TOMS RIVER TOWNSHIP FIRE DISTRICT No. 1

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April 24, 2019

Government Records Council
PO Box 819
Trenton, NJ 08625-0819

RE: Guidance on Open Public Records

Toms River Fire District #1 has received a request for dispatch records. Toms River Fire District #1, in cooperation with District #1 provides dispatch services for the Township of Toms River. The Township of Toms River also provides dispatch services. These services are physically located in the same location.

An earlier request for these records included information which, on hindsight, revealed enough information that a person's medical condition was being released. In coordination with the Township, this request was answered such that this medical information would not be readily ascertainable.

District #1 took the position based upon the belief that a person has a reasonable expectation of privacy in his or her medical information. The fact that that condition resulted in the need for emergency services to be called to assist with that medical condition does not lessen that person's expectation of privacy.

N.J.S.A. 47:1A-1, provides, in relevant part, that "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."

In Alfano v. Margate City, 2012 WL 4344148, (App.Div.2012), the Appellate Division, in discussing this portion of the statute, noted that the Supreme Court has listed seven factors which a court should apply. The factors are: (1) the type of record requested; (2) the information it does or might contain; (3) the potential for harm in any subsequent nonconsensual disclosure; (4) the injury from disclosure to the relationship in which the record was generated; (5) the adequacy of safeguards to prevent unauthorized disclosures; (6) the degree of need for access; and (7) whether there is an

express statutory mandate, articulated public policy, or other recognized public interest militating toward access. Citing Burnett v. County of Bergen, 198 N.J. 408, 427-28 (2009) and Doe v. Poritz, 142 N.J. 1, 88 (1995). In Burnett, the issue was the release of documents containing Social Security numbers for which an individual has an expectation of privacy. In Alfano, the information would have identified an individual who had apparently attempted suicide.

In Paff v. Galloway Township, 229 N.J. 340, 358 (2017), the Supreme Court, after citing the statutory exceptions and the above cited language, noted that "[t]his is by no means an exhaustive list of OPRA's exceptions and exemptions."

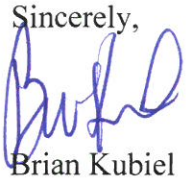
In this request, the requestor seeks additional information from that which was provided. The additional information would be sufficient to identify a person and his or her medical condition. The release of medical information can be detrimental for an individual. These individuals who called for assistance did not intend that their conditions would become public knowledge. The requestor has indicated that he intends to publish the information to the public. The need for such information seems minimal.

Regarding the last fact noted above, District #1 takes the position an articulated public policy exists which militates against the release of medical information and, therefore, that one has an expectation of privacy in one's own medical information. Such medical information would include the fact that an ambulance was called to one's house and any information related to the reason for the call which would set forth the medical reason for the call. Initially, this public policy was set forth in Executive Order #11, issued in November of 1974, which references the non-disclosure of detailed medical or psychological information. While that order did not deal with particular record involve in this case, it does not that even public employees have an expectation of privacy in their medical information. The logical extension would be that a citizen would also have that expectation of privacy.

That executive order was issued long before the federal government enacting the Health Insurance Portability and Accountability Act (HIPAA). In that act the federal government has also articulated a public policy which favors the protection of a person's medical information. HIPAA includes penalty provisions which, in part, provides that a person violates the act by using a unique health identifier, obtaining individually identifiable health information or disclosing individually identifiable health information. 42 U.S.C.A. Sec. 1320d-6(a). The definition of health care provider and health information under HIPAA is expansive. 42 U.S.C.A. Sec. 1320d(3) and (4). Individually identifiable health information means any information, including demographic information, collected from an individual that relates to the past, present or future physical or mental health or condition of an individual or the provision of health care to an individual. 42 U.S.C.A. Sec. 1320d(6). The statue continues by referring to information "to which there is a reasonable basis to believe that the information can be used to identify the individual." 42 U.S.C.A. Sec. 1320d(6)(B)(ii). Medical services include ambulance service. 42 U.S.C.A. Sec. 1395x(7). Thus, HIPAA provides a basis to support the position that a person does have an expectation of privacy.

In conclusion, District #1 requests an opinion on whether it must provide information which could lead to the identity of an individual and to that individual's medical condition.

Sincerely,



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