



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

September 29, 2020 Government Records Council Meeting

Lionell Glenn Miller
Complainant

Complaint No. 2019-70

v.

NJ Department of Corrections
Custodian of Record

At the September 29, 2020 public meeting, the Government Records Council (“Council”) considered the September 22, 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 records sought by the Complainant are exempt from disclosure pursuant to DOC’s regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(12). Further, whether the Complainant sought access to information regarding phone calls he himself made is of no moment here. Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017). As such, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.

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 29th Day of September 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: October 1, 2020



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2020 Council Meeting**

**Lionell Glenn Miller¹
Complainant**

GRC Complaint No. 2019-70

v.

**N.J. Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of the Complainant's "IPIN" phone logs showing all phone calls he made between September 2018 and December 25, 2018.

Custodian of Record: John Falvey
Request Received by Custodian: January 29, 2019
Response Made by Custodian: February 4, 2019
GRC Complaint Received: March 29, 2019

Background³

Request and Response:

On an unknown date, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On February 4, 2019, the Custodian responded in writing denying access to the subject OPRA request under N.J.A.C. 10A:22-2.3(a)(12), which exempts access to "[r]ecords and/or content related to inmate phone . . . information." Id.

Denial of Access Complaint:

On March 29, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian unlawfully denied access to the requested records because the cited exemption only applied to "third parties." The Complainant contended that the cited exemption was not intended to prevent an inmate from obtaining his own records. See Grimes v. N.J. Dep't of Corr., 452 N.J. Super. 396, 401 (App. Div. 2017). The Complainant contended that the New Jersey Department of Corrections ("DOC")

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Beonica A. McClanahan.

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.

instead chose to deny disclosure to avoid giving him evidence supporting that a DOC employee wrote a false report.

The Complainant further analogized his request to having in his possession a copy of his “approved visit list,” which he attached. The Complainant also noted that multiple court decisions supported that inmates could access records relating to them. See Ramirez v. N.J. Dep’t of Corr., 382 N.J. Super. 18, 22 (2005); Natale v. Camden Cnty. Corr. Facility, 318 F.3d 575, 582 (3d Cir. 2003).

Statement of Information:

On April 30, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on January 29, 2019 and responded in writing on February 4, 2019 denying the request under DOC’s regulations.

The Custodian stated that N.J.S.A. 30:1B-24 allows DOC to promulgate rules and regulations as necessary to “for the proper discharge of its responsibility.” The Custodian stated that to this end, DOC promulgated OPRA-specific regulations barring disclosure of certain categories of records. N.J.A.C. 10A:22-2.3. The Custodian stated that one of those regulations exempted inmate phone information from access. N.J.A.C. 10A:22-2.3(a)(12). The Custodian noted that “IPIN” phone logs contained names, relationship status’ to the inmate, addresses, and phone numbers. The Custodian thus argued that he lawfully denied access to the Complainant’s OPRA request.

The Custodian further argued that the Complainant’s reliance on Ramirez, 382 N.J. Super. 18 was misplaced. The Custodian noted that while Ramirez provided for disclosure of certain confidential records, the court was not tasked with contemplating said disclosure under OPRA. The Custodian stated that instead, Ramirez contemplated access to certain records through internal administrative disciplinary processes. Id. at 22 (citing Avant v. Clifford, 67 N.J. 496, 525-530 (1975)). The Custodian contended that to the contrary, OPRA does not contemplate the identity of a requestor: “a record is either confidential or it is not.”

Additional Submissions:

On May 7, 2019, the Complainant submitted a letter refuting the Custodian’s SOI. Therein, the Complainant asserted that if the Custodian believed he sought all individuals’ information in the requested “IPIN” forms, he misconstrued the subject OPRA request. The Complainant argued that he requested “IPIN” logs for a specific time period and not “IPIN” forms. The Complainant asserted that DOC maintained an electronic system that tracked all telephone calls made from their facilities: he sought a printout of all calls he made from that system.

The Complainant noted that, to further narrow his request, he sought the log showing he made phone calls from East Jersey State Prison at approximately 6:00 p.m. on December 23, 2018. The Complainant further argued that this information would allow him to prove that a DOC employee falsified verbal and written statements about his actions on that day.

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 its provisions “*shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . regulation promulgated under the authority of any statute.*” N.J.S.A. 47:1A-9(a) (emphasis added).

To this end, DOC’s regulations provide that:

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 *et seq.* . . . the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 *et seq.*

12. Records and/or content related to inmate phone, e-mail, or visit information;

[N.J.A.C. 10A:22-2.3.]

In the instant complaint, the Complainant submitted an OPRA request seeking access to “IPIN” phone logs for a specific time frame. The Custodian denied the request pursuant to N.J.S.A. 47:1A-1 and N.J.A.C. 10A:22-2.3(a)(12), which exempts all records related to inmate phone information. The Complainant filed the instant complaint arguing that the Custodian misapplied OPRA by denying him access to his own records. The Complainant argued that the Custodian erroneously denied access because DOC’s regulations did not apply to inmates requesting their own records. Citing Grimes, 452 N.J. Super. 396; Ramirez, 382 N.J. Super. 18; Natale, 318 F.3d 575. In the SOI, the Custodian maintained his position that the responsive records were exempt from disclosure under OPRA, pursuant to N.J.S.A. 47:1A-1 and N.J.A.C. 10A:22-2.3(a)(12).

Reviewing Complainant’s OPRA request under the plain meaning of N.J.A.C. 10A:22-2.3, the request was correctly denied by the Custodian. Specifically, the Complainant sought phone information regarding calls he made over a specific time frame. Even though the Complainant later attempted to clarify that he did not seek copies of “IPIN” forms, but rather sought log information, same nonetheless constitutes “inmate phone . . . information” exempt from disclosure. N.J.S.A. 10A:22-2.3(a)(12). Additionally, whether the Complainant sought access to his own phone call information is of no moment here: neither OPRA nor DOC’s OPRA regulations include an exception to this provision allowing for inmates to obtain access to their own records. See Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017) (affirming the Council’s decision in GRC Complaint No. 2014-169 that “[complainant’s] claimed entitlement to a report which is exempt from disclosure under OPRA finds no support in the statute.” Id. at 6.).

Finally, the GRC briefly notes that it agrees with the Custodian's SOI statement that Ramirez, 382 N.J. Super. 18 did not apply here. The same is true of both Grimes, 452 N.J. Super. 396 and Natale, 318 F.3d 575. In each case, any issues of disclosure addressed related to DOC's internal processes and right to due process rather than OPRA. Thus, even if the courts in those cases required disclosure of certain records, such decisions are inapplicable to OPRA and thus not dispositive here.

Accordingly, the records sought by the Complainant are exempt from disclosure pursuant to DOC's regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(12). Further, whether the Complainant sought access to information regarding phone calls he himself made is of no moment here. Spillane, 2017 N.J. Super. Unpub. LEXIS 2392. As such, the Custodian lawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the records sought by the Complainant are exempt from disclosure pursuant to DOC's regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(12). Further, whether the Complainant sought access to information regarding phone calls he himself made is of no moment here. Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017). As such, the Custodian lawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

September 22, 2020