Final Decision

May 19, 2020 Government Records Council Meeting

Marlon E. Bradshaw, Sr. Complaint No. 2018-231
Complainant

v.

NJ Department of Corrections Custodian of Record

At the May 19, 2020 public meeting, the Government Records Council (“Council”) considered the May 12, 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 requested records concern scheduled medical appointment and/or prescription drug information, they constitute records containing medical information that are exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(4) and N.J.S.A. 47:1A-9(a). Therefore, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Robinson v. N.J. Dep’t of Corr., GRC Complaint No. 2012-129 (May 2013).

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 19th Day of May 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: May 20, 2020
STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Executive Director
May 19, 2020 Council Meeting

Marlon E. Bradshaw, Sr. GRC Complaint No. 2018-231
Complainant

v.

New Jersey Department of Corrections Custodial Agency

Records Relevant to Complaint: Hard copies via J-Pay service of the following identified records: 766859, 780651, 18001112, 18002715, and 18014684.

Custodian of Record: John Falvey
Request Received by Custodian: July 5, 2018
Response Made by Custodian: July 6, 2018
GRC Complaint Received: October 15, 2018

Background

On or around June 25, 2018, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On July 6, 2018, the Custodian responded in writing denying access on the grounds that the records were identified as MR-007 forms and therefore exempt pursuant to N.J.A.C. 10A:22-2.3(a)(4), which exempted from access information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation. The Custodian also stated that the Complainant may file a form MR-022 with the New Jersey Department of Correction’s ("NJDOC") Health Services Unit ("HSU") to obtain those records.

Denial of Access Complaint:

On October 15, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he spoke with a Medical
Records Clerk in the HSU in September 2018 and was told that she did not have access to the requested records. The Complainant asserted that the records were facilitated via J-Pay and were not part of the HSU’s systems. The Complainant asserted that the records were not part of the HSU’s system because they did not contain medical information. The Complainant contended that the records did not contain examination or test results but were instead requests for medical appointments, inquiries on prescription delivery, or other similar requests. The Complainant asserted that the records were not directed to or responded by physicians or any medical personnel.

Statement of Information:

On November 15, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 5, 2018. The Custodian certified that the identified records were retrieved and reviewed. The Custodian certified that he responded in writing on July 6, 2018 denying access to the records under NJDOC regulations.

The Custodian argued that N.J.S.A. 47:1A-9(a) exempts records from public access that regulations authorized by another statute deem exempt. The Custodian argued that N.J.S.A. 30:1B-24 granted the NJDOC the authority to promulgate rules and regulations governing access to records in its possession. The Custodian argued that under N.J.A.C. 10A:22-2.3(a)(4), records containing “information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation” were not considered government records subject to access under OPRA.

The Custodian argued that the five (5) records sought by the Complainant are designated as MR-007 forms used by incarcerated individuals to request and/or schedule medical treatment. The Custodian asserted that these records were therefore expressly exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(4) since they relate directly to medical treatment. The Custodian asserted that because those forms were exempt under OPRA, the Complainant was directed to seek the records with the HSU. The Custodian therefore argued that the complaint should be dismissed.

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. 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:

The provisions of [OPRA] 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) (emphasis added).]

Further, NJDOC regulations designate certain regulations as confidential, specifically, “... any information relating to medical psychiatric or psychological history, diagnosis, treatment or evaluation.” N.J.A.C. 10A:22-2.3(a)(4).

In Robinson v. N.J. Dep’t of Corr., GRC Complaint No. 2012-129 (May 2013), the complainant requested a preliminary incident report. The complainant asserted that the report was not a medical record because it was a statement he provided to a NJDOC employee as the victim of a physical attack. The custodian certified that because the report detailed the nature of the complainant’s injuries and the medical treatment received, it constituted a medical record. The Council agreed, finding that the report was exempt under N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(4).

In the current matter, the Complainant contended that the records sought were not medical records because they did not contain examination results, nor were they created or handled by medical professionals. However, both the Custodian and Complainant asserted that the records pertained to requests for medical treatment, or the Complainant’s drug prescription delivery. Therefore, the records expressly relate to the Complainant’s medical history and treatment, notwithstanding whether the records were handled by a medical professional or contained examination results. See Robinson, GRC 2012-129.

Accordingly, because the requested records concern scheduled medical appointment and/or prescription drug information, they constitute records containing medical information that are exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(4) and N.J.S.A. 47:1A-9(a). Therefore, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Robinson, GRC 2012-129.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the requested records concern scheduled medical appointment and/or prescription drug information, they constitute records containing medical information that are exempt from disclosure under N.J.A.C. 10A:22-2.3(a)(4) and N.J.S.A. 47:1A-9(a). Therefore, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Robinson v. N.J. Dep’t of Corr., GRC Complaint No. 2012-129 (May 2013).

Prepared By: Samuel A. Rosado
Staff Attorney

May 12, 2020