



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**February 26, 2020 Government Records Council Meeting**

Stephen Henry  
Complainant

Complaint No. 2018-106

v.

NJ Department of Corrections  
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the January 21, 2020 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 the requested state pay account record is not subject to public access under OPRA because it is exempt under Executive Order 26 (Gov. McGreevey 2002). N.J.S.A. 47:1A-9(a); Farra’D v. N.J. Dep’t of Corr., GRC Complaint No. 2010-47 (October 2011). Sheridan v. N.J. Dep’t of Corr., GRC Complaint No. 2013-122 (December 2013). Further, the record is exempt from disclosure regardless of the fact the Complainant sought a record from his own account. See Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017). Thus, the Custodian lawfully denied access to the subject OPRA request. 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 26<sup>th</sup> Day of February 2020

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



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 26, 2020 Council Meeting**

**Stephen Henry<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-106**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies via U.S. mail of a printout of Complainant's own state pay account for his full term of incarceration from November 2, 2017 to present.

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** May 4, 2018  
**Response Made by Custodian:** May 16, 2018  
**GRC Complaint Received:** June 12, 2018

**Background<sup>3</sup>**

**Request and Response:**

On May 4, 2018, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On May 16, 2018, the Custodian responded in writing denying the Complainant's request, stating that the above-mentioned records were exempt from disclosure pursuant to N.J.S.A. 47:1A-9 and Executive Order No. 26 (Gov. McGreevey 2002) ("EO 26").

**Denial of Access Complaint:**

On June 12, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted the purpose of his request was to ascertain how much money, if any, was deducted for any fines or obligations incurred while incarcerated. The Complainant asserted that he did not understand how or why he was not entitled to a record of his own state pay account details.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Deputy Attorney General Francis Raso.

<sup>3</sup> 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.

Statement of Information:

On July 16, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Complainant’s OPRA request was sent on May 4, 2018. The Custodian noted that he was unsure of the day he received the subject OPRA request. The Custodian certified that he responded in writing on May 16, 2018 stating that the Complainant’s OPRA request was denied pursuant to EO 26, which exempts “information describing a natural person’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness, except as otherwise required by law.” Id.

The Custodian argued that he properly denied access to the requested record. N.J.S.A. 47:1A-9, EO 26. See also In Re N.J. Firemen’s Ass’n Obligation to Provide Relief Applications under OPRA, 230 N.J. 258, 279-80 (2017). The Custodian further asserted that, “OPRA does not take into account the identity or status of the requestor, only the status of the record.” The Custodian also argued that OPRA does not permit the disclosure of records to one person but not to another. The Custodian averred that “a record is either confidential or it is not.”

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 further provides that:

The provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA] . . . any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a).]

EO 26 provides that:

The following records shall not be considered to be government records subject to public access pursuant to . . . Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed.

[Id.]

In Farra’D v. N.J. Dep’t of Corr., GRC Complaint No. 2010-47 (October 2011), the custodian denied the complainant’s OPRA request for a copy of his own “Inmate Payment on Obligations” summary. The Council determined that the requested record was exempt from disclosure pursuant to EO 26 applicable to OPRA through N.J.S.A. 47:1A9(a).

Further, in Sheridan v. N.J. Dep’t of Corr., GRC Complaint No. 2013-122 (December 2013), the complainant sought a copy of his state pay account. The custodian noted in both his original response and his SOI that the “Business Manager of the correctional facility shall be responsible for maintaining inmate accounts and recordkeeping . . . [and] shall be responsible for providing an inmate with a monthly statement containing each financial transaction processed.” N.J.A.C. 10A:2-2.1(a)-(b). The Council recognized the record as information of the type contemplated by EO 26. As such, the Council found that the responsive record was exempt from disclosure. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a).

In the instant complaint, the Custodian denied the Complainant’s OPRA request seeking his state pay account for his full term of incarceration under EO 26. In the Denial of Access Complaint, the Complainant asserted that he should be able to obtain a record of his own financial transactions. In the SOI, the Custodian contended that he lawfully denied access to the responsive record under EO 26. The Custodian further asserted that OPRA did not contemplate the identity of a requestor trying to obtain his or her own financial record.

The facts of the instant complaint are on point with those in Farra’D, GRC 2010-47, where the complainant sought a record of his own financial activity. The requested account record thus falls under EO 26 because it represents the financial activity of a natural person. N.J.S.A. 47:1A-9(a); Sheridan, GRC 2013-122. Further, the fact that the Complainant sought his own financial record is of no moment. See Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017)<sup>4</sup> (dismissing appellant’s assertion that he was entitled to the requested report because it was about him).

Therefore, the requested state pay account record is not subject to access under OPRA because it is exempt under EO 26. N.J.S.A. 47:1A-9(a); Farra’D, GRC 2010-47; Sheridan, GRC 2013-122. Further, the record is exempt from disclosure regardless of the fact the Complainant sought a record from his own account. See Spillane, 2017 N.J. Super. Unpub. LEXIS 2392. Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the requested state pay account record is not subject to public access under OPRA because it is exempt under Executive Order 26 (Gov. McGreevey 2002). N.J.S.A. 47:1A-9(a); Farra’D v. N.J. Dep’t of Corr., GRC Complaint No. 2010-47 (October 2011). Sheridan v. N.J. Dep’t of Corr., GRC Complaint No. 2013-122 (December 2013). Further, the record is exempt from disclosure regardless of the fact the Complainant sought a record from his own account. See Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub.

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<sup>4</sup> Affirming on appeal Spillane v. N.J. Dep’t of Corr., GRC Complaint No. 2014-169 (March 2015).

LEXIS 2392 (App. Div. 2017). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

Prepared By: Brandon Garcia  
Case Manager

January 21, 2020<sup>5</sup>

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<sup>5</sup> This complaint was prepared for adjudication at the Council's January 28, 2020 meeting, but could not be adjudicated due to lack of quorum.