



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

August 30, 2022 Government Records Council Meeting

Edward Farley Aizen
Complainant

Complaint No. 2021-1

v.

NJ Department of Children and Families,
Division of Child Protection & Permanency
Custodian of Record

At the August 30, 2022 public meeting, the Government Records Council ("Council") considered the August 23, 2022 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 Custodian did not unlawfully deny access to the Complainant's OPRA request because the responsive records are exempt from disclosure pursuant to N.J.S.A. 9:6-8.10a, applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6. Furthermore, the Complainant failed to show that any exception in N.J.S.A. 9:6-8.10a(b) applies to permit access to the responsive records. See Downing v. N.J. Dep't of Children & Families, GRC Complaint No. 2010-295 (April 2012); Johnson v. N.J. Dep't of Children & Families, GRC Complaint No. 2013-40 (September 2013).

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 August 2022

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 1, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 30, 2022 Council Meeting**

**Edward Farley Aizen¹
Complainant**

GRC Complaint No. 2021-1

v.

**New Jersey Department of Children and Families,
Division of Child Protection and Permanency²
Custodial Agency**

Records Relevant to Complaint: Letter size paper copies of “[A]ll records from 1970-78 . . . all medical documentation, all correspondence between the Willingboro Police Department and ‘DYFS’ . . . all information between case managers working on my case on the date of October 6, 1971 and the State Department. In other words, any documentation in my name . . .”³

Custodian of Record: Sybil R. Trotta
Request Received by Custodian: December 10, 2020
Response Made by Custodian: December 22, 2020
GRC Complaint Received: January 6, 2021

Background⁴

Request and Response:

On December 10, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 22, 2020, the Custodian responded in writing informing the Complainant that she could not confirm or deny the existence of the responsive records. The Custodian further stated that if the requested records are records of an investigation of child abuse and neglect, the request is denied pursuant to N.J.S.A. 9:6-8.10a. The Custodian stated that the statute applies to OPRA pursuant to N.J.S.A. 47:1A-9(a). The Custodian informed the Complainant that in limited circumstances he may seek access to the requested records outside of OPRA pursuant to N.J.S.A. 9:6-8.10a(b).

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Sara M. Gregory.

³ DYFS is the acronym for the New Jersey Division of Youth and Family Services which is the former name of the Custodial Agency.

⁴ 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.

Edward Farley Aizen v. New Jersey Department of Children and Families, Division of Child Protection and Permanency, 2021-1 – Findings and Recommendations of the Executive Director

Denial of Access Complaint:

On January 6, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian, citing N.J.S.A. 9:6-8.10a, denied him access to the entire record he requested. The Complainant stated that the Custodian could release any record that “sits outside of the ‘N.J.S.A. 9:6-8.10a’.” The Complainant stated that in 1993, with assistance of legal counsel, he received the bulk of the Division of Youth and Family Services record.⁵ The Complainant stated, “I know as a fact, that the entire record does not simply or only pertain to ‘an investigation of child abuse and neglect.’ Therefore, [the Custodian’s] denial is unreasonable and in utter violation of the very New Jersey Statute she cited.” The Complainant demanded the Custodian disclose the requested records to him.

Statement of Information:

On February 9, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on December 10, 2020. The Custodian certified that she responded in writing on December 22, 2020. The Custodian certified that she searched New Jersey Spirit, which is the official record of the Division of Child Protection and Permanency (“DCP&P”). The Custodian further certified that when the Complainant’s name was not located in that database, she contacted the closed record department. The Custodian certified that the closed record department conducted a search and located a single closed investigatory abuse and neglect file relating to the Complainant which is comprised of six hundred sixty-six (666) pages.

The Custodian certified that all information obtained by DCP&P relating to the report and investigation of child abuse is confidential pursuant to N.J.S.A. 9:6-8.10a(a). The Custodian certified that the records requested by the Complainant fall under the purview of this statute and are thus confidential and not subject to disclosure. The Custodian certified that even when disclosure is permitted under N.J.S.A. 9:6-8.10a(b), “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.” The Custodian certified that the “Complainant has not cited to any exceptions to confidentiality, nor do any apply to this request.” N.J.S.A. 9:6-8.10a(b). The Custodian certified that the provisions of N.J.S.A. 9:6-8.10a apply to OPRA pursuant to N.J.S.A. 47:1A-9(a).

Additional Submissions:

On the morning of April 29, 2022, the Complainant e-mailed the GRC in response to the Custodian’s SOI. The Complainant asserted that the Custodian stated that his OPRA request was denied under N.J.S.A. 9:6-8.10a. The Complainant asserted that the Custodian neglected to point out an exception within the statute which provides that “. . . a victim of a crime shall have access to the victim’s own records.” The Complainant argued that he is a victim of a crime which was

⁵ The Complainant did not identify the specific record(s) he allegedly received.

Edward Farley Aizen v. New Jersey Department of Children and Families, Division of Child Protection and Permanency, 2021-1 – Findings and Recommendations of the Executive Director

committed by the State of New Jersey. The Complainant stated that the only other person who could be considered a victim is deceased. The Complainant stated that “[t]he issue I am raising before the [GRC] concerns a fraudulent social security number which the New Jersey Department of Children and Families (NJDCF) filed on my behalf in 1973 and 1976.” The Complainant stated that he needs an explanation why the first three numbers in his deceased father’s social security number was changed to his social security number.

The Complainant further cited several provisions of OPRA and stated that “[i]f a records custodian is unable to comply with a request for access, the custodian must indicate the specific basis in writing.” Finally, the Complainant stated that he is entitled to mediation and would be willing to participate in a Zoom conference.⁶

On the same date, the GRC by reply e-mail informed the Complainant that “N.J.S.A. 9:6-8.10a is applicable to OPRA pursuant to N.J.S.A. 47:1A-9. The exceptions in N.J.S.A. 47:1A-1.1 do not apply here. You seem to be confusing the two statutes . . .”

During the afternoon of April 29, 2022, the Complainant submitted another e-mail which contained content similar to his morning e-mail. The Complainant asked the GRC to forward the e-mail to the Custodian, and the GRC complied with his request to forward the e-mail.

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 “[t]he 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-9(a). Additionally, N.J.S.A. 9:6-8.10a provides that “[a]ll records of child abuse reports . . . all information obtained by [DCP&P] in investigating such reports . . . shall be kept confidential . . .”

The Council has previously found that unless certain exceptions exist, records related to child abuse maintained by DCP&P are exempt from disclosure. N.J.S.A. 9:6-8.10a; N.J.S.A. 47:1A-9(a). In Downing v. N.J. Dep’t of Children & Families, GRC Complaint No. 2010-295 (April 2012), the complainant filed an OPRA request for a copy of an investigation report prepared by the Department of Children & Families. The complainant argued that pursuant to N.J.S.A. 9:6-10(b)(12), she should be entitled to these records on behalf of her daughter. The custodian denied the complainant access to the records pursuant to N.J.S.A. 9:6-8.10a. The Council found that the custodian’s denial of access was lawful because the requested records were exempt from disclosure

⁶ The Complainant in the Denial of Access Complaint declined to participate in mediation.

Edward Farley Aizen v. New Jersey Department of Children and Families, Division of Child Protection and Permanency, 2021-1 – Findings and Recommendations of the Executive Director

pursuant to the provisions of N.J.S.A. 9:6-8.10a and N.J.S.A. 47:1A-9(a). Additionally, the Council found that the complainant's assertion in favor of disclosure pursuant to N.J.S.A. 9:6-8.10(b)(12) was incorrect, and that the complainant failed to show that any exception of N.J.S.A. 9:6-8.10(b) applied to the matter to permit her access to the requested records.

Subsequently, in Johnson v. N.J. Dep't of Children & Families, GRC Complaint No. 2013-40 (September 2013), the Council found that the custodian did not unlawfully deny access to the complainant's OPRA request for a copy of a child interview because the plain language of N.J.S.A. 9:6-8.10a clearly exempted the requested records. Additionally, the Council determined that none of the exceptions contained in N.J.S.A. 9:6-8.10a(b) applied.

Here, the Complainant sought copies of "all" records held by DCP&P "in my name." The Custodian certified that such records related to the report and investigation of child abuse and are confidential pursuant to N.J.S.A. 9:6-8.10a(a), applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). As such, the Custodian denied the Complainant's request. Moreover, the Complainant did not list any exceptions in N.J.S.A. 9:6-8.10a(b) that would warrant disclosure. Although the Complainant asserted that the statute provides that "... a victim of a crime shall have access to the victim's own records," he is mistaken because no such provision is contained within N.J.S.A. 9:6-8.10a(b).⁷

Therefore, the Custodian did not unlawfully deny access to the Complainant's OPRA request because the responsive records are exempt from disclosure pursuant to N.J.S.A. 9:6-8.10a, applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6. Furthermore, the Complainant failed to show that any exception in N.J.S.A. 9:6-8.10a(b) applies to permit access to the responsive records. See Downing, GRC 2010-295; Johnson, GRC 2013-40.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant's OPRA request because the responsive records are exempt from disclosure pursuant to N.J.S.A. 9:6-8.10a, applicable to OPRA by operation of N.J.S.A. 47:1A-9(a). N.J.S.A. 47:1A-6. Furthermore, the Complainant failed to show that any exception in N.J.S.A. 9:6-8.10a(b) applies to permit access to the responsive records. See Downing v. N.J. Dep't of Children & Families, GRC Complaint No. 2010-295 (April 2012); Johnson v. N.J. Dep't of Children & Families, GRC Complaint No. 2013-40 (September 2013).

Prepared By: John E. Stewart

August 23, 2022

⁷ The statutory language the Complainant asserted is contained within OPRA's definition of a "[v]ictim's record." N.J.S.A. 47:1A-1.1. The language is not contained within N.J.S.A. 9:6-8.10a(b) as an exception to the confidentiality provisions of N.J.S.A. 9:6-8.10a(a). As the GRC informed the Complainant on April 29, 2022, he is confusing the two statutes.

Edward Farley Aizen v. New Jersey Department of Children and Families, Division of Child Protection and Permanency, 2021-1 – Findings and Recommendations of the Executive Director