing but that he could not identify which ones were allegedly missing.

The Custodian contended that DOC did not deny access to any responsive records. The Custodian certified that the Complainant requested inspection of his File, EJSP had provided it, and that DOC properly complied with the OPRA request. Kwanzaa v. NJ Dep’t of Corr., GRC Complaint No. 2004-167 (March 2005) (holding that the Council has no authority over content of a record); Valdes v. Twp. of Belleville (Essex), GRC Complaint No. 2010-258 (March 2012).

### **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.

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<sup>4</sup> The complaint was referred to mediation on May 3, 2016. Following unsuccessful efforts to mediate the matter, the complaint was referred back from mediation on June 6, 2016.

The GRC has typically held that a request seeking access to a “file” is invalid because it represents a blanket request for a class of various records. *See Morgano v. Essex Cnty. Prosecutor’s Office*, GRC Complaint No. 2007-190 (February 2008); *Bradley-Williams v. Atlantic Cnty. Jail*, GRC Complaint No. 2011-232 (December 2012); *Nunley v. NJ State Parole Bd.*, GRC Complaint No. 2013-335 (July 2014). However, the GRC declines to find that the request in the instant matter is invalid because Ms. Foreman-Parker was able to locate and provide a finite file to the Complainant for inspection. *See Burke v. Brandes*, 429 N.J. Super. 169 (App. Div. 2012) (holding that a custodian’s ability to locate responsive records “belied any assertion that the request was . . . overbroad”). Thus, the GRC will adjudicate this complaint based on the arguments raised by the parties.

Previously, the Council has found no unlawful denial of access when a custodian certified that he provided all responsive records to complainant, and there existed no credible evidence in the record to refute such certification. *See Kohn v. Twp. of Livingston*, GRC Complaint No. 2009-203 & 2009-211 (January 2011); *Burns v. Borough of Collingswood*, GRC Complaint No. 2005-68 (September 2005).

Additionally, N.J.S.A. 47:1A-7(b) delineates the Council’s powers and duties. Such powers and duties do not include authority over a record’s content. In *Kwanzaa*, GRC 2004-167, the Council held that it “does not oversee the content of documentation” but “does oversee the disclosure and non-disclosure of documents.” *See also Toscano v. NJ Dep’t of Labor*, GRC Complaint No. 2005-59 (September 2005) (finding GRC does not have authority over condition of records provided by Custodian).

In the instant matter, the Custodian forwarded the Complainant’s OPRA request to EJSP, where Ms. Foreman-Parker allowed the Complainant to inspect his File. Thereafter, the Complainant asserted that the File did not include all records. The Complainant filed the complaint, asserting a denial of access to “half of [the File].” In the SOI, the Custodian certified that EJSP provided the Complainant’s File for inspection as requested and that it did not unlawfully deny access to the request. The Custodian noted that the Complainant could not identify those records he believed were missing from the File. The Custodian finally noted that the GRC had no authority over content of a record.

The evidence of record supports that there was no unlawful denial of access. Specifically, EJSP provided the Complainant with inspection of his File, and the Custodian certified to this fact in the SOI. Further, the Complainant confirmed his inspection through the “Signed Receipt of OPRA Request.” Although the Complainant contended that his File was incomplete, he provided no evidence to prove his allegation. Moreover, even if EJSP were not maintaining certain records in the File, the GRC has no authority over content within the File.

Therefore, the Custodian has borne his burden of proving that he did not unlawfully deny access to the requested File because he certified that he disclosed all responsive records to the Complainant, and the Complainant has not provided any evidence to refute such certification. N.J.S.A. 47:1A-6. Further, the GRC’s powers do not include authority over the content of the File. *See N.J.S.A. 47:1A-7(b)*; *Kohn*, GRC 2009-203 & 2009-211; *Kwanzaa*, GRC 2004-167; *Burns*, GRC 2005-68; *Toscano*, GRC 2005-59.

## **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving that he did not unlawfully deny access to the requested classification file because he certified that he disclosed all responsive records to the Complainant, and the Complainant has not provided any evidence to refute such certification. N.J.S.A. 47:1A-6. Further, the GRC's powers do not include authority over the content of the classification file. *See* N.J.S.A. 47:1A-7(b); Kohn v. Twp. of Livingston, GRC Complaint No. 2009-203 & 2009-211 (January 2011); Kwanzaa v. NJ Dep't of Corr., GRC Complaint No. 2004-167 (March 2005); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Toscano v. NJ Dep't of Labor, GRC Complaint No. 2005-59 (September 2005).

Prepared By: Frank F. Caruso  
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May 16, 2017