



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

March 29, 2011 Government Records Council Meeting

Oswaldo Chaves
Complainant

Complaint No. 2009-217

v.

JFK Medical Center (Middlesex)
Custodian of Record

At the March 29, 2011 public meeting, the Government Records Council (“Council”) considered the March 22, 2011 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the amended findings and recommendations. The Council, therefore, finds that in considering the meaning of a public agency as explained by the court in The Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 368 N.J.Super. 425 (April 2004) and the Council’s decision in Nash v. Children’s Hospital of New Jersey, GRC Complaint No. 2006-13 (May 2006), the information obtained from JFK Medical Center’s website, as well as from the New Jersey State Business Gateway Service’s report supports the conclusion that the Medical Center, wholly owned by Solaris Health Systems, Inc., a private health-care entity which Board of Directors is comprised of private individuals including medical care providers and businesspeople, is not an “instrumentality or agency created by a political subdivision” nor does it perform a “governmental function” as defined by the New Jersey Supreme Court in Lafayette Yard, nor does it affect the “rights, duties, obligations, privileges, benefits or other legal relations of any person.” JFK Medical Center is therefore not a public agency subject to OPRA. N.J.S.A. 47:1A-1 et seq.

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 29th Day of March, 2011



Robin Berg Tabakin, Chair
Government Records Council

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

Charles A. Richman, Secretary
Government Records Council

Decision Distribution Date: April 1, 2011

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 29, 2011 Council Meeting**

**Oswaldo Chaves¹
Complainant**

GRC Complaint No. 2009-217

v.

**JFK Medical Center (Middlesex)²
Custodian of Records**

Records Relevant to Complaint: Operating room records dated February 27, 2004, March 6, 2004 and/or March 9, 2004.

Request Made: Unknown.

Response Made: Unknown.

Contact Person: Sonia Lambdin

GRC Complaint Filed: July 16, 2009³

Background

August 7, 2008

Letter from Complainant to JFK Medical Center. The Complainant discusses his attempt to contact a specific doctor, but does not request copies of any records.

August 8, 2008

Letter from Complainant to JFK Medical Center. The Complainant states that he met with Dr. Constable today in his office and verbally requested copies of his patient records related to his JFK surgery listed on the Medicate papers where Dr. Constable was the assisting surgeon. The Complainant states that the doctor claimed to not have any records. The Complainant asks JFK Medical Center if it or any other hospital routinely submit operating room medical charges to insurance companies on behalf of surgeons.

August 8, 2008

Letter from Complainant to Dr. Kotta M. Ramamurthy, copied to JFK Medical Center. The Complainant requests copies of his patient records and a detailed bill for services previously rendered.

¹ No legal representation listed on record.

² No legal representation listed on record.

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

July 16, 2009

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

- Letter from Complainant to JFK Medical Center dated August 7, 2008
- Letter from Complainant to JFK Medical Center dated August 8, 2008
- Letter from Complainant to Dr. Kotta M. Ramamurthy, copied to JFK Medical Center, dated August 8, 2008⁴

The Complainant states that he submitted records requests to JFK Medical Center on numerous occasions which were ignored. The Complainant states that his phone calls were also ignored until he finally reached the Operating Room Manager who informed the Complainant that Dr. Ramirez, who is listed as receiving Medicare reimbursement for assisting in surgery on February 27, 2004, “works in the O.R. but is not on hospital payroll” and that the Operating Room Manager checked the operating room’s records and Dr. Ramirez did not work on February 27, 2004.

The Complainant agrees to mediate this complaint.

August 5, 2009

Offer of Mediation sent to contact person for JFK Medical Center.

August 6, 2009

E-mail from contact person to GRC. The contact person declines mediation because the contact person asserts that JFK Medical Center is not a public agency. The contact person also states that the Complainant has received copies of his medical records on seven (7) occasions between October 23, 2004 and April 27, 2009.

August 28, 2009

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

August 28, 2009

E-mail from contact person to GRC. The contact person states that she contacted the medical records department and they have no knowledge of any OPRA request from the Complainant. However, the contact person states that she does have on file (6) hospital requests/authorizations from the Complainant for copies of medical records and one (1) from an attorney on the Complainant’s behalf. The contact person states that JFK Medical Center is not a public agency and does not maintain any public records on file.

September 15, 2009

E-mail from GRC to contact person. The GRC states that it is in receipt of the contact person’s August 28, 2009 e-mail wherein the contact person states that she has no record of ever receiving an OPRA request from the Complainant. The GRC requests that the contact person provide a legal certification by the close of business on September 22, 2009 indicating such. The GRC notes the contact person’s assertion that JFK Medical Center is not a public agency under OPRA.

⁴ The Complainant attaches additional records; however, said records are not relevant to the adjudication of this Denial of Access Complaint.

October 1, 2009

Letter from GRC to contact person. The GRC states that on September 15, 2009 it requested a legal certification by the close of business on September 22, 2009 from the contact person. The GRC states that it is not in receipt of the contact person's requested certification. The GRC requests that the contact person provide said certification by the close of business on October 8, 2009.⁵

December 6, 2010

E-mail from GRC to contact person. The GRC states that on August 28, 2009, the contact person submitted an e-mail to the GRC indicating that the JFK Medical Center is not a public agency subject to OPRA. The GRC states that to determine whether or not the JFK Medical Center is a public agency pursuant to OPRA, the GRC needs the following items:

- A copy of the Certificate of Incorporation for the Medical Center, or other documentation that brought the organization into existence;
- A copy of the bylaws for the organization;
- A legal certification stating if any ordinance, resolution or agreements exist which discuss the relationship between the organization and any state or local government agency;
- A copy of the documents referenced in the immediately preceding point.⁶

January 14, 2011

The GRC obtained a Business Entity Status Report from The New Jersey State Business Gateway Service for Solaris Health Systems, Inc. The Status Report indicates that Solaris Health Systems, Inc., is an active nonprofit corporation and has been since 1982. The Status report also lists J.F.K. Health Systems, Inc., as an associated name for Solaris Health Systems, Inc.

Analysis

Whether the JFK Medical Center is a “public agency” under OPRA?

OPRA defines a public agency as:

“...[a]ny of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political

⁵ The contact person failed to respond to the GRC's request for a legal certification and has provided no further correspondence regarding this complaint.

⁶ The contact person failed to respond to the GRC's request for a legal certification and has provided no further correspondence regarding this complaint.

subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions." N.J.S.A. 47:1A-1.1.

Most definitions of "public agency" under New Jersey statutes and the Administrative Code resemble that contained in OPRA. However, the Open Public Meetings Act ("OPMA") defines "public body" as a commission, authority, board, council, committee or any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, or collectively authorized to spend public funds. N.J.S.A. 10:4-8a.

OPMA's definition of public body requires that an entity, "... (1) consist of 'two or more persons' and (2) be 'collectively empowered as a voting body' (3) 'to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person or collectively authorized to spend public funds.' N.J.S.A. 10:4-8a..." The Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 368 N.J.Super. 425, 846 A.2d 659 (April 2004).

In that case, the court held that:

- (1) a private, non-profit corporation created for the express purpose of redeveloping property donated to it by the city of Trenton,
- (2) having a Board of Trustees appointed by the Mayor and City Council,
- (3) with the mandated reversion of the donated property after the completion of the project and repayment of the debt,
- (4) having corporate bylaws requiring the distribution of all assets to the city upon the dissolution or liquidation of the corporation,
- (5) having a Disposition Agreement with the city that designates the city as the "agency" and the corporation as the "redeveloper" pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -49, and
- (6) having the authority to issue tax-exempt bonds for the financing of the project

qualified the corporation as a "public body" under OPMA. The court further held that the corporation was "an 'instrumentality' created by the City and a 'public agency' under the OPRA for essentially the same reasons that it is a 'public body' under the OPMA." *Id.* at 442,670.

The decision of the Superior Court that Lafayette Yard Community Development Corp. qualifies as a "public body" was affirmed by the New Jersey Supreme Court (Times of Trenton, 183 N.J. 519, 874 A.2d 1064 (June 2005)). See also Snyder v. American Association of Blood Banks, 144 N.J. 269, 676 A.2d 1036 (1996) (finding that the legislature did not create or authorize the AABB to perform a specific governmental

purpose); Williams v. National Car Rental System, Inc., 225 N.J.Super. 164, 541 A.2d 1125 (App. Div. 1988) (finding that the broad powers conferred upon the Port Authority leave no doubt that it is a public authority or public agency); Blazer Corporation v. NJ Sports and Exposition Authority, 195 N.J.Super. 542, 480 A.2d 953 (App. Div. 1984) (citing Wade v. N.J. Turnpike Authority, 132 N.J.Super. 92, 332 A.2d 232 (Law Div. 1975), "[t]he Court noted the official comment to N.J.S.A. 59:1-3: 'The definition of 'Public Entity' provided in this section is intended to be all inclusive and to apply uniformly throughout the State of New Jersey to all entities exercising governmental functions.'").

Additionally, two rules in the Administrative Code define "public agency" more precisely than other rules and statutes by adding the following language to the usual definition, "... agencies exercising sovereign powers of government." This language is very illustrative of the meaning of public agencies, as explained by the court in the Times of Trenton cases cited above. While other state statutes and rules do not include this language, it appears that the New Jersey Supreme Court confirms that "exercising sovereign powers of government" is required for an entity to be deemed a public body or agency.

In the current complaint, the contact person contends that the JFK Medical Center is not a public agency subject to the requirements of OPRA. Although the contact person has not provided any documentation to the GRC to support her assertion, the GRC accessed pertinent information from JFK Medical Center's website, as well as the New Jersey State Business Gateway Service. As such, the Council takes judicial notice of the information contained on said websites and report which describes the agency's function and structure.

Pursuant to *N.J.A.C. 1:1-15.2(a)* and (b), official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. The Appellate Division has held that it was appropriate for an administrative agency to take notice of an appellant's record of convictions, because judicial notice could have been taken of the records of any court in New Jersey, and appellant's record of convictions were exclusively in New Jersey. *See Sanders v. Division of Motor Vehicles*, 131 N.J. Super. 95 (App.Div. 1974).

First, JFK Medical Center's website (www.jfkmc.org) indicates that the Medical Center is an affiliate of Solaris Health System ("Solaris"). Solaris' website (www.solarishs.org) can be accessed directly from JFK Medical Center's website. On said site, Solaris maintains the fiscal year 2008 financial statements for JFK Medical Center. According to the financial statement prepared by an independent auditor, JFK Medical Center is not-for-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code, and a controlled entity of Solaris Health System, Inc. Additionally, according to its 2008 financial statement, Solaris derives its income from short and long term investments, derivatives, financial instruments, beneficial interests in perpetual trust and other private sources including rental properties.

Additionally, according to the Business Entity Status Report the GRC obtained from the New Jersey State Business Gateway Service's website (www.state.nj.us/treasury/revenue/) regarding Solaris Health Systems, Inc., said agency is an active nonprofit corporation and has been 1982. The Status report also lists J.F.K. Health Systems, Inc., as an associated name for Solaris Health Systems, Inc.

An entity must meet two (2) requirements to be considered a public agency subject to the provisions of OPRA. Lafayette Yard, *supra*. An entity must perform a specific governmental function affecting the rights, duties, obligations, privileges, benefits or other legal relations of any other person. *Id.* Also, said entity must also have the collective authority to spend public funds. *Id.*

In Nash v. Children's Hospital of New Jersey, GRC Complaint No. 2006-13 (May 2006), the Council determined that a hospital was not a public agency subject to OPRA where the Certificate of Incorporation showed that the hospital was a private, not-for-profit corporation created exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 and having a Board of Trustees appointed by the sole member of the corporation, which was St. Barnabas Corporation, a New Jersey non-profit corporation. Moreover, the hospital's Certificate of Incorporation provided that in the event that the corporation's charter is surrendered to, taken away by or revoked by St. Barnabas Corporation, the corporation shall dissolve and the remaining assets of the corporation shall be distributed to a non-profit fund, foundation or organization which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986.

Thus, in considering the meaning of a public agency as explained by the court in the Lafayette Yard case and the Council's decision in Nash, the information obtained from JFK Medical Center's website, as well as from the New Jersey State Business Gateway Service's report supports the conclusion that the Medical Center, wholly owned by Solaris Health Systems, Inc., a private health-care entity which Board of Directors is comprised of private individuals including medical care providers and businesspeople, is not an "instrumentality or agency created by a political subdivision" nor does it perform a "governmental function" as defined by the New Jersey Supreme Court in Lafayette Yard, nor does it affect the "rights, duties, obligations, privileges, benefits or other legal relations of any person." JFK is therefore not a public agency subject to OPRA. N.J.S.A. 47:1A-1 et seq.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that in considering the meaning of a public agency as explained by the court in The Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 368 N.J.Super. 425 (April 2004) and the Council's decision in Nash v. Children's Hospital of New Jersey, GRC Complaint No. 2006-13 (May 2006), the information obtained from JFK Medical Center's website, as well as from the New Jersey State Business Gateway Service's report supports the conclusion that the Medical Center, wholly owned by Solaris Health Systems, Inc., a private health-care entity which Board of Directors is

comprised of private individuals including medical care providers and businesspeople, is not an “instrumentality or agency created by a political subdivision” nor does it perform a “governmental function” as defined by the New Jersey Supreme Court in Lafayette Yard, nor does it affect the “rights, duties, obligations, privileges, benefits or other legal relations of any person.” JFK Medical Center is therefore not a public agency subject to OPRA. N.J.S.A. 47:1A-1 et seq.

Prepared By: Dara Lownie
Communications Manager

Approved By: Catherine Starghill, Esq.
Executive Director

March 22, 2011