



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**December 15, 2020 Government Records Council Meeting**

David Henry  
Complainant

Complaint No. 2019-253

v.

NJ Office of the Public Defender  
Custodian of Record

At the December 15, 2020 public meeting, the Government Records Council (“Council”) considered the December 8, 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 OPRA request seeking four (4) reports used during his trial. 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) and the Complainant failed to provide any authorization necessary to overcome the exemption. 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 15<sup>th</sup> Day of December 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: December 17, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
December 15, 2020 Council Meeting**

**David Henry<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-253**

v.

**N.J. Office of the Public Defender<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of four (4) reports presented to the Complainant's defense attorney and containing the opinions of a defense expert dated on or about December 8, 2006, February 5, 2007, April 5, 2007, and August 27, 2007.

**Custodian of Record:** Lauren S. Michaels  
**Request Received by Custodian:** October 15, 2019  
**Response Made by Custodian:** October 21, 2019  
**GRC Complaint Received:** December 23, 2019

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

**Request and Response:**

On October 11, 2019, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On October 21, 2019, the Custodian responded in writing denying the subject OPRA request under the public defender exemption. N.J.S.A. 47:1A-5(k).

**Denial of Access Complaint:**

On December 23, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant stated that he needed the reports sought in order to obtain assistance from Centurion Ministries to overturn his "wrongful conviction and imprisonment." The Complainant asserted that he made multiple attempts to obtain the reports including the subject OPRA request. The Complainant disputed the denial of access and questioned why he could not obtain the reports related to his specific case.

---

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

<sup>2</sup> No legal representation listed on record.

<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 February 14, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 15, 2019. The Custodian certified that she responded in writing on October 21, 2019 denying the request under N.J.S.A. 47:1A-5(k).

The Custodian stated that the subject OPRA request sought access to expert reports presented during the Complainant’s criminal trial. The Custodian contended that, to the extent they exist, the requested reports are clearly exempt from disclosure under OPRA because they are part of a client file maintained by the Office of the Public Defender [(“OPD”)]. N.J.S.A. 47:1A-5(k). The Custodian further argued that the Complainant did not provide any authorization “by law, court order, or the State Public Defender” that would have allowed him to overcome the exemption. Id.

### 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 “[t]he files maintained by the [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. See also Shabazz v. N.J. Office of the Pub. Defender, GRC Complaint No. 2017-145 (July 2019).

In the matter before the Council, the Complainant sought four (4) reports used in his trial from the OPD. 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 OPRA exempts access to all OPD client records and contains no exceptions for persons attempting to access their own files.

Therefore, the Custodian lawfully denied access to the Complainant's OPRA request seeking four (4) reports used during his trial. 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) and the Complainant failed to provide any authorization necessary to overcome the exemption. See Lemon, GRC 2015-297.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant's OPRA request seeking four (4) reports used during his trial. 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) and the Complainant failed to provide any authorization necessary to overcome the exemption. See Lemon v. N.J. Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).

Prepared By: Frank F. Caruso  
Executive Director

December 8, 2020