



**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**

**April 28, 2020 Government Records Council Meeting**

Ronald DeMeco  
Complainant

Complaint No. 2018-122

v.

NJ Department of Corrections  
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council (“Council”) considered the April 3, 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 that the records responsive to the Complainant’s OPRA request are exempt from disclosure 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 28<sup>th</sup> Day of April 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

**Decision Distribution Date: April 30, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 28, 2020 Council Meeting**

**Ronald DeMeco<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-122**

**v.**

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

**Records Relevant to Complaint:** Via U.S. mail, a copy of a record verifying the date of a phone call made by the Complainant to his attorney between April 10, 2017 and June 5, 2017, from the New Jersey State Prison (“NJSP”) Law Library “inmate legal call” phone.

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** June 22, 2018  
**Response Made by Custodian:** June 22, 2018  
**GRC Complaint Received:** July 2, 2018

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

**Request and Response:**

On June 14, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 22, 2018, the Custodian responded in writing denying the Complainant’s OPRA request, stating the records sought were exempt pursuant to New Jersey Department of Corrections (“DOC”) regulations. N.J.A.C. 10A:22-2.3(a)(12).

**Denial of Access Complaint:**

On July 2, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he filed a “G-27 Request for Legal Assistance” form that would serve as evidence of the call. The Complainant contended that the law library custodian “recorded the call in her record.”

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

<sup>2</sup> Represented by Deputy Attorney General Suzanne Davies.

<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.

The Complainant asserted that he had the legal right to obtain a written record proving that he made the alleged phone call. The Complainant further asserted that he needed the requested record to support his claim of “Ineffective Assistance of Counsel.” The Complainant argued that N.J.A.C. 10A:22-2.3(a)(12) was meant to protect the privacy of inmates’ personal communications within the law library and not to prevent a person from acquiring his own records. The Complainant further argued that the Custodian’s failure to maintain records of this type was a violation of DOC regulations.

#### Statement of Information:

On August 8, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 22, 2018. The Custodian certified that he responded in writing on the same day denying the subject request under N.J.A.C. 10A:22-2.3(a)(12). The Custodian cited Mason v. City of Hoboken, 196 N.J. 51, 65 (2008) stating that the public’s right to access to government records is not “absolute.”

The Custodian cited N.J.S.A. 47:1A-1 in arguing that government records are subject to public access unless exempt through “. . . regulation[s] promulgated under the authority of any statute or Executive Order. . .” The Custodian further contended that N.J.S.A. 47:1A-1 exempts certain information under OPRA. The Custodian asserted that pursuant to N.J.S.A. 30: 1B-24, “. . . the DOC promulgated N.J.A.C. 10A:22-2.3(a)(12), which exempts from disclosure “[r]ecords and/or content related to inmate phone, e-mail, or visit information.”

Additionally, the Custodian asserted that the fact the Complainant requested his own records is irrelevant. The Custodian cited Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017) stating that “. . . OPRA does not afford an individual the right of personal access to government records that are subject to OPRA’s exceptions or exemptions.” The Custodian thus asserted that the DOC properly denied the Complainant’s request for his phone records under OPRA.

#### Additional Submissions:

On September 15, 2018, the Complainant sent correspondence to the GRC refuting the Custodian’s SOI. Therein, the Complainant asserted that a G-27 form was submitted to the NJSP law library supervisor. The Complainant further asserted that the G-27 form is the first step required to request a legal phone call. The Complainant affirmed that the law library supervisor then verifies the party being called and that information is recorded on the G-27 form. The Complainant contended that the G-27 form serves as proof that his call was made. The Complainant argued that the Custodian’s reliance on N.J.S.A. 47:1A-1 and N.J.A.C. 10A:22-2.3(a)(12) misinterpreted OPRA. The Complainant further argued that disclosure of his own records that he created with his attorney do not violate his, or DOC’s, privacy interest.

The Complainant contended that OPRA dovetails with the common law right of access in that records may be withheld from public access if a common law balancing test determines that the “. . . public interest for confidentiality outweigh[ed] the private right to access . . .” The Complainant further argued that DOC “has not claimed or implied that any damage would or could

occur” from disclosure of his personal records to him. Additionally, the Complainant argued that DOC’s denial of access did not account for “his legal need” for the records.<sup>4</sup>

## 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 also provides that:

[OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . 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; Rules of Court; any federal law; federal regulation; or federal order.

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

To this end, DOC’s regulations provide that:

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 *et seq.* . . . the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 *et seq.*

12. Records and/or content related to inmate phone, e-mail, or visit information;

[N.J.A.C. 10A:22-2.3.]

In the instant complaint, the Complainant submitted an OPRA request for verification of a phone call he made to his attorney between the dates of April 10, 2017 and June 5, 2017. The Complainant asserted that the purpose of his request was to support his claim of “ineffective assistance of counsel.” The Custodian denied the request pursuant to N.J.S.A. 47:1A-1 and N.J.A.C. 10A:22-2.3(a)(12), which exempts all records related to inmate phone calls. The Complainant filed the instant complaint arguing that the Custodian misrepresented OPRA by denying him access to his own records.

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<sup>4</sup> The GRC does not have the authority to address a requestor’s common law right to access records. N.J.S.A. 47:1A-7(b); Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013); Kelly v. N.J. Dep’t of Transp., GRC Complaint No. 2010-215 (November 2011) at 2. Thus, the GRC cannot address the Complainant’s asserted common law right of access.

Notwithstanding, the Custodian contended in the SOI that the responsive records were exempt from disclosure under OPRA, pursuant to N.J.S.A. 47:1A-1 and N.J.A.C. 10A:22-2.3(a)(12). Furthermore, the Custodian argued that the fact that the Complainant requested his own phone records was of no moment. Spillane, slip op. at 6.

Specifically, OPRA recognizes exemptions that exist in promulgated regulations. N.J.S.A. 47:1A-9(a). Additionally, N.J.A.C. 10A:22-2.3(a)(12) exempts inmate phone call records from disclosure. The regulation's exemption applies here to the Complainant's phone records maintained by DOC. N.J.A.C. 10A:22-2.3(a)(12).

Accordingly, the records responsive to the Complainant's OPRA request are exempt from disclosure 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 Executive Director respectfully recommends the Council find that the records responsive to the Complainant's OPRA request are exempt from disclosure 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: Brandon Garcia  
Case Manager

April 3, 2020