



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

October 31, 2007 Government Records Council Meeting

Jasmin Hanks
Complainant

Complaint No. 2007-174

v.

NJ Department of Children & Families,
Division of Youth & Family Services
Custodian of Record

At the October 31, 2007 public meeting, the Government Records Council ("Council") considered the October 24, 2007 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 requested records are statutorily exempt from disclosure pursuant to the provisions of N.J.S.A. 9:6-8.10a, and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-9.a. and that no exception to the statutory exemption of N.J.S.A. 9:6-8.10a has been determined to apply based upon the evidence of record.

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 31st Day of October, 2007

Vincent P. Maltese, Chairman
Government Records Council



I attest the foregoing is a true and accurate record of the Government Records Council.

Robin Berg Tabakin, Vice Chairman
Government Records Council

Decision Distribution Date: November 16, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 31, 2007 Council Meeting**

**Jasmin Hanks¹
Complainant**

GRC Complaint No. 2007-174

v.

**NJ Department of Children and Families,
Division of Youth & Family Services²
Custodian of Records**

Records Relevant to Complaint:

Any and all documentation regarding the investigation of T'Keyah Hines,³ including but not limited to case plans, court documents, and any and all other documents within the case file.

Request Made: June 7, 2007 and June 11, 2007

Response Made: June 11, 2007 (both requests)

Custodian: Aileen Williams⁴

GRC Complaint Filed: August 7, 2007

Background

June 7, 2007

Complainant's Open Public Records Act ("OPRA") request on an official OPRA request form. The Complainant requests the records relevant to this complaint listed above. The Complainant submitted her request to the Department of Human Services, Division of Youth and Family Services.

June 11, 2007

Custodian's response to the Complainant's June 7, 2007 OPRA request. The Custodian at the Department of Human Services, Division of Youth and Family Services responded to the Complainant's OPRA request in writing on the second (2nd) business day following receipt of such request. The Custodian states that the requested records are denied because the Department of Human Services no longer maintains such records. The Complainant was informed that the Division of Youth and Family Services is now

¹ No legal representation listed on record.

² Represented by DAG Christian A. Arnold, on behalf of the New Jersey Attorney General.

³ T'Keyah Hines is the Complainant's daughter.

⁴ This is the Custodian for the Department of Children and Families, Division of Youth and Family Services. The Complainant had originally submitted her request to the Custodian for the Department of Human Services, Elena Flynn, who denied the request because the Division of Youth and Family Services was transferred in July of 2006 from the Department of Human Services to the newly created Department of Children and Families.

within the Department of Children and Families (“DCF”), and that the Complainant should resubmit her request accordingly.

June 11, 2007

Complainant’s Open Public Records Act (“OPRA”) request on an official OPRA request form. The Complainant requests the records relevant to this complaint listed above.

June 11, 2007

Custodian’s response to the OPRA request. The Custodian responded to the Complainant’s OPRA request in writing on the same day she received the request. The Custodian states that the requested records are denied because N.J.S.A. 9:6-8.10a requires that all records of child abuse/neglect reports and all information obtained by the Division in investigating such reports shall be held confidential.

June 15, 2007

E-mail from the Complainant to the Custodian. The Complainant expresses her disagreement with the Custodian’s decision to deny her access to the requested records.

August 7, 2007

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- The Complainant’s OPRA request receipt dated June 7, 2007
- The Complainant’s OPRA request receipt dated June 11, 2007
- Copy of N.J.S.A. 9:6-8.10, N.J.S.A. 9:6-8.10a and N.J.S.A. 9:6-8.10b from an apparent on-line source of unknown origin
- E-mail from the Complainant to the Custodian dated June 15, 2007

The Complainant contends that she was unlawfully denied access to the records she requested because the law cited by the Custodian to deny her access contains exceptions for the parent of a child for whom the reports are requested. The Complainant states that two such exceptions apply in her circumstances and she is therefore entitled to inspect and copy the requested reports.

August 17, 2007

Offer of Mediation sent to both parties.

August 17, 2007

Facsimile transmittal from the Complainant to the GRC. The Complainant agreed to mediation.

August 17, 2007

Telephone call from the Custodian’s Counsel to the GRC. The Custodian’s Counsel advised the GRC that he will be on vacation until August 27, 2007 and requested an extension of time to decide on mediation. An extension of time was granted until August 29, 2007 and a confirming e-mail was sent to the Custodian’s Counsel.

August 30, 2007

E-mail from the Custodian’s Counsel to the GRC. The Custodian’s Counsel forwarded a letter declining mediation.

August 30, 2007

Request for the Statement of Information sent to the Custodian.

September 6, 2007

Custodian’s Statement of Information (“SOI”) with the following attachments:

- Complainant’s OPRA request dated June 11, 2007
- E-mail from the Custodian to the Complainant dated June 11, 2007 (with attachment)

The Custodian certifies that the records responsive to the Complainant’s request are protected under the confidentiality provisions of N.J.S.A. 9:6-8.10a and therefore not subject to disclosure under OPRA. The Custodian further certifies that the exceptions in subsections (b)(17) and (b)(19) of N.J.S.A. 9:6-8.10a which the Complainant relies upon to demand disclosure of the records have been taken out of context by the Complainant and do not apply in the Complainant’s situation.

Analysis

Whether the Custodian unlawfully denied access to the requested record?

OPRA provides that:

“.....government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added) N.J.S.A. 47:1A-1.1.

OPRA defines a government record as:

“ ...any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file...or that has been received in the course of his or its official business ...” N.J.S.A. 47:1A-1.1.

OPRA also provides:

“The provisions of this act...shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to...any other statute...” N.J.S.A. 47:1A-9a.

The Custodian certifies that the records responsive to the Complainant's request cannot be disclosed pursuant to the confidentiality provisions of N.J.S.A. 9:6-8.10a, which provides that all records of child abuse reports, all information obtained by the Department of Children and Families in investigating such reports, and all reports of findings forwarded to the child abuse registry "shall be kept confidential and may be disclosed only under the circumstances expressly authorized under subsections b., c., d., e., and g. herein." The Custodian asserts that the confidentiality provisions within subsection b of the statute apply to OPRA through N.J.S.A. 47:1A-1. Although the Custodian cites to the Legislative findings section of OPRA to argue that the confidentiality provisions of N.J.S.A. 9:6-8.10a have not been abrogated by OPRA rather than citing to N.J.S.A. 47:1A-9.a., the GRC recognizes the application of N.J.S.A. 47:1A-9.a. in the present complaint.

The Complainant contends that she was unlawfully denied access to the records, however, because two exceptions in N.J.S.A. 9:6-8.10a(b) provide for the disclosure of the records to her as a parent of the child for whom the reports are sought. The Complainant cites N.J.S.A. 9:6-8.10a(b)(17) which she contends provides as follows: "[the files may be disclosed to] the parent, when information is needed to discuss the case with the department in order to make decisions relating to or concerning the child." The Complainant also cites N.J.S.A. 9:6-8.10a(b)(19) which she contends provides as follows: "[the files may be disclosed to] a parent, when the information is needed in which that parent is directly involved. The information may be released to the requesting parent, to discuss services or the basis for the department's involvement or to develop, discuss, or implement a case plan for the child."

The Custodian disagrees with the Complainant's contention that these exceptions apply in the instant complaint because the language within the exceptions has been taken out of context by the Complainant. The Custodian asserts that N.J.S.A. 9:6-8.10a(b)(17) is applicable only to a written request for records made by **the legal counsel** of a child parent or guardian (emphasis added by the Custodian).

N.J.S.A. 9:6-8.10a(b) provides that "[t]he department may and upon written request, shall release the records and reports referred to in subsection a., or parts thereof, consistent with the provisions of P.L. 1997, c.175 (C.9:6-8.83 et al.) to:

(17) The legal counsel of a child, parent or guardian, whether court-appointed or retained, when information is needed to discuss the case with the department in order to make decisions relating to or concerning the child."

The Custodian certifies that the Complainant is being represented by legal counsel in protective services litigation in Essex County involving her daughter and that if her attorney had relied upon this exception to obtain records deemed necessary to make decisions related to the child, the records would have been released. The Custodian asserts that the Complainant herself, however, cannot rely upon this exception to make a blanket request for all of DCF's child abuse records related to her daughter. Therefore, because the Complainant rather than the Complainant's Counsel asserted this exception,

the exception is not actionable and the Custodian lawfully denied the Complainant access to the records pursuant to same.

The Custodian also disagrees with the Complainant's contention that the requested records should be disclosed pursuant to N.J.S.A. 9:6-8.10a(b)(19). Here, the Custodian asserts the Complainant left out important language when she cited to the exception.

N.J.S.A. 9:6-8.10a(b) provides in relevant part “[t]he department may and upon written request, shall release the records and reports referred to in subsection a., or parts thereof, consistent with the provisions of P.L. 1997, c.175 (C.9:6-8.83 et al.) to:

(19) A parent...when the information is needed in a department matter in which that parent...is directly involved. The information may be released only to the extent necessary for the requesting parent...to discuss services or the basis for the department's involvement or to develop, discuss, or implement a case plan for the child.”

The Custodian certifies that the Complainant has not requested documents in relation to discussing services, the department's involvement or a case plan for her daughter. Accordingly, the exception provided for in N.J.S.A. 9:6-8.10a(b)(19) does not apply and the Custodian lawfully denied the Complainant access to the requested records.

Pursuant to N.J.S.A. 47:1A-9.a., the statutory exemptions from disclosure of N.J.S.A. 9:6-8.10a have not been abrogated by OPRA. Therefore, short of any applicable exception to that statute, that statutory exemption was properly asserted by the Custodian to deny access to the requested records.

OPRA places the responsibility on the Custodian to prove that a denial of access is lawful. Specifically, OPRA provides:

“ The public agency shall have the burden of proving that the denial of access is authorized by law.” N.J.S.A. 47:1A-6.

In this complaint, the evidence reveals the Custodian has met that burden. There was no unlawful denial of access because the requested records are exempt from disclosure pursuant to the provisions of N.J.S.A. 9:6-8.10a recognized by OPRA under N.J.S.A. 47:1A-9.a. and no exception to the statutory exemption of N.J.S.A. 9:6-8.10a has been determined to apply based upon the evidence of record herein.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council find that the requested records are statutorily exempt from disclosure pursuant to the provisions of N.J.S.A. 9:6-8.10a, and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-9.a. and that no exception to the statutory exemption of N.J.S.A. 9:6-8.10a has been determined to apply based upon the evidence of record.

Prepared By:

John E. Stewart
Case Manager/*In Camera* Attorney

Approved By:

Catherine Starghill, Esq.
Executive Director

October 24, 2007