



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

Daniel Caraballo
Complainant

Complaint No. 2019-95

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 Supplemental 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 Complainant’s OPRA request seeking a Pre-Sentence report. N.J.S.A. 47:1A-6. Specifically, Pre-Sentence reports are exempt as “inter-agency, intra-agency advisory, consultative, or deliberative material” under N.J.S.A. 47:1A-1.1. See Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014) (citing DeGeorge, 113 N.J. Super. 542, 544 (App. Div. 1971)).

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**

**Daniel Caraballo¹
Complainant**

GRC Complaint No. 2019-95

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via U.S. mail of a Pre-Sentence (“PSI”) report.³

Custodian of Record: John Falvey
Request Received by Custodian: April 16, 2019
Response Made by Custodian: April 22, 2019
GRC Complaint Received: May 17, 2019

Background⁴

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 April 22, 2019, the Custodian responded in writing denying access to the requested PSI report as “inter-agency or intra-agency advisory, consultative, or deliberative [“ACD”] material.” N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9.

Denial of Access Complaint:

On May 17, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was unlawfully denied access to the PSI report sought. The Complainant did not provide any additional arguments in support of his position.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Stephanie R. Dugger.

³ The Complainant sought additional records that are not issue in this complaint.

⁴ 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 June 13, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 16, 2019. The Custodian certified that he responded in writing on April 22, 2019 denying access to the requested PSI report under the ACD exemption. N.J.S.A. 47:1A-1.1.

The Custodian contended that he lawfully denied access to the requested PSI report. N.J.A.C. 10A:22-2.3; State v. DeGeorge, 113 N.J. Super. 542 (App. Div. 1971). The Custodian stated that PSI reports are mandatory reports created by the courts pursuant to N.J.S.A. 2C:44-6. See N.J. Court Rules, R. 3:21-2(a). The Custodian stated that PSI reports contain multiple factors that the courts rely upon to determine sentencing, including prior criminal history, civil commitment history, and medical history. The Custodian averred that R. 1:38-3(b)(2) expressly states that PSI reports are ACD material. The Custodian argued that both OPRA and the New Jersey Department of Corrections’ (“DOC”) regulations exempt PSI reports from disclosure. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3. The Custodian further argued that both New Jersey’s courts and the GRC have determined that PSI reports were exempt from disclosure under OPRA. DeGeorge, 113 N.J. Super. 542; Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014).

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.

Regarding PSI reports, the Council has previously held that same were exempt from disclosure under the ACD material exemption. In Pitts, GRC 2013-299, the Council found that the contents of PSI reports meet the definition of ACD material. Id. at 4. Most notable, the Council relied upon DeGeorge, 113 N.J. Super. at 542, holding that even if PSI reports are available to defendants in certain judicial proceedings, that in itself “does not render it a public record.” Pitts, GRC 2013-299 at 5. See also Baker v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2014-262 (May 2015).

Here, the Complainant sought a PSI report to which the Custodian denied access under OPRA citing N.J.S.A. 47:1A-1.1. In the SOI, the Custodian maintained his position that he properly denied access to the Complainant’s request under OPRA and cited DeGeorge, and Pitts, GRC 2013-299. A review of the case law provided by the Custodian supports his denial of access. That is, Pitts is on point with the facts here and thus the GRC must follow accordingly by determining that the requested PSI report is exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1.

Therefore, the Custodian lawfully denied access to Complainant's OPRA request seeking a PSI report. N.J.S.A. 47:1A-6. Specifically, PSI reports are exempt as ACD material under N.J.S.A. 47:1A-1.1. See Pitts, GRC 2013-299 (citing DeGeorge, 113 N.J. Super. at 544).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to Complainant's OPRA request seeking a Pre-Sentence report. N.J.S.A. 47:1A-6. Specifically, Pre-Sentence reports are exempt as "inter-agency, intra-agency advisory, consultative, or deliberative material" under N.J.S.A. 47:1A-1.1. See Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2013-299 (September 2014) (citing DeGeorge, 113 N.J. Super. 542, 544 (App. Div. 1971)).

Prepared By: Frank F. Caruso
Executive Director

September 22, 2020