



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

March 28, 2017 Government Records Council Meeting

S. Anthony Franklin
Complainant

Complaint No. 2016-93

v.

NJ Department of Corrections
Custodian of Record

At the March 28, 2017 public meeting, the Government Records Council (“Council”) considered the March 17, 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 because the Custodian certified that access to the responsive records is denied under the agency’s regulation providing that “an inmate shall not be permitted to inspect, examine, or obtain copies of documents concerning any other inmate,” and because the Complainant is an inmate seeking records concerning another inmate, the Custodian lawfully denied access to said records pursuant to N.J.A.C. 10A:22-2.3(b) and N.J.S.A. 47:1A-9.

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 March, 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: March 31, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 28, 2017 Council Meeting**

**S. Anthony Franklin¹
Complainant**

GRC Complaint No. 2016-93

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Copies of any and all documents related to the disciplinary proceedings of Golden Williamson SBI#253883D, for the infractions of *.004 and *.306, including but not limited to all documents, exhibits, photographs, witness statements and any and all other evidence used in the disciplinary proceedings. The matter was adjudicated on May 20, 2015, in front of Disciplinary Hearing Officer Ms. C. Ralph.

Custodian of Record: John Falvey
Request Received by Custodian: March 10, 2016
Response Made by Custodian: March 11, 2016
GRC Complaint Received: April 1, 2016

Background³

Request and Response:

On March 10, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 11, 2016, the first (1st) business day following receipt of said request, the Custodian responded in writing to the Complainant at his Northern State Prison address, informing the Complainant that the requested records are exempt from disclosure under OPRA pursuant to N.J.A.C. 10A:22-2.3(b), which states “an inmate shall not be permitted to inspect, examine, or obtain copies of documents concerning any other inmate.” The Custodian relied on this regulation to deny the Complainant access to the requested records.

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 April 1, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that he submitted the OPRA request to the Custodian in March 2016, and was denied access to the requested records on March 11, 2016.

The Complainant contends that the Custodian arbitrarily denied the request because the Custodian assumed that Golden Williamson was an inmate in their custody; however, Williamson is no longer an inmate because he was released in September 2015. The Complainant argues that the requested records must be disclosed to him because N.J.A.C. 10A:22-2.3(b) does not specifically state that ex-inmates records are to be confidential. The Complainant states that, as such, the requested records were subject to disclosure once the inmate was no longer an inmate.

Statement of Information:

On May 4, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on March 10, 2016, and responded in writing on March 11, 2016. The Custodian certifies that he determined that the records responsive to the Complainant’s request are disciplinary charges, evidence used at a disciplinary hearing, and the record of the disciplinary hearing for former inmate Golden Williamson. The Custodian further certifies that the responsive records total thirty-one (31) pages. The Custodian also certifies that the Complainant was denied access to the responsive records because he and Golden Williamson were inmates in the New Jersey prison system and N.J.A.C. 10A:22-2.3(b) provides “an inmate shall not be permitted to inspect, examine, or obtain copies of documents concerning any other inmate.”

The Custodian certifies that, although the Complainant claims N.J.A.C. 10A:22-2.3(b) is not applicable because Mr. Williamson is no longer incarcerated, Williamson’s records remain “documents concerning any other inmate,” and as such are exempt from disclosure to another inmate.⁴

The Custodian further certifies that the Complainant should not be granted access to the requested records because disclosure would be detrimental to Mr. Williamson’s privacy interests. The Custodian cites N.J.S.A. 20:1B-3 as establishing a mandate for the agency to facilitate inmates’ reintegration into the community upon release. The Custodian contends that Mr. Williamson has presumably exhibited a certain level of rehabilitation necessary for his release and return to the community; therefore, the agency fulfilled its mandate with the minimum invasion of Mr. Williamson’s privacy. The Custodian argues that disclosure of the requested records can only serve to harm his future prospects.

⁴ The Custodian certified that at the time of the request the Complainant was an inmate at Northern State Prison. The Custodian also confirmed that Golden Williamson was an inmate but was released on September 10, 2015.

The Custodian provided responses to the common law balancing test questions set forth in Doe v. Portiz, 142 N.J. 1 (1995).⁵ With respect to the type of records requested and the information the requested records do or might contain, the Custodian stated that the records are internal disciplinary records which contain statements regarding Mr. Williamson. With respect to the potential harm in any subsequent non-consensual disclosure of the requested records and the injury from disclosure to the relationship in which the requested records were generated, the Custodian stated that release of the records can only undo the rehabilitative efforts of Mr. Williamson by subjecting him to additional scrutiny by the public. Regarding the adequacy of safeguards to prevent unauthorized disclosure, the Custodian implied that the only safeguard is denial of access because “[o]nce in the hands of Mr. Franklin, there is virtually no way to ensure these records will not be disclosed.” With respect to the final balancing test factor, the Custodian implied that there is no express statutory mandate, articulated public policy or other recognized public interest militating toward access because disclosure of the records “can only hinder the Department’s mission to rehabilitate inmates.”

Additional Submissions:

By letter dated December 2, 2016, the GRC requested that the Complainant provide responses to the balancing test questionnaire. On December 9, 2016, the Complainant returned the completed questionnaire to the GRC. In response to the question asking why the Complainant needed the requested records, the Complainant stated that he is a paralegal and represents inmates charged with disciplinary infractions at disciplinary hearings. The Complainant added that the requested records are for use as exculpatory evidence in two court matters related to a guilty finding in a disciplinary hearing. With respect to the level of importance of the requested records, the Complainant stated that they are needed for two court matters which impact another inmate’s due process rights. Regarding the questions of whether the Complainant plans to redistribute the requested records or use the records for unsolicited contact of the individuals named therein, the Complainant answered, “NO!” (Emphasis in original).

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.

⁵ The Custodian provided the balancing test responses as part of the SOI without prompting by the GRC. The balancing test is applicable to complaints in which privacy interests are implicated and it allows the GRC to exercise its discretion in determining whether the privacy interest of the individuals named in government records are outweighed by any factors militating in favor of disclosure, including the requestor’s stated need for access to such information.

Here, the Custodian certified that the records responsive to the request were denied pursuant to N.J.A.C. 10A:22-2.3(b), because the Complainant and Golden Williamson were inmates in the New Jersey prison system. N.J.A.C. 10A:22-2.3(b) provides “[a]n inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.”

The Complainant asserted that the Custodian erred in denying his request because the Custodian knew the Complainant was an inmate and assumed that Golden Williamson was also an inmate. The Complainant stated, however, that Williamson is no longer an inmate and that the requested records must be disclosed to him because N.J.A.C. 10A:22-2.3(b) does not specifically state that ex-inmates records are to be confidential. The Complainant argued that the requested records were subject to disclosure once Williamson was no longer an inmate.

The Complainant’s argument is not persuasive. At the time the requested records were created, Mr. Williamson was an inmate; the records are therefore inmate records. The records do not cease to be “documents concerning any other inmate” merely because the inmate they concern has been released from prison. The Complainant admitted that he is an inmate; therefore he is not permitted to “obtain copies of documents concerning any other inmate.” N.J.A.C. 10A:22-2.3(b).

Because the Custodian lawfully denied the Complainant access to the requested records under its regulation, it is unnecessary for the GRC to employ the common law balancing test to determine if privacy interests are implicated.

Accordingly, because the Custodian certified that access to the responsive records is denied under the agency’s regulation providing that “an inmate shall not be permitted to inspect, examine, or obtain copies of documents concerning any other inmate,” and because the Complainant is an inmate seeking records concerning another inmate, the Custodian lawfully denied access to said records pursuant to N.J.A.C. 10A:22-2.3(b) and N.J.S.A. 47:1A-9.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian certified that access to the responsive records is denied under the agency’s regulation providing that “an inmate shall not be permitted to inspect, examine, or obtain copies of documents concerning any other inmate,” and because the Complainant is an inmate seeking records concerning another inmate, the Custodian lawfully denied access to said records pursuant to N.J.A.C. 10A:22-2.3(b) and N.J.S.A. 47:1A-9.

Prepared By: John E. Stewart

March 17, 2017