



State of New Jersey
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 10, 2020 Government Records Council Meeting

Guilio Mesadieu
Complainant

Complaint No. 2019-161

v.

Union County Department of Corrections
Custodian of Record

At the November 10, 2020 public meeting, the Government Records Council (“Council”) considered the October 27, 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 did not unlawfully deny access to responsive records because same are exempt from disclosure under the Internal Affairs Policy & Procedures. N.J.S.A. 47:1A-6; O’Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009); Blaustein v. Lakewood Police Dep’t (Ocean), GRC Complaint No. 2011-102 (June 2012); Rivera v. Borough of Keansburg Police Dep’t (Monmouth), GRC Complaint No. 2007-222 (June 2010); Camarata v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2014-127 (June 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 10th Day of November 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: November 13, 2020

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 10, 2020 Council Meeting**

**Guilio Mesadiou¹
Complainant**

GRC Complaint No. 2019-161

v.

**Union County Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hard copies via U.S. mail of all Union County Department of Corrections (“Department”) Internal Affairs investigation discovery and documents for case No. 17-03-009, conducted by Lt. Michael Patella.

Custodian of Record: Marlena Russo
Request Received by Custodian: July 11, 2019
Response Made by Custodian: July 17, 2019
GRC Complaint Received: August 12, 2019

Background³

Request and Response:

On or about May 14, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 17, 2019, the Custodian responded in writing stating that the requested records were exempt from disclosure pursuant to OPRA’s exemption for personnel records. N.J.S.A. 47:1A-10.

Denial of Access Complaint:

On August 12, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he initially submitted an OPRA request with the New Jersey Department of Corrections (“NJDOC”) on or about November 13, 2017. The Complainant asserted that the custodian for NJDOC responded to the request on July 17, 2019, stating that the requested records were not maintained, and suggesting that he (the Complainant) resubmit the OPRA request to the Department. The Complainant stated that he refiled the OPRA request with the Department on or about May 14, 2019.

¹ No legal representation listed on record.

² Represented by April C. Bauknight, Esq., Assistant County Counsel (Elizabeth, N.J.).

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.

The Complainant asserted that the Custodian denied the request on or about July 17, 2019. The Complainant asserted he now appeals the request denial to the GRC.

Statement of Information:⁴

On November 4, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 11, 2019. The Custodian certified that her search included manually searching the Department’s files. The Custodian certified that she responded in writing on July 17, 2019, denying access to the records pursuant to OPRA’s personnel records exemption.

The Custodian asserted that OPRA exempts records “including but not limited to records relating to any grievance filed by or against an individual.” N.J.S.A. 47:1A-10; Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 592 (2011). The Custodian argued that the internal investigation records requested by the Complainant were considered personnel records and did not fall into the categories permitting disclosure under N.J.S.A. 47:1A-10. Thus, the Custodian argued that the denial should be upheld.

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.

Additionally, the Council is permitted to raise additional defenses regarding the disclosure of records pursuant to Paff v. Twp. of Plainsboro, 2007 N.J. Super. Unpub. LEXIS 2135 (App. Div.), certif. denied, 193 N.J. 292 (2007).⁵ In Paff, the complainant challenged the GRC’s authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that the Open Public Meetings Act prohibited the disclosure of the redacted portions to the requested executive session minutes. The Council affirmed the custodian’s denial to portions of the executive session minutes but for reasons other than those cited by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian’s cited basis for denial was lawful. The court held that:

The GRC has an independent obligation to “render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to’ OPRA . . . The GRC is not limited to

⁴ The complaint was referred to mediation on September 5, 2019. The complaint was referred back from mediation on October 2, 2019.

⁵ On appeal from Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

assessing the correctness of the reasons given for the custodian's initial determination; it is charged with determining if the initial decision was correct.”

The court further stated that:

Aside from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998) (citing Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) (lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), certif. denied, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. Super. 110, 121 (App. Div. 1956) (question for reviewing court is propriety of action reviewed, not the reason for the action), aff'd, 24 N.J. 139 (1957).

Regarding requests for personnel information, OPRA mandates that:

[T]he personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access[.]

[N.J.S.A. 47:1A-10.]

However, the GRC notes that records pertaining to internal affairs are not personnel records pursuant to the Attorney General's Internal Affairs Policy & Procedures (“IAPP”).⁶ See Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012). Notwithstanding, the GRC has held that the IAPP and other Attorney General Guidelines carry the force of law. See Id. (citing O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009)).

Thus, because the Appellate Division determined that Attorney General Guidelines have the force of law for police entities, the IAPP operates to exempt the requested records from disclosure, providing in part: “[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information.”⁷ See also Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010) (accepting an Initial Decision of the Office of Administrative Law that internal affairs reports are confidential records); Camarata v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2014-127 (June 2015) (holding that the custodian lawfully denied access to IA investigation records).

In the instant matter, the Complainant requested the discovery and documents pertaining to an internal affairs investigation conducted by Lt. Patella. It is apparent that the requested records

⁶ The IAPP was promulgated via the Division of Criminal Justice in the New Jersey Department of Law and Public Safety. All GRC references to the IAPP are to the August 2020 revision of the document.

⁷ IAPP, Internal Affairs Records, pg. 56.

are comparable to those at issue in Rivera and Camarata. Thus, notwithstanding the Custodian's reliance on OPRA's personnel records exemption, she lawfully denied access to the request since such records are explicitly exempt under the IAPP.

Therefore, the Custodian did not unlawfully deny access to responsive records because same are exempt from disclosure under the IAPP. N.J.S.A. 47:1A-6; O'Shea, 410 N.J. Super. 371; Blaustein, GRC 2011-102; Rivera, GRC 2007-222; Camarata, GRC 2014-127.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to responsive records because same are exempt from disclosure under the Internal Affairs Policy & Procedures. N.J.S.A. 47:1A-6; O'Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009); Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012); Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010); Camarata v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2014-127 (June 2015).

Prepared By: Samuel A. Rosado
Staff Attorney

October 27, 2020