



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 30, 2021 Government Records Council Meeting

David Drukaroff
Complainant

Complaint No. 2019-100

v.

Ocean County Board of Social Services
Custodian of Record

At the March 30, 2021 public meeting, the Government Records Council (“Council”) considered the March 23, 2021 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 because N.J.S.A. 52:27D-406 provides that “[a]ll records and communications pertaining to any report, evaluation, or service provided pursuant to this act¹ are confidential,” and because the requested “Adult Protective Services file regarding Mildred Drukaroff” is a record made pursuant to said act, and because said act is a statute, the confidentiality provisions of which are not abrogated by OPRA, the Custodian has borne her burden of proving that she lawfully denied access to the requested record. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). As such, it is unnecessary for the Council to consider the other reasons asserted by the Custodian for denying access to the requested 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 30th Day of March 2021

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: April 1, 2021



N.J.S.A. 52:27D-406 et seq.

New Jersey is an Equal Opportunity Employer • Printed on Recycled paper and Recyclable

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 30, 2021 Council Meeting**

**David Drukaroff¹
Complainant**

GRC Complaint No. 2019-100

v.

**Ocean County Board of Social Services²
Custodial Agency**

Records Relevant to Complaint: A copy of the entire Adult Protective Services file regarding Mildred Drukaroff.

Custodian of Record: Linda Murtagh
Request Received by Custodian: April 22, 2019
Response Made by Custodian: April 30, 2019
GRC Complaint Received: May 28, 2019

Background³

Request and Response:

On April 22, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 30, 2019, the sixth (6th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that his request was denied pursuant to the Adult Protective Services Act, N.J.S.A. 52:27D-406 et seq. (“APS Act”). The Custodian also informed the Complainant that the requested record is not subject to disclosure under OPRA’s privacy interest exemption N.J.S.A. 47:1A-1 and N.J.A.C. 10:90-7.7, which provides that information about applicants or recipients of public assistance benefits shall only be used or disclosed for purposes directly related to the administration of public assistance and related services.

Denial of Access Complaint:

On May 28, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on April 30, 2019, the Custodian denied him access to the requested record on the grounds of privacy. The Complainant

¹ No legal representation listed on record.

² Represented by Colleen R. Golin, Esq. (Toms River, NJ).

³ 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.

stated that Mildred Drukaroff is now deceased; therefore, her privacy rights have ended. The Complainant stated that he is co-executor of Ms. Drukaroff's estate, and that he attached a copy of her death certificate to the complaint.

Statement of Information:

On June 5, 2019, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on April 22, 2019, and responded in writing on April 30, 2019.

The Custodian certified that the Ocean County Board of Social Services is the designated Adult Protective Services provider in Ocean County. The Custodian certified that the APS Act is applicable to Adult Protective Services records of the Ocean County Board of Social Services, and under N.J.S.A. 47:1A-9, meets OPRA's criteria for honoring a statute prohibiting disclosure of agency records. The Custodian certified that subsection 420 of the APS Act mandates that all records generated in connection with services provided pursuant to the APS Act are kept confidential. The Custodian further certified that the requested record is also exempt from access under N.J.S.A. 47:1A-1, which provides a privacy exemption for records exempt from public access by law or regulation and delineates a public agency's obligation to safeguard access when disclosure would violate a citizen's reasonable expectation of privacy.

The Custodian certified that for the aforementioned reasons, the requested record is not subject to disclosure under OPRA. Moreover, the Custodian certified that there is no exception for the death of a former Adult Protective Services client; therefore, the Ocean County Board of Social Services has a duty to maintain and protect the privacy and confidentiality of the Adult Protective Services records regarding Mildred Drukaroff.

Additional Submissions:

On June 6, 2019, the Complainant responded to the Custodian's SOI. The Complainant asserted that, as pointed out by the Custodian, OPRA requires a custodian to safeguard a citizen's reasonable expectation of privacy. The Complainant argued that the operative word is "REASONABLE not ABSOLUTE" (emphasis in original). The Complainant also stated that, based on the behavior of Ocean County Board of Social Services employees, he has concluded that he stands accused of abusive behavior towards his mother, i.e., Mildred Drukaroff. The Complainant stated that he wants to know who accused him and what they accused him of doing. The Complainant stated that he will send a separate e-mail "illustrating the evil of faceless informants."⁴

⁴ On the same date, the Complainant sent the referenced e-mail; however, the e-mail's content is not relevant because it does not serve to refute the Custodian's SOI.

Analysis

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 further provides that:

The provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a).]

The Custodian denied the Complainant access to the requested Adult Protective Services file regarding Mildred Drukaroff by citing as reasons for denial (1) the APS Act; (2) OPRA’s privacy interest exemption, N.J.S.A. 47:1A-1; and (3) N.J.A.C. 10:90-7.7, which addresses the confidentiality of information about applicants or recipients of Work First New Jersey Program benefits. Conversely, the Complainant argued that because Mildred Drukaroff has died, the requested record is no longer confidential since the need for privacy no longer exists.

Subsection 420 of the APS Act provides:

All records and communications pertaining to any report, evaluation, or service provided pursuant to this act are confidential. All third party information, together with the identities of the reporters, witnesses and the adults allegedly in need of protective services are confidential, except disclosures which may be necessary for the commissioner or the county adult protective services provider to perform his duties and to support any findings that may result from the evaluation of a report.

[N.J.S.A. 52:27D-420.]

The Custodian certified that the requested records are to be kept confidential pursuant to N.J.S.A. 52:27D-420, and are not subject to public disclosure under OPRA by operation of N.J.S.A. 47:1A-9. The Custodian further certified that there is no exception for the death of a former Adult Protective Services client. The Complainant failed to provide any evidence to refute the Custodian’s certification.

Therefore, because N.J.S.A. 52:27D-406 provides that “[a]ll records and communications pertaining to any report, evaluation, or service provided pursuant to this act⁵ are confidential,” and because the requested “Adult Protective Services file regarding Mildred Drukaroff” is a record made pursuant to said act, and because said act is a statute, the confidentiality provisions of which are not abrogated by OPRA, the Custodian has borne her burden of proving that she lawfully denied access to the requested record. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). As such, it is unnecessary for the Council to consider the other reasons asserted by the Custodian for denying access to the requested record.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because N.J.S.A. 52:27D-406 provides that “[a]ll records and communications pertaining to any report, evaluation, or service provided pursuant to this act⁶ are confidential,” and because the requested “Adult Protective Services file regarding Mildred Drukaroff” is a record made pursuant to said act, and because said act is a statute, the confidentiality provisions of which are not abrogated by OPRA, the Custodian has borne her burden of proving that she lawfully denied access to the requested record. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a). As such, it is unnecessary for the Council to consider the other reasons asserted by the Custodian for denying access to the requested record.

Prepared By: John E. Stewart
Staff Attorney

March 23, 2020

⁵ N.J.S.A. 52:27D-406 et seq.

⁶ N.J.S.A. 52:27D-406 et seq.