



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

July 30, 2019 Government Records Council Meeting

Omari Shabazz
Complainant

Complaint No. 2017-145

v.

NJ Office of the Public Defender
Custodian of Record

At the July 30, 2019 public meeting, the Government Records Council (“Council”) considered the July 23, 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 lawfully denied access to the Complainant’s June 19, 2017 OPRA request seeking a transcript and/or 911 dispatch report pertaining to his criminal case. N.J.S.A. 47:1A-6. Access to case file records from the Office of the Public Defender are deemed confidential pursuant to N.J.S.A. 47:1A-5(k). See Lemon v. N.J. Office of the Public Defender, GRC Complaint No. 2015-297 (November 2015).

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 30th Day of July 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: August 2, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
July 30, 2019 Council Meeting**

**Omari Shabazz¹
Complainant**

GRC Complaint No. 2017-145

v.

**N.J. Office of the Public Defender²
Custodial Agency**

Records Relevant to Complaint: Hard copies of: transcript and/or report of a 911 dispatch, call and radio broadcast made on August 4, 1999 pertaining to Indictment No. 95-02-00179.

Custodian of Record: Susan Green
Request Received by Custodian: June 23, 2017
Response Made by Custodian: June 26, 2017
GRC Complaint Received: July 10, 2017

Background³

Request and Response:

On June 19, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 26, 2019, the Custodian responded in writing denying the request as seeking records contained in files relating to the Office of the Public Defender’s (“OPD”) representation of a client. See N.J.S.A. 47:1-5(k).

Denial of Access Complaint:

On July 10, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the State withheld the requested records believed to be exculpatory regarding his criminal matter. The Complainant stated that the included police report described the incident in the same way as the dispatch.

Statement of Information:

On August 16, 2017, the Custodian filed a Statement of Information (“SOI”). The

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

Custodian certified that she received the Complainant's OPRA request on June 23, 2017. The Custodian certified that she responded in writing on June 26, 2017.

The Custodian asserted that N.J.S.A. 47:1A-5(k) prohibits disclosure of OPD case files. The Custodian therefore contended that no records were provided to the Complainant. The Custodian added that she recommended that the Complainant reach out directly to the OPD office that last represented him to gain access to the files.

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.

OPRA provides that "[t]he files maintained by [OPD] that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender." N.J.S.A. 47:1A-5(k). See also Gaines v. N.J. Office of the Public Defender, GRC Complaint No. 2012-261 (August 2013) (holding that responsive records relating to OPD's representation of the complainant were exempt from disclosure under OPRA).

In Lemon v. N.J. Office of the Public Defender, GRC Complaint No. 2015-297 (November 2015), the Complainant sought records, including plea forms, related to his own case file. The GRC held that based on the plain language of N.J.S.A. 47:1A-5(k), and without evidence of a law, court order, or State Public Defender authorization, the Custodian's denial of access was lawful.

Here, the Complainant sought a transcript and/or a 911 report pertaining to his case file with the OPD. The Custodian subsequently denied the Complainant access to the responsive records under N.J.S.A. 47:1A-5(k). Additionally, the Complainant provided no evidence of a law, court order, or State Public Defender authorization allowing him access to his records under OPRA. Based on the foregoing, the GRC is satisfied that the Custodian's denial of access was lawful because the plain language of N.J.S.A. 47:1A-5(k) exempts access to all OPD client records and contains no exceptions for persons attempting to access their own files. Moreover, the Complainant explicitly requested records from his own case file with OPD.

Accordingly, the Custodian lawfully denied access to the Complainant's June 19, 2017 OPRA request seeking a transcript and/or 911 dispatch report pertaining to his criminal case. N.J.S.A. 47:1A-6. Access to case file records from OPD are deemed confidential pursuant to N.J.S.A. 47:1A-5(k). See Lemon, 2015-297.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant's June 19, 2017 OPRA request seeking a transcript and/or 911 dispatch report pertaining to his criminal case. N.J.S.A. 47:1A-6. Access to case file records from the Office of the Public Defender are deemed confidential pursuant to N.J.S.A. 47:1A-5(k). See Lemon v. N.J. Office of the Public Defender, GRC Complaint No. 2015-297 (November 2015).

Prepared By: Samuel A. Rosado
Staff Attorney

July 23, 2019