



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 27, 2021 Government Records Council Meeting

Carl Moore
Complainant

Complaint No. 2020-121

v.

NJ Department of Corrections
Custodian of Record

At the July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 20, 2021 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 visitation logs because same are exempt from disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(12) and N.J.S.A. 47:1A-9(a). 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 27th Day of July 2021

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 29, 2021



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 27, 2021 Council Meeting**

**Carl Moore¹
Complainant**

GRC Complaint No. 2020-121

v.

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

Records Relevant to Complaint: Hardcopies via U.S. mail of “records or visitor log[s]” showing Detective Patrick Holt’s visits to the Complainant at South Woods State Prison and New Jersey State Prison from September 2019 through December 2019.

Custodian of Record: John Falvey
Request Received by Custodian: May 8, 2020
Response Made by Custodian: May 12, 2020
GRC Complaint Received: June 15, 2020

Background³

Request and Response:

On May 6, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 12, 2020, the Custodian responded in writing denying the subject OPRA request under N.J.A.C. 10A:22-2.3(a)(12).

Denial of Access Complaint:

On June 15, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was denied access to the requested records but provided no additional arguments in support of his assertion.

Statement of Information:

On October 22, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 8, 2020. The

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Travis M. Anderson.

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.

Custodian certified that he responded in writing on May 12, 2020 denying the subject OPRA request under N.J.A.C. 10A:22-2.3(a)(12).

The Custodian contended that he lawfully denied access to the subject OPRA request based on the New Jersey Department of Corrections' ("DOC") regulation cited in his initial response. The Custodian argued that N.J.A.C. 10A:22-2.3(a)(12), which exempts access to "[r]ecords and/or content related to inmate phone, e-mail or visit information," plainly applies to the records sought in the instant OPRA request.

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:

[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.*, DOC regulations exempt access to "[r]ecords and/or content related to inmate phone, e-mail or visit information." N.J.A.C. 10A:22-2.3(a)(12).⁴

Here, the Complainant's OPRA request sought records pertaining to visitations with Detective Holt over a three-month period. The Custodian denied the request pursuant to N.J.A.C. 10A:22-2.3(a)(12). This complaint ensued, and the Custodian maintained his position in the SOI that the OPRA request sought records pertaining to visitation, which were exempt under DOC regulations. N.J.A.C. 10A:22-2.3(a)(12).

⁴ The Council has also generally held that the fact that requested records pertained or referred to the complainant did not affect whether they were subject to access 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 Serv., 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 (App. Div. 2017). (dismissing appellant's assertion that he was entitled to the requested report because it was about him).

The Complainant's OPRA request seeks records pertaining to Detective Holt's visitation while the Complainant was incarcerated for a three-month period. Such information is expressly exempt from disclosure under OPRA pursuant to N.J.A.C. 10A:22-2.3(a)(12). Thus, it is clear that exemption applies and a lawful denial of access occurred here.

Accordingly, the Custodian lawfully denied access to the Complainant's OPRA request seeking visitation logs because same are exempt from disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(12) and N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant's OPRA request seeking visitation logs because same are exempt from disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(12) and N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

July 20, 2021