



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

March 26, 2019 Government Records Council Meeting

Mustafa Minor
Complainant

Complaint No. 2017-18

v.

NJ Department of Corrections
Custodian of Record

At the March 26, 2019 public meeting, the Government Records Council (“Council”) considered the March 19, 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 requested record, the Complainant’s prison visiting list, is exempt from access pursuant to N.J.A.C. 10A:22-2.3(a)(12), which is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). As such, the Custodian has borne his burden of proving that the denial of access was lawful. N.J.S.A. 47:1A-6.

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 26th Day of March, 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: March 29, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
March 26, 2019 Council Meeting**

**Mustafa Minor¹
Complainant**

GRC Complaint No. 2017-18

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Copy of “my prison visiting list.”

Custodian of Record: John Falvey
Request Received by Custodian: December 22, 2016
Response Made by Custodian: December 22, 2016
GRC Complaint Received: January 24, 2017

Background³

Request and Response:

On December 21, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 22, 2016, the date the request was received, the Custodian responded in writing informing the Complainant that his request was denied because N.J.A.C. 10A:22-2.3(a)(12) exempts inmate visit information.

Denial of Access Complaint:

On January 24, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian unlawfully denied him access to his prison visiting list.

Statement of Information:

On April 6, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on December 22, 2016 and responded

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.

in writing on that same date. The Custodian certified that a list of approved visitors for Inmate Minor at South Woods State Prison is the record responsive to the Complainant's request. The Custodian certified that the record was denied pursuant to N.J.A.C. 10A:22-2.3(a)(12).

The Custodian's Counsel stated that pursuant to N.J.S.A. 30:1B-24, the Department of Corrections ("DOC") may promulgate rules and regulations as may be necessary for the proper discharge of its responsibility. Counsel further stated that under the authority of this statute, the DOC promulgated N.J.A.C. 10A:22-2.3(a)(12), which provides that:

In addition to records designated as confidential pursuant to [OPRA] . . . the following records shall not be considered government records subject to public access . . . [r]ecords and/or content related to inmate phone, e-mail, or visit information.

The Custodian's Counsel stated that the record requested by the Complainant contains visiting information specifically exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(12). Counsel stated that the Custodian correctly denied the Complainant access to the requested record pursuant to said regulation, and argued that the complaint 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.

Here, OPRA provides 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 . . ." N.J.S.A. 47:1A-9(a). Additionally, N.J.A.C. 10A:22-2.3(a)(12) exempts from disclosure inmate visit information. The Complainant's "visiting list" is the specific record deemed exempt by the regulation. Therefore, the provisions of N.J.A.C. 10A:22-2.3(a)(12), exempting the requested record from access, are applicable to OPRA.

Accordingly, the requested record, the Complainant's prison visiting list, is exempt from access pursuant to N.J.A.C. 10A:22-2.3(a)(12), which is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). As such, the Custodian has borne his burden of proving that the denial of access was lawful. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that the requested record, the Complainant's prison visiting list, is exempt from access pursuant to N.J.A.C. 10A:22-2.3(a)(12),

which is applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). As such, the Custodian has borne his burden of proving that the denial of access was lawful. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart
Staff Attorney

March 26, 2019