



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**May 19, 2020 Government Records Council Meeting**

Marlon E. Bradshaw, Sr.  
Complainant

Complaint No. 2018-231

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 19<sup>th</sup> 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.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-231**

**v.**

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

**Records Relevant to Complaint:**<sup>3</sup> 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<sup>4</sup>**

**Request and Response:**

On or around June 25, 2018,<sup>5</sup> 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

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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 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> The Complainant asserted that he submitted his request on July 6, 2018. However, the date indicated on the OPRA request form is June 25, 2018.

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-1.1. 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, “. . . [a]ny 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