



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
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CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

CHARLES A. RICHMAN  
*Commissioner*

**FINAL DECISION**

**December 19, 2017 Government Records Council Meeting**

Brian Hoffman  
Complainant

Complaint No. 2016-154

v.

NJ Department of Corrections  
Custodian of Record

At the December 19, 2017 public meeting, the Government Records Council (“Council”) considered the December 12, 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 in the instant matter timely responded to the Complainant in writing, informing him that NJDOC does not make or maintain the records sought and that he should instead submit an OPRA request to the Atlantic County Justice Facility. The Custodian also certified to the GRC that the NJDOC does not make or maintain the requested records. Therefore, there was no unlawful denial of access to the Complainant’s April 28, 2016 OPRA request pursuant to N.J.S.A. 47:1A-5(h), and Schlosser v. City of Union City (Hudson), GRC Complaint No. 2009-45 (July 2009).

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 19<sup>th</sup> Day of December, 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: December 21, 2017**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
December 19, 2017 Council Meeting**

**Brian Hoffman<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-154**

**v.**

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

**Records Relevant to Complaint:** Hard copies of:

1. “Please forward one copy from above named individual’s Atlantic County Justice Facility (ACJF) file – Prison Health Services (PHS) progress notes dated October 2, 1992 with an entry date 10/13/92 indicating ‘. . . no thoughts of revenge . . .’”;
2. Or an SCJF Inmate Request Form dated October 2, 1992 with an entry dated 10/13/92 in the section – Response by Staff – signed by Ellen Kawich MD – stating ‘. . . no thoughts of revenge . . .’”

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** April 28, 2016  
**Response Made by Custodian:** May 4, 2016  
**GRC Complaint Received:** May 7, 2016

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

**Request and Response:**

On April 28, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 4, 2016, the Custodian responded in writing, stating that the records sought are not made, maintained, or kept on file with the New Jersey Department of Corrections (“NJDOC”). The Custodian also stated that the Atlantic County Justice Facility would likely have the requested records and that the Complainant should instead contact them directly.

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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.

### Denial of Access Complaint:

On May 7, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not provide any additional argument beyond his claim that he was denied access to the requested records.

### Statement of Information:

On June 29, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 28, 2016. The Custodian certified that he responded in writing on May 4, 2016.

The Custodian certified that the Complainant requested records specific to the Atlantic County Justice Facility. Thus, the Custodian advised the Complainant to submit an OPRA request to the appropriate agency that would maintain the records he sought. The Custodian claims that there has been no unlawful denial of access, since the agency does not make or maintain the requested records, and therefore no responsive records exist. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

## 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 requires “[a]ny officer or employee of a public agency who *receives a request* for access to a government record *shall forward* the request to the custodian of record or *direct* the request to the *custodian of the record*.” (Emphasis added). N.J.S.A. 47:1A-5(h). Once a custodian has notified a requestor in writing within the statutorily mandated seven (7) business days as required under N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the custodian’s duty under OPRA is fulfilled.

In Schlosser v. City of Union City (Hudson), GRC Complaint No. 2009-45 (July 2009), the custodian timely responded to the complainant, stating that she could obtain the requested records by contacting the local municipal court. The custodian also certified to the Council that his agency does not maintain the records sought. Therefore, the Council held that there was no unlawful denial of access since the custodian directed the complainant to the proper agency within the allotted time frame.

Similarly, the Custodian in the instant matter timely responded to the Complainant in writing, informing him that NJDOC does not make or maintain the records sought, and that he should instead submit an OPRA request to the Atlantic County Justice Facility. The Custodian also

certified to the GRC that the NJDOC does not make or maintain the requested records. Therefore, there was no unlawful denial of access to the Complainant's April 28, 2016 OPRA request pursuant to N.J.S.A. 47:1A-5(h), and Schlosser, GRC No. 2009-45.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian in the instant matter timely responded to the Complainant in writing, informing him that NJDOC does not make or maintain the records sought and that he should instead submit an OPRA request to the Atlantic County Justice Facility. The Custodian also certified to the GRC that the NJDOC does not make or maintain the requested records. Therefore, there was no unlawful denial of access to the Complainant's April 28, 2016 OPRA request pursuant to N.J.S.A. 47:1A-5(h), and Schlosser v. City of Union City (Hudson), GRC Complaint No. 2009-45 (July 2009).

Prepared By: Samuel A. Rosado  
Staff Attorney

December 12, 2017