



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 28, 2020 Government Records Council Meeting

Andree Friel
Complainant

Complaint No. 2018-93

v.

NJ Department of Children and Families
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council (“Council”) considered the April 3, 2020 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 and 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. 2013-4 (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 28th Day of April 2020

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 30, 2020

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**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2020 Council Meeting**

**Andree Friel¹
Complainant**

GRC Complaint No. 2018-93

v.

**New Jersey Department of Children and Families²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of the transcript and voice recording of a phone call made on or about May 11, 2018 to a hotline for New Jersey Department of Children and Families, Division of Child Protection and Permanency (“DCP”).

Custodian of Record: Catherine Schafer, Esq.
Request Received by Custodian: May 16, 2018
Response Made by Custodian: May 21, 2018
GRC Complaint Received: May 23, 2018

Background³

Request and Response:

On May 15, 2018 the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 21, 2018, the Custodian responded in writing advising that she could not confirm or deny that any responsive records existed. The Custodian further asserted that the Complainant’s OPRA request was denied because DCP investigative records were confidential pursuant to N.J.S.A. 9:6-8.10a(b).

Denial of Access Complaint:

On May 23, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was contacted by an investigator from DCP requesting to interview his son regarding an incident of alleged child abuse. The Complainant alleged that the investigator stated that his son was named as the victim of the reported abuse. The Complainant asserted that he requested access to the record of the phone call

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Sara M. Gregory.

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.

reporting the incident. The Complainant asserted that he was requesting access under N.J.S.A. 9:6-8.10a.

Statement of Information:

On June 12, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 16, 2018. The Custodian certified that she responded in writing on May 21, 2018, advising the Complainant that she could not confirm or deny the existence of the responsive records. The Custodian certified that she also denied the request under N.J.S.A. 9:6-8.10a(b).

The Custodian contended that all records related to reports and investigations of child abuse are confidential. N.J.S.A. 47:1A-9(a); N.J.S.A. 9:6-8.10a. The Custodian argued that even under limited circumstances where disclosure is permitted, “nothing may be disclosed which would likely endanger 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.” N.J.S.A. 9:6-8.10a(b). The Custodian further argued that the parties involved in DCF’s cases “must be able to rely on an expectation of privacy in order to make the child protection system work.” The Custodian asserted that “[the] Complainant did not cite to any exceptions to confidentiality, nor do any apply.” N.J.S.A. 9:6-8.10a(b).

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 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 Council has previously found that unless certain exceptions exist, records related to child abuse maintained by DCF are exempt from disclosure. N.J.S.A. 47:1A-9(a); N.J.S.A. 9:6-8.10a. 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 DCF’s Institutional Abuse Investigation Unit. 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 certified that pursuant to N.J.S.A. 9:6-8.10a “all records of child abuse reports . . . and all information obtained by [DCF] in investigating such reports . . . shall be kept confidential . . . ”

The Council found that the custodian's denial of access was lawful because the requested records were exempt from disclosure pursuant to the provisions of N.J.S.A. 9:6-8.10a and N.J.S.A. 47:1A-9(a); N.J.S.A. 47:1A-6. 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 because only DCF or an Administrative Law Judge may determine that disclosure is necessary for a determination of the issue on appeal. Furthermore, the Council found 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.

In Johnson v. N.J. Dep't of Children & Families, GRC Complaint No. 2013-4 (September 2013), the Council found that the original custodian did not unlawfully deny access to the complainant's OPRA request because the requested records were 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). Specifically, the complainant indicated in the Denial of Access Complaint that a juvenile was the subject of neglect and abuse and that the requested reports related to both. The Council found that the plain language of N.J.S.A. 9:6-8.10a clearly exempted the requested reports. Additionally, no evidence in the record established that any of the exceptions contained in N.J.S.A. 9:6-8.10a(b) applied. See Torriero v. N.J. Dep't of Children & Family Services, GRC Complaint No. 2009-145 (April 2010); Downing, GRC 2010-295.

In the instant complaint, the Complainant sought a transcript and recording of a phone call reporting a case of alleged child abuse naming his son as the victim. The Complainant cited N.J.S.A. 9:6-8.10a in support of disclosure. The Custodian denied the subject OPRA request pursuant to N.J.S.A. 47:1A-9(a) and N.J.S.A. 9:6-8.10a(a). The Complainant did not list any exceptions in N.J.S.A. 9:6-8.10a(b) that would warrant disclosure. Additionally, it is the responsibility of DCF or an Administrative Law Judge to decide whether an exception exists that warrants disclosure. N.J.S.A. 9:6-8.10a. Thus, no unlawful denial of access occurred here.

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 and 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 2013-4.

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 and 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. 2013-4 (September 2013).

Prepared By: Brandon Garcia
Case Manager

April 3, 2020