

Caruso, Frank

From: Government Records Council
Sent: Monday, April 29, 2019 1:32 PM
To: Brian Kubiak
Cc: 'Peter Van Dyke (PVanDyke@kvdmlaw.com)'
Subject: RE: Guidance Request

Mr. Kubiak,

Thank you for contacting the NJ Government Records Council ("GRC"). The information provided by the GRC is guidance and does not constitute legal advice or a final decision of the GRC regarding whether a particular record is exempt from disclosure or not since the provisions of the Open Public Records Act ("OPRA") are applied to the specific facts of the request and/or complaint. Specifically, the GRC adjudicates denial of access complaints filed against state and local government records custodians.

Regarding your recent correspondence, the GRC interprets same as a request for an advisory opinion. To the extent that this is the case, please be advised of the following. OPRA allows the GRC to issue advisory opinions, on its own initiative, of particular type of government records. N.J.S.A. 47:1A-7(b), N.J.A.C. 5:105-4.1. Unfortunately, the GRC is not currently entertaining requests for advisory opinions. For this reason, the GRC has not implemented a procedure for individuals to request these opinions.

Notwithstanding the forgoing, the GRC provides the following typical guidance regarding a person's medical information contained within "government records."

Executive Order No. 26 (Gov. McGreevey, 2002), exempts access to "[i]nformation relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation." Id. at 4(b). As an example, in Rivera v. Town of West New York (Hudson), GRC Complaint No. 2010-208 (Interim Order dated January 29, 2013), the Council determined that an operations report related to a medical emergency was exempt from disclosure under Executive Order No. 26 (Gov. McGreevey, 2002). This complaint can be viewed at <http://www.state.nj.us/grc/decisions/pdf/2010-208.pdf>. The Council also upheld a custodian's denial of access to EMS reports. Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (Interim Order dated February 27, 2008). Additional cases regarding medical records can be located at <http://search.state.nj.us/query.html?col=&ht=0&qp=%2Burl%3Awww.state.nj.us/grc/decisions/&qs=&qc=&pw=100%25&la=en&charset=iso-8859-1&si=0&fs=&qt=%22medical+records%22&ex=&rq=0&oq=&ws=0&qm=0&qf=&st=21&nh=10&lk=1&rf=0>. You will note that most complaints originate from incarcerated individuals seeking access to their own medical records.

Sincerely,

Frank F. Caruso

Government Records Council

Acting Executive Director

Tel: (609) 292-6830 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>

This correspondence contains advisory, consultative and deliberative material and is intended solely for the person(s) shown as recipient(s).

From: Brian Kubiel <bkubiel@trfire.org>
Sent: Wednesday, April 24, 2019 2:35 PM
To: Government Records Council <Government.Records@dca.nj.gov>
Cc: 'Peter Van Dyke (PVanDyke@kvdmLaw.com)' <PVanDyke@kvdmLaw.com>
Subject: [EXTERNAL] Guidance Request

Good afternoon. Please see the attached request for and opinion from the Government Records Council. Thank you. Brian

Brian S. Kubiel, MBA, CPM, QPA
Chief Administrator
Toms River Board of Fire
Commissioners District No. 1
1144 Hooper Avenue, Suite 306
Toms River, NJ 08753
Voice (732) 341-4441
Fax (732) 505-2150
E-mail: bkubiel@trfire.org
Web Address: www.trfire.org

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