



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Acting Commissioner

FINAL DECISION

April 28, 2010 Government Records Council Meeting

John Torriero
Complainant

Complaint No. 2009-145

v.

New Jersey Department of Children
and Family Services
Custodian of Record

At the April 28, 2010 public meeting, the Government Records Council (“Council”) considered the April 21, 2010 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 28th Day of April, 2010

Robin Berg Tabakin, Chair
Government Records Council



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

Janice L. Kovach, Secretary
Government Records Council

Decision Distribution Date: April 30, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2010 Council Meeting**

**John Torriero¹
Complainant**

GRC Complaint No. 2009-145

v.

**New Jersey Department of Children and Family Services²
Custodian of Records**

Records Relevant to Complaint:

All records pertaining to Steven Torriero between inception of the case on February 21, 2009 and the termination of the agency's involvement on March 23, 2009.

Request Made: March 27, 2009

Response Made: March 27, 2009

Custodian: Aileen Williams

GRC Complaint Filed: April 30, 2009³

Background

March 27, 2009

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 transmitted electronically to the public agency.

March 27, 2009

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the same day as receipt of such request. The Custodian states that access to the requested record is denied pursuant to N.J.S.A. 9:6-8.10a, which states that all records of child abuse/neglect reports and all information obtained by the Division in investigating such reports is confidential.

April 30, 2009⁴

Denial of Access Complaint filed with the Government Records Council ("GRC"). The Complainant asserts that he did not receive a response to the OPRA request. The Complainant does not agree to mediate this complaint.

¹ No legal representation listed on record.

² Represented by DAG Chris Arnold, on behalf of the NJ Attorney General.

³ The GRC received the Denial of Access Complaint on said date.

⁴ The Complainant did not attach a copy of his March 27, 2009 OPRA request to the Denial of Access Complaint.

June 1, 2009

Request for the Statement of Information (“SOI”) sent to the Custodian.

June 10, 2009

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated March 27, 2009
- E-mail from the Custodian to the Complainant dated March 27, 2009 (with attachments)

The Custodian certifies that no search was made for the requested records. The Custodian further certifies that case records maintained by the Division of Youth and Family Services must be retained for 99 years in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management (“DARM”).

The Custodian asserts that no records were provided to the Complainant. The Custodian further asserts that pursuant to N.J.S.A. 9:6-8.10a, “all records of child abuse reports ... and all information obtained by [DCF] in investigating such reports ... shall be kept confidential.” The Custodian contends that the records requested by the Complainant are therefore not subject to public access as they are exempt from disclosure by statute. N.J.S.A. 47:1A-1.

The Custodian argues that maintaining the confidentiality of DCF child abuse records per statute in the face of a blanket request for such records has previously been upheld by the Appellate Division: in Kaszerman v. Manshel, 176 N.J. Super. 132 (App. Div. 1980), the court held that while persons may obtain DCF child abuse records under limited circumstances, the plaintiff’s request did not meet any of those circumstances. The Custodian further argues that similarly, the Complainant’s request herein for DCF child abuse records does not meet any of the exceptions set forth at N.J.S.A. 9:6-8.10(a) and therefore, the denial of access to the requested records was proper.

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-1.1.

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 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 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 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.

The Complainant asserts that he received no response from the Custodian to the OPRA request dated March 27, 2009. The Custodian, however, attached a copy of her e-mail to the Complainant dated March 27, 2009, the same day as receipt of the Complainant’s OPRA request, in which she denied access to the requested records pursuant to N.J.S.A. 9:6-8.10a.

A review of the Custodian’s e-mail response to the Complainant’s OPRA request discloses that the Complainant’s e-mail address is incorrect. In the Denial of Access Complaint, the Complainant noted his e-mail address as ormtors@gmail.com. However, the e-mail address to which the Custodian sent her response to the OPRA request is ormtors@qmail.com. There is no evidence in the record that such error was either knowing or willful on the part of the Custodian. Therefore, it appears from the evidence of record that the Custodian made a good faith attempt to respond to the OPRA request both timely and in writing.

Moreover, the records requested by the Complainant are exempt from disclosure as a matter of law. 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 has not submitted any evidence to the GRC to establish that any of the exceptions in N.J.S.A. 9:6-8.10a(b) provide for the disclosure of the records to him nor did he make such an argument in the Denial of Access Complaint.⁵

⁵ The statutory exemptions allowing disclosure of these records are:

- (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 purpose;
 - (9) (Deleted by amendment, P.L.1997, c.175).
 - (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 ([C.30:5B-25.1](#) et seq.) 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 ([C.52:4B-1](#) et seq.) to a child victim who is the subject of such report;
 - (12) Any person appealing a department service or status action or a 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 consider 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 an 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;
- John Torriero v. New Jersey Department of Children and Family Services, 2009-145 – Findings and Recommendations of the Executive Director

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.

(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 and 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 (C.9:6-8.83 et al.); 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.

Prepared By: Karyn Gordon, Esq.
In House Counsel

Approved By: Catherine Starghill, Esq.
Executive Director

April 21, 2010