



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 26, 2020 Government Records Council Meeting

Harry De La Roche
Complainant

Complaint No. 2018-45

v.

NJ Department of Corrections
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the January 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 the Custodian lawfully denied the Complainant’s OPRA request for a copy, front and back, of his cancelled check# 233974. N.J.S.A. 47:1A-6. The record falls under Executive Order No. 26 (Gov. McGreevey 2002) which exempts from disclosure information describing a natural person’s finances. N.J.S.A. 47:1A-9(a); Farra’D v. N.J. Dep’t of Corr., GRC Complaint No. 2010-47 (October 2011). See also Sheridan v. N.J. Dep’t of Corr., GRC Complaint No. 2013-122 (December 2013). Further, the record is exempt from disclosure regardless of the fact the Complainant sought a record from his own account. See Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017).

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 26th Day of February 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: March 3, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 26, 2020 Council Meeting**

**Harry De La Roche¹
Complainant**

GRC Complaint No. 2018-45

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: “I would like a copy, front and back, of a check sent on my behalf to Inmate Magazine Service, P.O. Box 2063, Fort Walton, FL 32549.”

Custodian of Record: John Falvey
Request Received by Custodian: February 14, 2018
Response Made by Custodian: February 14, 2018
GRC Complaint Received: March 19, 2018

Background³

Request and Response:

On January 25, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 14, 2018, the Custodian responded in writing denying the Complainant’s OPRA request. N.J.S.A. 47:1A-9; Executive Order No. 26 (Gov. McGreevey, 2002) (“EO 26”).

Denial of Access Complaint:

On March 19, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that the purpose of his OPRA request was to reveal who cashed the check in question and where. The Complainant asserted that the Custodian directed him to his correctional facility’s business office to obtain the desired records. The Complainant argued that the Trust Account Statement and front copy of his check provided by the business office was not sufficient for this purpose.

The Complainant further argued that he did not believe that N.J.S.A. 47:1A-9 applied to this OPRA request. The Complainant asserted that his OPRA request as written made it evident

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Erica Heyer.

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.

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that he already had more information than DOC regulations permitted the business office to disclose; thus, he was requesting the above-mentioned records under OPRA. The Complainant asserted that the New Jersey Department of Corrections (“DOC”) “is acting as his de facto, if not de jure, bank and banker” because he has no other method to send out funds than the business remit system recognized by the DOC. The Complainant averred that because the DOC maintained his account on his behalf, and because the records in his OPRA request were of his own financial activity, they should be disclosed to him.

Additionally, the Complainant argued that the Custodian’s denial did not make sense in comparison to other information he was legally able to obtain. The Complainant cited Michelson v. Wyatt, 379 N.J. Super. 611 (App. Div. 2005) in arguing that he was able to request a list of DOC employees’ names and salaries and it would be provided, yet he could not obtain a record of his own financial actions. The Complainant also contended that he was able to request his own health records through a routine request to the DOC, yet he was not able to obtain the above-mentioned financial records of his own account.

Additional Submissions:

On April 10, 2018, the Complainant submitted a letter to Custodian’s Counsel in response to her letter of representation. The Complainant enclosed copies of pages taken from the inmate handbook for South Woods Prison (“SWP”), including the procedures for business remits. The Complainant cited Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234, 300 (1973), in asserting that EO 26 does not apply to his complaint because he is not another member of the public, but an individual asking for records of his own account. The Complainant asserted that he was entitled to records of his “private and individual financial actions” because the DOC maintained and executed those transactions on his behalf.

Statement of Information:

On May 1, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on February 14, 2018. The Custodian certified that he responded in writing on the same day denying Complainant’s OPRA request. The Custodian certified that he referred the Complainant to his correctional facility’s business office pursuant to DOC regulations. N.J.A.C. 10A:2-2.1(b). The Custodian certified that he was provided with an example of the response to such a request from the business office, but could not confirm that the Complainant received the same record.

The Custodian asserted that he properly denied the Complainant’s OPRA request because the records sought were exempt under EO 26, which exempts “information describing a natural person’s finances . . . [or] financial history or activities.” N.J.S.A. 47:1A-9. The Custodian further asserted that under EO 26, copies of a check, front and back “shall not be considered to be government records subject to public access.” N.J.S.A. 47:1A-9(a).

Additional Submissions:

On May 7, 2018, the Complainant sent a letter to the GRC responding to the SOI. The Complainant asserted that he was concerned that his April 10, 2018 letter was not part of the SOI

appendix. The Complainant reiterated that EO 26 did not apply to his situation. The Complainant further asserted that under N.J.A.C. 10A:22-2.3(b), the DOC differentiated between the “individual inmate” and “other inmates” with respect to the disclosure of records.

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.

Further, 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).]

EO 26 provides that:

The following records shall not be considered to be government records subject to public access pursuant to [OPRA]: [I]nformation describing a natural person’s finances, income, assets, liability, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed.

[Id. at 4 (b).]

In Farra’D v. N.J. Dep’t of Corr., GRC Complaint No. 2010-47 (October 2011), the custodian denied the complainant’s OPRA requested for a copy of his own “Inmate Payment on Obligations” summary. The Council determined that the requested record was exempt from disclosure pursuant to EO 26 applicable to OPRA through N.J.S.A. 47:1A9(a).

Further, in Sheridan v. N.J. Dep’t of Corr., GRC Complaint No. 2013-122 (December 2013), the complainant sought a copy of his state pay account. The custodian noted in both his original response and his SOI that the “Business Manager of the correctional facility shall be responsible for maintaining inmate accounts and recordkeeping . . . [and] shall be responsible for providing an inmate with a monthly statement containing each financial transaction processed.” N.J.A.C. 10A:2-2.1(a)-(b). The Council recognized the record as information of the type contemplated by EO 26. As such, the Council found that the responsive record was exempt from disclosure. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a).

In the matter before the Council, the Complainant requested a copy, front and back of a check sent on his behalf to Inmate Magazine Service. The Custodian denied the subject OPRA request under N.J.S.A. 47:1A-9(a) and EO 26. The Custodian denied access under EO 26 and referred the Complainant to his institutional business office pursuant to DOC regulations. N.J.A.C. 10A:2-2.1(b). In the Denial of Access Complaint, the Complainant argued that the record should be disclosed to him because it is of his own account. The Complainant further argued that N.J.A.C. 10A:22-2.3(b) differentiated between the disclosure of an inmate's records to another inmate as opposed to the disclosure of an inmate's own records to himself.

The facts of the instant complaint are on point with those in Farra'D, GRC 2010-47, where the complainant sought a record of his own financial activity. The GRC relied on EO 26 in both Farra'D and Sheridan citing "information describing a natural person's finances and liabilities [was] exempt from public access, except as otherwise required by law to be disclosed." Id. at 4 (b). Thus, the record sought is exempt under EO 26 because it describes the financial activity of a natural person. N.J.S.A. 47:1A-1.1. Also, because an inmate is prohibited under DOC regulations from obtaining records of another inmate, it cannot be inferred that an inmate would be entitled under OPRA to his [her, their] own financial records. See Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017)⁴ (dismissing appellant's assertion that he was entitled to the requested report because it was about him).

Therefore, the Custodian lawfully denied the Complainant's OPRA request for a copy, front and back, of his cancelled check #233974. N.J.S.A. 47:1A-6. The record falls under EO 26 which exempts from disclosure information describing a natural person's finances. N.J.S.A. 47:1A-9(a); Farra'D, GRC 2010-47; Sheridan, GRC 2013-122. Further, the record is exempt from disclosure regardless of the fact the Complainant sought a record from his own account. See Spillane, 2017 N.J. Super. Unpub. LEXIS 2392.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied the Complainant's OPRA request for a copy, front and back, of his cancelled check# 233974. N.J.S.A. 47:1A-6. The record falls under Executive Order No. 26 (Gov. McGreevey 2002) which exempts from disclosure information describing a natural person's finances. N.J.S.A. 47:1A-9(a); Farra'D v. N.J. Dep't of Corr., GRC Complaint No. 2010-47 (October 2011). See also Sheridan v. N.J. Dep't of Corr., GRC Complaint No. 2013-122 (December 2013). Further, the record is exempt from disclosure regardless of the fact the Complainant sought a record from his own account. See Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017).

Prepared By: Brandon Garcia
Case Manager

January 21, 2020⁵

⁴ Affirming on appeal Spillane v. N.J. Dep't of Corr., GRC Complaint No. 2014-169 (March 2015).

⁵ This complaint was prepared for adjudication at the Council's January 28, 2020 meeting, but could not be adjudicated due to lack of quorum.

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