



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 27, 2018 Government Records Council Meeting

Jason Harry Komis
Complainant

Complaint No. 2016-143

v.

Camden County
Custodian of Record

At the February 27, 2018 public meeting, the Government Records Council (“Council”) considered the January 23, 2018 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 she lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6 The certifications from the Custodian and Mr. Johnson, and accompanying evidence in the record reflects that no responsive records exist. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 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 27th Day of February, 2018

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: March 2, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
February 27, 2018 Council Meeting**

**Jason Harry Komis¹
Complainant**

GRC Complaint No. 2016-143

v.

**Camden County²
Custodial Agency**

Records Relevant to Complaint: “I am requesting the Internal Affairs Report and any all other reports on or about January 13, 2014 regarding the assault committed by Camden County inmates on that day upon Jason Komis, a state inmate at the time, in the Camden County Correctional Facility. Further, I am requesting the names of the defendants who assaulted Jason Komis and the Indictment or Accusation Numbers under which they were charged with the assault. Please provide any and all information you have in regards to the above incident of January 13, 2014.”

Custodian of Record: Maria Efstratiades

Request Received by Custodian: April 14, 2016

Response Made by Custodian: May 2, 2016

GRC Complaint Received: May 17, 2016

Background³

Request and Response:

On April 7, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 25, 2016, Dana DeLuca responded in writing on behalf of the Custodian, seeking an extension of time to respond to the request to on or about May 2, 2016. On May 2, 2016, Ms. DeLuca responded in writing, stating that no responsive records exist.

Denial of Access Complaint:

On May 17, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on April 1, 2016, he submitted an OPRA request to the Camden County Correctional Facility (“CCCF”) seeking the

¹ No legal representation listed on record.

² Represented by Howard Goldberg, Esq. of Camden County (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.

above-mentioned records. The Complainant stated that he also submitted the OPRA request at issue to the Custodian on April 7, 2016.

Thereafter, the Complainant received a letter dated April 11, 2016 from Darryl G. Johnson, Aid to Warden David S. Owens, Jr. of the Camden County Dep't of Corrections ("CCDOC"), acknowledging receipt of the OPRA request. Mr. Johnson stated that CCDOC cannot release documents that were part of an internal affairs investigation without redacting the names of inmates involved, if any. Mr. Johnson further stated that the Complainant must sign a release prior to fulfilling the OPRA request, and that any information documented via an internal investigation can only be released with the approval of the Warden. Mr. Johnson concluded by suggesting the Complainant narrow the scope of the request to specific matters, and that if the Complainant's request can be processed without interfering with other matters, then he can proceed to fulfill the request. The Complainant stated that he replied to Mr. Johnson's correspondence on April 22, 2016. He requested that Mr. Johnson move forward with redacting the names of inmates contained in reports pertaining to the incident identified in the OPRA request, and to forward a copy of those reports to him.

The Complainant stated that he subsequently received a letter from Ms. DeLucca on April 25, 2016 notifying the Complainant that the Custodian received his OPRA request as of April 14, 2016. Ms. DeLucca also stated that CCDOC personnel needed an extension of time to respond to on or about May 2, 2016 in order to complete a search for responsive records. The Complainant stated that he then received a response from Ms. DeLucca dated May 2, 2016, indicating that there were no responsive records to his OPRA request.

The Complainant contended that the Custodian's claim of no responsive records is false, based upon the April 11, 2016 correspondence he received from Mr. Johnson. The Complainant argued that said letter verified the existence of responsive records, and that only the names of inmates within the records needed to be redacted prior to release.

Statement of Information:

On June 16, 2016, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on April 14, 2016. The Custodian certified that once the request was received and assigned a reference number, it was forwarded to Captain Karen Taylor of the CCDOC to conduct a search for responsive records. On April 25, 2016, Ms. DeLucca, on behalf of the Custodian, notified the Complainant that an extension of time was needed to conduct a search for responsive records.

That same day, Cpt. Taylor notified the Custodian via that no responsive records to the Complainant's OPRA request were located in the CCDOC's files. Thereafter, the Custodian certified that on April 28, 2016, she confirmed with Cpt. Taylor via telephone that no responsive records exist. On May 2, 2016, Ms. DeLucca responded in writing to the Complainant stating that no responsive records exist. In her SOI, the Custodian provided copies of e-mail correspondence between herself and Cpt. Taylor pertaining to the Complainant's OPRA request.

The Custodian asserted that all OPRA requests for Camden County records, including those controlled by the CCDOC, are handled by the Custodian. She also contended that Mr. Johnson's April 11, 2016 reply to the Complainant did not verify that records existed, but instead restated the Warden's position regarding the release of Internal Affairs records. Lastly, the Custodian noted that in the complaint, the Complainant asserted that the date of the incident was January 13, 2015 rather than January 13, 2014, which was the alleged date in the original OPRA request. The Custodian certified that the Custodian's Counsel reached out to Cpt. Taylor to inquire whether responsive records existed for either dates, but Cpt. Taylor reported that no responsive records exist.

Additional Information

On February 2, 2018, the GRC requested a certification from Mr. Johnson. Specifically the GRC wished to know whether Mr. Johnson had in fact conducted a search and located responsive records to the Complainant's OPRA request prior to submitting his letter dated April 11, 2016.

On February 6, 2018, the Custodian responded in writing with a certification from Mr. Johnson. Mr. Johnson certified that upon receiving the OPRA request in April 2016, responded to the Complainant, describing CCDOC's policy on providing records to an inmate that contain identifying information of other inmates. He certified that at the time he drafted and submitted his response, he had not searched or located any records that would have been responsive to the Complainant's OPRA request.

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.

In Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

In the instant matter, the Custodian certified that a search conducted by Cpt. Taylor for Internal Affairs reports pertaining to the incident identified by the Complainant did not locate responsive records. The Custodian certified further that an additional search was conducted to include the January 13, 2015 date mentioned in the complaint, but no responsive records were located for that date as well. The Complainant disputed the claim that no responsive records exist by referencing Mr. Johnson's letter dated April 11, 2016. The Complainant contended that the

letter implied the existence of responsive records, but were being withheld pending the authorization to release the records from involved inmates.

However, Mr. Johnson is not the Records Custodian for the CCDOC. Additionally, Mr. Johnson certified in response to a GRC inquiry that he did not conduct a search or locate records at the time he sent his April 11, 2016 letter, contrary to the Complainant's assertion. Furthermore, the Custodian included correspondence with Cpt. Taylor regarding the status of the search for responsive records, and certified that no such records exist as a result.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. The certifications from the Custodian and Mr. Johnson, and accompanying evidence in the record reflects that no responsive records exist. Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that she lawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. The certifications from the Custodian and Mr. Johnson, and accompanying evidence in the record reflects that no responsive records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

January 23, 2018⁴

⁴ The matter was originally scheduled for the Council's January 30, 2018 meeting but was tabled.