



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

August 28, 2018 Government Records Council Meeting

Robert Kovacs
Complainant

Complaint No. 2016-321

v.

Union County Department of Corrections
Custodian of Record

At the August 28, 2018 public meeting, the Government Records Council ("Council") considered the August 21, 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. Because the Complainant did not provide any evidence to contradict the Custodian's certification, the Custodian did not unlawfully deny access to the Complainant's OPRA requests pursuant to N.J.S.A. 47:1A-5(i), since the Custodian certified that he did not receive either request.
2. The Custodian lawfully denied access to the requested records pursuant to N.J.S.A. 47:1A-6. Specifically, the Complainant, at the time he submitted his OPRA request, was an inmate and was barred from accessing the requested records pursuant to N.J.S.A. 47:1A-9(a), and N.J.A.C. 10A:31-6.10(b), which states that "[a]n inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate."

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 28th Day of August, 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: August 30, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
August 28, 2018 Council Meeting**

**Robert Kovacs¹
Complainant**

GRC Complaint No. 2016-321

v.

**Union County Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: “One copy of all releasable records pertaining to or containing the name Marc Perrette, date of birth 5/10/1982. Including booking reports, incident reports, arrest reports, etc. Provide records from 5/10/2000 to the present. “

Custodian of Record: James Pellettiere³

Request Received by Custodian: N/A

Response Made by Custodian: N/A

GRC Complaint Received: December 19, 2016

Background⁴

Request and Response:

On September 6, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The record does not indicate that the Custodian responded to the request.

Denial of Access Complaint:

On December 19, 2016 the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he submitted an OPRA request to “Aida Pantoja,” as the Records Custodian for the Union County Department of Corrections (“Department”). The Complainant also stated that thereafter he submitted the OPRA request a second time on October 6, 2016, labeled “OPRA REQUEST: 2nd Mailing.”

The Complainant asserted that the Custodian never responded to his request in either

¹ No legal representation listed on record.

² Represented by April C. Bauknight, Esq. (Elizabeth, NJ).

³ The current Records Custodian is Joanne Rajoppi.

⁴ 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.

instance and asserted that the Custodian is denying his rights to the requested records. He requested that the GRC be ordered to provide these records.

Statement of Information:

On January 13, 2017, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that he did not receive either of the Complainant’s ORPA requests dated September 6, 2016, and October 6, 2016.

The Custodian asserted that, notwithstanding the above, the requested records are not subject to disclosure pursuant to N.J.A.C. 10A:31-6.10(b), which states in part that inmates “shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.”

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁵ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

In the instant matter the Complainant asserted that he did not receive a response from the Custodian for his September 6, 2016 and October 6, 2016 OPRA request. The Custodian certified that he did not receive any OPRA request from the Complainant prior to the filing of this complaint. The Complainant did not provide a certified mail receipt or other confirmation of delivery in his denial of access complaint.

Therefore, because the Complainant did not provide any evidence to contradict the Custodian’s certification, the Custodian did not unlawfully deny access to the Complainant’s OPRA requests pursuant to N.J.S.A. 47:1A-5(i), since the Custodian certified that he did not receive either request.

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

⁵ A custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

“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 also states that:

“[t]he provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor . . .”

[N.J.S.A. 47:1A-9(a)]

Here, the Complainant sought various records pertaining to Marc Perrette from May 10, 2000 to present. Via the SOI, the Custodian is denying access to the records, citing N.J.A.C. 10A:31-6.10(b), which prevents inmates from obtaining access to records pertaining to other inmates. At the time of the OPRA request, the Complainant was incarcerated at Palm Beach County Jail in West Palm Beach, Florida. Additionally, the Complainant listed the Palm Beach County Jail as his mailing address on his complaint form.

Therefore, the Custodian lawfully denied access to the requested records pursuant to N.J.S.A. 47:1A-6. Specifically, the Complainant, at the time he submitted his OPRA request, was an inmate and was barred from accessing the requested records pursuant to N.J.S.A. 47:1A-9(a), and N.J.A.C. 10A:31-6.10(b), which states that “[a]n inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.”

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. Because the Complainant did not provide any evidence to contradict the Custodian’s certification, the Custodian did not unlawfully deny access to the Complainant’s OPRA requests pursuant to N.J.S.A. 47:1A-5(i), since the Custodian certified that he did not receive either request.
2. The Custodian lawfully denied access to the requested records pursuant to N.J.S.A. 47:1A-6. Specifically, the Complainant, at the time he submitted his OPRA request, was an inmate and was barred from accessing the requested records pursuant to N.J.S.A. 47:1A-9(a), and N.J.A.C. 10A:31-6.10(b), which states that “[a]n inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.”

Prepared By: Samuel A. Rosado
Staff Attorney

August 21, 2018