



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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**September 29, 2016 Government Records Council Meeting**

Melissa Bailey  
Complainant

Complaint No. 2015-159

v.

NJ Department of Children and Families  
Custodian of Record

At the September 29, 2016 public meeting, the Government Records Council (“Council”) considered the August 23, 2016 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 properly denied access because the requested records are statutorily exempt from disclosure pursuant to N.J.S.A. 9:6-8.10(a) as made applicable to OPRA pursuant to N.J.S.A. 47:1A-9(a). The Complainant did not cite any exception listed in N.J.S.A. 9:6-8.10(a). In addition, the Custodian certified that the Department did not possess any “court documents or newspaper articles” that are responsive to the request, and the Complainant did not provide any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep’t. of Educ., GRC 2005-49 (July 2005).

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 29<sup>th</sup> Day of September, 2016

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: October 4, 2016**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 29, 2016 Council Meeting**

**Melissa Bailey<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-159**

v.

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

**Records Relevant to Complaint:** Records, reports, inspections, newspaper articles, court documents, “and anything you have pertaining to me or my children.”

**Custodian of Record:** Darryl Rhone  
**Request Received by Custodian:** April 16, 2015  
**Response Made by Custodian:** April 22, 2015  
**GRC Complaint Received:** June 4, 2015

**Background<sup>3</sup>**

**Request and Response:**

On April 16, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian, seeking the above-mentioned records. On April 22, 2015, the Custodian responded in writing, denying the request in pertinent part because the requested records are exempt pursuant to N.J.S.A. 9:6-8.10(a), which exempts certain records of child abuse. The Custodian also denied the request in pertinent part, claiming that no responsive records exist.

**Denial of Access Complaint:**

On June 4, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant advanced no argument in support of her Complaint and offered no additional evidence.

**Statement of Information:**

On June 17, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian

---

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

<sup>2</sup> Represented by Deputy Attorney General Christian Arnold.

<sup>3</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.

Melissa Bailey v. New Jersey Dep’t of Children and Families, GRC Complaint No. 2015-159 – Findings and Recommendations of the Executive Director

certified that he received the Complainant's OPRA request on April 16, 2015, and responded to the Complainant in writing on April 22, 2015. With respect to the Complainant's request for investigatory records, the Custodian denied access, claiming that "abuse/neglect reports and all information obtained by the Division in investigating such reports are confidential." N.J.S.A. 9:6-8.10(a). The Custodian notes that the statute applies to OPRA pursuant to N.J.S.A. 47:1A-9(a). With respect to the remainder of the request, the Custodian claimed that the Department has no "court documents or newspaper articles that are responsive" to the request.

### 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.

In denying access to the records, the Custodian cites to Title 9 of the New Jersey statutes, 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., f. and g. herein.<sup>4</sup>

N.J.S.A. 9:6-8.10(a).

In Donnell v. NJ Dep't of Children and Families, GRC Complaint No. 2008-47 (May 2008), the Complainant sought records and reports relating to the complainant as a ward of the court under DYFS supervision and any records and reports relating to the complainant's son while under DYFS supervision. The Council found that the custodian properly denied access to the records, because the records were exempt from disclosure pursuant to N.J.S.A. 9:6-8.10(a) and because the complainant did not raise a valid exception to the provision.

In the instant matter, the Complainant sought various records "pertaining to" her or her children. The Custodian denied access to those records and cited to N.J.A.C. 9:6-8.10(a), which provides that child abuse records are confidential. In advancing her Complaint, the Complainant did not raise a valid exception to the provision. Nor did she assert that any of the listed exceptions apply to her case.<sup>5</sup>

---

<sup>4</sup> Although the statute cited by the Custodian lists several exceptions, the Complainant raises none of those points in her Denial of Access Complaint.

<sup>5</sup> See Downing v. NJ Dep't of Children and Family, GRC Complaint No. 2010-295 (April 2012): "Pursuant to N.J.S.A. 47:1A-9a, the statutory exemptions of N.J.S.A. 9:6-8.10(a) have not been abrogated by OPRA. Therefore Melissa Bailey v. New Jersey Dep't of Children and Families, GRC Complaint No. 2015-159 – Findings and Recommendations of the Executive Director

Moreover, the Council has previously found that when a custodian certifies that no records responsive to the request exist and no evidence exists in the record to refute the custodian's certification, no unlawful denial of access occurred. See Pusterhofer v. NJ Dep't. of Educ., GRC Complaint No. 2005-49 (July 2005).

The Custodian here certified that the Department did not have any "court documents or newspaper articles" that are responsive to the request. Absent any argument from the Complainant to refute the Custodian's certification, the Custodian has borne his burden of proof that he lawfully denied access to the requested items because he certified that no responsive records exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification.

Based on the foregoing, the Custodian properly denied access because the requested records are statutorily exempt from disclosure pursuant to N.J.S.A. 9:6-8.10(a) as made applicable to OPRA pursuant to N.J.S.A. 47:1A-9(a). The Complainant did not cite any exception listed in N.J.S.A. 9:6-8.10(a). In addition, the Custodian certified that the Department did not possess any "court documents or newspaper articles" that are responsive to the request, and the Complainant did not provide any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian properly denied access because the requested records are statutorily exempt from disclosure pursuant to N.J.S.A. 9:6-8.10(a) as made applicable to OPRA pursuant to N.J.S.A. 47:1A-9(a). The Complainant did not cite any exception listed in N.J.S.A. 9:6-8.10(a). In addition, the Custodian certified that the Department did not possess any "court documents or newspaper articles" that are responsive to the request, and the Complainant did not provide any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't. of Educ., GRC 2005-49 (July 2005).

Prepared By: Ernest Bongiovanni  
Staff Attorney

August 23, 2016<sup>6</sup>

---

short of any applicable exception to the statute, that statutory exception was properly asserted by the Custodian to deny access to the requested records."

<sup>6</sup> This complaint was prepared for adjudication at the Council's August 30, 2016 meeting; however, the complaint could not be adjudicated due to lack of a quorum.

Melissa Bailey v. New Jersey Dep't of Children and Families, GRC Complaint No. 2015-159 – Findings and Recommendations of the Executive Director