



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

July 28, 2020 Government Records Council Meeting

Kory McClary
Complainant

Complaint No. 2019-14

v.

Atlantic County
Custodian of Record

At the July 28, 2020 public meeting, the Government Records Council (“Council”) considered the July 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 access to the Complainant’s December 12, 2018 OPRA request seeking a copy of his visit log since same is exempt from disclosure pursuant to N.J.A.C. 10A:31-6.10(a)(13) and N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6; see also Azzolini v. N.J. Dep’t of Corr., GRC Complaint No. 2018-26 (November 2019).

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 28th Day of July 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 30, 2020



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 28, 2020 Council Meeting**

**Kory McClary¹
Complainant**

GRC Complaint No. 2019-14

v.

**Atlantic County²
Custodial Agency**

Records Relevant to Complaint: Hard copy via U.S. mail of a visit log from February 2012 until March 2013.

Custodian of Record: Daniel J. Solt

Request Received by Custodian: December 12, 2018

Response Made by Custodian: December 13, 2018

GRC Complaint Received: January 24, 2019

Background³

Request and Response:

On December 3, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 13, 2018, the Custodian responded in writing denying access to the request. The Custodian stated that under N.J.A.C. 10A:31-6.10, “log books” are not government records under OPRA.

Denial of Access Complaint:

On January 24, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was only requesting a copy of his own visit log. The Complainant added that he needed the times and dates of each visit with his attorney during the requested period while held at the Atlantic County Justice Facility (“ACJF”). The Complainant asserted that he needed the logs for an upcoming appeal, and they should be not confidential since the records were his own.

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 March 4, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on December 12, 2018. The Custodian certified that he responded in writing on December 13, 2018 denying access to the request. The Custodian maintained that “log books” are not government records under N.J.A.C. 10A:31-6.10.

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 also provides that:

[OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . 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; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1, *et seq.*, N.J.A.C. 10A:31-6.10 exempts from access several types of records maintained by New Jersey’s county correctional facilities. On December 19, 2016, five (5) new exemptions were added, including “log books.” N.J.A.C. 10A:31-6.10(a)(13).

Although decided during the pendency of this complaint, Azzolini v. N.J. Dep’t of Corr., GRC Complaint No. 2018-26 (November 2019) is instructive. The complainant sought access to his visitation log while incarcerated at New Jersey State Prison. The custodian denied access citing New Jersey Department of Corrections (“DOC”) regulations that exempted “log books” from disclosure. N.J.A.C. 10A:22-2.3(a)(13). The Council held that the custodian lawfully denied access to the complainant’s request since “log books” are expressly identified as exempt via DOC’s regulations.

Furthermore, the Council has generally held that a requestor’s interest to obtain government records about himself/herself/themselves does not justify disclosure of the records under OPRA. See Wassenaar v. N.J. Dep’t of Corr., GRC Complaint Nos. 2012-187 & 2012-192 (June 2013); Lobosco v. N.J. Dep’t of Health & Human Servs., Div. of Certificate of Need & Healthcare Facility Licensure, GRC Complaint No. 2010-64 (October 2010). See also Spillane v.

N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392, 6 (App. Div. 2017)⁴ (dismissing appellant’s assertion that he was entitled to the requested report because it was about him).

Here, the Complainant submitted an OPRA request seeking a copy of his visit log while incarcerated at ACJF. The Custodian denied access to the request pursuant to N.J.A.C. 10A:31-6.10. The Complainant asserted that the records should not be withheld since he sought his own records.

Upon review, the facts here parallel those in Azzolini, GRC 2018-26. Although the complainant in Azzolini sought a visitation log from DOC versus a county correctional facility, the regulations pertaining to confidential records for both entities are substantially similar. Accordingly, because “log books” are expressly identified as exempt under N.J.A.C. 10A:31-6.10(a)(13), the GRC is satisfied that the Custodian lawfully denied access under N.J.S.A. 47:1A-9(a). Although not raised by the Custodian, it should be noted that N.J.A.C. 10A:31-6.10(a)(12) also exempts from access “[r]ecords and/or content related to inmate phone, e-mail or visit information.” Additionally, that the Complainant seeks his own records is immaterial, as the personal or private needs of the requestor does not enhance their access to records otherwise exempt under OPRA. See Spillane, slip op. at 6.

Accordingly, the Custodian lawfully denied access to the Complainant’s December 12, 2018 OPRA request seeking a copy of his visit log since same is exempt from disclosure pursuant to N.J.A.C. 10A:31-6.10(a)(13) and N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6; see also Azzolini, GRC 2018-26.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant’s December 12, 2018 OPRA request seeking a copy of his visit log since same is exempt from disclosure pursuant to N.J.A.C. 10A:31-6.10(a)(13) and N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6; see also Azzolini v. N.J. Dep’t of Corr., GRC Complaint No. 2018-26 (November 2019).

Prepared By: Samuel A. Rosado
Staff Attorney

July 21, 2020

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