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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5089-14T2

RICHARD SPILLANE,

Appellant,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondent.

Submitted September 11, 2017 – Decided September 21, 2017

Before Judges Messano and Vernoia.

On appeal from the Government Records Council,
Complaint No. 2014-169.

Richard Spillane, appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent New Jersey State
Parole Board (Lisa A. Puglisi, Assistant
Attorney General, of counsel; Gregory R.
Bueno, Deputy Attorney General, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent Government Records
Council (Debra A. Allen, Deputy Attorney
General, on the statement in lieu of brief).

PER CURIAM

Appellant Richard Spillane appeals from a decision of the Government Records Council (GRC) finding the New Jersey State Parole Board lawfully denied his request for access to a mental health evaluation report under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13. Because we are convinced the GRC correctly determined the requested report was exempt from disclosure under OPRA, we affirm.

Appellant is an inmate serving a life sentence in the custody of the New Jersey Department of Corrections. He was denied parole by the New Jersey State Parole Board and, in a separate appeal, challenges the Parole Board's decision.

A mental health evaluation of appellant was performed at the Parole Board's direction for its use in connection with his parole proceeding. Appellant filed an OPRA request with the Parole Board seeking a copy of the mental health evaluation report.¹ The Parole Board denied the request claiming the report was exempt from disclosure under OPRA.

Appellant filed a complaint with the GRC asserting the Parole Board's denial of access to the report violated OPRA. Following the exchange of submissions by appellant and the Parole Board, the GRC's executive director made findings and recommendations. The

¹ Appellant also requested other items that are not at issue here.

executive director found the report constituted a medical, psychiatric, or psychological record that was exempt from disclosure under OPRA and recommended that the GRC determine the Parole Board lawfully denied access to the report. In its final decision, the GRC adopted the executive director's findings and recommendation. This appeal followed.

We review the GRC's decision under the same standard we apply to the review of any other state agency decision. Fisher v. Div. of Law, 400 N.J. Super. 61, 70 (App. Div. 2008). The determinations and findings of an administrative agency will not be set aside absent "a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008) (citing In re Herrmann, 192 N.J. 19, 28 (2007)). "[U]nder our deferential standard of review, we give weight to the GRC's interpretation of OPRA." McGee v. Twp. of E. Amwell, 416 N.J. Super. 602, 616 (App. Div. 2010). This deference is appropriate in light of the specialized or technical expertise of the agency charged with administration of a regulatory system. In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 488-89 (2004).

Appellant first contends GRC's determination that the report is exempt from disclosure is inconsistent with the policies underlying OPRA's requirements. Appellant relies on Burnett v. Cty. of Bergen, 198 N.J. 408, 414 (2009), where our Supreme Court explained that OPRA is intended to provide access to government records and protect a citizen's personal information. He asserts that neither of those policies are furthered by the Parole Board's denial of his access to a mental health evaluation report about himself and, for that reason, the GRC decision violates OPRA. We disagree.

Although the Court in Burnett described OPRA's purposes and noted OPRA required that "government records 'shall be readily accessible' to the citizens of this State," it also recognized that access to government records under OPRA was "subject to certain exceptions." Ibid. Here, the GRC correctly determined appellant was not entitled to the report because the report is exempted from disclosure under OPRA.

N.J.S.A. 47:1A-1 declares it is the public policy of this State that government records shall be readily accessible. OPRA does not, however, require or permit access to all government records. N.J.S.A. 47:1A-1 bars access to records that are exempt from disclosure under OPRA and "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[,] Executive Order of the Governor, Rules of Court, any federal law, federal regulation, or federal order." Ibid. (emphasis added).

Similarly, N.J.S.A. 47:1A-9 further identifies records that are exempt from disclosure under OPRA. In pertinent part, it provides that OPRA

shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L. 1963, c. 93 [OPRA]; 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; 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).]

The GRC determined that the Parole Board lawfully denied access to the mental health evaluation report under N.J.S.A. 47:1A-9 because the report was exempt from disclosure under Executive Order No. 26 which was issued by Governor James E. McGreevey in 2002. The executive order expressly provides that "[i]nformation relating to [an individual's] medical, psychiatric or psychological history, diagnosis, treatment or evaluation" "shall not be considered to be government records" under OPRA. Exec. Order No. 26 (Aug. 13, 2002), 34 N.J.R. 3043(b)-44 (Sept. 3, 2002).

The GRC also determined appellant was not entitled to access to the report under N.J.A.C. 10A:71-2.2, which regulates the disclosure of information by the Parole Board. The regulation prohibits the Parole Board's disclosure of records that are exempt from disclosure under OPRA, and also exempts from disclosure the following records: "[i]nformation, files, documents, reports, records or other written materials concerning an offender's medical, psychiatric or psychological history, diagnosis, treatment or evaluation." N.J.A.C. 10A:71-2.2.

We discern no basis to reverse the GRC's reliance on Executive Order No. 26 or N.J.A.C. 10A:71-2.2 to support its determination that the requested report was exempted from disclosure under N.J.S.A. 47:1A-1 and -9. The plain language of the executive order and regulation rendered the report exempt from disclosure under OPRA. N.J.S.A. 47:1A-1 and -9. Thus, the GRC correctly determined that the Parole Board lawfully denied appellant access to the report under OPRA.

We are not persuaded by appellant's contention he was entitled to the report under OPRA because the report was about himself. OPRA provides a vehicle for public access to government records. See N.J.S.A. 47:1A-1 (providing that government records "shall be subject to public access"); N.J.S.A. 47:1A-9 (describing records that are exempt from "from public access" under OPRA). OPRA does

not afford appellant a right of personal access to government records that are subject to OPRA's exceptions or exemptions. See MAG Entertainment, LLC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (finding "OPRA provides an alternative means of access to government documents not otherwise exempted from its reach"). As a result, appellant's claimed entitlement to a report which is exempt from disclosure under OPRA finds no support in the statute.

We also reject appellant's assertion that the GRC's application of OPRA's requirements deprived him of due process rights in the parole proceeding before the Parole Board. The GRC has "jurisdiction to adjudicate all complaints about denial of access to a 'government record' based on OPRA." Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346, 353 (App. Div. 2005); see also A.A. v. Gramiccioni, 442 N.J. Super. 276, 282 n.4 (App. Div. 2015) (explaining "[t]he GRC has jurisdiction only over OPRA requests"); accord Ciesla v. N.J. Dep't. of Health, 429 N.J. Super. 127, 146-49 (App. Div. 2012). Here, the GRC exercised its limited jurisdiction to adjudicate only appellant's allegation that the Parole Board violated OPRA by denying access to the report.

The GRC did not decide, nor could it, that appellant had a due process right to the production of the report in his parole proceeding before the Parole Board. See N.J.S.A. 47:1A-9 (granting

the GRC jurisdiction to render a decision as to whether a requested record is a government record that must be accessible to the public under OPRA). Appellant's parole hearing was the subject of a separate proceeding before a different agency, the Parole Board, and appellant's appeal the Parole Board's decision is the subject of a separate proceeding before this court.

We do not offer an opinion as to whether appellant had a right of access to the report, independent of OPRA's requirements, in his parole proceeding. See MAG Entertainment, supra, 375 N.J. Super. at 543 (explaining that a litigant may obtain records through OPRA, the common law right to know, and under the discovery rules applicable to a proceeding). We decide only that the GRC correctly determined the Parole Board properly denied appellant access to the report under OPRA.

Appellant's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION