



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

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Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

January 30, 2024 Government Records Council Meeting

Rafael D. Brito
Complainant

v.

NJ Department of Corrections
Custodian of Record

Complaint No. 2022-378

At the January 30, 2024 public meeting, the Government Records Council (“Council”) considered the January 23, 2024 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 because the Denial of Access Complaint lacks any factual or legal basis alleging an unlawful denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. 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 30th Day of January 2024

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: February 5, 2024



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 30, 2024 Council Meeting**

**Rafael D. Brito¹
Complainant**

GRC Complaint No. 2022-378

v.

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

Records Relevant to Complaint: Hardcopy of the “Immigration & Naturalization Services” letter issued to Northern State Prison (“NSP”) on April 1, 2022.

Custodian of Record: John Falvey
Request Received by Custodian: July 5, 2022
Response Made by Custodian: July 5, 2022
GRC Complaint Received: August 1, 2022

Background³

Request and Response:

On June 20, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 5, 2022, the Custodian responded in writing denying the request under N.J.A.C. 10A:22-2.3(a)(5).

Denial of Access Complaint:

On August 1, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant failed to provide any argument or support for why he believed he was unlawfully denied access to the record sought other than stating “[s]ee the attached document” and “[p]lease see attached” in reference to the Custodian’s response.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General (“DAG”) Patrick J. Misale. Previously represented by DAG 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 September 30, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 5, 2022 and responded on the same day denying access under N.J.S.A. 10A:22-2.3(a)(5).

The Custodian argued that he could neither confirm nor deny the existence of the record sought. The Custodian contended that such a response is consistent with those offered in N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office, 447 N.J. Super. 182 (App. Div. 2016) and Harmon v. Morris Cnty. Prosecutor’s Office, GRC Complaint No. 2017-38 (February 2019). The Custodian asserted that this response, known colloquially as the “Glomar” response, is permissible where acknowledging the existence of record: 1) would reveal the existence of an investigation not resulting in charges; and 2) violate the “target’s” reasonable expectation of privacy. N. Jersey Media Grp., Inc. at 212.

The Custodian argued that the facts here are on point with precedential case law in that the record sought is a U.S. Immigration and Customs Enforcement (“ICE”) letter alleging a violation. The Custodian argued that acknowledging the existence of the letter would reveal whether a citizenship status investigation into the Complainant was ongoing. The Custodian further argued that acknowledging the existence of the letter prior to issuance of a detainer through Form I-247 could “harm both the individual being investigated and, potentially, the investigation itself.” The Custodian noted that the N.J. Department of Corrections’ (“DOC”) own regulations similarly set forth a process whereby an individual will only be notified of an ICE investigation after it receives a detainer. N.J.A.C. 10A:10-4.4(a)(1). The Custodian also argued that neither confirming nor denying the existence of the letter is also consistent with how ICE responds to requests for its investigatory records under the Freedom of Information Act. See Conti v. U.S. Dep’t of Homeland Security, 2014 U.S. Dist. LEXIS 42544 (S.D.N.Y. March 24, 2014).

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.

A Denial of Access Complaint is not actionable when a complainant fails to provide any factual or legal basis alleging an unlawful denial of access to government records. In Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014), the complainant’s denial of access complaint lacked any arguments or legal precedent in support of his complaint. The Council found that the custodian did not unlawfully deny access to the OPRA request, in part, because the complainant failed to advance any argument in support of his claim. See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014).

Here, the Complainant filed his complaint attaching the Custodian’s response to his OPRA request. However, the Complainant did not include any arguments that could reasonably be considered a claim. Furthermore, the Complainant does not argue, or even attempt to explain why he disagreed with the Custodian’s July 5, 2022 denial, noting only “[s]ee attached document” and “[p]lease see attached” on the Denial of Access Complaint form. Thus, the Complainant failed to advance any argument in support of his claim for an unlawful denial of access to records and this complaint should be dismissed accordingly.⁴ See Loigman, GRC 2013-242.

Accordingly, because the Denial of Access Complaint lacks any factual or legal basis alleging an unlawful denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman, GRC 2013-242; Inzelbuch, GRC 2013-20; Collazo, GRC 2013-310. As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Denial of Access Complaint lacks any factual or legal basis alleging an unlawful denial of access to government records, the Complainant failed to state a claim on which the Council could grant relief. See Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014). As such, the matter should be dismissed. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

January 23, 2024

⁴ The GRC notes that notwithstanding the Complainant’s failure to state a claim here, the Custodian’s original denial of access based on DOC’s regulations appeared to be a lawful basis for denial. See *e.g.* Parker v. N.J. Dep’t of Corr., GRC Complaint No. 2016-199 (September 2018).