



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**

Omar J. Ross, Sr.  
Complainant

Complaint No. 2018-202

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 because the Custodian made the requested records available to the Complainant upon payment of the assessed copy fee, his response was appropriate pursuant to N.J.S.A. 47:1A-5(b), Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), and Ortiz v. N.J. Dep’t of Corr., GRC Complaint No. 2007-101 (November 2008). See also Reid v. N.J. Dep’t of Corr., GRC Complaint No. 2010-83 (May 2011); and Harris v. N.J. Dep’t of Corr., GRC Complaint No. 2010-233 (February 2012). Moreover, the Custodian was not required to provide the requested record until receipt of payment of \$4.35. See Paff, GRC 2006-54. Thus, there was no unlawful denial of access. 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**

**Omar J. Ross, Sr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-202**

v.

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

**Records Relevant to Complaint:<sup>3</sup>** Hard copies via U.S. mail of:

1. Records related to January 2017 attempted assault charge.
2. Records related to January 2017 abusive language charge.
3. Records related to June 2017 assault charge.
4. Records related to June 2017 refusing assignment charge.
5. Records related to June 2017 charges.

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** June 15, 2018  
**Response Made by Custodian:** June 19, 2018  
**GRC Complaint Received:** September 11, 2018

**Background<sup>4</sup>**

**Request and Response:**

On June 13, 2018, the Complainant<sup>5</sup> submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 19, 2018, the Custodian responded in writing stating that eighty-seven (87) pages of records have been located with some redactions made under OPRA’s security and surveillance exemption. N.J.S.A. 47:1A-1.1. The Custodian state stated that there was a copy fee of \$4.35 for the documents, and once the enclosed authorization form was submitted, the fee would be deducted from the Complainant’s account. The Custodian then stated that once payment was received, the records would be delivered to the Complainant.

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

<sup>2</sup> Represented by Deputy Attorney General Erica R. Heyer.

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

<sup>4</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.

<sup>5</sup> At the time of the request, the Complainant was an incarcerated individual residing at New Jersey State Prison (“NJSP”).

On July 3, 2018, the Complainant replied to the Custodian, stating that he was unable to obtain a loan from the NJSP Business Office, and added that his mother would pay the amount incurred. The Complainant stated that the Custodian can reach out to his mother to determine how she could deliver payment.

On July 11, 2018, the Custodian responded to the Complainant via regular mail, stating that in accordance with the New Jersey Department of Corrections' ("NJDOC") Internal Management Procedure FMB.ACC.017 ("IMP .017"), third party payments cannot be accepted on an inmate's behalf. The Custodian also stated that loans through the NJSP Business Office were not allowed for OPRA-related matters.

#### Denial of Access Complaint:

On September 11, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he was indigent, and that the NJSP Business Office would not provide him a loan to pay for the assessed copy fee. The Complainant contended that when he previously sought medical records, NJDOC provided him a loan to obtain those records. The Complainant asserted that if NJDOC was able to authorize a loan for medical records, then they should also authorize a loan to pay for records requested under OPRA.

#### Statement of Information:

On October 23, 2018, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on June 15, 2018. The Custodian certified that he responded in writing on June 19, 2018, outlining the records located and the copy fee of \$4.35.

The Custodian noted that the Complainant's only issue was that he was denied access to records due to having insufficient funds to pay for the associated cost. The Custodian asserted that the Complainant failed to provide any law supporting the claim that he was entitled to a loan from DOC to pay for the copying costs or that he was entitled to a fee waiver.

The Custodian asserted that requestors were required to pay the appropriate copying costs for the requested records. N.J.S.A. 47:1A-5(b). The Custodian asserted that the Council has previously held that a custodian was not required to release responsive records until payment was received, citing Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). The Custodian also referenced Mejias v. N.J. Dep't of Corr., GRC Complaint No. 2007-181 (July 2008); Santos v. New Jersey State Parole Bd., GRC Complaint No. 2004-74 (August 2004); Cuba v. Northern State Prison, GRC Complaint No. 2004-176 (February 2005); Ortiz v. N.J. Dep't of Corr., GRC Complaint No. 2007-101 (November 2008); Reid v. N.J. Dep't of Corr., GRC Complaint No. 2010-83 (May 2011); and Harris v. N.J. Dep't of Corr., GRC Complaint No. 2010-233 (February 2012).

The Custodian contended that it was undisputed that the Complainant failed to pay the \$4.35 copy fee for the responsive records, and therefore NJDOC was not required to release the

requested records. The Custodian thus contended that NJDOC lawfully denied access to the Complainant's OPRA request and requested the GRC to dismiss the matter.

## 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:

[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record in the form of printed matter shall not exceed the following:

- \$0.05 per letter size page or smaller, and
- \$0.07 per legal size page or larger.

[N.J.S.A. 47:1A-5(b).]

In Ortiz, GRC 2007-101, the Council referenced Paff, GRC 2006-54 to reaffirm that the custodian was "not required to release the requested records until payment is received . . ." Id. at 8. The Council subsequently held in Reid, GRC 2010-83,<sup>6</sup> and Harris, GRC 2010-233, that the complainants' indigency status was inapposite to their obligation to pay the assessed copying costs required under OPRA, citing Paff, GRC 2006-54 and Ortiz, GRC 2007-101.

In the instant complaint, the evidence of record indicates that the Custodian offered the requested records to the Complainant conditioned upon payment of the appropriate copy fee. Thus, the Custodian was under no obligation to provide the requested records at issue until receipt of the appropriate payment pursuant to Paff, GRC 2006-54, and its progeny. Furthermore, the Complainant's indigent status is of no moment, as OPRA does not include a provision waiving fees on such a basis. See Reid, GRC 2010-83.

Therefore, because the Custodian made the requested records available to the Complainant upon payment of the assessed copy fee, his response was appropriate pursuant to N.J.S.A. 47:1A-5(b), Paff, GRC 2006-54, and Ortiz, GRC 2007-101. See also Reid, GRC 2010-83; Harris, GRC 2010-233. Moreover, the Custodian was not required to provide the requested record until receipt

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<sup>6</sup> Affirmed on appeal in Reid v. GRC & N.J. Dep't of Corr., 2013 N.J. Super. Unpub. LEXIS 2625 (App. Div. 2013).

of payment of \$4.35. See Paff, GRC 2006-54. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.<sup>7</sup>

Additionally, the GRC declines to address the Complainant's argument regarding NJDOC's regulations on loan access to pay for costs associated with OPRA requests as it is beyond the scope of the GRC's jurisdiction. N.J.S.A. 47:1A-7.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Custodian made the requested records available to the Complainant upon payment of the assessed copy fee, his response was appropriate pursuant to N.J.S.A. 47:1A-5(b), Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), and Ortiz v. N.J. Dep't of Corr., GRC Complaint No. 2007-101 (November 2008). See also Reid v. N.J. Dep't of Corr., GRC Complaint No. 2010-83 (May 2011); and Harris v. N.J. Dep't of Corr., GRC Complaint No. 2010-233 (February 2012). Moreover, the Custodian was not required to provide the requested record until receipt of payment of \$4.35. See Paff, GRC 2006-54. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado  
Staff Attorney

April 21, 2020

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<sup>7</sup> The GRC does not address the Custodian's redactions made to the responsive records based on OPRA's security and surveillance exemption because the Complainant did not raise the issue at any point during the pendency of this complaint.