



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

February 21, 2017 Government Records Council Meeting

Joshua Graham
Complainant

v.

NJ Department of Corrections
Custodian of Record

Complaint No. 2016-21

At the February 21, 2017 public meeting, the Government Records Council (“Council”) considered the February 14, 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:

1. The Custodian lawfully denied access to copies of the responsive disciplinary records of two other inmates because N.J.A.C. 10A:22-2.3(b) prohibits the Complainant from either inspecting or obtaining records pertaining to another inmate. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). *See also* Werner v. NJ Dep’t of Corrections, GRC Complaint No. 2011-153 (September 2012).
2. The Custodian has borne his burden of proving that the release of the requested SID investigative report would jeopardize the SID’s investigative process, because the requested records consist of security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property. N.J.S.A. 47:1A-1.1. *See also* Hayes v. NJ DOC, GRC Complaint No. 2014-286 (May 2015). Based on the foregoing, the Custodian lawfully denied access to the requested record. N.J.S.A. 47:1A-6. Because the records are exempt under N.J.S.A. 47:1A-1.1, the GRC declines to address the applicability of N.J.A.C. 10A:22-2.3(a)(1), N.J.A.C. 10A:22-2.3(a)(4), and 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 21st Day of February, 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: February 23, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 21, 2017 Council Meeting**

**Joshua Graham¹
Complainant**

GRC Complaint No. 2016-21

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Records pertaining to an incident where the Complainant was allegedly burned by an inmate at Garden State Youth Correctional Facility on July 2, 2015. The incident is a Special Investigations Division (“SID”) case.

Custodian of Record: John Falvey
Request Received by Custodian: September 1, 2015
Response Made by Custodian: September 10, 2015
GRC Complaint Received: January 22, 2016

Background³

Request and Response:

On September 1, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 10, 2015, the Custodian responded in writing, advising that his office was provided with 155 pages of Courtline records from the hearings of the two inmates administratively charged in the referenced incident. The Custodian denied access to those records pursuant to N.J.A.C. 10A:22-2.3(b), which prohibits inmates from inspecting, examining, or obtaining copies of documents concerning any other inmate. The Custodian noted that the responsive records were also exempt pursuant to N.J.S.A. 47:1A-1.1.; N.J.A.C. 10A:22-2.3(a)(4); N.J.A.C. 10A:22-2.3(a)(5); and N.J.S.A. 47:1A-3(a).

The Custodian additionally advised that an SID investigative report was also located but stated that he could not disclose the report pursuant to the following exemptions: N.J.S.A. 47:1A-1.1.; N.J.A.C. 10A:22-2.3(a)(1); N.J.A.C. 10A:22-2.3(a)(2); N.J.A.C. 10A:22-2.3(a)(4); N.J.A.C. 10A:22-2.3(a)(5); and N.J.A.C. 10A:22-2.3(b).

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

Denial of Access Complaint:

On January 11, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian had unlawfully denied access but made no additional legal arguments.

Statement of Information:

On February 2, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on September 1, 2015, and responded in writing on September 10, 2015. The Custodian certified that the following responsive disciplinary records were located at the Albert C. Wagner Youth Correctional Facility and Garden State Youth Correctional Facility in Chesterfield:

1. Disciplinary Adjudication Hearing Records, Evidence, and Exhibits for inmate #1 (79 pages);
2. Disciplinary Adjudication Hearing Records, Evidence, and Exhibits for inmate #2 (74 pages); and,
3. SID report related to incident.

The Custodian argued that the records of the two involved inmates consisted of disciplinary hearing forms and all reports/evidence that were marked as exhibits and used at their hearings. The Custodian asserted that the Complainant cannot have access to records concerning another inmate per the New Jersey Department of Corrections’ (“DOC”) regulations. N.J.A.C. 10A:22-2.3(b). The Custodian noted that his denial was consistent with the Council’s prior decisions in Edwards v. NJ DOC, GRC Complaint No. 2014-8 (September 2014), and Pizarro v. NJ DOC, GRC Complaint No. 2013-176 (January 2015).

The Custodian contended that the responsive SID report was denied pursuant to the following exemptions:

- N.J.S.A. 47:1A-1.1: emergency or security information or procedures for any building or facility, which, if disclosed, would jeopardize security of the building or facility or person therein;
- N.J.S.A. 47:1A-1.1: security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property;
- N.J.A.C. 10A:22-2.3(a)(1): informant documents and statements;
- N.J.A.C. 10A:22-2.3(a)(2): SID 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;
- N.J.A.C. 10A:22-2.3(a)(4): any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation;
- N.J.A.C. 10A:22-2.3(a)(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; and,

- N.J.A.C. 10A:22-2.3(b): an inmate shall not be permitted to inspect, examine, or obtain copies of documents concerning any other inmate.

The Custodian further noted that the records detail the SID's investigative process and identifies inmate witnesses and their statements. The Custodian asserted that disclosure of the information could subject those inmates to retaliation and would also discourage other inmates from coming forward in the future, knowing their cooperation could be exposed. The Custodian also noted that his denial of the SID report was consistent with the Council's prior decisions in Hayes v. NJ DOC, GRC Complaint No. 2014-286 (May 2015) and Cordero v. NJ DOC, GRC Complaint No. 2012-209 (June 2013).

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.

Disciplinary Records of Inmate #1 and Inmate #2

OPRA provides that:

The provisions of [OPRA] 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).

Further, DOC 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). Here, two of the responsive records refer to inmates alleged to have assaulted the Complainant. The DOC's regulations are clear in that the Complainant is not permitted either to inspect or obtain copies of records concerning other inmates. Id.

Therefore, the Custodian lawfully denied access to copies of the responsive disciplinary records of two other inmates because N.J.A.C. 10A:22-2.3(b) prohibits the Complainant from either inspecting or obtaining records pertaining to another inmate. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). *See also* Werner v. NJ Dep't of Corrections, GRC Complaint No. 2011-153 (September 2012).

SID Report

OPRA exempts from public access 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. The Council has previously addressed whether OPRA's security exemption applies to records maintained by the Department of Corrections.

In Hayes, GRC 2014-286, the complainant's OPRA request sought copies of the "investigation notes" and "classification file" regarding a specific incident. In that instance, the custodian denied access to the responsive SID report on the basis that such records were exempt from disclosure as emergency or security information or procedures which, if disclosed, would jeopardize the security of the building or facility or persons therein, pursuant to N.J.S.A. 47:1A-1.1. The Council held that release of the records would jeopardize the security of the New Jersey State Prison or the persons therein and that the record was exempt from public access.

As was the case in Hayes, the request here sought investigative documents relating to a specific incident that resulted in an SID investigation. In the instant matter, the Council's decision in Hayes is instructive. As in Hayes, the Custodian here sufficiently demonstrated that release of the responsive SID report, which contains sensitive information necessary to maintaining security of the prison, would jeopardize the SID investigative process.

Therefore, the Custodian has borne his burden of proving that the release of the requested SID investigative report would jeopardize the SID's investigative process, because the requested records consist of security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons or property. N.J.S.A. 47:1A-1.1. *See also Hayes*, GRC 2014-286. Based on the foregoing, the Custodian lawfully denied access to the requested record. N.J.S.A. 47:1A-6. Because the records are exempt under N.J.S.A. 47:1A-1.1, the GRC declines to address the applicability of N.J.A.C. 10A:22-2.3(a)(1), N.J.A.C. 10A:22-2.3(a)(4), and N.J.A.C. 10A:22-2.3(a)(5).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian lawfully denied access to copies of the responsive disciplinary records of two other inmates because N.J.A.C. 10A:22-2.3(b) prohibits the Complainant from either inspecting or obtaining records pertaining to another inmate. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). *See also Werner v. NJ Dep't of Corrections*, GRC Complaint No. 2011-153 (September 2012).
2. The Custodian has borne his burden of proving that the release of the requested SID investigative report would jeopardize the SID's investigative process, because the requested records consist of security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property. N.J.S.A. 47:1A-1.1. *See also Hayes v. NJ DOC*, GRC Complaint No. 2014-286 (May 2015). Based on the foregoing, the Custodian lawfully denied access to the requested record.

N.J.S.A. 47:1A-6. Because the records are exempt under N.J.S.A. 47:1A-1.1, the GRC declines to address the applicability of N.J.A.C. 10A:22-2.3(a)(1), N.J.A.C. 10A:22-2.3(a)(4), and N.J.A.C. 10A:22-2.3(a)(5).

Prepared By: Husna Kazmir
Staff Attorney

February 14, 2017