



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 31, 2019 Government Records Council Meeting

Frank Hubbard
Complainant

Complaint No. 2016-270

v.

NJ State Parole Board
Custodian of Record

At the January 31, 2019 public meeting, the Government Records Council (“Council”) considered the January 22, 2019 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking a letter from the Camden County Prosecutor’s Office to the New Jersey State Parole Board that was submitted and/or referenced at the Complainant’s June 29, 2016 parole hearing. Specifically, the Custodian certified that while a letter between the parties was located in the Complainant’s file, the letter pertained to parole hearing from ten (10) years prior. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 31st Day of January, 2019

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 5, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
January 31, 2019 Council Meeting**

**Frank Hubbard¹
Complainant**

GRC Complaint No. 2016-270

v.

**N.J. State Parole Board²
Custodial Agency**

Records Relevant to Complaint:

“I request the letter, and any accompanying documents, written to the New Jersey State Parole Board [“Board”] from the Camden County Prosecutor’s Office [“CCPO”] opposing parole for Frank Hubbard for his parole hearing conducted on May 6, 2016 and June 29, 2016 and submitted as confidential information.”

Custodian of Record: Dina I. Rogers, Esq.

Request Received by Custodian: September 19, 2016

Response Made by Custodian: September 22, 2016

GRC Complaint Received: October 11, 2016

Background³

Request and Response:

On September 12, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 22, 2016, the Custodian responded in writing, stating that no responsive records exist.

Denial of Access Complaint:

On October 11, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that a Board member read from a letter received from the CCPO opposing a grant of parole during the Complainant’s June 29, 2016 hearing. The Complainant attached what appeared to be a letter from the CCPO to the Board dated August 18, 2006, opposing parole for the Complainant in anticipation of a hearing dated for

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Suzanne Davies.

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

September 2006. The Complainant also included a copy of a sentencing report and a presentence report.

Statement of Information:

On November 21, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on or around September 19, 2016. The Custodian certified she reviewed the Complainant’s entire file with the Board for any responsive documents. The Custodian asserted that the only letter the Board received from the CCPO was the letter dated August 18, 2006, which the Custodian asserted was previously provided to the Complainant. The Custodian certified that no other letters from the CCPO exist. Thus, the Custodian certified that she responded in writing on September 22, 2016, stating that no responsive records exist.

The Custodian asserted that because there were no responsive records to the Complainant’s OPRA request, they were unable to be provided to the Complainant, and the matter should be dismissed.

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.

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, the Complainant’s OPRA request sought a letter from the CCPO to the Board that was read aloud during his parole hearing dated June 29, 2016. In her SOI, the Custodian denied access to the record, certifying that no records existed. The Custodian certified that while a search of the Complainant’s file located a letter from the CCPO to the Board, the letter was dated August 18, 2006, and pertained to a parole hearing from ten (10) years prior. The Custodian certified that no additional letters from the CCPO to the Board existed. Additionally, there is no evidence in the record to refute the Custodian’s certification. Thus, the GRC is satisfied that no unlawful denial of access occurred.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking a letter from the CCPO to the Board that was submitted and/or referenced at the Complainant’s June 29, 2016 parole hearing. Specifically, the Custodian certified that while a letter between the parties was located in the Complainant’s file, the letter pertained to parole hearing from ten (10) years prior. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking a letter from the Camden County Prosecutor's Office to the New Jersey State Parole Board that was submitted and/or referenced at the Complainant's June 29, 2016 parole hearing. Specifically, the Custodian certified that while a letter between the parties was located in the Complainant's file, the letter pertained to parole hearing from ten (10) years prior. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Samuel A. Rosado
Staff Attorney

January 22, 2019