



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

November 14, 2017 Government Records Council Meeting

Tysheim Murphy
Complainant

Complaint No. 2017-25

v.

Atlantic County Prosecutor's Office
Custodian of Record

At the November 14, 2017 public meeting, the Government Records Council ("Council") considered the November 8, 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 undisputed evidence of record reveals that the Complainant was convicted of an indictable offense and is seeking records containing personal information pertaining to his victim, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-2.2(a). *See Killion v. Hammonton Police Dep't (Atlantic)*, GRC Complaint No. 2013-228 (June 2014).

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 14th Day of November, 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: November 17, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 14, 2017 Council Meeting**

**Tysheim Murphy¹
Complainant**

GRC Complaint No. 2017-25

v.

**Atlantic County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Copies of:

1. The Promis Gavel of Nyjua J. Kemp.
2. The criminal rap sheet of Nyjua J. Kemp.
3. The LR 27, LR 28 guilty plea of Nyjua J. Kemp.
4. Any and all records and information revealing prior misconduct or bad acts attributed to Nyjua J. Kemp.
5. Any and all records of whether Nyjua J. Kemp received favorable treatment for his testimony in the case of State v. Tysheim Murphy, under Indictment No. 07-04-0858.

Custodian of Record: John J. Santoliquido³

Request Received by Custodian: December 19, 2016

Response Made by Custodian: December 20, 2016

GRC Complaint Received: February 6, 2017

Background⁴

Request and Response:

On December 13, 2016, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. The evidence of record reveals that the Custodian received the request on December 19, 2016. On December 20, 2016, the first (1st) business day following receipt of the request, the Custodian responded in writing, informing the Complainant that his request was denied because: (1) all items, except for item number 2, are overly broad requests for information; (2) all of the requested records pertain to the victim of the indictable offenses for which the Complainant was convicted, and are therefore

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Custodian is an Assistant Prosecutor in the Atlantic County Prosecutor's Office.

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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2; and (3) all of the requested records are criminal investigatory records exempt from access pursuant to N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On February 6, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that he submitted an OPRA request to the Custodian on December 13, 2016, and that his request was denied on December 20, 2016.

The Complainant asserts that there was improper conduct by the prosecutor and that his due process rights were violated because the prosecutor withheld exculpatory evidence that, if disclosed, could have altered the results of the proceeding. The Complainant also asserts that the prosecution suppressed evidence favorable to the defense. The Complainant further asserts that his due process rights were violated because the prosecutor failed to disclose a criminal record of the State’s chief witness and withheld evidence that could have been used to impeach said witness. The Complainant states “I, Tysheim Murphy, plead to ‘GRC’ to allow me these files, in good faith.”

The Complainant attached to the complaint a letter dated January 19, 2017, titled State v. Tysheim Murphy, Indictment No. 07-04-858B. The letter is addressed to the GRC and directed to the attention of a Mr. Wertzberger. The letter purports to be an OPRA request for the same records requested of the Atlantic County Prosecutor’s Office. The letter also contains a brief overview of various discovery procedures with citations to the New Jersey Rules of Court and several court decisions. The Complainant did not refer to this letter as an exhibit and/or provide any other reason for its inclusion within the complaint.⁵

Statement of Information:

On March 28, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on December 19, 2016, and responded in writing on December 20, 2016. The Custodian asserts that, with the exception of request item number 2, all of the requests are overly broad requests for information. The Custodian cites MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005) and Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005) in support of his assertion.

With respect to request item number 2, the Custodian cites N.J.A.C.10A:34-1.6, a New Jersey Department of Corrections regulation which provides that “comprehensive criminal history information (rap sheet)” records are not subject to access. The Custodian certifies that, pursuant to N.J.A.C.10A:34-1.6, any rap sheet in existence for Nyjua J. Kemp would not be subject to disclosure.

⁵ The GRC does not presently, and did not as of the date of the letter, have an employee by the name of Mr. Wertzberger. However, because the letter purports to be an OPRA request, the GRC checked with its custodian to determine if the custodian received the letter request on or about January 19, 2017. The custodian stated that there is no record of such a request being received by the GRC.

The Custodian certifies that all of the requested records pertain to the victim of the offenses for which the Complainant was convicted under Indictment 07-04-0858 and are therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2. The Custodian further certifies that all of the records requested by the Complainant, to the extent that they exist, would be exempt from disclosure as criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1.

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.

N.J.S.A. 47:1A-2.2(a) provides that:

[W]here it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing personal information pertaining to the person’s victim or the victim’s family, including but not limited to a victim’s home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information, the right of access provided for in [OPRA] shall be denied.

In Killion v. Hammonton Police Dep’t (Atlantic), GRC Complaint No. 2013-228 (June 2014), the complainant requested charging documents made by a family member of the person victimized by the complainant. The Council determined that, notwithstanding the fact that the Complainant’s conviction was subsequent to filing his OPRA request, the requested records were exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2.

Here, the evidence of record reveals that the Complainant was convicted of an indictable offense. The Complainant attached a letter dated January 19, 2017, titled State v. Tysheim Murphy, Indictment No. 07-04-858B. The Complainant is seeking as requested item number 5 “records of whether Nyjua J. Kemp received favorable treatment” for his testimony in the case of State v. Tysheim Murphy, under Indictment No. 07-04-0858. Furthermore, the Custodian, an Assistant Prosecutor in the Atlantic County Prosecutor’s Office, certified that “[the Complainant] w[as] convicted under Indictment No. 07-04-0858.”⁶

The evidence of record also reveals that all of the items the Complainant has requested are records containing personal information pertaining to the Complainant’s victim. The Custodian certified that all of the requested records “pertain to the victim of the offenses for which [the

⁶ See the December 20, 2016 response to the request, which was incorporated into the SOI.

Complainant] w[as] convicted.”⁷ The Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification.⁸

Accordingly, because the undisputed evidence of record reveals that the Complainant was convicted of an indictable offense and is seeking records containing personal information pertaining to his victim, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-2.2(a). See Killion, GRC 2013-228.

Also, because all of the requested records are exempt from access under N.J.S.A. 47:1A-2.2(a), it is unnecessary for the GRC to determine whether the records were not subject to disclosure because the request was overly broad and/or the requested items were exempt as criminal investigatory records.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the undisputed evidence of record reveals that the Complainant was convicted of an indictable offense and is seeking records containing personal information pertaining to his victim, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-2.2(a). See Killion v. Hammonton Police Dep’t (Atlantic), GRC Complaint No. 2013-228 (June 2014).

Prepared By: John E. Stewart

November 8, 2017

⁷ See the December 20, 2016 response to the request, which was incorporated into the SOI.

⁸ N.J.S.A. 47:1A-2.2(b) provides that records protected under this provision of OPRA may be released only if the information is necessary to assist in the defense of the requestor but that such determination must be made by the court upon motion by the requestor or his representative. Accordingly, N.J.S.A. 47:1A-2.2(b) is not applicable in the instant complaint.