



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

May 28, 2008 Government Records Council Meeting

Nichole Donnell
Complainant

Complaint No. 2008-47

v.

NJ Department of Children & Family Services
Custodian of Record

At the May 28, 2008 public meeting, the Government Records Council (“Council”) considered the May 21, 2008 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted to unanimously 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 under OPRA 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 28th Day of May, 2008

Robin Berg Tabakin, Chairman
Government Records Council



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

David Fleisher, Secretary
Government Records Council

Decision Distribution Date: June 3, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 28, 2008 Council Meeting**

**Nichole Donnell¹
Complainant**

GRC Complaint No. 2008-47

v.

**NJ Department of Children and Family Services²
Custodian of Records**

Records Relevant to Complaint: Any records and reports relating to the Complainant as a ward of the court under DYFS supervision and any records and reports relating to the Complainant's son while under DYFS supervision, up to and including any information only included in electronic format.

Request Made: March 5, 2008

Response Made: March 5, 2008

Custodian: Aileen Williams

GRC Complaint Filed: March 17, 2008

Background

March 5, 2008

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

March 5, 2008

Custodian's response to the OPRA request. The Custodian, according to the evidence of record, responds in writing to the Complainant's OPRA request on the same day she received the request. The Custodian states that access to the requested records is 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 and that no exception to the statute is applicable for this request.

March 13, 2008

E-mail from the Complainant to the GRC. The Complainant forwards her Denial of Access Complaint to the GRC; however, it is not complete.

March 17, 2008

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

¹ No legal representation listed on record.

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

- Complainant's OPRA request dated March 5, 2008
- E-mail from the Complainant to the GRC dated March 13, 2008

The Complainant contends that she is entitled to disclosure of the records she requested because she was a ward of the court under NJ Department of Youth and Family Service ("DYFS") supervision and is seeking her personal records. The Complainant also states she wants access to her son's record for defense purposes. The Complainant did not agree to mediate this complaint.

March 25, 2008

Request for the Statement of Information sent to the Custodian.

March 27, 2008

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA request dated March 5, 2008
- Request receipt from the Custodian to the Complainant wherein the Custodian denies the Complainant's OPRA request dated March 26, 2008³

The Custodian certifies that she did not conduct a search for the requested records because access is prohibited by N.J.S.A. 9:6-8.10a from accessing the records. The Custodian also certifies that because she is barred from accessing the records, she is unable to identify specific records to determine the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that the records that would have been responsive to the Complainant's request are protected under the confidentiality provisions of N.J.S.A. 9:6-8.10a and therefore are not subject to disclosure under OPRA. The Custodian further certifies that N.J.S.A. 9:6-8.10a does provide for several exceptions to the confidentiality requirement but that none of the exceptions are applicable to the Complainant's OPRA request. The Custodian acknowledges that the Complainant may file a motion seeking *in camera* inspection of relevant records pursuant to N.J.S.A. 9:6-8.10a(b)(6); however, such a motion must be filed in her pending custody matter.

The Custodian cites Kaszerman v. Manshel, 176 N.J. Super. 132 (App. Div. 1980) in support of her denial of the Complainant's request. In Kaszerman, the Custodian avers that under a comparable fact pattern the court held that parents can obtain Department of Children and Families ("DCF") child abuse records under limited exceptions but that the plaintiff's request did not meet any of those exceptions. Therefore, denial of access to the requested records was proper. Similarly, in the matter before the Council the Custodian certifies that because the Complainant's request did not meet any of the

³ This is apparently the date a copy of this form was generated for the Custodian to remit with the SOI. The "Request Date" on the form is March 5, 2008. There is no dispute between the parties that the request date and response date is March 5, 2008.

exceptions in N.J.S.A. 9:6-8.10a, denial of her records request was proper pursuant to that statute.

April 1, 2008

E-mail from the GRC to the Complainant. Because it is unclear whether the Complainant received a copy of the SOI from the Custodian, the GRC forwarded a copy of the SOI as an attachment to this e-mail.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

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.

Additionally, 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 ...” (Emphasis added.) 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.

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

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

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.

Here, the Custodian contends that the records that would have been responsive to the Complainant’s request cannot be disclosed pursuant to the confidentiality provisions

of N.J.S.A. 9:6-8.10a and that none of the exceptions to the confidentiality provisions are applicable to the Complainant's request.

N.J.S.A. 9:6-8.10a provides:

“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., f. and g. herein.” N.J.S.A. 9:6-8.10a.

The exceptions to the confidentiality provisions under subsections b., c., d., e., f. and g. provide as follows:

“b. The department may and upon written request, shall release the records and reports referred to in subsection a., or parts thereof, to:

- 1) A public or private child protective agency authorized to investigate a report of child abuse or neglect;
- 2) A police or other law enforcement agency investigating a report of child abuse or neglect;
- 3) A physician who has before him a child whom he reasonably suspects may be abused or neglected or an authorized member of the staff of a duly designated regional child abuse diagnostic and treatment center which is involved with a particular child who is the subject of the request;
- 4) A physician, a hospital director or his designate, a police officer or other person authorized to place a child in protective custody when such person has before him a child whom he reasonably suspects may be abused or neglected and requires the information in order to determine whether to place the child in protective custody;
- 5) An agency, whether public or private, including any division or unit in the Department of Human Services or the Department of Children and Families, authorized to care for, treat, assess, evaluate or supervise a child who is the subject of a child abuse report, or a parent, guardian, resource family parent or other person who is responsible for the child's welfare, or both, when the information is needed in connection with the provision of care, treatment, assessment, evaluation or supervision to such child or such parent, guardian, resource family parent or other person and the provision of information is in the best interests of the child as determined by the Division of Youth and Family Services;
- 6) A court or the Office of Administrative Law, upon its finding that access to such records may be necessary for determination of an issue before it, and such records may be disclosed by the court or the Office of Administrative Law in whole or in part to the law guardian, attorney or other appropriate person upon a finding that

- such further disclosure is necessary for determination of an issue before the court or the Office of Administrative Law;
- 7) A grand jury upon its determination that access to such records is necessary in the conduct of its official business;
 - 8) Any appropriate State legislative committee acting in the course of its official functions, provided, however, that no names or other information identifying persons named in the report shall be made available to the legislative committee unless it is absolutely essential to the legislative process;
 - 9) ...
 - 10) A family day care sponsoring organization for the purpose of providing information on child abuse or neglect allegations involving prospective or current providers or household members pursuant to P.L. 1993, c. 350 and as necessary, for use in administrative appeals related to information obtained through a child abuse registry search;
 - 11) The Victims of Crime Compensation Board, for the purpose of providing services available pursuant to the “Criminal Injuries Compensation Act of 1971, “ P.L. 1971, c. 317 to a child victim who is the subject of such report;
 - 12) Any person appealing a department service or status action substantiated finding of child abuse or neglect and his attorney or authorized lay representative upon a determination by the department or the presiding Administrative Law Judge that such disclosure is necessary for a determination of the issue on appeal;
 - 13) Any person or entity mandated by statute to conduct child abuse or neglect information when conducting a background check or employment-related screening of an individual employed by or seeking employment with an agency or organization providing services to children;
 - 14) Any person or entity conducting a disciplinary, administrative or judicial proceeding to determine terms of employment or continued employment of an officer, employee, or volunteer with any agency or organization providing services for children. The information may be disclosed in whole or in part to the appellant or other appropriate person only upon a determination by the person or entity conducting the proceeding that the disclosure is necessary to make a determination;
 - 15) The members of a county multi-disciplinary team, established in accordance with State guidelines, for the purpose of coordinating the activities of agencies handling alleged cases of child abuse and neglect;
 - 16) A person being evaluated by the department or the court as a potential care-giver to determine whether that person is willing and able to provide the care and support required by the child;
 - 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;
- 18) A person who has filed a report of suspected child abuse or neglect for the purpose of providing that person with only the disposition of the investigation;
 - 19) A parent, resource family parent or legal guardian when the information is needed in a department matter in which that parent, resource family parent or legal guardian is directly involved. The information may be released only to the extent necessary for the requesting parent, resource family parent or legal guardian to discuss services or the basis for the department's involvement or to develop, discuss, or implement a case plan for the child;
 - 20) A federal, State or local government entity, to the extent necessary for such entity to carry out its responsibilities under law to protect children from abuse or neglect;
 - 21) Citizen review panels designated by the State in compliance with the federal "Child Abuse Prevention and Treatment Act Amendments of 1996," Pub.L. 104-235;
 - 22) The Child Fatality and Near Fatality Review Board established pursuant to P.L. 1997, c. 175; or
 - 23) Members of a family team or other case planning group formed by the Division of Youth and Family Services and established in accordance with regulations adopted by the Commissioner of Children and Families for the purpose of addressing the child's safety, permanency or well-being, when the provision of such information is in the best interests of the child as determined by the Division of Youth and Family Services.

Any individual, agency, board, court, grand jury, legislative committee, or other entity which receives from the department the records and reports referred to in section a., shall keep such records and reports, or parts thereof, confidential and shall not disclose such records and reports, or parts thereof except as authorized by law.

c. The department may share information with a child who is the subject of a child abuse or neglect report, as appropriate to the child's age or condition, to enable the child to understand the basis for the department's involvement and to participate in the development, discussion, or implementation of a case plan for the child.

d. The department may release the records and reports referred to in subsection a. of this section to any person engaged in a bona fide research purpose, provided, however, that no names or other information identifying persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and provided further that the approval of the Commissioner of Children and Families or his designee shall first have been obtained.

e. For incidents determined by the department to be substantiated, the department shall forward to the police or law enforcement agency in whose jurisdiction the child named in the report resides, the identity of persons alleged to have committed child abuse or neglect and of victims of child abuse or neglect, their addresses, the nature of the allegations, and other relevant information, including, but not limited to, prior reports of abuse or neglect and names of siblings obtained by the department during its investigation of a report of child abuse or neglect. The police or law enforcement agency shall keep such information confidential.

f. The department may disclose to the public the findings or information about a case of child abuse or neglect which has resulted in a child fatality or near fatality. Nothing may be disclosed which would likely endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person or which may compromise the integrity of a department investigation or a civil or criminal investigation or judicial proceeding. If the department denies access to specific information on this basis, the requesting entity may seek disclosure of the information through the Chancery Division of the Superior Court. No information may be disclosed which is deemed confidential by federal or State law. The name or any other information identifying the person or entity who referred the child to the department shall not be released to the public.

g. The department shall release the records and reports referred to in subsection a. of this section to a unified child care agency contracted with the department pursuant to *N.J.A.C. 10:15-2.1* for the purpose of providing information on child abuse or neglect allegations involving a prospective approved home provider or any adult household member pursuant to section 2 of P.L. 2003, c. 185 to a child's parent when the information is necessary for the parent to make a decision concerning the placement of the child in an appropriate child care arrangement.

The department shall not release any information that would likely endanger the life, safety or physical or emotional well-being of a child or the life or safety of any other person.” N.J.S.A. 9:6-8.10b., c.,d.,e.,g.

Pursuant to N.J.S.A. 47:1A-9.a., the provisions 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.

Accordingly, 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 under OPRA pursuant to 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 under OPRA 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

May 21, 2008