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DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

February 18, 2025 Government Records Council Meeting

Thaise Chapman
Complainant

Complaint No. 2024-56

v.

NJ Department of Corrections
Custodian of Record

At the February 18, 2025, public meeting, the Government Records Council (“Council”) considered the February 11, 2025, Supplemental 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 has borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no recordings responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

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 18th Day of February 2025

John A. Alexy, 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 20, 2025



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
February 18, 2025 Council Meeting**

**Thaise Chapman¹
Complainant**

GRC Complaint No. 2024-56

v.

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

Records Relevant to Complaint: Copies of logbook entries from Central Reception and Assignment Facility (“CRAF”) East Two Alphas’ sally port gates from January 2017 through December 2019.³

Custodian of Record: John Falvey
Request Received by Custodian: November 21, 2023
Response Made by Custodian: November 29, 2023
GRC Complaint Received: March 4, 2024

Background

Request and Response:

On or around November 16, 2023, the Complainant submitted a letter to the Commissioner of the New Jersey Department of Corrections (“DOC”) seeking the above-mentioned records. On November 29, 2023, the Custodian responded in writing advising that no responsive records could be located.

Denial of Access Complaint:

On March 4, 2024, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”) including a motion to file within time per N.J.A.C. 5:105-2. The Complainant disputed the denial and noted that she needed the records for an upcoming case.

Further, the Complainant requested that the GRC accept her complaint filed within time because she previously submitted it in December 2023. The Complainant noted that, upon not receiving any response from the GRC, she called and was informed that none was received. The

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Expedito Sean B. Miralles. Previously represented by Deputy Attorney General Dana Paolillo, Esq.

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

Complainant noted that, based on having been informed that her complaint was not received, she refiled her complaint on February 11, 2024.⁴

March 26, 2024 Council Meeting:

At its March 26, 2024 public meeting, the Council considered the March 19, 2024 Administrative Order 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, found that:

The Complainant verified the instant complaint on February 11, 2024, alleging she was denied access to her OPRA request on November 29, 2023, or seventy-four (74) days prior. The Complainant asserted that she previously mailed her complaint to the [GRC] in December 2023. The Complainant noted that after not receiving “an update,” she called the GRC and was informed that no such filing was received. Upon review, the Complainant has shown good cause to permit the complaint to proceed out of time. Therefore, this complaint shall be accepted as filed within time. N.J.A.C. 5:105-2.1(a)

Procedural History:

On March 28, 2024, the Council distributed its Interim Order to all parties.

Statement of Information:

On April 30, 2024, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that he received the Complainant’s OPRA request on November 21, 2023. The Custodian certified that his search involved contacting staff at the appropriate facility to perform a search for the logs, who advised they were unable to locate same. The Custodian certified that he responded in writing on November 29, 2023, denying the subject OPRA request because no records could be located.

The Custodian certified that, upon a reasonable search, no responsive records were located. The Custodian thus contended that no record exists, and no unlawful denial of access occurred. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). The Custodian further noted that had the logbooks existed, they would have been exempt from disclosure under OPRA pursuant to DOC’s regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(13).

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a

⁴ The GRC returned the Denial of Access Complaint because it was out of time and did not include a motion to file within time. The GRC subsequently received a completed Denial of Access Complaint and accompanying motion via e-mail on March 1, 2024.

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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer, GRC 2005-49. Here, the Complainant sought CRAF logbook entries from East Two Alphas’ sally port gates from January 2017 through December 2019. The Custodian responded advising that no responsive records could be located. This complaint followed, wherein the Custodian certified that a search did not yield any responsive records. The Complainant has not provided any evidence to refute this position. Thus, the GRC is compelled to find that Pusterhofer applies here.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request. Specifically, the Custodian certified in the SOI, and the record reflects, that no recordings responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the Complainant’s OPRA request. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no recordings responsive to the OPRA request exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso
Executive Director

February 11, 2025