



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

LT. GOVERNOR SHEILA Y. OLIVER  
*Commissioner*

**FINAL DECISION**

**September 25, 2018 Government Records Council Meeting**

Darryl Derelle Parker  
Complainant

Complaint No. 2016-199

v.

NJ Department of Corrections  
Custodian of Record

At the September 25, 2018 public meeting, the Government Records Council (“Council”) considered the September 18, 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:

1. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request item No. 1 seeking “checks” because he certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian lawfully denied access to the responsive IPIN records. N.J.S.A. 47:1A-6. Specifically, the disclosure of such records pertaining to “an identified individual,” including those of the Complainant, has a significant risk of jeopardizing “the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement.” N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(5). Further, the GRC does not reach the Custodian’s other asserted bases for denial because the records are exempt under N.J.A.C. 10A:22-2.3(a)(5).

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 25<sup>th</sup> Day of September, 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: September 27, 2018**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
September 25, 2018 Council Meeting**

**Darryl Derelle Parker<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-199**

v.

**NJ Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies of:

1. Every check written out of the Complainant's inmate trust account from 2007 through 2015.
2. New Jersey Department of Corrections ("DOC") "IPIN" assignment forms the Complainant submitted from 2007 through 2015.

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** May 26, 2016<sup>3</sup>  
**Response Made by Custodian:** June 20, 2016  
**GRC Complaint Received:** July 15, 2016

**Background<sup>4</sup>**

**Request and Response:**

On May 26, 2016, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On June 20, 2016, the Custodian responded in writing advising that no records responsive to item No. 1 existed. Further, the Custodian identified twenty-eight (28) forms located at various DOC facilities. However, the Custodian denied access to these forms citing the "personal information" exemption, as well as DOC regulations prohibiting disclosure of information relating to an identified individual which, if disclosed, would jeopardize the safety and security of persons or facilities. N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(5). The Custodian noted that the Complainant may want to contact Global Tel for billing inquiries and provided a telephone number.

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

<sup>2</sup> Represented by Deputy Attorney General Suzanne Davies.

<sup>3</sup> The Complainant appears to have submitted multiple requests for request item No. 2. However, in the Denial of Access Complaint, he only identified his May 26, 2016 OPRA request as at issue here. The GRC will thus only address the May 26, 2016 OPRA request in this complaint.

<sup>4</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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

### Denial of Access Complaint:

On July 15, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he had been moved to multiple facilities between 2005 and present, which caused him to lose the requested records over time. Regarding item No. 2, the Complainant disputed the Custodian’s denial of access, asserting that he could not see how disclosure of these records would jeopardize the safety of any person or facility. The Complainant argued that he provided the numbers of friends and family to DOC in the first place; receiving those numbers would not jeopardize their safety.

### Statement of Information:

On August 29, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 26, 2016. The Custodian certified that he had prior knowledge that DOC did not retain checks written from inmate accounts. Further, the Custodian certified that his search for IPIN forms involved contacting Global Tel, DOC’s third-party vendor, who identified twenty-eight (28) responsive forms. The Custodian certified that he responded in writing on June 20, 2016, denying access to item No. 1 because no records existed. The Custodian affirmed that he also denied access to item No. 2 under N.J.S.A. 47:1A-1.1 and N.J.A.C. 10A:22-2.3(a)(5).

Regarding item No. 1, the Custodian affirmed that DOC does not retain checks written by inmates out of their trust accounts. The Custodian further certified that no retention requirements exist for these checks. The Custodian averred that he properly denied access to request item No. 1 because no records existed.

Regarding item No. 2, the Custodian contended that he properly denied access to the twenty-eight (28) responsive IPIN forms because they contained personal information. The Custodian certified that the forms contain names, relationships, addresses, and phone numbers. The Custodian argued that all of this information is exempt under OPRA. N.J.S.A. 47:1A-1; Burnett v. Cnty. of Bergen, 198 N.J. 408, 414 (2009); N.J.S.A. 47:1A-1.1.

The Custodian also contended that he properly denied access to the IPIN forms under DOC regulations. The Custodian stated that N.J.A.C. 10A:22-2.3(a)(5) exempted access to “a report or record relating to an identified individual, which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement.” The Custodian contended that disclosing the IPIN forms presents numerous safety, security, and privacy issues. The Custodian argued that the IPIN forms could contain, in addition to friends and family, outside law enforcement agencies. The Custodian asserted that when inmates have obtained these forms, other inmates have been known to contact individuals without consent. The Custodian asserted that this could lead to witness tampering, extortion, and intimidation.

The Custodian further contended that disclosure of these forms could expose confidential informants within a facility. The Custodian argued that this could happen because Global Tel only queries numbers to identify if they are legitimate. The Custodian thus argued that DOC would not know if any of the numbers are law enforcement agencies aside of those known to the Special

Investigations Division. The Custodian asserted that altercations over informant rumors occur regularly and usually lead to coerced sharing of IPIN forms in their possession. The Custodian argued that this coerced disclosure creates a risk to the informant.

Additionally, the Custodian asserted that disclosure presented a risk to the individuals whose information was contained in the IPIN forms. The Custodian asserted that inmates could add numbers without an individual's consent; in the past inmates have successfully added victims, as well as individuals with restraining or no-contact orders. The Custodian noted that these numbers are blocked following an investigation initiated by law enforcement, or at the request of the individual receiving calls. The Custodian argued that requiring disclosure could lead to the Complainant "regaining" a phone number of a victim or other civilian that DOC previously blocked after investigation. The Custodian asserted that the security risk in disclosing blocked numbers is as described in the forgoing paragraphs. The Custodian further asserted that this was especially true given that IPIN does not constitute an agreement of contact with the individual, nor is DOC aware of all non-contact orders that may exist.

Finally, the Custodian asserted that while DOC stood by its exemptions, the Complainant was not entitled to records previously in possession. Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (July 2015). The Custodian stated that there, the Council found that requiring a custodian to disclose records the requestor created and submitted did not advance the purposes of OPRA. The Custodian stated that here, the Complainant admitted that he was attempting to recover records he once possessed. The Custodian asserted that, similar to Caggiano, neither checks nor IPIN forms previously in the Complainant's possession would advance the purposes of OPRA. The Custodian thus asserted that, even if the Council found that the exemptions did not apply, the Complainant was not entitled to the records per Caggiano, GRC 2014-408.

#### Additional Submissions:

On September 24, 2016, the Complainant sent a letter to the GRC rebutting the Custodian's SOI. Therein, the Complainant reiterated his Denial of Access Complaint argument that disclosure of the IPIN forms would not jeopardize anyone's safety. The Complainant also argued that he was entitled to the numbers because they were no longer "unlisted" when he provided them to DOC. The Complainant also argued that none of the hypothetical situations the Custodian espoused supported a denial under OPRA. The Complainant contended that the Council should deem the denial unlawful.

### 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 Request Item No. 1

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, in OPRA request item No. 1, the Complainant sought “checks” he wrote from his inmate account from 2007 through 2015. The Custodian denied access to this request item, stating that DOC “does not keep these records.” In the SOI, the Custodian certified that he had personal knowledge that DOC did not maintain checks written from inmate accounts as a matter of policy. The Custodian also affirmed that no retention schedule existed for these types of records. Additionally, there is no evidence in the record to refute that the Custodian did not possess the responsive records.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request item No. 1 seeking “checks” because he certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

### OPRA Request Item No. 2

OPRA provides that its provisions “shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . regulation[s] promulgated under the authority of any statute or Executive Order of the Governor . . .” N.J.S.A. 47:1A-9(a).

DOC’s promulgated regulations provide that:

[T]he following records shall not be considered government records subject to public access pursuant to OPRA . . . A report or record relating to an identified individual, which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement . . .

[N.J.A.C. 10A:22-2.3(a)(5).]

Here, the Complainant sought access to “IPIN” assignment forms that he submitted from 2007 through 2015. The Custodian denied access under OPRA and DOC’s regulations, stating that disclosure would jeopardize the safety and security of persons or facilities. N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(5). In the Denial of Access Complaint, the Complainant argued that disclosure would not present a safety or security risk; the forms contained numbers of friends and family that he submitted.

In the SOI, the Custodian presented multiple scenarios as to why disclosure of the records would jeopardize the safety of persons or the correctional facility. Among them, the Custodian asserted that other inmates may use the records as leverage to witness tamper, extort, or intimidate others. The Custodian also argued that the records could expose informants. Finally, the Custodian asserted that the numbers, which inmates could add without the person’s approval, could result in the disclosure of victim’s or other civilian’s numbers that DOC has previously blocked.

In response to the SOI, the Complainant again argued that disclosure of the forms would not jeopardize anyone's safety. The Complainant argued that the numbers were no longer "unlisted" at the point that he gave them to DOC. The Complainant finally argued that none of the hypothetical situations supported a denial here.

In weighing the arguments provided by the parties, the GRC is persuaded by the Custodian's arguments for denying access to the responsive IPIN forms. It is apparent the IPIN forms are "a record relating to an identified individual . . ." N.J.A.C. 10A:22-2.3(a)(5). While meeting a portion of the exemption, the record must also "jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement." Id. The Custodian's most compelling argument is the risk that numbers blocked could be reobtained through disclosure; inclusive of victim's contact information, which would be exempt in this instance under N.J.S.A. 47:1A-2.2. Further, the GRC notes that DOC's regulations do not include an exception to this provision allowing for inmates submitting the forms to obtain them. See also Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017) (affirming the Council's decision in GRC Complaint No. 2014-169 that "[complainant's] claimed entitlement to a report which is exempt from disclosure under OPRA finds no support in the statute." Id. at 6.).

Further, the GRC also finds recent amendments to N.J.A.C. 10A:22-2.3 to be compelling evidence of Custodian's lawful denial here. On November 5, 2016, within a few months after the denial resulting in this complaint, DOC proposed amendments to its regulations. The amendments include a new exemption for "[r]ecords and/or content related to inmate phone, e-mail, or visit information . . ." 48 N.J.R. 1775(a). The DOC proposed this amendment echoing some of the reasons set forth herein that this information be specifically exempted under OPRA. Id. Thereafter, on December 19, 2016, the new regulations were promulgated inclusive of the above exemption. N.J.A.C. 10A:22-2.3(a)(12).<sup>5</sup> The newly amended regulations thus provide additional standing to the importance of not disclosing the IPIN records responsive to the subject OPRA request.

Accordingly, the Custodian lawfully denied access to the responsive IPIN records. N.J.S.A. 47:1A-6. Specifically, the disclosure of such records pertaining to "an identified individual," including those of the Complainant, has a significant risk of jeopardizing "the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement." N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(5). Further, the GRC does not reach the Custodian's other asserted bases for denial because the records are exempt under N.J.A.C. 10A:22-2.3(a)(5).

### **Conclusions and Recommendations**

The Council Staff respectfully recommends the Council find that:

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<sup>5</sup> The GRC notes that OPRA expressly provides that neither the Council, the courts, or agencies can rely on regulations limiting access to government records retroactively unless they "can demonstrate an emergent need . . ." N.J.S.A. 47:1A-5(a). While the GRC does not rely on this exemption here, same provides additional insight into DOC's reasoning for denying access to the responsive IPIN forms.

1. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's OPRA request item No. 1 seeking "checks" because he certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian lawfully denied access to the responsive IPIN records. N.J.S.A. 47:1A-6. Specifically, the disclosure of such records pertaining to "an identified individual," including those of the Complainant, has a significant risk of jeopardizing "the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement." N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(5). Further, the GRC does not reach the Custodian's other asserted bases for denial because the records are exempt under N.J.A.C. 10A:22-2.3(a)(5).

Prepared By: Frank F. Caruso  
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September 18, 2018