



State of New Jersey
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LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 9, 2022 Government Records Council Meeting

Kaseem Ali-X
Complainant

Complaint No. 2021-323

v.

NJ Department of Corrections
Custodian of Record

At the November 9, 2022 public meeting, the Government Records Council (“Council”) considered the October 27, 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 Complainant’s June 23, June 29, and June 30, 2021 OPRA requests seeking logbook entries 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)(13). N.J.S.A. 47:1A-6; See also Cauthen v. N.J. Dep’t of Corr., GRC Complaint No. 2020-215 (November 2021); Azzolini v. N.J. Dep’t of Corr., GRC Complaint No. 2018-26 (November 2019); Hammond v. N.J. Dep’t of Corr., GRC Complaint No. 2017-32 (April 2019).

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 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: November 15, 2022

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 9, 2022 Council Meeting**

**Kaseem Ali-X¹
Complainant**

GRC Complaint No. 2021-323

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint:

June 23, 2021 OPRA request (Status No. 19289): Hardcopies via U.S. mail of:

1. New Jersey State Prison's ("NJSP") Unit 3DD logbook for legal mail outgoing dated May 28, 2021 showing all the mail the Complainant turned in only.

June 29, 2021 OPRA request (Status No. 19310): Hardcopies via U.S. mail of:

1. Unit 3DD of NJSP logbook of dates and times the Complainant was seen by a paralegal from June 17-21, 2019 and September 11-16, 2019.

June 30, 2021 OPRA request (Status No. 19306): Hardcopies via U.S. mail of:

1. All of the Complainant's outgoing mail for May 28, 2021 log book on Unit 3DD of NJSP.
2. All times the Complainant was seen by an inmate paralegal for the month of June 2021 in Unit 3DD's logbook of NJSP.

Custodian of Record: John Falvey

Request Received by Custodian: July 14, 2021 (#19289); July 19, 2021 (#19306 & #19310)³

Response Made by Custodian: July 23, 2021 (#19289); July 28, 2021 & August 5, 2021 (#19306 & #19310)

GRC Complaint Received: December 10, 2021

Background⁴

Request and Response:

June 23, 2021 OPRA request

On June 23, 2021, the Complainant submitted an Open Public Records Act ("OPRA")

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Erica R. Heyer.

³ The Complainant requested additional records in each OPRA request that are not at 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

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request to the Custodian seeking the above-mentioned records. On July 23, 2021, the Custodian responded in writing to the Complainant's June 23, 2021 OPRA request, denying access under N.J.A.C. 10A:22-2.3(a)(13), which exempts "logbooks" from disclosure under OPRA.

June 29, 2021 OPRA request and June 30, 2021 OPRA Request

On June 29 and June 30, 2021, the Complainant submitted a second (2nd) and third (3rd) OPRA request to the Custodian seeking the above-mentioned records. On the July 28, 2021, the Custodian responded in writing to both OPRA requests obtaining a ten (10) business day extension to locate responsive records. On August 5, 2021, the Custodian responded in writing to both OPRA requests denying access to all request items as they sought "logbook" entries and therefore were exempt under N.J.A.C. 10A:22-2.3(a)(13).

Denial of Access Complaint:

On December 10, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that NJSP is supposed to keep records of his legal mail and when he is seen by an inmate paralegal. The Complainant asserted that he needed access to the logbook entries to provide evidence in court. The Complainant also asserted the names of other inmates could be redacted, and he was only concerned with evidence he was entitled to access.

Statement of Information:

On February 8, 2022, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's June 23, 2021 OPRA request on July 14, 2021. The Custodian then certified he received the Complainant's June 29 and June 30, 2021 OPRA requests on July 19, 2021. The Custodian certified he responded in writing to the June 23, 2021 OPRA request on July 23, 2021, denying access to the request. The Custodian affirmed he thereafter sought an extension of ten (10) business days on July 28, 2021 to respond to the June 29 and June 30, 2021 OPRA requests. The Custodian certified he responded to the June 29 and June 30, 2021 OPRA requests on August 5, 2021, denying access to the requested records.

The Custodian contended he lawfully denied access to all three (3) of the Complainant's OPRA requests since they all sought logbook entries, which are expressly exempt under New Jersey Department of Corrections ("NJDOC") regulations. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(13). The Custodian noted the GRC previously upheld NJDOC's denial of access to OPRA requests seeking logbooks. See Cauthen v. N.J. Dep't of Corr., GRC Complaint No. 2020-215 (November 2021); Azzolini v. N.J. Dep't of Corr., GRC Complaint No. 2018-26 (November 2019); Hammond v. N.J. Dep't of Corr., GRC Complaint No. 2017-32 (April 2019).

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a
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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.*, NJDOC regulations exempt access to “[l]og books.” N.J.A.C. 10A:22-2.3(a)(13).⁵

Here, the Complainant’s OPRA requests sought copies of logbook entries pertaining to outgoing mail and instances where he was seen by an inmate paralegal and received legal assistance on various dates from 2019-2021. The Custodian denied the request pursuant to N.J.A.C. 10A:22-2.3(a)(13). This complaint ensued, and the Custodian maintained his position in the SOI that the OPRA request sought logbook entries, which were exempt under NJDOC regulations. Id.

A review of the evidence demonstrates that each of the Complainant’s OPRA requests clearly seek disclosure of logbook entries pertaining to the Complainant’s mail and receipt of legal assistance. Such information is expressly exempt from disclosure under OPRA pursuant to N.J.A.C. 10A:22-2.3(a)(13) and prevailing case law. See Cauthen, GRC 2020-215. Thus, the cited exemption applies, and a lawful denial of access occurred here.

Accordingly, the Custodian lawfully denied access to the Complainant’s June 23, June 29, and June 30, 2021 OPRA requests seeking logbook entries 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)(13). N.J.S.A. 47:1A-6; See also Cauthen, GRC 2020-215; Azzolini, GRC 2018-26; Hammond, GRC 2017-32.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the Complainant’s June 23, June 29, and June 30, 2021 OPRA requests

⁵ 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).

seeking logbook entries 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)(13). N.J.S.A. 47:1A-6; See also Cauthen v. N.J. Dep't of Corr., GRC Complaint No. 2020-215 (November 2021); Azzolini v. N.J. Dep't of Corr., GRC Complaint No. 2018-26 (November 2019); Hammond v. N.J. Dep't of Corr., GRC Complaint No. 2017-32 (April 2019).

Prepared By: Samuel A. Rosado
Staff Attorney

October 27, 2022