



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 9, 2021 Government Records Council Meeting

Corey Cauthen
Complainant

Complaint No. 2020-215

v.

NJ Department of Corrections
Custodian of Record

At the November 9, 2021 public meeting, the Government Records Council (“Council”) considered the October 26, 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.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(12)-(13). 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 9th Day of November 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: November 15, 2021



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 9, 2021 Council Meeting**

**Corey Cauthen¹
Complainant**

GRC Complaint No. 2020-215

v.

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

Records Relevant to Complaint: Hardcopies via U.S. mail of the Complainant’s “[a]ttorney log visit . . . book from 2010-2011.”

Custodian of Record: John Falvey
Request Received by Custodian: August 17, 2020
Response Made by Custodian: September 9, 2020
GRC Complaint Received: October 21, 2020

Background³

Request and Response:

On August 17, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 9, 2020, the Custodian responded in writing stating that the New Jersey Department of Corrections (“DOC”) did not maintain a separate logbook for attorney visits; thus, attempting to separate out attorney visit entries would substantially disrupt agency operations. The Custodian stated that notwithstanding the forgoing, logbook records are exempt from disclosure under DOC regulations. N.J.A.C. 10A:22-2.3(a)(12)-(13).

Denial of Access Complaint:

On October 21, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was attempting to confirm that his attorney did not visit him during the relevant time period. The Complainant argued that he would be amicable to withdrawing this complaint if the Custodian would check his classification file and confirm that no visits from his attorney occurred in 2010 or 2011.

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.

Statement of Information:

On November 27, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 17, 2020. The Custodian certified that he responded in writing on September 9, 2020 denying the OPRA request because visitation logbooks were not separated by visitation type and were nonetheless exempt from disclosure under OPRA. N.J.A.C. 10A:22-2.3(a)(12)-(13).

The Custodian argued that he lawfully denied access to the subject OPRA request because OPRA permits the application of exemptions present in promulgated regulations. The Custodian affirmed that the subject OPRA request sought visitation logs, which are expressly exempt under DOC’s regulations. N.J.A.C. 10A:22-2.3(a)(12)-(13). The Custodian thus argued that this complaint should be dismissed.

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” and “[l]og books.” N.J.A.C. 10A:22-2.3(a)(12)-(13).⁴

Here, the Complainant’s OPRA request sought copies of a logbook pertaining to visitations with his attorney from 2010-2011. The Custodian denied the request pursuant to N.J.A.C. 10A:22-

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).

2.3(a)(12) and (13), among other reasons. This complaint ensued, and the Custodian maintained his position in the SOI that the OPRA request sought logbooks pertaining to visitation, which were exempt under DOC regulations. N.J.A.C. 10A:22-2.3(a)(12)-(13).

The Complainant's OPRA request clearly seeks access to visitation information through disclose of logbook entries. Such information is expressly exempt from disclosure under OPRA pursuant to N.J.A.C. 10A:22-2.3(a)(12) and (13). Thus, the cited exemptions apply, 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.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(12)-(13). 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.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(12)-(13). N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

October 26, 2021