



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 12, 2019 Government Records Council Meeting

Anonymous
Complainant
v.

Complaint No. 2018-101

Rutgers University
Custodian of Record

At the November 12, 2019 public meeting, the Government Records Council (“Council”) considered the October 30, 2019 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian did not unlawfully deny access to the requested list of individuals currently banned from Rutgers University property. N.J.S.A. 47:1A-6. The Custodian has shown that the records requested by the Complainant are not considered “government records” under OPRA because such records contain “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein” and “security measures . . . which, if disclosed, would create a risk to the safety of persons [and/or] property . . .” N.J.S.A. 47:1A-1.1. See also Russomanno v. Twp. of Edison (Middlesex), GRC Complaint No. 2012-307 (November 2013).

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 12th Day of November 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: November 15, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 12, 2019 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2018-101

v.

**Rutgers University²
Custodial Agency**

Records Relevant to Complaint: Copy of a list of all individuals currently banned from Rutgers University property.

Custodian of Record: Casey Woods

Request Received by Custodian: May 3, 2018

Response Made by Custodian: May 14, 2018

GRC Complaint Received: June 7, 2018

Background³

Request and Response:

On May 3, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 14, 2018, the seventh (7th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that OPRA exempts from disclosure “[e]mergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.” N.J.S.A. 47:1A-1.1, and “[s]ecurity measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software.” N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On June 7, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that his records request was denied by the Custodian because OPRA exempts “[e]mergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or

¹ No legal representation listed on record.

² Represented by Elizabeth Minott, Esq. (New Brunswick, NJ); however, no representation letter was submitted.

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.

persons therein.” N.J.S.A. 47:1A-1.1. Furthermore, the Complainant stated that the Custodian asserted as a reason for denial “[s]ecurity measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software.” N.J.S.A. 47:1A-1.1.

The Complainant stated that the information he sought was neither “security information or procedures” for any building or facility, nor “security measures and surveillance techniques,” as exempted by law. The Complainant stated that the information pertains to individuals against whom Rutgers University would take action should such individuals be found on Rutgers University property. As an example, the Complainant stated that an arresting officer, after confirming that an individual was banned from Rutgers University property, charged the individual as a defiant trespasser. In support of his example, the Complainant attached a copy of the police report to the Denial of Access Complaint.

Statement of Information:

On June 22, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 3, 2018 and responded in writing on May 14, 2018. The Custodian certified that he denied the Complainant’s request because OPRA specifically exempts “security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.” The Custodian certified that the requested record is generated and maintained by law enforcement personnel and disclosing the record would compromise its value as a law enforcement tool.

The Custodian also certified that the requested record includes exempt student and employee information, and disclosure of such information would violate the privacy interest of non-affiliated individuals banned from University property pursuant to N.J.S.A. 47:1A-1. The Custodian stated that the privacy interests of individuals who were banned in lieu of being criminally charged would also be at issue if the requested record was disclosed. Moreover, the Custodian certified that there are concerns that disclosure may violate the Family Education Rights and Privacy Act. The Custodian further certified that persons are often banned as a result of personnel action, such as a suspension or termination, and that disclosure of the requested record would therefore violate the OPRA’s personnel records exemption in such circumstances. The Custodian certified that for all of the reasons he set forth, the requested record should be exempt from disclosure.

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 exempts both “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein” and “security measures . . . which, if disclosed, would create a risk to the safety of persons, property, electronic data or software[.]” N.J.S.A. 47:1A-1.1.

In Russomanno v. Twp. of Edison (Middlesex), GRC Complaint No. 2012-307 (November 2013), the complainant requested the Township’s Emergency Management Organizational Charts and Plans for a three-year period. The State Police expressed concerns regarding the deleterious impact the disclosure of the records would have on public safety. Although the Council determined that the complainant appeared to have a legitimate purpose in seeking the requested records, they concluded that there was “no way of ensuring that such information would remain in the hands of parties who would use it for proper purposes.” As such, the Council found that the custodian lawfully denied access to the requested records in reliance upon OPRA’s “security information or procedures” provision.

Here, the Custodian certified that the requested record is generated and maintained by law enforcement personnel for law enforcement purposes related to security on the campus. It is axiomatic that, in an age when violence on university campuses is perceived to be increasing, security must be of paramount concern. Although the Complainant contested the Custodian’s application of the cited OPRA provisions as grounds for denial, he provided no evidence to support his challenge. To the contrary, the Complainant included an example in his complaint narrative in which the police relied upon the requested record to conclude there was a defiant trespasser on University property.

The Custodian properly relied upon the exemption in OPRA to deny access to information used by law enforcement personnel to enhance campus security. Moreover, unlike the complainant in Russomanno, GRC 2012-307, who was found to have a legitimate purpose in seeking the requested records, here the Complainant filed his OPRA request anonymously and this fact further weighs in favor of nondisclosure.

Accordingly, the Custodian did not unlawfully deny access to the requested list of individuals currently banned from Rutgers University property. N.J.S.A. 47:1A-6. The Custodian has shown that the records requested by the Complainant are not considered “government records” under OPRA because such records contain “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein” and “security measures . . . which, if disclosed, would create a risk to the safety of persons, [and/or] property . . .” N.J.S.A. 47:1A-1.1. See also Russomanno, GRC 2012-307.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the requested list of individuals currently banned from Rutgers University property. N.J.S.A. 47:1A-6. The Custodian has shown that the records requested by the Complainant are not considered “government records” under OPRA because such records contain “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein” and “security measures . .

. which, if disclosed, would create a risk to the safety of persons [and/or] property . . .” N.J.S.A. 47:1A-1.1. See also Russomanno v. Twp. of Edison (Middlesex), GRC Complaint No. 2012-307 (November 2013).

Prepared By: John E. Stewart
Staff Attorney

October 30, 2019