



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 26, 2020 Government Records Council Meeting

Robert G. Dix
Complainant

Complaint No. 2018-132

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 that the Custodian has borne his burden of proving that the internal management procedures responsive to the Complainant’s OPRA request are exempt from disclosure as “. . . 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.” N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Reid v. N.J. Dep’t of Corr., GRC Complaint No. 2013-165 (January 2014); Durham v. N.J. Dep’t of Corr., GRC Complaint No. 2016-258 (June 2018). See also Fischer v. N.J. Dep’t of Corr., GRC Complaint No. 2005-171 (February 2006). Additionally, because the internal management procedures are exempt under OPRA, the GRC declines to address the applicability of N.J.A.C. 10A:22-2.3(a)(9) in this complaint.

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 26th 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

Decision Distribution Date: March 3, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Robert G. Dix¹
Complainant**

GRC Complaint No. 2018-132

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Copies via U.S. Mail of:

1. New Jersey Department of Corrections' ("DOC") policies on designating inmates as high risk,
2. DOC policies for cell searches, housing and work assignments, and review of an inmate's high risk status.

Custodian of Record: John Falvey
Request Received by Custodian: June 22, 2018
Response Made by Custodian: June 22, 2018
GRC Complaint Received: July 9, 2018

Background³

Request and Response:

On June 22, 2018, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On that same day, the Custodian responded in writing stating that he located three (3) internal management procedures ("IMPs") responsive to the subject OPRA request. The Custodian stated that the records were exempt from disclosure as "emergency or security information." N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(9). The Custodian alternatively offered the Complainant a copy of N.J.A.C. 10A, Chapter 9, which outlined the classification process.

Denial of Access Complaint:

On July 9, 2018, the Complainant filed a Denial of Access Complaint with the Government

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.

Records Council (“GRC”). The Complainant did not add any additional comments in favor of the disclosure of the above-mentioned records.

Statement of Information:

On August 16, 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 that same day denying access to three (3) IMPs as “exempt from disclosure because disclosure would jeopardize inmate and facility safety and security.” N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(9).

The Custodian contended that IMPs were exempt under N.J.S.A. 47:1A-1.1 because disclosure would create a safety and security risk to the inmates and the facility. The Custodian contended that IMPs related to search and investigative techniques detailing the factors which staff look for to identify high risk inmates. The Custodian asserted that the IMPs contained detailed specific arrangements and security precautions for those identified as high risk. Additionally, the Custodian argued that an inmate could use this information to avoid detection as high risk and conceal items that could pose a threat to other inmates and staff. The Custodian also argued that N.J.A.C. 10A:22-2.3(a)(9) similarly exempted the responsive IMPs from access under OPRA.

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 provides that:

A government record shall not include . . . 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; [or] security 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 Council has previously addressed whether the forgoing provision applied to DOC IMPs. In Reid v. N.J. Dep’t of Corr., GRC Complaint No. 2013-165 (January 2014), the complainant sought access to an IMP for the “North Compound Close Custody Housing Unit” (“Unit”). The custodian denied access under N.J.S.A. 47:1A-1.1, which resulted in the filing of GRC 2013-165. In the SOI, the custodian argued that he lawfully denied access because the IMP contained safety and security measures taken by staff. The custodian further argued that the

measures included the Unit's physical setup, searches, and inmate movements. The Council looked to its prior decision in Fischer v. N.J. Dep't of Corr., GRC Complaint No. 2005-171 (February 2006) and held that the denial of access was lawful. The Council reasoned that:

In both cases, the complainants sought procedures for a unit within a prison facility and were denied access under N.J.S.A. 47:1A-1.1. Here, as in Fischer, GRC 2005-171, the GRC is satisfied that disclosure of [the IMP] to the Complainant could pose a significant risk to the safe and secure operation of the [New Jersey State Prison] for the reasons expressed by the custodian. An inmate seeking to exploit facility weaknesses to plot escapes, assaults, or other prohibited activity would be given an advantage by having intimate knowledge of the procedures found in [the IMP]. Thus, the responsive records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

[Id. at 3.]

Further, in Durham v. N.J. Dep't of Corr., GRC Complaint No. 2016-258 (June 2018), the complainant's OPRA request sought access to two (2) IMPs for cell searches, body searches, pat frisk, strip searches, and the Mess Hall. The custodian denied access under N.J.S.A. 47:1A-1.1, and subsequently argued in the SOI that both IMPs contained a host of sensitive information. The custodian affirmed that the records sought were comprised of staff assignments, search areas, how search procedures, scheduling of mess hall activities, and mess hall officer shift information. The Council, citing Reid, GRC 2013-165, held that the custodian had borne his burden of proving that the IMPs responsive to the complainant's OPRA request were exempt from disclosure as ". . . 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." N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6.

In the instant complaint, the Complainant's OPRA request sought access to IMPs for designating inmates as high risk, cell searches, housing and work assignments, and the review of inmates' high-risk status. In response, the Custodian identified three (3) IMPs responsive to the Complainant's OPRA request. However, the Custodian denied access under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), and N.J.A.C. 10A:22-2.3(a)(9). The Custodian asserted in the SOI that the IMP's contained information on investigative and search techniques that could be used by inmates to subvert a cell search or avoid detection as high risk.

In comparing the IMPs at issue here to the IMPs in Reid, GRC 2013-165 and Durham, GRC 2016-258, the GRC is persuaded that the Custodian's denial of access was lawful. As noted in Reid, the IMPs here contain highly sensitive information that could be used to exploit facility protocols for nefarious purposes. The GRC is satisfied that disclosure of IMPs would create a significant risk to the safety and security of both DOC facilities and the persons therein. For this reason, and in accordance with both Reid and Durham, no unlawful denial of access to the responsive IMPs occurred. N.J.S.A. 47:1A-1.1.

Accordingly, the Custodian has borne his burden of proving that the IMPs responsive to the Complainant's OPRA request are exempt from disclosure as ". . . 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.” N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Reid, GRC 2013-165; Durham, GRC 2016-258. See also Fischer, GRC 2005-171. Additionally, because the IMPs are exempt under OPRA, the GRC declines to address the applicability of N.J.A.C. 10A:22-2.3(a)(9) in this complaint.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving that the internal management procedures responsive to the Complainant’s OPRA request are exempt from disclosure as “. . . 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.” N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Reid v. N.J. Dep’t of Corr., GRC Complaint No. 2013-165 (January 2014); Durham v. N.J. Dep’t of Corr., GRC Complaint No. 2016-258 (June 2018). See also Fischer v. N.J. Dep’t of Corr., GRC Complaint No. 2005-171 (February 2006). Additionally, because the internal management procedures are exempt under OPRA, the GRC declines to address the applicability of N.J.A.C. 10A:22-2.3(a)(9) in this complaint.

Prepared By: Brandon Garcia
Case Manager

January 21, 2020⁴

⁴ This complaint was prepared for adjudication at the Council’s January 28, 2020 meeting, but could not be adjudicated due to lack of quorum.