

FINAL DECISION

December 14, 2006 Government Records Council Meeting

George Garton, II
Complainant

Complaint No. 2005-169

v.

NJ Department of Health & Senior Services
Custodian of Record

At the December 14, 2006 public meeting, the Government Records Council (“Council”) considered the December 7, 2006 Supplemental 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 based on the Custodian’s November 29, 2006 certification, she has complied with the Council’s November 15, 2006 Interim Order by releasing the requested surveyor’s notes with appropriate redactions and a legal justification for each redacted part thereof.

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 14th Day of September, 2006

Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Robin Berg Tabakin, Vice Chairman & Secretary
Government Records Council

Decision Distribution Date: December 19, 2006

**Supplemental Findings and Recommendations of the Executive Director
December 14, 2006 Council Meeting**

**George Garton¹
Complainant**

GRC Complaint No. 2005-169

v.

**NJ Department of Health and Senior Services
("DOHSS")
Custodian of Records**

Records Relevant to Complaint: Surveyor's notes for George Garton I, Case No. L-836-03.

Request Made: January 30, 2004

Response Made: June 22, 2005

Custodian: Paula Howard

GRC Complaint Filed: August 1, 2005

Background

November 15, 2006

Government Records Council's ("Council") Interim Order. At its November 15, 2006 public meeting, the Council considered the November 8, 2006 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, found that:

1. The Custodian would not have unlawfully denied access to the requested surveyor's notes as they are exempt from public access pursuant to Governor McGreevey's Executive Order 26, except that the Custodian's failure to provide a written response to said request resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i.
2. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne her burden of proving a lawful denial of access to the two page surveyor's response, which was partially provided to the Complainant in the Custodian's Statement of Information.
3. As the Custodian attempted to release the two page surveyor's response to the Complainant, but provided only page 2, the Custodian should release page one, with appropriate redactions, if any, and a legal justification for each redacted part thereof.

¹ No legal representation listed on record.

4. **The Custodian should comply with (3) above within five (5) business days from receipt of the Council's Order and simultaneously provide certified confirmation of compliance to the Executive Director.**
5. Based upon the fact that the Custodian attempted to clarify (via telephone) what records the Complainant was seeking, and therefore, did not completely ignore the Complainant's OPRA request (although the Custodian's written response to the request was untimely pursuant to OPRA), there is no evidence that the Custodian's actions were consistent with the legal standards established for knowing and willful conduct by the New Jersey courts. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.a.

November 21, 2006

Council's Interim Order distributed to the parties.

November 28, 2006

Letter from Custodian's Counsel to Complainant. Counsel states that the requested surveyor's notes are enclosed. He asserts that some information has been redacted pursuant to Governor McGreevey's Executive Order 26, Paragraph 4(b)1, which provides that information concerning an individual's medical, psychiatric, or psychological history, diagnosis treatment, or evaluation shall not be considered a government record.

November 29, 2006

Custodian's certification pursuant to NJ Court Rules. The Custodian certifies that on November 28, 2006, the Complainant was provided with true and exact copies of the requested surveyor's notes with appropriate redactions and legal justifications for each redacted portion. The Custodian also certifies that she is not aware of any other records that are responsive to the Complainant's request.

Analysis

Whether the Custodian complied with the Council's November 15, 2006 Interim Order?

The Custodian certifies that on November 28, 2006, the Complainant was provided with true and exact copies of the requested surveyor's notes with appropriate redactions and legal justifications for each redacted portion. The Custodian also certifies that she is not aware of any other records that are responsive to the Complainant's request. The Custodian's Counsel states that the information redacted from the requested record is exempt from disclosure pursuant to Governor McGreevey's Executive Order 26, Paragraph 4(b)1, which provides that information concerning an individual's medical,

psychiatric, or psychological history, diagnosis treatment, or evaluation shall not be considered a government record.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that based on the Custodian's November 29, 2006 certification, she has complied with the Council's November 15, 2006 Interim Order by releasing the requested surveyor's notes with appropriate redactions and a legal justification for each redacted part thereof.

Prepared By:

Dara Lownie
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

December 7, 2006

INTERIM ORDER
November 15, 2006 Government Records Council Meeting

George Garton, III.
Complainant

Complaint No. 2005-169

v.

NJ Department of Health & Senior Services
Custodian of Record

At the November 15, 2006 public meeting, the Government Records Council (“Council”) considered the November 8, 2006 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:

6. The Custodian would not have unlawfully denied access to the requested surveyor’s notes as they are exempt from public access pursuant to Governor McGreevey’s Executive Order 26, except that the Custodian’s failure to provide a written response to said request resulted in a “deemed” denial pursuant to N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i.
7. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne her burden of proving a lawful denial of access to the two page surveyor’s response, which was partially provided to the Complainant in the Custodian’s Statement of Information.
8. As the Custodian attempted to release the two page surveyor’s response to the Complainant, but provided only page 2, the Custodian should release page one, with appropriate redactions, if any, and a legal justification for each redacted part thereof.
- 9. The Custodian should comply with (3) above within ten (10) business days from receipt of the Council’s Order and simultaneously provide certified confirmation of compliance to the Executive Director.**
10. Based upon the fact that the Custodian attempted to clarify (via telephone) what records the Complainant was seeking, and therefore, did not completely ignore the Complainant’s OPRA request (although the Custodian’s written response to the request was untimely pursuant to OPRA), there is no evidence that the Custodian’s actions were consistent with the legal standards established for knowing and willful conduct by the New Jersey courts. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.a.

Interim Order Rendered by the
Government Records Council

On The 15th Day of November, 2006

Vincent P. Maltese, Chairman
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Robin Berg Tabakin, Vice Chairman & Secretary
Government Records Council

Decision Distribution Date: November 21, 2006

**Findings and Recommendations of the Executive Director
November 15, 2006 Council Meeting**

George C. Garton, II²

GRC Complaint No. 2005 -169

Complainant

v.

**NJ Department of Health and Senior Services (“DOHSS”)
Custodian of Records**

Records Relevant to Complaint: Surveyor’s notes for George Garton I, Case No. L-836-03.

Request Made: January 30, 2004

Response Made: June 22, 2005

Custodian: Paula Howard

GRC Complaint Filed: August 1, 2005

Background

January 30, 2004

Complainant’s Open Public Records Act (“OPRA”) request for the surveyor’s notes for George Garton I, Case No. L-836-03.

June 22, 2005

Custodian’s response to the Complainant’s OPRA request seventeen (17) months following the date of the request. The Custodian references the Complainant’s statement that the Division of Health Care Quality and Oversight (“Division”) failed to provide him with copies of the surveyor’s notes concerning the investigation into the care received by his father while a patient at Memorial Hospital in Salem County. The Custodian states that the Division classifies the requested surveyor’s notes as exempt from disclosure, as they constitute advisory, consultative or deliberative material.

August 1, 2005

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Letter from the Director of Inspections, Compliance & Complaints of the DOHSS to Complainant dated January 17, 2003

² No legal representation listed on record.

- Letter from the Director of Acute Care Survey of DOHSS to Complainant dated November 14, 2003
- Letter from Complainant to the Director of Inspections, Compliance & Complaints of the DOHSS dated November 21, 2003
- Letter from the Director of Acute Care Survey of the DOHSS to Complainant dated December 12, 2003
- Letter from Complainant to Custodian dated December 20, 2003
- Complainant's OPRA request dated January 30, 2004
- Letter from Complainant to Attorney General dated April 13, 2004
- Letter from Assistant Director of Citizens Services and Relations of the Office of the Attorney General to the Complainant dated May 10, 2004
- Letter from Complainant to Executive Director of the GRC dated May 20, 2004
- Letter from Complainant to Assistant Director of Citizens Services and Relations of the Office of the Attorney General dated March 1, 2005
- Letter from Assistant Director of Citizens Services and Relations of the Office of the Attorney General to Complainant dated May 11, 2005
- Letter from Custodian to Complainant dated June 22, 2005

The Complainant states that he is challenging the Custodian's ruling to deny him the requested surveyor's notes. He also states that he submitted his OPRA request on January 30, 2004 and did not receive a response from the Custodian until June 22, 2005.

September 13, 2005

Offer of Mediation sent to both parties.

September 16, 2005

Custodian's Agreement to Mediate. The Complainant did not agree to mediate this case.

September 21, 2006

Request for Statement of Information sent to the Custodian.

October 3, 2005

Custodian's Statement of Information ("SOI") with the following attachments:

- December 20, 2003 – Letter from the Complainant to the Custodian asking for a Records Request form
- January 30, 2004 – Complainant's OPRA request
- June 22, 2005 – Letter from the Custodian to the Complainant
- Page 2 of the requested Surveyor's notes

Custodian's Counsel states that the Custodian received a letter in mid-January of 2004 dated December 20, 2003, and postmarked January 7, 2004 from the Complainant in which he (the Complainant) requested an OPRA request form. The Complainant was seeking records regarding George C. Garton I, Memorial Hospital Salem County #L – 836-03. Counsel states that the Custodian mailed the requested form on January 20, 2004.

Custodian's Counsel states that the Complainant's OPRA request form (dated January 30, 2004) was received via regular mail on or about February 20, 2004. Counsel states that the form was handwritten, difficult to read, non-specific as to the information sought, as well as the fact that the requestor had underlined, in red, words and phrases on the back of the form. Counsel states that the Custodian contacted the Complainant by telephone for clarification regarding the records requested. The Complainant informed the Custodian that he was seeking a copy of the complaint investigation conducted by the Division's Acute Care Unit involving Memorial Hospital of Salem County.

Counsel states that Alison Gibson, Director of the Acute Care Survey Unit, informed the Custodian on February 26, 2004 that the complaint had been investigated on January 24, 2003 and was determined to be unsubstantiated. Ms. Gibson noted that there was no deficiency notice or "plan or correction" to provide to the requestor. Counsel states that the requestor did not ask for any other information at that time. Counsel states that in June 2005 the Complainant informed the Custodian that he wanted copies of the surveyor's notes.

Counsel states that on May 27, 2005, the Custodian received a fax from Paul Dice, then Executive Director of the GRC. The Custodian discussed the matter with Mr. Dice, by telephone, on or about May 27, 2005, and was directed to contact the Complainant to determine what information he was seeking. Counsel states that the Custodian contacted the Complainant on or about June 7, 2005, and was informed that the Complainant was seeking any and all records relating to the complaint investigation including interview notes/investigator's notes, or a certification that no records or notes existed. The Custodian informed the Complainant that the surveyor's notes could not be given to him.

Custodian's Counsel states that the Department withheld copies of the notes compiled by surveyors regarding the investigation of January 24, 2003. Counsel states that the Complainant was advised in error that this information was withheld because the Division considers the surveyor's notes inter-agency or intra-agency advisory, consultative or deliberative material ("ACD").

Counsel goes on to state that the request should have been denied, in part, not because of the ACD exemption, but rather based upon Governor McGreevy's Executive Order 26, ("EO 26") paragraph 4(b) 1. This section of Executive Order 26 states that information relating to an individual's medical, psychiatric or psychological history, diagnosis, treatment or evaluation is exempt from the definition of a public record. Counsel states that the surveyor's notes sought by the requestor were a synopsis of George Garton I's medical records at Salem Hospital. This included such protected information as past medical history, diagnosis and treating physician's notes. Counsel states that this information is exempt from the definition of a public record and is therefore not disclosable. Counsel states that absent an authorization from the patient or his legal representative, the Custodian cannot release this information. However, Counsel states that a separate document prepared by the surveyor which does not include any personal health information can be turned over to the Complainant. This two page document, which contains the surveyor's response to the Complainant's complaint, is being provided to the Complainant as an attachment to the Statement of Information.

May 25, 2006

Letter from the Complainant to the GRC. The Custodian states that page 2 of the surveyor's notes were released. The Complainant requests the release of page 1 of the surveyor's notes.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“ ... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file* ... or that has been *received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

Additionally, OPRA provides that:

“...[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefore on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5.g

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“... [t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA states 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...or...*Executive Order of the Governor...*” (Emphasis added.) N.J.S.A. 47:1A-9.a.

Executive Order 26 (McGreevey 2002) states that an individual’s medical information is not to be considered a government record. Specifically, EO 26 states:

“...[t]he following records shall not be considered to be government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:

...information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation...”

The Complainant states that he is challenging the Custodian’s ruling to deny him the requested surveyor’s notes. Additionally, the Complainant states that he made his OPRA request on January 30, 2004 and did not receive a written response until June 22, 2005.

Custodian’s Counsel states that the Custodian received a letter in mid-January of 2004 dated December 20, 2003 and postmarked January 7, 2004 from the Complainant in which he (the Complainant) requested an OPRA request form. Counsel states that the Custodian contacted the Complainant on or about June 7, 2005 and was informed that the Complainant was seeking any and all records relating to the complaint investigation including interview notes/investigator’s notes, or a certification that no records or notes existed. The Custodian informed the Complainant that the surveyor’s notes could not be given to him.

Custodian’s Counsel states that the Custodian withheld copies of the notes compiled by surveyors regarding the investigation of January 24, 2003. Counsel states that the Complainant was advised in error that this information was withheld because the Division considers the surveyor’s notes exempt from disclosure as inter-agency or intra-agency advisory, consultative or deliberative material (“ACD”).

Counsel goes on to state that the request should have been denied, in part, not because of the ACD exception, but rather based upon Governor McGreevey’s Executive Order 26, (“EO 26”) paragraph 4(b) 1. This section of EO 26 states that information relating to an individual’s medical, psychiatric or psychological history, diagnosis, treatment or evaluation is exempt from the definition of a public record. Counsel states that the surveyor’s notes sought by the requestor were a synopsis of George Garton, I’s medical records at Salem Hospital. This included such protected information as past medical history, diagnosis and treating physician’s notes. Counsel states that this information is exempt from the definition of a public record and therefore not disclosable.

Counsel states that absent an authorization from the patient or his legal representative, the Custodian cannot release this information. However, Counsel states that a separate document prepared by the surveyor which does not include any personal health information can be turned over to the Complainant. This two page document, which contains the surveyor's response to the Complainant's complaint, is being provided to the Complainant as an attachment to the Statement of Information. The Complainant states that only page 2 of the requested document has been provided.

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. 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 Caban v. Department of Corrections, GRC Case No. 2004-174, the documents at issue were also medical records. The Council held that the requested medical records "are exempt from disclosure pursuant to Executive Order # 26 sec. 4 (b) 1. EO 26 states that certain information relating to individuals is exempt from disclosure under OPRA. It specifically identifies medical information as an exempted record." Similarly, in the case at issue here, the requested medical records are also exempt from public access pursuant to EO 26. As such, the Custodian would not have unlawfully denied access to the requested records.

However, OPRA requires a Custodian to grant or deny access to a government record in writing, as soon as possible, but not later than seven (7) business days after receiving the request. N.J.S.A. 47:1A-5.i. OPRA also allows the Custodian to deny access to records under those circumstances in which the records requested are exempt from access under OPRA or any other state or federal law pursuant to N.J.S.A. 47:1A-9.a. If a Custodian asserts an exemption from disclosure under the law, the Custodian is required to notify the Complainant in writing of the specific legal basis for the denial pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-6.

Pursuant to the fact that the Custodian received the Complainant's OPRA request in mid-January of 2004 and didn't respond to said request until June 22, 2005, the Custodian failed to grant or deny access to the requested records within the statutorily mandated seven (7) business days, therefore resulting in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.i.

Therefore, the Custodian would not have unlawfully denied access to the requested surveyor's notes as they are exempt from public access pursuant to Governor McGreevey's Executive Order 26, except that the Custodian's failure to provide a written response to said request resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. Additionally, pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne her burden of proving a lawful denial of access to the two page surveyor's response, which was partially provided to the Complainant in the Custodian's Statement of Information.

Whether the Custodian's delay in access to the requested records rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ...” N.J.S.A. 47:1A-11.a.

OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states:

“... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7.e.

The Complainant states that he is challenging the Custodian’s ruling to deny him the surveyor’s notes he has requested. Additionally, the Complainant states that he made his OPRA request on January 30, 2004 and did not receive a written response until June 22, 2005.

Custodian’s Counsel states that the OPRA request from the Complainant (dated January 30, 2004) was received via regular mail on or about February 20, 2004. Counsel states that the form was handwritten, difficult to read, non-specific as to the information sought, as well as the fact that the requestor had underlined, in red, words and phrases on the back of the form. Counsel states that the Custodian contacted the Complainant by telephone for clarification regarding the information he was seeking. The Complainant informed the Custodian that he was seeking a copy of the complaint investigation conducted by the Division’s Acute Care Unit involving Memorial Hospital of Salem County.

Counsel states that Alison Gibson, Director of the Acute Care Survey Unit, informed the Custodian on February 26, 2004, that the complaint had been investigated on January 24, 2003, and was determined to be “unsubstantiated.” Ms. Gibson noted that there was no deficiency notice or “plan or correction” to provide to the requestor. Counsel states that the requestor did not ask for any other information at that time. Counsel states that in June 2005 the Complainant informed the Custodian that he wanted copies of the surveyor’s notes.

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170 at 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J.Super. 86 (App. Div. 1996) at 107).

Based upon the fact that the Custodian attempted to clarify (via telephone) what records the Complainant was seeking, and therefore, did not completely ignore the Complainant's OPRA request (although the Custodian's written response to the request was untimely pursuant to OPRA), there is no evidence that the Custodian's actions were consistent with the legal standards established for knowing and willful conduct by the New Jersey courts. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.a.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

11. The Custodian would not have unlawfully denied access to the requested surveyor's notes as they are exempt from public access pursuant to Governor McGreevey's Executive Order 26, except that the Custodian's failure to provide a written response to said request resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i.
12. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne her burden of proving a lawful denial of access to the two page surveyor's response, which was partially provided to the Complainant in the Custodian's Statement of Information.
13. As the Custodian attempted to release the two page surveyor's response to the Complainant, but provided only page 2, the Custodian should release page one, with appropriate redactions, if any, and a legal justification for each redacted part thereof.
- 14. The Custodian should comply with (3) above within five (5) business days from receipt of the Council's Order and simultaneously provide certified confirmation of compliance to the Executive Director.**
15. Based upon the fact that the Custodian attempted to clarify (via telephone) what records the Complainant was seeking, and therefore, did not completely ignore the Complainant's OPRA request (although the Custodian's written response to the request was untimely pursuant to OPRA), there is no evidence that the Custodian's actions were consistent with the legal standards established for knowing and willful conduct by the New Jersey courts. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.a.

Prepared By:

Dara Lownie
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

November 8, 2006