



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

Carl Gooding
Complainant

Complaint No. 2020-233

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 a list of phone calls from 2006 through 2016 because same is exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(12). 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**

**Carl Gooding¹
Complainant**

GRC Complaint No. 2020-233

v.

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

Records Relevant to Complaint: “[A] list of [the Complainant’s] telephone calls from 2006 to 2016.”

Custodian of Record: John Falvey
Request Received by Custodian: October 31, 2020
Response Made by Custodian: November 17, 2020
GRC Complaint Received: December 8, 2020

Background³

Request and Response:

On October 31, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 17, 2020, the Custodian responded in writing denying access to the subject OPRA request because the N.J. Department of Corrections’ (“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).

Denial of Access Complaint:

On December 8, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted to the extent the responsive record could not be produced, he would accept a list of the individual phone numbers dialed for the same time period identified in his OPRA request.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Raajen V. Bhaskar.

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 December 28, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on October 31, 2020. The Custodian certified that he responded in writing on November 17, 2020 denying access to the Complainant’s OPRA request under N.J.A.C. 10A:22-2.3(a)(12). The Custodian contended that his denial of access was lawful because the Complainant has been incarcerated since 1988 and DOC’s regulations expressly exempt the sought information from access under OPRA.

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, who has been incarcerated since 1988, sought a list of phone calls he made between 2006 and 2016. The Custodian denied the subject OPRA request pursuant to N.J.A.C. 10A:22-2.3(a)(12) and this complaint ensued, wherein the Custodian maintained his denial of access position in the SOI.

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 clearly seeks access to phone call information through a list. Such information is expressly exempt from disclosure under OPRA pursuant to N.J.A.C. 10A:22-2.3(a)(12). Thus, the cited exemption applies, and a lawful denial of access occurred here.

Accordingly, the Custodian lawfully denied access to the Complainant's OPRA request seeking a list of phone calls from 2006 through 2016 because same is exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(12). 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 a list of phone calls from 2006 through 2016 because same is exempt from disclosure pursuant to N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(12). N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

October 26, 2021