



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

June 30, 2020 Government Records Council Meeting

Jonathan DeFoxsa-Bearsa
Complainant

Complaint No. 2018-242

v.

NJ Office of the Public Defender
Custodian of Record

At the June 30, 2020 public meeting, the Government Records Council (“Council”) considered the June 23, 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:

1. The Custodian’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian lawfully denied access to the Complainant’s OPRA request seeking “any records” identifying himself as a minor. N.J.S.A. 47:1A-6. Specifically, access to case file records from the Office of the Public Defender are deemed confidential pursuant to N.J.S.A. 47:1A-5(k). See Lemon v. N.J. Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).

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 30th Day of June 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: July 2, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2020 Council Meeting**

**Jonathan DeFossa-Bearsa¹
Complainant**

GRC Complaint No. 2018-242

v.

**N.J. Office of the Public Defender²
Custodial Agency**

Records Relevant to Complaint: “I am looking for any records with my former last name Schaefer when I was a minor in 1996.”

Custodian of Record: Traci Telemaque

Request Received by Custodian: September 4, 2018

Response Made by Custodian: October 2, 2018

GRC Complaint Received: October 18, 2018

Background³

Request and Response:

On August 29, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 2, 2018, the Custodian responded in writing to inform the Complainant that his request was denied because the request records, to the extent they existed, were considered confidential pursuant to N.J.S.A. 47:1A-5(k). The Custodian referred the Complainant to the Bergen Regional Medical Center to access the records sought.

Denial of Access Complaint:

On October 18, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was trying to obtain records from his involvement “[his] case” with the New Jersey Office of the Public Defender (“OPD”) dating back to a 1996 incident.

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

Statement of Information:

On November 16, 2018, the GRC requested a completed Statement of Information (“SOI”) from the Custodian. On November 30, 2018, the GRC sent a “No Defense” letter to the Custodian, requesting a completed SOI within three (3) business days of receipt. The GRC did not receive any response from the Custodian thereafter.

Analysis

Failure to Submit SOI

OPRA also provides that “Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(f).]

Finally, OPRA provides that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian’s failure to adhere to N.J.A.C. 5:1052.4(a). See also Kovacs v. Irvington Police Dep’t (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant complaint, the Custodian did not comply with the GRC’s initial request for an SOI. After the expiration of the five (5) business day deadline, the GRC again attempted to obtain a completed SOI from the Custodian by sending a “No Defense” letter and requesting a completed SOI within three (3) business days of receipt. The GRC received no response thereafter.

Accordingly, the Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).

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 “[t]he files maintained by [OPD] that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.” N.J.S.A. 47:1A-5(k). See also Gaines v. N.J. Office of the Pub. Defender, GRC Complaint No. 2012-261 (August 2013) (holding that responsive records relating to OPD’s representation of the complainant were exempt from disclosure under OPRA).

In Lemon v. N.J. Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015), the complainant sought records, including plea forms, related to his own case file. The GRC held that based on the plain language of N.J.S.A. 47:1A-5(k), and without evidence of a law, court order or State Public Defender authorization, the custodian’s denial of access was lawful.

In the matter before the Council, the Complainant sought records from the OPD from a 1996 incident. The Custodian subsequently denied access under N.J.S.A. 47:1A-5(k), stating that the requested records were exempt under OPRA to the extent that they existed. Additionally, the Complainant provided no evidence of a law, court order, or State Public Defender authorization allowing him access to his records under OPRA. Based on the foregoing, the GRC is satisfied that the Custodian’s denial of access was lawful because the plain language of N.J.S.A. 47:1A-5(k), which exempts access to all OPD client records, contains no exceptions for persons attempting to access their own files.

Therefore, the Custodian lawfully denied access to the Complainant’s OPRA request seeking “any records” identifying himself as a minor. N.J.S.A. 47:1A-6. Specifically, access to case file records from the OPD are deemed confidential pursuant to N.J.S.A. 47:1A-5(k). See Lemon, GRC 2015-297.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).

2. The Custodian lawfully denied access to the Complainant's OPRA request seeking "any records" identifying himself as a minor. N.J.S.A. 47:1A-6. Specifically, access to case file records from the Office of the Public Defender are deemed confidential pursuant to N.J.S.A. 47:1A-5(k). See Lemon v. N.J. Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).

Prepared By: Brandon Garcia
Case Manager

June 23, 2020