



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

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**FINAL DECISION**

**November 12, 2019 Government Records Council Meeting**

Stephen F. Azzollini  
Complainant

Complaint No. 2018-26

v.

NJ Department of Corrections  
Custodian of Record

At the November 12, 2019 public meeting, the Government Records Council (“Council”) considered the October 30, 2019 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 lawfully denied the Complainant’s OPRA request seeking the inmate visitation log book for October 2, 2006 because the record is exempt from disclosure under OPRA pursuant to New Jersey Department of Corrections’ regulations. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(13).

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 12<sup>th</sup> Day of November 2019

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: November 15, 2019**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 12, 2019 Council Meeting**

**Stephen F. Azzollini<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-26**

v.

**N.J. Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** A copy of the “LOG BOOK” for Unit 2-A on October 2, 2006.

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** December 7, 2017  
**Response Made by Custodian:** December 8, 2017  
**GRC Complaint Received:** February 20, 2018

**Background<sup>3</sup>**

**Request and Response:**

On December 7, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 8, 2017, the Custodian responded in writing stating that the requested record was exempt from OPRA pursuant to N.J.A.C. 10A: 22-2.3 (a)(13).

**Denial of Access Complaint:**

On February 20, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that his request was not in violation of New Jersey Administrative Code. The Complainant asserted that the purpose of his request was to ascertain whether a Dr. Gregg Gambone, Ph.D. visited Unit 2-A to interview him on October 2, 2006. The Complainant further asserted that he would accept a redacted version of the log book page if and where Dr. Gambone’s name was present.

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

<sup>2</sup> Represented by Deputy Attorney General Adam Robert Gibbons.

<sup>3</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.

### Statement of Information:

On April 2, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on December 7, 2017. The Custodian certified that he responded in writing denying the request on December 8, 2017.

The Custodian asserted that the log book was exempt from disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(13). The Custodian affirmed that N.J.A.C. 10A:22-2.3(a)(13) “should be dispositive of this issue.” The Custodian stated that OPRA recognizes exemptions that exist in promulgated regulations. N.J.S.A. 47:1A-9(a).

In closing, the Custodian argued that the Courts have long deferred to the DOC when making safety and security decisions. The Custodian states that DOC has “broad discretionary power” to promulgate regulations aimed at maintaining security and order inside correctional facilities. Jenkins v. Fauver, 108 N.J. 239, 252 (1987). The Custodian stated that the Courts have noted that “[p]risons are dangerous places, and the courts must afford appropriate deference and flexibility to administrators trying to manage this volatile environment.” Russo v. NJ Dep’t of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999). See also Florence v. Bd. of Chosen Freeholders, Burlington Cnty., 132 S.Ct. 1510, 1515 (2012) (“[m]aintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face[.]”).

### Additional Submissions:

On April 6, 2018, the Complainant submitted a letter to the GRC. The Complainant asserted that the law used by the Custodian to deny his request was not made “retroactive.” The Complainant averred that the “new rule,” which took effect in 2011, should not prevent him from receiving requested records dating back to 2006. The Complainant asserted that a notarized letter stating whether Dr. Gambone entered and left Unit 2A on October 2, 2006 would satisfy his request.

## 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 its provisions:

[S]hall 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).]

The GRC's case law in recognizing exemptions contained in DOC's regulations as a lawful denial of access under OPRA is extensive. See Robinson v. N.J. Dep't of Corr., GRC Complaint No. 2012-129 (May 2013) (holding that the custodian lawfully denied access to a preliminary incident report under DOC's regulations); Riley v. N.J. Dep't of Corr., GRC Complaint No. 2013345 (July 2014) (holding that the custodian lawfully denied access to mental health records under N.J.A.C. 10A:22-2.3(a)(4)); Edwards v. N.J. Dep't of Corr., GRC Complaint No. 2014-8 (September 2014) (holding that the complainant could not have access to records pertaining to the person accused of assaulting him under N.J.A.C. 10A:22-2.3(b)). On December 19, 2016, DOC promulgated new OPRA regulations that included five (5) new exemptions, including one for "log books."

In the instant complaint, the Complainant has requested a copy of the prison visitation log for Unit 2A within N.J. State Prison on October 2, 2006. The Complainant argued that the purpose of his request was to ascertain whether or not a Dr. Gambone visited the facility on that day. The Custodian denied the Complainant's request citing the DOC regulations, which exempt "log books" from disclosure. N.J.A.C. 10A:22-2.3(a)(13). The Complainant subsequently contended that the requested record should be disclosed because it predates the establishment of the DOC regulation.

In reviewing the evidence of record, the GRC is satisfied that the Custodian lawfully denied the Complainant's OPRA request because "log books" are specifically identified as exempt in DOC's regulation. N.J.A.C. 10A:22-2.3(a)(13). Further, the Complainant submitted his OPRA request on December 7, 2017, long after DOC promulgated the cited regulation. Thus, the Complainant's claim that the requested record predates DOC's regulations is of no moment here.

Therefore, the Custodian lawfully denied the Complainant's OPRA request seeking the inmate visitation log book for October 2, 2006 because the record is exempt from disclosure under OPRA pursuant to DOC's regulations. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(13).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied the Complainant's OPRA request seeking the inmate visitation log book for October 2, 2006 because the record is exempt from disclosure under OPRA pursuant to New Jersey Department of Corrections' regulations. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(13).

Prepared By: Brandon Garcia  
Case Manager

October 30, 2019