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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0467-22**

EDWARD FARLEY AIZEN,

Complainant-Appellant,

v.

NEW JERSEY DEPARTMENT OF
CHILDREN AND FAMILIES,
DIVISION OF CHILD PROTECTION
AND PERMANENCY,

Custodian of Record-
Respondent.

GOVERNMENT RECORDS
COUNCIL,

Respondent.

Submitted June 4, 2024 – Decided June 19, 2024

Before Judges Sumners and Perez Friscia.

On appeal from the New Jersey Department of
Community Affairs, Government Records Council,
Docket No. 2021-1.

Edward Farley Aizen, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Department of Children and Families (Sara M. Gregory, Assistant Attorney General, of counsel; Nicholas Dolinsky, Deputy Attorney General, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent Government Records Council (Brian D. Ragunan, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Edward Aizen, self-represented, appeals from the August 30, 2022 final agency decision (FAD) of the Government Records Council (GRC) denying his request for disclosure of records pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13. Having considered the parties' arguments in light of the record and applicable legal principles, we affirm.

I.

On December 10, 2020, Aizen filed an OPRA request with the New Jersey Department of Children and Families (DCF) seeking "all records from 1970-78" and "any documentation in [his] name." About two weeks later, the DCF's custodian of records rejected Aizen's request in writing, advising the DCF could neither confirm nor deny the existence of the records. Relying on N.J.S.A. 9:6-8.10a and N.J.S.A. 47:1A-9(a), the custodian denied the release

of any records relating to "an investigation of child abuse and neglect." The custodian referred Aizen to N.J.S.A. 9:6-8.10a(b), relaying "in limited circumstances he may seek access to the requested records outside of OPRA."

On January 6, 2021, Aizen filed a denial of access complaint with the GRC. He argued for the records' release because he had previously "received the bulk of the Division of Youth [and] Family Services record"¹ and knew the record consisted of more than child abuse and neglect investigation documents. He further contended the DCF should release documents unrelated "to an investigation of child abuse and neglect."

On February 9, the DCF's custodian filed a statement of information with the GRC. The custodian certified to locating "a single abuse and neglect file relating to [Aizen]" with "the closed records department." The file was "comprised of approximately 666 pages." The custodian posited Aizen's complaint warranted dismissal because under OPRA's exemption provision, N.J.S.A. 47:1A-9(b), confidential records pursuant to a statute are precluded from disclosure. Relying on N.J.S.A. 9:6-8.10a(a), she contended release of the records was precluded because "all information obtained by the [DCPP]

¹ The Division of Youth and Family Services is now known as the Division of Child Protection and Permanency (DCPP). See State v. Young, 233 N.J. 345, 346 (2018). For ease of reference, we refer to the agency as the DCPP.

relating to the report and investigation of child abuse are confidential." While acknowledging certain confidentiality exceptions exist, she maintained no exception applied, noting "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." See N.J.S.A. 9:6-8.10a(b)(6). Further, referencing established public policy, she stated that "[r]eferents, collateral sources of information, and victims . . . must be able to rely on an expectation of privacy . . . to make the child protection system work." The custodian also highlighted that Aizen was "properly provided with information on how to seek release of his records through the Family Part consistent with N.J.S.A. 9:6-8.10a(b)."

On April 29, 2022, Aizen emailed the GRC asserting the DCF's records denial failed to consider his entitlement to disclosure as a fraud victim under OPRA's provision, N.J.S.A. 47:1A-1.1,² arguing the DCPD obtained a social security card in his name without consent. Aizen maintained releasing the records would not endanger the well-being or safety of any "victim involved"

² N.J.S.A. 47:1A-1.1 provides that "[a] government record shall not include the following information which is deemed to be confidential," including "victims' records, except that a victim of a crime shall have access to the victim's own records."

and he was neither "a child" nor "at risk on an emotional or physical level." The GRC responded by email, maintaining "[N.J.S.A.] 9:6-8.10a [wa]s applicable to OPRA pursuant to [N.J.S.A.] 47:1A-9" and "[t]he exceptions in [N.J.S.A.] 47:1A-1.1 d[id] not apply." Aizen's subsequent email correspondence with the GRC was forwarded to the custodian's counsel.

On August 23, the GRC's Executive Director issued findings and recommendations concluding "the [c]ustodian did not unlawfully deny access to [Aizen's] OPRA request because the responsive records [we]re 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)." Further, the Executive Director found Aizen "failed to show that any exception in [N.J.S.A.] 9:6-8.10a(b) applie[d] to permit access to the responsive records." He noted the exception for victims to access their own records "[wa]s 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)." On August 30, following a public meeting, the GRC issued an FAD adopting the Executive Director's findings and recommendations in its entirety.

On appeal, Aizen contends reversal of the disclosure denial is warranted because the GRC's decision: was arbitrary, capricious, and unreasonable as there was no ongoing investigation; failed to explain why no confidentiality

exception was applicable; and ignored that the DCPD fraudulently obtained a social security card in his name.

II.

"We must accord substantial deference to the [GRC]'s interpretation of the limits of the authority bestowed upon it by its own enabling statute." Ciesla v. N.J. Dep't of Health & Senior Servs., 429 N.J. Super. 127, 148 (App. Div. 2012). We "will not overturn an agency's decision unless it violates express or implied legislative policies, is based on factual findings that are not supported by substantial credible evidence, or is arbitrary, capricious[,] or unreasonable." Fisher v. Div. of L., 400 N.J. Super. 61, 70 (App. Div. 2008). However, our standard of review is "plenary with respect to" the GRC's interpretation of OPRA. See Asbury Park Press v. County of Monmouth, 406 N.J. Super. 1, 6 (App. Div. 2009). Although an agency's determination as to the applicability of OPRA is a legal conclusion subject to de novo review, see O'Shea v. Township of W. Milford, 410 N.J. Super. 371, 379, (App. Div. 2009), "under our deferential standard of review, we give weight to the GRC's interpretation of OPRA." McGee v. Township of E. Amwell, 416 N.J. Super. 602, 616 (App. Div. 2010). "We do not, however, simply rubber stamp the agency's decision." Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609,

618 (App. Div. 2008) (quoting Paff v. N.J. Dep't of Lab., 392 N.J. Super. 334, 340 (App. Div. 2007)).

"Any analysis of OPRA must begin with the recognition that the Legislature created OPRA intending to make government records 'readily accessible' to the state's citizens 'with certain exceptions[] for the protection of the public interest.'" Gilleran v. Township of Bloomfield, 227 N.J. 159, 170 (2016) (alteration in original) (quoting N.J.S.A. 47:1A-1). "The public's right to disclosure, while broad, is not unlimited." Bozzi v. City of Jersey City, 248 N.J. 274, 284 (2021). "OPRA . . . exempts [from disclosure] more than twenty categories of records." Rivera v. Union Cnty. Prosecutor's Off., 250 N.J. 124, 141 (2022) (citing N.J.S.A. 47:1A-1.1). "[I]f a document falls within one of these categories, it is not a government record and not subject to disclosure pursuant to OPRA." Commc'ns Workers of Am. v. Rousseau, 417 N.J. Super. 341, 355 (App. Div. 2010).

OPRA directs that "all government records shall be subject to public access unless exempt," and "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy." N.J.S.A. 47:1A-1. A disclosure

exemption exists under N.J.S.A. 47:1A-9(a), which provides OPRA "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(b) further provides that OPRA

shall not abrogate or erode any . . . grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

Pursuant to N.J.S.A. 9:6-8.10a(a), all records of child abuse "shall be kept confidential and may be disclosed only under the circumstances expressly authorized" by N.J.S.A. 9:6-8.10a(b) to (g). "N.J.S.A. 9:6-8.10a(b) expressly requires individuals and entities authorized to receive child abuse records under N.J.S.A. 9:6-8.10a(b) to 'keep the records and reports, or parts thereof, confidential,' and prohibits the disclosure of such materials 'except as authorized by law.'" Young, 233 N.J. at 347 (quoting N.J.S.A. 9:6-8.10a(b)). If access to the records is denied, "the requesting entity may seek disclosure through the Chancery Division of the Superior Court." N.J.S.A. 9:6-8.10a(a); see Div. of Youth & Fam. Servs. v. M.S., 340 N.J. Super. 126, 130 (App. Div. 2001) (holding the Chancery Division has exclusive jurisdiction when a request for disclosure of records has been denied). A prerequisite for

disclosure requires the court to find "access to such records may be necessary for determination of an issue before it." N.J.S.A. 9:6-8.10a(b)(6). There is a "presumption of confidentiality and limitations on disclosure of [DCPP] records as set forth in N.J.S.A. 9:6-8.10a(a)." In re Z.W., 408 N.J. Super. 535, 540 (App. Div. 2009). Indeed, "[N.J.S.A. 9:6-8.10a] is designed as a 'procedural safeguard to protect victim children from unnecessary disclosure . . . which may cause the child further guilt, vulnerability or humiliation.'" N.J. Div. of Youth & Fam. Servs. v. N.S., 412 N.J. Super. 593, 636 (App. Div. 2010) (alteration in original) (quoting N.J. Div. of Youth & Fam. Servs. v. J.C., 399 N.J. Super. 444, 447 (Ch. Div. 2006)). Furthermore, "[a]ny individual, . . . or other entity which receives . . . the records and reports referred to in subsection [(a)], shall keep the records and reports, or parts thereof, confidential and shall not disclose the records and reports . . . except as authorized by law." N.J.S.A. 9:6-8.10a(b). It is well-recognized "there is a need to protect those who come forward to report child abuse and neglect, which are often difficult to detect." N.S., 412 N.J. Super. at 636 (citing N.J. Div. of Youth & Fam. Servs. v. J.B., 120 N.J. 112, 125-26 (1990)).

III.

We address together Aizen's contentions that reversal of the GRC's decision precluding disclosure of the DCP's records is warranted because the decision was arbitrary, capricious, and unreasonable, and the confidentiality exceptions permitted disclosure. We are unpersuaded by either argument. Under OPRA's N.J.S.A. 47:1A-9(a) and (b) exemptions, records recognized as confidential by statute are precluded from disclosure. Specifically, OPRA's exemption under N.J.S.A. 47:1A-9(b) precludes disclosure of government records that a "statute" has "established or recognized" as "privilege[d]" or "confidential[]." N.J.S.A. 47:1A-9(a) similarly provides that OPRA does not abrogate "any exemption of a public record or government record from public access" pursuant to a "statute." It is well-established that all records of child abuse shall be kept confidential from disclosure unless an exception applies. N.J.S.A. 9:6-8.10a(a). Thus, we conclude the GRC's decision was not arbitrary, capricious, or unreasonable and provided sufficiently supported findings.

We reject Aizen's argument that disclosure is warranted because he previously received possession "of the entire [DCPP] file" that was later "confiscated by the government." Aizen's assertion that he previously


possessed the DCPD records does not establish the applicability of an exception elucidated in N.J.S.A. 9:6-8.10a(b), permitting release of the records deemed confidential. Further, his contention that disclosure is warranted, under N.J.S.A. 9:6-8.10a(f), because a child fatality allegedly occurred while in the care of the DCPD, is unavailing. The statute specifically permits disclosure of "information about a case of child abuse or neglect which has resulted in a child fatality or near fatality." N.J.S.A. 9:6-8.10a(f). The statute's plain meaning does not yield an interpretation that any fatality mandates disclosure; rather, disclosure is specific to an abuse or neglect case resulting "in a child fatality or near fatality." Ibid.; Am. Civil Liberties Union of N.J. v. Cnty. Prosecutors Ass'n of N.J., 257 N.J. 87, 101 (2024) ("When the plain language of a statute is clear and unambiguous, we apply the law as written." (quoting W.S. v. Hildreth, 252 N.J. 506, 518 (2023))). The GRC's denial of the records disclosure based on these contentions was not erroneous.

Aizen's argument that disclosure is warranted because "no children [are] under the protective care or custody of the State of New Jersey regarding this matter" is without merit. The presumption of confidentiality is not abrogated unless an exception is established. Aizen has failed to demonstrate a statutory exception under N.J.S.A. 9:6-8.10a(b) to (g), which allows disclosure to "a

lengthy list of institutions, governmental entities, and persons" under certain conditions. See N.J. Div. of Child Prot. & Permanency v. K.N.S., 441 N.J. Super. 392, 401 (App. Div. 2015). Finally, we also reject Aizen's contention that disclosure is required as he was a victim of the DCPD's fraudulent obtainment of a social security card in his name. We discern no error in the GRC's determination that Aizen's unsupported claims failed to demonstrate an exception for disclosure.

To the extent we have not specifically addressed any of Aizen's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office

CLERK OF THE APPELLATE DIVISION