



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 28, 2020 Government Records Council Meeting

Al-Qaadir Green
Complainant

Complaint No. 2018-123

v.

NJ Department of Corrections
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council (“Council”) considered the April 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 that the Custodian lawfully denied both OPRA requests because New Jersey Department of Corrections’ regulations explicitly prohibit access to records relating to involuntary protective custody. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(10).

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 28th 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**

**Al-Qaadir Green¹
Complainant**

GRC Complaint No. 2018-123

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Copies via U.S. mail of the following:

OPRA Request dated April 6, 2018:

1. All Involuntary Protective Custody (“IPC”) forms 146-II 2011-2017
2. All statements used by administration to initiate IPC placement
3. All hearing officer decisions on IPC from 2011-2017
4. Statement submitted by inmates Fryar and Rodriguez at 2017 hearing
5. All IPC appeals submitted 2011-2017

OPRA Request (Unknown date):

1. All IPC forms 146-II 2011-2018
2. All request for interviews and updated Special Investigations Division (“SID”) reports pertaining to IPC status 2011-2018
3. All hearing officer decisions on IPC from 2011-2018
4. Statement submitted by inmates Fryar and Rodriguez at 2017 hearing
5. All IPC appeals submitted 2011-2018

Custodian of Record: John Falvey

Request Received by Custodian: April 6, 2018; April 20, 2018

Response Made by Custodian: April 6, 2018; April 20, 2018

GRC Complaint Received: July 2, 2018

Background³

Request and Response:

On April 3, 2018, the Complainant submitted an Open Public Records Act (“OPRA”)

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

request to the Custodian seeking the above-mentioned records. On April 6, 2018, the Custodian responded in writing denying the subject OPRA request pursuant to New Jersey Department of Corrections (“DOC”) regulations at N.J.A.C. 10A:22-2.3(a)(5), (a)(10), and (b).

On an unknown date, the Complainant submitted an undated OPRA request to the Custodian seeking the above-mentioned records. On April 6, 2018, the Custodian responded in writing denying the Complainant’s OPRA request pursuant to N.J.A.C. 10A:22-2.3(a)(5), (a)(10), and (b).

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 two (2) OPRA requests concerning the same issue in hopes of clarifying the reason for the denial from the former to the latter. The Complainant further asserted that the requested records were his own and not those of another inmate. The Complainant affirmed that he was provided the above-mentioned records previously but lost them. The Complainant argued that his requests were “falsely denied and deemed exempt under OPRA pursuant to N.J.A.C. 10A:22-2.3(a)(5), [(a)(10) and (b)].”

Statement of Information:

On August 8, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s April 3, 2018 OPRA request on April 6, 2018. The Custodian certified that he responded in writing on April 6, 2018 denying access pursuant to N.J.A.C. 10A:22-2.3(a)(5), (a)(10), and (b). The Custodian certified that he received the Complainant’s undated OPRA request on April 20, 2018. The Custodian certified that he responded in writing on that same day denying the Complainant access pursuant to N.J.A.C. 10A:22-2.3(a)(5), (a)(10), and (b).

The Custodian stated that N.J.S.A. 30:1B-24 establishes that DOC “. . . may promulgate rules and regulations as may be necessary for the proper discharge of its responsibility. These rules are specified in the New Jersey Administrative Code.”

The Custodian certified that the Complainant’s OPRA requests sought records exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(10) and N.J.A.C. 10A:22-2.3(b). The Custodian asserted that the records sought in both of the Complainant’s OPRA requests related to IPC records which are exempt from OPRA. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(10). The Custodian cited Mason v. City of Hoboken, 196 N.J. 51, 65 (2008) stating that the public’s right to access government records is not “absolute.”

The Custodian further asserted that the fact the Complainant has sought his own records and not those of another inmate is irrelevant. The Custodian contended that IPC records are exempt from disclosure regardless of the requestor. See Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. September 21, 2017).

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).]

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 *et seq.*, DOC regulations exempt access to “[r]ecords related to involuntary or voluntary protective custody.”

Here, the Complainant submitted two (2) OPRA requests seeking records pertaining to IPC, SID reports, and statements made by other inmates. The Custodian denied both requests pursuant to N.J.A.C. 10A:22-2.3(a)(5), (a)(10), and (b). The Complainant asserted that the Custodian “falsely denied” both OPRA requests because he sought his own records and not those of another inmate. In the SOI, the Custodian asserted that in their entirety, both OPRA requests sought records pertaining to IPC, which were exempt under DOC regulations N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(10). The Custodian also contended that the fact that the Complainant sought his own records does not entitle him to records exempt under OPRA. Spillane, slip op at 6.

Collectively, the Complainant’s OPRA requests sought records pertaining to his placement in IPC. The Complainant’s OPRA requests sought SID reports as well as statements made by other inmates, records that are exempt under DOC regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(2), (a)(5). However, the aforementioned records all related directly to the Complainant’s IPC hearings and are therefore exempt from disclosure pursuant to the same DOC regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(10).

Thus, the Custodian lawfully denied both OPRA requests because DOC regulations explicitly prohibit access to records relating to IPC. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(10).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied both OPRA requests because New Jersey Department of Corrections' regulations explicitly prohibit access to records relating to involuntary protective custody. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(10).

Prepared By: Brandon Garcia
Case Manager

April 21, 2020