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LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**February 26, 2020 Government Records Council Meeting**

Shamsiddin Abdur-Raheem  
Complainant

Complaint No. 2016-204

v.

NJ Department of Corrections  
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the February 19, 2020 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 Complainant’s May 2, 2016 OPRA request item No. 1 seeking access to his “all non-confidential” internal management procedures and standard operating procedures for New Jersey State Prison, is valid. Specifically, the OPRA request item did not require research; rather, it simply required the Custodian to search all responsive internal management procedures and standard operating procedures to determine which were disclosable, in part or whole. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Thus, the Custodian unlawfully denied access to this OPRA request item. N.J.S.A. 47:1A-6. However, the GRC declines to order any additional actions here because it is currently addressing the disclosure of said records in Abdur-Raheem v. N.J. Dep’t of Corr., GRC Complaint No. 2016-283.
2. The logbook records responsive to the Complainant’s April 15, 2016 OPRA request item No. 1 and May 2, 2016, OPRA request item No. 2 are exempt from disclosure under the security and surveillance exemption. N.J.S.A. 47:1A-1.1; Wassenaar v. N.J. Dep’t of Corr., GRC Complaint Nos. 2012-187 & 2012-192 (June 2013). Thus, the Custodian lawfully denied access to these OPRA request items. N.J.S.A. 47:1A-6. Also, because the logbook records are exempt under N.J.S.A. 47:1A-1.1, the GRC need not address the other remaining exemptions raised by the Custodian.
3. The G25 forms responsive to the Complainant’s April 15, 2016 OPRA request item No. 2 are exempt from disclosure under the security and surveillance exemption, as well as under the New Jersey Department of Corrections’ regulations. N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(5); N.J.A.C. 10A:22-2.3(b). Specifically, disclosure of the forms would allow an inmate to circumvent the cell search process and could reveal information regarding other inmates. Thus, the Custodian lawfully denied access to this OPRA request item. N.J.S.A. 47:1A-6.

4. The Custodian's delay in responding to the Complainant's April 18, 2016 OPRA request item No. 1 resulted in the responsive records no longer being available. N.J.S.A. 47:1A-1. See Zayas v. City of Trenton Police Dep't (Mercer), GRC Complaint No. 2008-31 (July 2008). Notwithstanding, the responsive video footage, if in existence, would have been exempt from disclosure under OPRA's security and surveillance exemptions, as well as New Jersey Department of Corrections' regulations. N.J.S.A. 47:1A-1.1; Gilleran v. Bloomfield, 227 N.J. 159 (2016); Wassenaar v. N.J. Dep't of Corr., GRC Complaint Nos. 2012-187 & 2012-192 (June 2013).
5. The Involuntary Protective Custody report responsive to the Complainant's April 18, 2016 OPRA request item No. 2 is exempt from disclosure under OPRA and New Jersey Department of Corrections' regulations. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(2), (5). Specifically, the Custodian's description of the report's content support that disclosure would jeopardize safety and security within New Jersey State Prison. See July v. N.J. Dep't of Corr., GRC Complaint No. 2015-6 (July 2016). Thus, the Custodian lawfully denied access to this OPRA request item. N.J.S.A. 47:1A-6.
6. Although the Custodian unlawfully denied access to the Complainant's May 2, 2016 OPRA request item No. 1 because same was valid, he lawfully denied access to Complainant's remaining OPRA requests. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 26<sup>th</sup> Day of February 2020

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 3, 2020**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
February 26, 2020 Council Meeting**

**Shamsiddin Abdur-Raheem<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-204**

v.

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

**Records Relevant to Complaint:**

April 15, 2016 OPRA request (Status No. 12591): Hardcopies via U.S. mail of:

1. Logbook records of Unit 3B in New Jersey State Prison (“NJSP”) reflecting search of Complainant’s cell during first and second shifts on March 29, and April 1, 2016.
2. G25 form reflecting cell search records on first and second shifts on March 29, and April 1, 2016.

April 18, 2016 OPRA request (Status No. 12590): Hardcopies via U.S. mail of:

1. Video footage of Unit 3B-Left at NJSP at various identified times between March 29, and April 9, 2016.
2. Most recently updated Special Investigation Division (“SID”) Involuntary Protective Custody (“IPC”) report concerning the Complainant’s housing status.

May 2, 2016 OPRA request (Status No. 12634): Hardcopies via U.S. mail of:

1. All non-confidential internal management procedures (“IMP”) and standard operating procedures (“SOP”) for NJSP.
2. Unit 3B-Left logbook records reflecting social workers who signed in and conducted rounds from February 3, through 5, 2016.

**Custodian of Record:** John Falvey

**Request Received by Custodian:** April 27, 2016; May 9, 2016<sup>3</sup>

**Response Made by Custodian:** May 6, 2016; May 10, 2016

**GRC Complaint Received:** July 25, 2016

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

<sup>2</sup> Represented by Deputy Attorney General Nicole E. Adams.

<sup>3</sup> The Complainant requested additional records in each OPRA request that are not at issue in this complaint Shamsiddin Abdur-Raheem v. New Jersey Department of Corrections, 2016-204 – Findings and Recommendations of the Council Staff

## Background<sup>4</sup>

### Request and Response:

#### April 15, 2016 OPRA request

On April 15, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 6, 2016, the Custodian also responded in writing to the Complainant’s April 15, 2016 OPRA request obtaining a ten (10) business day extension to locate responsive records.

On May 11, 2016, the Custodian responded in writing to the Complainant’s April 15, 2016 OPRA request. Regarding item No. 1, the Custodian denied access to five (5) pages of logbook records under the “emergency and security” and “security measures and surveillance techniques” exemptions. N.J.S.A. 47:1A-1.1. The Custodian also stated that the record was exempt as any information related to medical, psychiatric, or psychological history, diagnosis, treatment, or evaluation. N.J.A.C. 10A:22-2.3(a)(4). The Custodian further stated that the record was exempt as a report relating to an identified individual which, if disclosed, would jeopardize any person or the safe and secure operation of a correctional facility or other designated place of confinement. N.J.A.C. 10A:22-2.3(a)(4). Finally, the Custodian stated that the record was exempt because an inmate shall not be permitted to inspect or obtain copies of records concerning other inmates. N.J.A.C. 10A:22-2.3(b). Regarding item No. 2, the Custodian denied access to five (5) pages of records for based on most of the exemptions cited above. N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(5); N.J.A.C. 10A:22-2.3(b).

#### April 18, 2016 OPRA request

On April 18, 2016, the Complainant submitted a second (2<sup>nd</sup>) OPRA request to the Custodian seeking the above-mentioned records. On the May 6, 2016, the Custodian responded in writing to the Complainant’s April 18, 2016 OPRA similarly obtaining a ten (10) business day extension to locate responsive records.

On May 10, 2016, the Custodian responded in writing to the Complainant’s April 18, 2016 OPRA request. Regarding item No. 1, the Custodian stated that the requested video no longer existed. Regarding item No. 2, the Custodian denied access to a two (2) page report under the “emergency and security” and “security measures and surveillance techniques” exemptions. N.J.S.A. 47:1A-1.1. The Custodian also stated that the record was exempt as a SID investigation record, provided that redactions would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility. N.J.A.C. 10A:22-2.3(a)(2). The Custodian further stated that the record was exempt as a report relating to an identified individual which, if disclosed, would jeopardize any person or the safe and secure operation of a correctional facility or other designated place of confinement. N.J.A.C. 10A:22-2.3(a)(5). Finally, the Custodian stated

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<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.

that the record was exempt as a report designated confidential by a Hearing Officer. N.J.S.A. 47:1A-9.

#### May 2, 2016 OPRA request

On May 2, 2016, the Complainant submitted a third (3<sup>rd</sup>) OPRA request seeking the above-mentioned records. On May 10, 2016, the Custodian responded in writing denying access the Complainant's May 2, 2016 OPRA request. Regarding item No. 1, the Custodian stated that the request was invalid because it was overly broad. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). The Custodian stated that the request item would require him to review every IMP and SOP to determine which was non-confidential. Regarding item No. 2, the Custodian denied access to one (1) page of records under the "emergency and security" and "security measures and surveillance techniques" exemptions. N.J.S.A. 47:1A-1.1.

#### Denial of Access Complaint:

On July 25, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he was unlawfully denied access to the responsive records.

Regarding his April 15, 2016 OPRA request item No. 1, the Complainant contended that the logbook records, which pertained only to him and his former cell, posed no security concern. The Complainant argued that this is especially true given he already knew the search took place. Further, the Complainant argued that he previously received similar cell search records. Finally, the Complainant argued that inmates have a right to know if cell searches are being properly documented to determine whether they were subject to arbitrary searches. Regarding item No. 2, the Complainant argued that G25 forms are not exempt under OPRA in any way. The Complainant further noted that he was previously provided redacted G25 forms.

Regarding his April 18, 2016 OPRA request item No. 1, the Complainant contended that the New Jersey Superior Court, Appellate Division held that the New Jersey Department of Corrections' ("DOC") policy of blanket denying video footage was improper. Robles v. N.J. Dep't of Corr., 388 N.J. Super. 516 (App. Div. 2006).<sup>5</sup> Regarding item No. 2, the Complainant contended that the Custodian denied the SID report regarding his IPC designation on "frivolous grounds." The Complainant contended that the report could be redacted if any other inmates were identified therein. The Complainant disputed that any security concerns existed in disclosing the report.

Regarding his May 2, 2016 OPRA request item No. 1, the Complainant disputed the denial. The Complainant argued that DOC should already know which IMPs and SOPs were "non-confidential," lest all be presumed non-confidential and thus disclosable. The Complainant further argued that DOC was obligated to make such a determination. The Complainant asserted that DOC's failure to make such a determination would permanently bar any requestor from obtaining access to those records. Regarding item No. 2, the Complainant argued that the Custodian's denial

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<sup>5</sup> There is no evidence in Robles that the plaintiff was seeking access to the footage at issue under OPRA. The requested footage was sought in an administrative request filed with DOC.

Shamsiddin Abdur-Raheem v. New Jersey Department of Corrections, 2016-204 – Findings and Recommendations of the Council Staff

was again “frivolous.” The Complainant argued that there could be no security concerns in disclosing the logbooks when social workers are visible to all inmates in a unit during their visit.

Statement of Information:

On September 2, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s April 15, and 18, 2016 OPRA requests on April 27, 2016. The Custodian certified that he initially sought an extension of ten (10) business days on May 6, 2016 to fulfill the OPRA requests. The Custodian affirmed that, thereafter, he received the Complainant’s May 2, 2016 OPRA request on May 9, 2016. The Custodian certified that he responded in writing to all three (3) of the Complainant’s OPRA requests on May 10 and 11, 2016 denying access to the requested records for a variety of reasons.

Regarding the Complainant’s April 15, 2016 OPRA request item No. 1, the Custodian contended that he lawfully denied access to the responsive logbook. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(5). Regarding the logbooks, the Custodian argued that he lawfully denied same because disclosure would jeopardize facility security and because the logbooks related to an identified individual, the disclosure of which would likely threaten the safety of persons or the safe and secure operation of the facility (or place of confinement). The Custodian argued that disclosure would give insight into staff movements: the information could be used to identify patterns and predict when staff was momentarily diverted. The Custodian further argued that logbooks contain information related to security equipment checks, inventory, other inmates, and medical information. The Custodian also noted that the responsive record is exempt under N.J.A.C. 10A:22-2.3(b), which prohibits inmates from inspecting or obtaining copies of documents concerning other inmates.

Regarding the Complainant’s April 15, 2016 OPRA request item No. 2, the Custodian affirmed that G25 forms were eighteen-point checklists utilized by DOC during cell inspections. The Custodian also certified that the forms identify those inmates’ cells searched. The Custodian contended that the forms: 1) could be used to undermine search efforts; 2) would identify other inmates; and 3) could also reveal search patterns. The Custodian contended that disclosure would also put the safe and secure operation of the facility at risk. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(5), N.J.A.C. 10A:22-2.3(b).

Regarding the Complainant’s April 18, 2016 OPRA request item No. 1, the Custodian certified that the requested video footage no longer existed because DOC’s video system only maintained videos for a thirty (30) day period. The Custodian affirmed that at that time, the system overwrote any previous data. The Custodian thus argued that he properly denied this item because no records existed, and the Complainant failed to provide any evidence to the contrary. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

Regarding the Complainant’s April 18, 2016 OPRA request item No. 2, the Custodian contended that he lawfully denied access to the responsive two (2) page SID report. The Custodian argued that the report was expressly exempt from disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(2), provided that redaction would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility. The Custodian also argued that the report related to a particular individual, the disclosure of which would similarly jeopardize the safety of

any person or the facility. N.J.A.C. 10A:22-2.3(a)(5). See also Cordero v. N.J. Dep't of Corr., GRC Complaint No. 2012-209 (June 2013) (holding that the custodian lawfully denied access to SID reports). The Custodian argued that the report at issue here revealed investigation steps taken to determine if IPC was necessary, identified the particulars of the Complainant's crimes, and reflected concerns DOC had about the Complainant's inclusion in the general population. The Custodian thus argued that he lawfully denied access to the responsive report.

Regarding the Complainant's May 2, 2016 OPRA request item No. 1 seeking access to "all non-confidential" IMPs and SOPs, the Custodian argued that he lawfully denied the request item as invalid. The Custodian argued that here, as was the issue in MAG, 375 N.J. Super. 534, DOC could not utilize any search engine to locate responsive records. The Custodian contended that the request item failed to identify any specific IMPs or SOPs by which he could narrow his search. The Custodian argued that he thus would have been required to conduct an open-ended review of every IMP and SOP to determine which were considered not confidential. The Custodian argued that any attempt to perform the research required would result in a substantial disruption of agency operations. N.J.S.A. 47:1A-5(g).

Regarding the Complainant's May 2, 2016 OPRA request item No. 2, the Custodian reiterated arguments presented in response to the April 15, 2016 OPRA request item No. 2. The Custodian added that disclosure of the logbooks responsive to this request item were for the entire unit and could reflect visits to other inmates.

In closing, the Custodian argued that the Courts have long deferred to the DOC when making safety and security decisions. The Custodian stated that DOC has "broad discretionary power" to promulgate regulations aimed at maintaining security and order inside correctional facilities. Jenkins v. Fauver, 108 N.J. 239, 252 (1987). The Custodian stated that the Courts have noted that "[p]risons are dangerous places, and the courts must afford appropriate deference and flexibility to administrators trying to manage this volatile environment." Russo v. NJ Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999). See also Florence v. Bd. of Chosen Freeholders, Burlington Cnty., 132 S.Ct. 1510, 1515 (2012) ("[m]aintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face[.]")

#### Additional Submissions:

On September 15, 2016, the Complainant submitted a letter responding to the Custodian's SOI. Therein, the Complainant refuted the Custodian's SOI arguments as follows:

Regarding the April 15, 2016 OPRA request, the Complainant argued that the Custodian misconstrued his request item No. 1 to mean a logbook of "all" searches for the dates in question. The Complainant noted that his request sought logbook cell search records only for his cell. The Complainant further contended that the Custodian's denial was erroneous: cell searches were conducted randomly by officers already within his closed custody unit. The Complainant argued that it would be impossible to discern a pattern when DOC's IMP's require random searches. Further, the Complainant noted that all inmates within the unit can witness searches, or at least have a right to know particular facts about a search. The Complainant further noted that any exempt

information could have been redacted. The Complainant argued that disclosure was in his interest and that DOC previously disclosed these records in response to an OPRA request.

The Complainant further asserted that the Custodian unlawfully denied access to the responsive G25 forms sought in item No. 2 as well. The Complainant again argued that the Custodian should have redacted all exempt information and disclosed same. The Complainant noted that he also received these records in responsive to a prior OPRA request.

Regarding the April 18, 2016 OPRA request, the Complainant expressed confusion on how the video responsive to item No. 1 could no longer exist. The Complainant noted that thirty (30) days had not passed at the time of his OPRA request. The Complainant also argued that the courts previously held that security footage was not confidential. See Robles, 388 N.J. Super. 516. The Complainant also contended that, contrary to the requirements set forth in Paff v. N.J. Dep't of Labor, 392 N.J. Super. 334 (App. Div. 2007), the Custodian failed to provide sufficient details regarding his search. The Complainant argued that the Custodian provided no details as to who informed him the video did not exist, what steps he took to confirm this fact, and whether he performed his own search. The Complainant contended that the GRC should reject the Custodian's unsupported statements and find that he unlawfully denied access to the video.

The Complainant also contended that the Custodian erroneously cited to Cordero in denying request item No. 2 seeking a SID report regarding his IPC status. The Complainant argued that the report at issue in Cordero, GRC 2012-209 was different from the one sought here. The Complainant reiterated that he had a right to know why he was placed in IPC status and likely already possessed certain materials regarding the allegations against him that resulted in his placement. The Complainant also argued that unlike in Cordero, the Custodian did not assert that other inmates, informants, or persons were contained therein. The Complainant further reiterated that even if other individuals were included, the record could be redacted prior to disclosure. The Complainant contended that the denial was meant to prevent him from appealing the IPC status. See N.J.A.C. 10A:5-5.2(j) (providing that an inmate must "be informed of all information related to the inmate's case . . ." at an IPC hearing). The Complainant asserted that upholding the denial would perpetrate the "endemic within this state and nation" of holding inmates in solitary confinement in perpetuity without the ability to challenge their placement.

Regarding the May 2, 2016 OPRA request, the Complainant argued that request item No. 1 was not invalid. The Complainant asserted that his request was akin to making a blanket request for all IMPS and SOPs, which would require the Custodian to disclose those that were not exempt. The Complainant argued that the Custodian was obligated to perform a search of all IMPS and SOPs to determine which were disclosable per Paff, 392 N.J. Super. 334. The Complainant argued that the request item did not require research as discussed in MAG, 375 N.J. Super. 534, and was similar to the request at issue in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). The Complainant further contended that conducting such a search would not become a substantial disruption of agency operations: the Custodian provided no evidence supporting his assertion. The Complainant also alleged that IMPs were classified by level, which could ease the Custodian's search process.

The Complainant finally contended that the Custodian unlawfully denied access to the social worker logbooks sought in item No. 2. The Complainant contended that the Custodian's



denial was “hollow, frivolous[,] and ridiculous.” The Complainant contended that social workers were required to conduct visits to closed custody units five (5) days a week in full view of the inmates within the closed custody unit. N.J.A.C. 10A:5-3.15(a); N.J.A.C. 10A:5-5.16(a). The Complainant also refuted the Custodian’s assertion that the logbook may contain visits to other inmates. The Complainant contended that the logbook in question contained social worker names and times; notwithstanding, any other inmate information could be redacted. The Complainant further asserted that the reason the logbook should be disclosed is so that an inmate may identify a social worker to whom he may have given certain documents. The Complainant asserted that based on the logbook entries, an inmate could then request that specific social worker’s personal logbook to determine whether the document handed in was properly logged. The Complainant noted that this was his reason for seeking the logbook. The Complainant thus contended that there was no security risk in disclosing the requested logbook for such a purpose.

### Analysis

#### Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.*

[MAG, 375 N.J. Super. at 546 (emphasis added).]

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division’s records custodian to manually search through all of the agency’s files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . .* In short, OPRA does not countenance open-ended searches of an agency’s files.” Id. (emphasis added). Bent v. Stafford Police Dep’t,

381 N.J. Super. 30, 37 (App. Div. 2005);<sup>6</sup> N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See *e.g.* Naples v. N.J. Motor Vehicle Comm'n, GRC Complaint No. 2008-97 (December 2008).

The Council also addressed the search/research question in Donato, GRC 2005-182. There, the Council held that pursuant to MAG, a custodian is obligated to search his or her files to find identifiable government records listed in a requestor’s OPRA request. The complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

Pursuant to [MAG], the Custodian is obligated to search her files to find the identifiable government records listed in the Complainant’s OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to research her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word search is defined as “to go or look through carefully in order to find something missing or lost.” The word research, on the other hand, means “a close and careful study to find new facts or information.” (Footnotes omitted.)

[Id.]

In the instant complaint, the Complainant’s May 2, 2016 OPRA request item No. 1 sought access to all “non-confidential” IMPS and SOPs. The Custodian responded denying this item as invalid because it was overly broad. In the Denial of Access Complaint, the Complainant argued that the Custodian had an obligation to review all IMPs and SOPs to determine whether they were disclosable. In the SOI, the Custodian argued that he had no way of searching for “non-confidential” IMPS or SOPs. The Custodian further argued that he would have to perform open-ended research to determine which records were “non-confidential” in order to respond to the OPRA request item. The Complainant subsequently rebutted the SOI by arguing that the request item did not require research; the Custodian only needed to search all IMPs and SOPs to determine which were subject to disclosure.

N.J.A.C. 1:1-15.2(a) and (b) state that official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the

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<sup>6</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004). Shamsiddin Abdur-Raheem v. New Jersey Department of Corrections, 2016-204 – Findings and Recommendations of the Council Staff

judge. The Appellate Division has held that it was appropriate for an administrative agency to take notice of an appellant's record of convictions because judicial notice could have been taken of the records of any court in New Jersey, and appellant's record of convictions were exclusively in New Jersey. See Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95 (App. Div. 1974).

The GRC must take judicial notice that the Complainant, presumably in the wake of receiving the Custodian's denial of his May 2, 2016 OPRA request item No. 1, submitted three (3) additional OPRA requests for IMPs and SOP on May 13, May 17, and August 6, 2016. In response to those three (3) OPRA requests, which are the subject of Abdur-Raheem v. N.J. Dep't of Corr., GRC Complaint No. 2016-283, the Custodian assessed a special service charge. The Complainant subsequently filed the afore-mentioned Denial of Access Complaint arguing that the special service charge was unreasonable and unwarranted.

In reviewing the evidence of record before the Council here, the GRC is persuaded that the Complainant's OPRA request was valid and that the Custodian unlawfully denied access to it. The GRC agrees with the Complainant's SOI rebuttal assertion that this request item only required the Custodian to review all IMPs and SOPs to determine whether they were disclosable, in part or whole. Much like the custodian in Donato, GRC 2005-182, who was required to produce all accident reports over a certain time frame, the Custodian here was only required to search through all IMPs and SOPs and perform his typical custodial duties of identifying which were disclosable in part of whole.

However, given that the Complainant subsequently submitted additional OPRA requests for the same records and filed a Denial of Access Complaint, the GRC does not recommend any further action in connection with this request item. Specifically, the Custodian did not assert the OPRA requests at issue in Abdur-Raheem, GRC 2016-283 were invalid. Instead, the Custodian assessed a special service charge that the Complainant challenged in the ensuing Denial of Access Complaint. The GRC believes that ordering any action here will result in a duplicative adjudication of the special service charge issue already before the Council in Abdur-Raheem. Thus, the GRC will address the disclosure of IMPs and SOPs as part of its adjudication in Abdur-Raheem.

Accordingly, the Complainant's May 2, 2016 OPRA request item No. 1 seeking access to his "all non-confidential" IMPs and SOPs for NJSP, is valid. Specifically, the OPRA request item did not require research; rather, it simply required the Custodian to search all responsive IMPs and SOPs to determine which were disclosable, in part of whole. MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 37; N.J. Builders Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Donato, GRC 205-182. Thus, the Custodian unlawfully denied access to this OPRA request item. N.J.S.A. 47:1A-6. However, the GRC declines to order any additional actions here because it is currently addressing the disclosure of said records in Abdur-Raheem, GRC 2016-283.

### **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 exempts disclosure of records that contain “*emergency or security information or procedures for any buildings or facility* which, if disclosed, would jeopardize security of the building or facility or persons therein.” N.J.S.A. 47:1A-1.1 (emphasis added). OPRA further exempts access to “*security measures and surveillance techniques* which, if disclosed, would create a risk to the safety of persons [or] property.” Id. (emphasis added).

Additionally, OPRA provides that its provisions “. . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.” N.J.S.A. 47:1A-9(a).

To this end, DOC’s regulations provide that:

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq. . . . the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.

(2) Special Investigations Division investigations records and reports, provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility;

(4) Any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation;

(5) 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)(2), (4)-(5).]

Further, DOC’s regulations provide that “[a]n inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.” N.J.A.C. 10A:22-2.3(b).

In the matter before the Council, the Complainant submitted three (3) separate OPRA requests seeking several records including logbooks, forms, video footage, and IPC records. In each instance, the Custodian denied access to said records under N.J.S.A. 47:1A-1.1 and DOC’s regulations. The Complainant disputed each denial, arguing that he should have been given access to the responsive records, in part or whole, for various reasons. The GRC will address each of those records below by type, as opposed to by OPRA request, for the purpose of clarity.

#### Logbooks (April 15, 2016 and May 2, 2016 OPRA requests)

In Wassenaar v. N.J. Dep’t of Corr., GRC Complaint Nos. 2012-187 & 2012-192 (June 2013), the complainant sought, in part, access to staff logbook entries for a certain period of time. The custodian denied access under N.J.S.A. 47:1A-1.1 and that Denial of Access Complaint

followed. Therein, the complainant argued that the logbooks “documented his movements and activities, as well as meal tray deliveries and diet.” Id. at 4. In the SOI, the custodian argued that the logbooks should be kept confidential to prevent inmates from exploiting them for prohibited activities. The complainant refuted the SOI by reiterating that the logbooks should be disclosed because they pertain to him.

The Council disagreed, finding that the custodian lawfully denied access to the logbook entries (citing Fischer v. N.J. Dep’t of Corr., GRC Complaint No. 2005-171 (February 2006); Durham v. N.J. Dep’t of Corr., GRC Complaint No. 2012-35 (March 2013)). The Council further noted that whether the responsive records “referred to the Complainant is of no moment.” Id. at 8 (citing Lobosco v. N.J. Dep’t of Health & Human Serv., Div. of Certificate of Need & Healthcare Facility Licensure, GRC Complaint No. 2010-64 (October 2010)). See also Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017)<sup>7</sup> (dismissing appellant’s assertion that he was entitled to the requested report because it was about him).

In this matter, the Complainant’s April 15, 2016 OPRA request Item No. 1 sought logbook records regarding cell searches conducted on two (2) different days. The Complainant’s May 2, 2016 OPRA request Item No. 2 sought logbook records showing social worker visits for a three (3) day period. The Custodian denied access to records responsive to each item (five (5) pages and one (1) page respectively) citing N.J.S.A. 47:1A-1.1 and applicable DOC regulations.

In the Denial of Access Complaint, the Complainant argued that the Custodian’s denials were “frivolous” and that there were no security concerns in disclosing logbook records. The Complainant contended that he knew when his cell was searched and that social workers were visible within his Housing Unit on a regular basis. In the SOI, the Custodian maintained DOC’s position that the logbooks were exempt from disclosure. The Custodian argued that inmates could use the records to develop and predict staff movement or obtain critical internal information about security, medical information, or other inmates. The Complainant responded to the SOI reiterating his Denial of Access Complaint arguments.

However, the Council’s prior decision in Wassenaar, GRC 2012-187, *et seq.* is controlling here. Specifically, as in Wassenaar, the Custodian provided a sufficient description to prove that disclosure of the logbooks would reasonably jeopardize the safe and secure running of NJSP. Also, whether the Complainant had knowledge of when his cell was searched, or which social workers were visiting is of no moment here. Spillane, 2017 N.J. Super. Unpub. LEXIS 2392. There are no exceptions in OPRA or DOC’s OPRA regulations supporting that the Complainant could overcome the existing exemptions and obtain access to the logbooks.

Accordingly, the logbook records responsive to the Complainant’s April 15, 2016 OPRA request item No. 1 and May 2, 2016, OPRA request item No. 2 are exempt from disclosure under the security and surveillance exemption. N.J.S.A. 47:1A-1.1; Wassenaar, GRC 2012-187, *et seq.* Thus, the Custodian lawfully denied access to these OPRA request items. N.J.S.A. 47:1A-6. Also, because the logbook records are exempt under N.J.S.A. 47:1A-1.1, the GRC need not address the other remaining exemptions raised by the Custodian.

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<sup>7</sup> Affirming on appeal Spillane v. N.J. Dep’t of Corr., GRC Complaint No. 2014-169 (March 2015).  
Shamsiddin Abdur-Raheem v. New Jersey Department of Corrections, 2016-204 – Findings and Recommendations of the Council Staff

### G25 Cell Search forms (April 15, 2016 OPRA request)

Here, the Complainant's April 15, 2016 OPRA request item No. 2 sought G25 forms for cell searches conducted on March 29 and April 1, 2016. The Custodian denied access to five (5) pages of records under N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(5); N.J.A.C. 10A:22-2.3(b). In the Denial of Access Complaint, the Complainant contended that the responsive forms were not exempt, noting that he previously received redacted G25 forms.

In the SOI, the Custodian certified that G25 forms consist of an eighteen-point checklist that DOC uses during cell searches. The Custodian argued that the forms: 1) could be used to undermine searches; 2) could contain other inmate information; and 3) would reveal search patterns. The Custodian thus argued that disclosure would compromise the safe and secure operation of the Complainant's facility. The Complainant refuted the Custodian's SOI argument by contending that the Custodian should have redacted the G25 forms and disclosed them. The Complainant argued that such an action would have been consistent with DOC's responses to prior OPRA requests.

The disclosability of G25 forms under OPRA is a matter of first impression for the GRC. Having reviewed the arguments submitted by the parties, the GRC is persuaded that the Custodian lawfully denied access to them. Specifically, the Complainant argued that G25 forms were not exempt and that he previously received redacted forms in response to OPRA requests. However, the assertion that the forms are not exempt does not overcome the Custodian's certification that the content of those forms, if disclosed, would jeopardize the safe and secure operation of DOC's facilities. N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(5). The GRC agrees that disclosing a checklist used to perform cell searches would allow an inmate to circumvent same to the detriment of the facility. It is further evident that the responsive forms likely contained other inmate information, given that the forms relate to any search performed on the identified days over multiple shifts. N.J.A.C. 10A:22-2.3(b). Finally, the Complainant's argument that he previously received redacted G25 forms is of no moment here: prior disclosure of records that may have otherwise been exempt do not expose them to similar disclosure in perpetuity.

Accordingly, the G25 forms responsive to the Complainant's April 15, 2016 OPRA request item No. 2 are exempt from disclosure under the security and surveillance exemption, as well as under DOC regulations. N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(5); N.J.A.C. 10A:22-2.3(b). Specifically, disclosure of the forms would allow an inmate to circumvent the cell search process and could reveal information regarding other inmates. Thus, the Custodian lawfully denied access to this OPRA request item. N.J.S.A. 47:1A-6.

### Video Footage (April 18, 2016 OPRA request)

In Perry v. N.J. Dep't of Corr., GRC Complaint No. 2012-237 (June 2013), on June 11, 2012, the complainant sought access to surveillance footage from an incident occurring on May 9, 2012. The custodian initially denied access under DOC's regulations. Subsequently, the custodian certified in the SOI that any video would have been overwritten prior to the date of the OPRA request. The Council thus held that the custodian lawfully denied access to said records, if any, because none existed. Id. at 4 (citing Pusterhofer, GRC 2005-49).

Conversely, in Zayas v. City of Trenton Police Dep't (Mercer), GRC Complaint No. 2008-31 (July 2008), on November 16, 2007, the complainant sought access to a picture taken from a traffic camera on November 13, 2007. The custodian initially responded seeking an extension of time, and subsequently responded on January 18, 2008 stating that the record was no longer available. In the SOI, the custodian provided an explanation indicating that confusion as to who maintained the record resulted in it being overwritten after thirty (30) days. The Council held that:

Although the evidence of record shows that the Custodian made several attempts to obtain the record from the Trenton Police Department, the Department's confusion as to the location of the record materially hindered the Complainant's right of public access to government records as set forth in N.J.S.A. 47:1A-1. This hindrance should not be borne by a requestor. N.J.S.A. 47:1A-1 ("any limitations on the right of access . . . should be construed in favor of the public's right of access.")

[Id. at 6.]

In the matter before the Council, the Complainant's April 18, 2016 OPRA request item No. 1 sought video footage at various times between March 29, and April 9, 2016. The Custodian initially responded on May 6, 2016 obtaining ten (10) additional business days to respond. Thereafter, the Custodian responded on May 10, 2016 denying access to this request item stating that no videos existed. In the SOI, the Custodian certified that video was only maintained for thirty (30) days; thus, he lawfully denied access to the item under Pusterhofer, GRC 2005-49. The Complainant refuted the Custodian's SOI argument, contending that he submitted his OPRA request within thirty (30) days of the requested footage. The Complainant further argued that the Custodian failed to comply with Paff, 392 N.J. Super. 334.

A review of the evidence of record here; however, does not support a finding consistent with Perry, GRC 2012-237. Rather, the facts here are consistent with Zayas, GRC 2008-31. Specifically, the Custodian certified that DOC only maintained video footage for thirty (30) days and that the requested videos "no longer existed." However, the Complainant submitted his OPRA well within that thirty (30)-day time frame. Further, the Custodian initially sought an extension of time still within the thirty (30) days. It was not until May 10, 2016, thirty-one (31) days after the final date identified in the OPRA request, that the Custodian responded advising that no records existed. Based on the forgoing, the Custodian's time extension to complete a response led to the responsive records no longer being available.

Notwithstanding the forgoing, controlling court precedent, as well as GRC case law, support a finding that if responsive records were in fact located, they would be otherwise exempt from disclosure. In Gilleran v. Bloomfield, 227 N.J. 159 (2016), the Supreme Court held that security footage within a government building is exempt from disclosure under OPRA's security and surveillance exemption at N.J.S.A. 47:1A-1.1. Further, in Wassenaar, GRC 2012-187, *et seq.*, the Council held that the custodian lawfully denied access to video images of the complainant from cameras mounted outside his housing unit (citing N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(2), (5)). Accordingly, it is reasonable to conclude that the video footage

sought here, from cameras located within NJSP, would be similarly exempt from disclosure under OPRA.<sup>8</sup>

Accordingly, the Custodian's delay in responding to the Complainant's April 18, 2016 OPRA request item No. 1 resulted in the responsive records no longer being available. N.J.S.A. 47:1A-1. See Zayas, GRC 2008-31. Notwithstanding, the responsive video footage, if in existence, would have been exempt from disclosure under OPRA's security and surveillance exemptions, as well as DOC regulations. N.J.S.A. 47:1A-1.1; Gilleran, 227 N.J. 159; Wassenaar, GRC 2012-187, *et seq.*

#### IPC Report (April 18, 2016 OPRA request)

In Cordero, GRC 2012-209, the complainant sought access to SID reports regarding an investigation into potential narcotics use in a DOC facility. The custodian denied access under N.J.S.A. 47:1A-1.1 and the complainant filed a Denial of Access Complaint. In the SOI, the custodian detailed the reports' content and how disclosure could jeopardize the safety and security of a DOC facility. The custodian also argued that the reports were exempt under DOC regulations. The Council agreed, holding that the custodian bore his burden of proof that he lawfully denied access to the responsive reports. Citing N.J.S.A. 47:1A-1.1.

Further, in July v. N.J. Dep't of Corr., GRC Complaint No. 2015-6 (July 2016), the complainant sought access to SID reports regarding his IPC designation. The custodian denied access to said reports citing multiple provisions in N.J.A.C. 10A:22-2.3. In response to the complaint, the custodian again detailed the reports' content to support his denial of access. The Council, considering the custodian's description of the responsive reports, determined that same were exempt from disclosure. Id. at 3.

In the matter before the Council, the Complainant's April 18, 2016 OPRA request item No. 2 sought access to an IPC report regarding his housing status. The Custodian denied access to a two (2)-page report under OPRA's security and surveillance exemption, as well as under DOC regulations at N.J.A.C. 10A:22-2.3(a)(2) and (5). In the Denial of Access Complaint, the Complainant disputed the denial, arguing that the responsive report could have been redacted. In the SOI, the Custodian maintained his position that he lawfully denied access to the responsive report in accordance with Cordero, GRC 2012-209. The Custodian also detailed the contents of the report. The Complainant subsequently disputed the SOI wherein he argued that Cordero did not apply. The Complainant further argued that he had a right to the report under N.J.A.C. 10A:5-5.2(j).

Having reviewed the facts and arguments as they relate to this request item, the GRC is persuaded that the Custodian lawfully denied access to the responsive SID report. The GRC agrees with the Complainant that Cordero, GRC 2012-209 is not exactly on point with the instant complaint. Specifically, the reports in Cordero did not appear to relate to an IPC designation. However, the instant complaint is similar to July, GRC 2015-6 in that the report relates to an IPC

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<sup>8</sup> The GRC notes that the Complainant argued that Robles, 388 N.J. Super. 516 did not allow DOC to blanket deny the footage; however, the decision addressed evidence at a discipline hearing and not OPRA. Thus, Robles is not dispositive in the instant matter.



designation. Further, as in July, the Custodian here provided enough details regarding the contents of the report to support his denial. The GRC also notes that the Complainant's reliance on N.J.A.C. 10A:5-5.2(j) is misplaced. That regulation has no impact on OPRA, as it sets forth procedures in an IPC hearing.

Accordingly, the IPC report responsive to the Complainant's April 18, 2016 OPRA request item No. 2 is exempt from disclosure under OPRA and DOC regulations. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(2), (5). Specifically, the Custodian's description of the report's content support that disclosure would jeopardize safety and security within NJSP. See July, GRC 2015-6. Thus, the Custodian lawfully denied access to this OPRA request item. N.J.S.A. 47:1A-6.

In closing, on September 6, 2016, subsequent to the interaction between the parties here, DOC proposed amendments to N.J.A.C. 10A:22-2.3. Those proposed amendments sought to identify additional records that DOC "found the need to add . . . to the list of confidential records." 48 N.J.R. 1775(a). Those records included:

- all internal management procedures, or any portion thereof, including any portions of those procedures and/or any indexes or lists identifying the procedures related to safety and security measures, inmate movement, staffing, investigative techniques, contraband detection, intelligence gathering techniques, structural or physical plant designs, surveillance techniques, and search techniques;
- records related to involuntary or voluntary protective custody;
- records related to security threat groups or security threat group investigations or validations;
- records and/or content related to inmate phone, e-mail or visit information;
- log books; and
- surveillance footage of areas located within a correctional facility's secured perimeter.

[Id.]

The updates to DOC's regulations were promulgated with an effective date of December 19, 2016. N.J.A.C. 10A:22-2.3(a)(9)-(14). However, OPRA prohibits the retroactive application of regulations limiting access "[e]xcept where an agency can demonstrate an emergent need." N.J.S.A. 47:1A-5(a). See also Chester v. N.J. Dep't of Corr., GRC Complaint No. 2016-167 (May 2018).

Notwithstanding, DOC provided justifications in 48 N.J.R. 1775(a) for the addition of each record to the "confidential" list, with many mirroring the arguments presented in the Custodian's SOI herein. Thus, although the new regulations cannot be applied here, DOC's rationale for amending them provides additional insight into the sensitive nature of the records sought in the instant complaint.

### **Knowing & Willful**

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA] and is found to have unreasonably denied access under the totality of Shamsiddin Abdur-Raheem v. New Jersey Department of Corrections, 2016-204 – Findings and Recommendations of the Council Staff

the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter before the Council, the Custodian unlawfully denied access to the Complainant’s May 2, 2016 OPRA request item No. 1 because same was valid. However, he lawfully denied access to Complainant’s remaining OPRA requests. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Council Staff respectfully recommends the Council find that:

1. The Complainant’s May 2, 2016 OPRA request item No. 1 seeking access to his “all non-confidential” internal management procedures and standard operating procedures for New Jersey State Prison, is valid. Specifically, the OPRA request item did not require research; rather, it simply required the Custodian to search all responsive internal management procedures and standard operating procedures to determine which were disclosable, in part of whole. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Thus, the Custodian unlawfully denied access to this OPRA request item. N.J.S.A. 47:1A-6. However, the GRC declines to order any additional actions here because it is currently addressing the disclosure of said records in Abdur-Raheem v. N.J. Dep’t of Corr., GRC Complaint No. 2016-283.

2. The logbook records responsive to the Complainant's April 15, 2016 OPRA request item No. 1 and May 2, 2016, OPRA request item No. 2 are exempt from disclosure under the security and surveillance exemption. N.J.S.A. 47:1A-1.1; Wassenaar v. N.J. Dep't of Corr., GRC Complaint Nos. 2012-187 & 2012-192 (June 2013). Thus, the Custodian lawfully denied access to these OPRA request items. N.J.S.A. 47:1A-6. Also, because the logbook records are exempt under N.J.S.A. 47:1A-1.1, the GRC need not address the other remaining exemptions raised by the Custodian.
3. The G25 forms responsive to the Complainant's April 15, 2016 OPRA request item No. 2 are exempt from disclosure under the security and surveillance exemption, as well as under the New Jersey Department of Corrections' regulations. N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(5); N.J.A.C. 10A:22-2.3(b). Specifically, disclosure of the forms would allow an inmate to circumvent the cell search process and could reveal information regarding other inmates. Thus, the Custodian lawfully denied access to this OPRA request item. N.J.S.A. 47:1A-6.
4. The Custodian's delay in responding to the Complainant's April 18, 2016 OPRA request item No. 1 resulted in the responsive records no longer being available. N.J.S.A. 47:1A-1. See Zayas v. City of Trenton Police Dep't (Mercer), GRC Complaint No. 2008-31 (July 2008). Notwithstanding, the responsive video footage, if in existence, would have been exempt from disclosure under OPRA's security and surveillance exemptions, as well as New Jersey Department of Corrections' regulations. N.J.S.A. 47:1A-1.1; Gilleran v. Bloomfield, 227 N.J. 159 (2016); Wassenaar v. N.J. Dep't of Corr., GRC Complaint Nos. 2012-187 & 2012-192 (June 2013).
5. The Involuntary Protective Custody report responsive to the Complainant's April 18, 2016 OPRA request item No. 2 is exempt from disclosure under OPRA and New Jersey Department of Corrections' regulations. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(2), (5). Specifically, the Custodian's description of the report's content support that disclosure would jeopardize safety and security within New Jersey State Prison. See July v. N.J. Dep't of Corr., GRC Complaint No. 2015-6 (July 2016). Thus, the Custodian lawfully denied access to this OPRA request item. N.J.S.A. 47:1A-6.
6. Although the Custodian unlawfully denied access to the Complainant's May 2, 2016 OPRA request item No. 1 because same was valid, he lawfully denied access to Complainant's remaining OPRA requests. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso  
Executive Director

February 19, 2020