



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**September 24, 2013 Government Records Council Meeting**

David T. Johnson  
Complainant

Complaint No. 2013-40

v.

NJ Department of Children & Families  
Custodian of Record

At the September 24, 2013 public meeting, the Government Records Council (“Council”) considered the September 17, 2013 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 original Custodian did not unlawfully deny access to the Complainant’s OPRA request because the requested records are exempt from disclosure. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 9:6-8.10(a). See Torriero v. NJ Dep’t of Children & Family Services, GRC Complaint No. 2009-145 (April 2010); Downing v. NJ Dep’t of Children & Families, GRC Complaint No. 2010-295 (April 2012).

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 24th Day of September, 2013

Robin Berg Tabakin, Esq., Chair  
Government Records Council



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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: September 26, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 24, 2013 Council Meeting**

**David T. Johnson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-40**

v.

**New Jersey Department of Children & Families<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copy of child interview for J.J. and report prepared on or about December 1, 2012 by Tiesha Valentine and another employee of the Burlington County Special Response Unit (“BCSRU”).

**Custodian of Record:** Catherine Schafer, Esq.<sup>3</sup>  
**Request Received by Custodian:** December 12, 2012  
**Response Made by Custodian:** December 12, 2012  
**GRC Complaint Received:** January 30, 2013

**Background<sup>4</sup>**

**Request and Response:**

On December 12, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the original Custodian responded in writing denying access to the responsive records pursuant to N.J.S.A. 9:6-8.10a.

**Denial of Access Complaint:**

On January 30, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputes the original Custodian’s denial of access but provides no arguments as to the disclosability of the record at issue.

The Complainant contends that he has advocated neglect and abuse issues regarding J.J. since J.J.’s birth. The Complainant asserts that the records at issue relate to an interview in which

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The original custodian of record was Aileen Williams.

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

J.J. purportedly complained about current living conditions and requested to live with the Complainant.

Statement of Information:

On March 1, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian states that N.J.S.A. 47:1A-9(a) provides that OPRA “... shall not abrogate any exemption ... made pursuant to any other statute ...” The Custodian states that N.J.S.A. 9:6-8.10a provides that “[a]ll records of abuse/neglect reports and all information obtained by the Division in investigating such reports is confidential.” The Custodian contends that the Complainant sought records that fall within this exemption and that the Council should uphold the original Custodian’s denial of access and dismiss this complaint.

Analysis<sup>5</sup>

Unlawful Denial of Access

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.

OPRA provides that its provisions “... shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute ... regulation promulgated under the authority of any statute or Executive Order of the Governor ...” N.J.S.A. 47:1A-9(a). Additionally, N.J.S.A. 9:6-8.10a provides that “[a]ll records of abuse/neglect reports and all information obtained by the Division in investigating such reports is confidential.” The GRC notes that the statute contains certain exceptions, but none are applicable to the facts here. N.J.S.A. 9:6-8.10a(b).

Here, the GRC is satisfied that the original Custodian’s denial of access was lawful. Specifically, the Complainant indicated in the Denial of Access Complaint that J.J. was the subject of neglect and abuse and that the requested reports related to both. The plain language of N.J.S.A. 9:6-8.10a clearly exempts this information. Additionally, no evidence in the record establishes that any of the exceptions contained in N.J.S.A. 9:6-8.10a(b) apply.

The original Custodian did not unlawfully deny access to the Complainant’s OPRA request because the requested records are exempt from disclosure. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 9:6-8.10(a). See Torriero v. NJ Dep’t of Children & Family Services, GRC Complaint No. 2009-145 (April 2010); Downing v. NJ Dep’t of Children & Families, GRC Complaint No. 2010-295 (April 2012).

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<sup>5</sup> There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the original Custodian did not unlawfully deny access to the Complainant's OPRA request because the requested records are exempt from disclosure. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 9:6-8.10(a). See Torriero v. NJ Dep't of Children & Family Services, GRC Complaint No. 2009-145 (April 2010); Downing v. NJ Dep't of Children & Families, GRC Complaint No. 2010-295 (April 2012).

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Brandon D. Minde, Esq.  
Executive Director

September 17, 2013