



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 31, 2022 Government Records Council Meeting

George R. Melendez
Complainant

Complaint No. 2020-210

v.

NJ Department of Corrections
Custodian of Record

At the May 31, 2022 public meeting, the Government Records Council (“Council”) considered the May 24, 2022 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 responsive CUS-139 form dated November 22, 2019. N.J.S.A. 47:1A-6. Specifically, the form was generated by the Complainant’s allegations against a Department of Corrections employee, which constituted a “grievance filed by or against an individual” N.J.S.A. 47:1A-1.1; Yannone v. N.J. Dep’t of Corr., GRC Complaint No. 2016-73 (October 2017).

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 31st Day of May 2022

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: June 2, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 31, 2022 Council Meeting**

**George R. Melendez¹
Complainant**

GRC Complaint No. 2020-210

v.

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

Records Relevant to Complaint: Hard copies via U.S. mail of Inmate Placement Investigation form CUS-139 filed by New Jersey State Prison (“NJSP”) Sgt. Watters on November 22, 2019.³

Custodian of Record: John Falvey
Request Received by Custodian: December 14, 2019
Response Made by Custodian: January 2, 2020
GRC Complaint Received: October 13, 2020

Background⁴

Request and Response:

On December 14, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 2, 2020, the Custodian responded in writing denied access to the record, stating that it was exempt under N.J.S.A. 47:1A-1.1 as information generated by or on behalf of public employers or employees in connection with any grievance filed by or against an individual.

Denial of Access Complaint:

On October 13, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he needed access to the form to proceed with his rights, as the form documented an alleged assault committed against him. The Complainant included a copy of an inquiry form which indicates the Complainant’s allegations against a DOC officer. The form also indicates that another DOC officer interviewed the Complainant regarding the incident and that a CUS-139 form was completed.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Chanell Branch.

³ The Complainant requested additional records that are not at issue in this matter.

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 November 9, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on December 23, 2019. The Custodian certified that he responded in writing on January 2, 2020, denying access to the requested record.

The Custodian asserted that OPRA exempts “information generated by or on behalf of public employers or employees in connection . . . with any grievance filed by or against an individual.” N.J.S.A. 47:1A-1.1. The Custodian contended that the requested record, a CUS-139 form, is an inmate placement investigation for completion by a supervisor, which allows an inmate to file a complaint or grievance against Department of Corrections (“DOC”) staff or other inmates.

The Custodian asserted that the form asks the inmate several questions that could result in protective custody or separation orders. The Custodian asserted that the form at issue was created when the Complainant filed a grievance against an officer; a public employee. The Custodian therefore argued that the form was exempt from disclosure under OPRA. The Custodian contended that the Complainant had the option of following up with NJSP’s Administration via inquiry to determine the status of his grievance complaint.

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:

A government record shall not include . . . information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer [or] with any grievance filed by or against an individual

[N.J.S.A. 47:1A-1.1.]

In Yannone v. N.J. Dep’t of Corr., GRC Complaint No. 2016-73 (October 2017), the complainant sought a recorded interview of an inmate pertaining to allegations of misconduct against a DOC employee. The Custodian denied access under the grievance exemption. The GRC found that because the recorded interview was borne from allegations of misconduct by an inmate against an employee, the record was exempt from disclosure under OPRA. The GRC also noted that DOC certified that the record pertained to a grievance filing. See also Rodgers v. N.J. Dep’t of Corr., GRC Complaint No. 2007-311 (June 2009).

Here, the Complainant sought access to the form CUS-139 dated November 22, 2019. The Complainant asserted that the form was filed after alleging that a DOC officer assaulted him. The Custodian denied access under OPRA's grievance exemption. N.J.S.A. 47:1A-1.1. In the SOI, the Custodian certified that the CUS-139 form is a form completed by a custody supervisor, which thereby allows an inmate to file a grievance against DOC staff or other inmates.

Upon review, the GRC is satisfied that the record was properly withheld under OPRA, given the factual similarities here and those in Yannone, GRC 2016-73. Specifically, both matters involve records generated from allegations levied by inmates against DOC employees. Furthermore, DOC has certified in both instances that the records pertained to grievances filed by inmates against employees. Lastly, the GRC notes that no *in camera* review is necessary since the Complainant concedes that the record directly pertains to a grievance levied at a DOC employee alleged to have assaulted him.

Accordingly, the Custodian lawfully denied access to the responsive CUS-139 form dated November 22, 2019. N.J.S.A. 47:1A-6. Specifically, the form was generated by the Complainant's allegations against a DOC employee, which constituted a "grievance filed by or against an individual" N.J.S.A. 47:1A-1.1; Yannone, GRC 2016-73.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the responsive CUS-139 form dated November 22, 2019. N.J.S.A. 47:1A-6. Specifically, the form was generated by the Complainant's allegations against a Department of Corrections employee, which constituted a "grievance filed by or against an individual" N.J.S.A. 47:1A-1.1; Yannone v. N.J. Dep't of Corr., GRC Complaint No. 2016-73 (October 2017).

Prepared By: Samuel A. Rosado
Staff Attorney

May 24, 2022