



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 25, 2020 Government Records Council Meeting

Jennifer Dericks (o/b/o TAPintoSparta.net)
Complainant

Complaint No. 2019-08

v.

Sparta Township (Sussex)
Custodian of Record

At the August 25, 2020 public meeting, the Government Records Council (“Council”) considered the August 18, 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 the record responsive to the request, a Sparta Police Department report for case #ST-2018022700, is exempt from access pursuant to N.J.S.A. 2A:4A-60 because that statute is a law that contains provisions not abrogated by OPRA pursuant to N.J.S.A. 47:1A-9(a). Therefore, the confidentiality provisions of N.J.S.A. 2A:4A-60 restricts public access to the requested record. Accordingly, the Custodian lawfully denied the Complainant access to said record. N.J.S.A. 47:1A-6; Rivera v. Cliffside Park Police Dep’t (Bergen), GRC Complaint No. 2010-275 (Interim Order dated April 25, 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 25th Day of August 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: August 27, 2020

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
August 25, 2020 Council Meeting**

**Jennifer Dericks (o/b/o TAPintoSparta.net)¹
Complainant**

GRC Complaint No. 2019-8

v.

**Sparta Township (Sussex)²
Custodial Agency**

Records Relevant to Complaint: Electronic record via e-mail of “Sparta police reports in ref. to Sparta case #ST-2018022700.”³

Custodian of Record: Terrence Mulligan

Request Received by Custodian: December 18, 2018

Response Made by Custodian: December 26, 2018

GRC Complaint Received: January 15, 2019

Background⁴

Request and Response:

On December 18, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 26, 2018, the fifth (5th) business day following receipt of said request, the Custodian responded in writing, informing the Complainant that the requested records were being denied because they are records that pertain to a juvenile and are exempt from access pursuant to N.J.S.A. 2A:4A-60 and N.J.S.A. 47:1A-9(a). The Custodian further stated that the Complainant failed to show that any of the exceptions set forth in N.J.S.A. 2A:4A-60 apply. The Complainant cited D.B. v. Somerset Cnty. Prosecutor’s Office (Somerset), GRC Complaint No. 2007-144 (November 2007), Gabardi v. Voorhees Twp. Police Dep’t (Camden), GRC Complaint No. 2008-259 (December 2009), and Mawhinney v. Twp. Of Galloway Police Dep’t (Atlantic), GRC Complaint No. 2016-153 (February 2018) in support of the denial.

¹ No legal representation listed on record.

² Represented by Jonathan N. Frodella, Esq., of Laddey, Clark & Ryan, LLP (Sparta, NJ).

³ There were other records requested that are not relevant to this complaint.

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.

Denial of Access Complaint:

On January 15, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on December 18, 2018, she submitted an OPRA request to the Custodian and that the Custodian on December 26, 2018, denied her request because the records sought pertain to a juvenile and are therefore exempt from access.

The Complainant stated that the requested records consist of a complaint made by a juvenile against an adult (“accused”) with an attached statement made by an adult against the accused in a related incident. The Complainant argued that N.J.S.A. 2A:4A-60 does not apply as a bar to access because the juvenile was not the person charged. The Complainant asserted that N.J.S.A. 2A:4A-60 provides that “. . . records of law enforcement agencies pertaining to juveniles charged as delinquent or found to be part of a juvenile-family crisis, shall be strictly safeguarded from public inspection.” (Emphasis omitted). The Complainant argued that here, the juvenile is the complainant and is not charged as a delinquent or part of a juvenile-family crisis. The Complainant stated that the juvenile’s identifying information could be redacted, thereby allowing for disclosure of the requested records. Finally, the Complainant argued that none of the cases cited by the Custodian are applicable to the facts of the instant complaint.

Statement of Information:

On January 23, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on December 18, 2018 and responded on December 26, 2018. The Custodian certified that the record responsive to the request is a twelve (12) page Sparta Township Police Department Incident Report consisting of:

1. A statement of a juvenile victim accusing another juvenile and the juvenile’s parents of multiple instances of harassment and conspiracy to harass pursuant to N.J.S.A. 2C:33-4.
2. A statement of a juvenile victim’s parent describing the harassment incidents.
3. A description of the harassment incidents in the police incident report, the police investigation report and an additional police narrative report.

The Custodian certified that the requested record is exempt from access for several reasons. The Custodian first certified that the requested record is exempt from access because the incident concerns “a juvenile charged as a delinquent.” As such, the Custodian certified that the record was properly denied because N.J.S.A. 2A:4A-60(a) provides that records of law enforcement agencies “pertaining to juveniles charged as a delinquent or found to be part of a juvenile-family crisis, shall be strictly safeguarded from public inspection.” The Custodian certified that the Complainant failed to provide any evidence that an exception to the general exemption of juvenile records from disclosure is applicable; therefore, he properly denied access to the records.

The Custodian next certified that access was properly denied because the incident

concerns a juvenile who is part of a juvenile-family crisis. The Custodian certified that N.J.S.A. 2A:4A-22(g) defines a juvenile-family crisis as:

[B]ehavior, conduct or a condition of a juvenile, parent or guardian or other family member which presents or results in (1) a serious threat to the well-being and physical safety of a juvenile, or (2) a serious conflict between a parent or guardian and a juvenile regarding rules of conduct which has been manifested by repeated disregard for lawful parental authority by a juvenile or misuse of lawful parental authority by a parent or guardian, or (3) unauthorized absence by a juvenile for more than 24 hours from his home, or (4) a pattern of repeated unauthorized absences from school by a juvenile subject to the compulsory education provision of Title 18A of the New Jersey Statutes, or (5) an act which if committed by an adult would constitute prostitution in violation of N.J.S. 2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking.”

The Custodian certified that the requested record concerns accusations against the parent as well as against the juvenile which shows that the incident concerns a juvenile who is part of a juvenile-family crisis. The Custodian further certified that the juvenile victim accused both a juvenile and a parent of conspiring to work together to harass the juvenile accuser; thereby fitting the fact pattern of N.J.S.A. 2A:4A-22(g) subsections (1) and (2). As such, the Custodian certified that he properly denied access to the requested record because it concerns a juvenile-family crisis.

Finally, the Custodian certified that he properly denied access to the requested record because it contains statements made by a juvenile victim and many references to such statements. The Custodian certified that in D.B. v. Somerset Cnty. Prosecutor’s Office (Somerset), GRC Complaint No. 2007-144 (November 2007), the Council determined that interviews and statements by a juvenile victim are exempt from disclosure unless a statutory exception applies. The Custodian certified that here, no exceptions to the rule against disclosure of juvenile records apply; therefore he properly denied the Complainant access to the requested record.

For all of the aforementioned reasons for which the Custodian denied access to the requested record he cites N.J.S.A. 2A:4A-60(a). The Custodian certifies that N.J.S.A. 47:1A-9(a) allows the exemptions in N.J.S.A. 2A:4A-60(a) to apply under OPRA.

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.

N.J.S.A. 2A:4A-60 provides in relevant part, that “. . . records of law enforcement agencies, pertaining to juveniles charged as a delinquent or found to be part of a juvenile-family crisis, shall be strictly safeguarded from public inspection. Such records shall be made available only to [enumerated individuals or entities].”

The Council has long held that juvenile records which fall under the purview of N.J.S.A. 2A:4A-60 are exempt from access. In Rivera v. Cliffside Park Police Dep’t (Bergen), GRC Complaint No. 2010-275 (Interim Order dated April 25, 2012), the complainant requested two police records involving a juvenile. The Council subsequently determined that the requested records were exempt from disclosure pursuant to N.J.S.A. 2A:4A-60.

In the instant complaint the Complainant argued that the record she requested should not have been denied under N.J.S.A. 2A:4A-60 because the juvenile was not the person charged. The Complainant asserted that the juvenile is the complainant in the matter and is not charged or being charged as a delinquent or part of a juvenile-family crisis. Conversely, the Custodian certified that the requested record is exempt from access because the incident concerns a juvenile charged as a delinquent, and for this reason N.J.S.A. 2A:4A-60(a) bars disclosure of the requested record. The Custodian further certified that the Complainant failed to show that any of the exceptions set forth in N.J.S.A. 2A:4A-60 apply. The Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification.

Accordingly, the record responsive to the request, a Sparta Police Department report for case #ST-2018022700, is exempt from access pursuant to N.J.S.A. 2A:4A-60 because that statute is a law that contains provisions not abrogated by OPRA pursuant to N.J.S.A. 47:1A-9(a). Therefore, the confidentiality provisions of N.J.S.A. 2A:4A-60 restricts public access to the requested record. Accordingly, the Custodian lawfully denied the Complainant access to said record. N.J.S.A. 47:1A-6; Rivera, GRC 2010-275.

Because the requested record is exempt from access as a record concerning a juvenile charged as a delinquent under N.J.S.A. 2A:4A-60(a), the GRC need not determine whether the record is exempt from access for the additional reasons asserted by the Custodian

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the record responsive to the request, a Sparta Police Department report for case #ST-2018022700, is exempt from access pursuant to N.J.S.A. 2A:4A-60 because that statute is a law that contains provisions not abrogated by OPRA pursuant to N.J.S.A. 47:1A-9(a). Therefore, the confidentiality provisions of N.J.S.A. 2A:4A-60 restricts public access to the requested record. Accordingly, the Custodian lawfully denied the Complainant access to said record. N.J.S.A. 47:1A-6; Rivera v. Cliffside Park Police Dep’t (Bergen), GRC Complaint No. 2010-275 (Interim Order dated April 25, 2012).

Prepared By: John E. Stewart

August 18, 2020