



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 12, 2019
SPR19/682

Andrew Levrault, Esq.
Assistant General Counsel
Disabled Persons Protection Commission
300 Granite Street, Suite 404
Braintree, MA 02184

Dear Attorney Levrault:

I have received the petition of David S. Kassel of the Massachusetts Coalition of Families and Advocates, Inc. appealing the response of the Disabled Persons Protection Commission (DPPC) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on February 7, 2019, Mr. Kassel requested:

“Data from the [DPPC] from Fiscal Year 2010 to the present that show:

- The number of abuse allegations received by the DPPC each year in state-operated group homes, broken down by Department of Developmental Services (DDS) region, and the number of such allegations that were substantiated;
- The number of abuse allegations received by the DPPC each year in state-operated group homes, per resident, broken down by DDS region, and the number of such allegations, per resident, that were substantiated;
- The number of abuse allegations received by the DPPC each year for each of the following categories: nonprofit and for-profit provider agencies, and the number of such allegations in each category that were substantiated.
- The number of abuse allegations received by the DPPC each year, per resident, for each of the following categories: nonprofit and for-profit provider agencies, and the number of such allegations, per resident, in each category that were substantiated.”

Finally, Mr. Kassel advised, “[i]f the DPPC does not maintain data in the format(s) requested, please inform me of the types of abuse data breakdowns that the DPPC does maintain.”

On February 8, 2019, after some clarification of Mr. Kassel's request, the DPPC informed Mr. Kassel that it does not maintain data in the format that he requested. You explained, "[t]he DPPC does not collect information on whether a provider is a for-profit or nonprofit. The DPPC cannot segregate or compile information on a per-resident basis." However, you informed Mr. Kassel that DPPC could, "run a report and generate an [E]xcel spreadsheet for intakes from the specified time period, broken down by DDS region, where the alleged victim's service providing agency is indicated to be DDS, and the setting of alleged abuse was indicated to be a residential program. The report would provide the vendor's name (including DDS operated programs), the screening decision, and whether the investigation was substantiated."

New Request – March 15, 2019

After several email exchanges between the parties since the initial February request, in which DPPC answered several questions concerning the data and records received, Mr. Kassel made a new request on March 15th. Specifically, Mr. Kassel requests "additional data, in the categories enumerated in my February 7 Public Records request, specifically on the number of abuse allegations resulting from intake reports that the agency has screened in and combined for investigation, and the number of such allegations that have been substantiated and/or referred for criminal prosecution."

In your March 27th response, you informed Mr. Kassel:

"The DPPC specifically advised on February 8th that the DPPC could only extract data [from its database] based upon intakes received, and that it was not uncommon to receive multiple intakes on the same incident. The DPPC further reiterated this information on February 8th in response to your direct question of whether each row in the data [on the spreadsheets] you received represented an intake or an allegation. Therefore, in response to your March 15, 2019 public records request, which references your February 7th public records request, the DPPC states that it has no responsive records. The DPPC's database can only extract the data you are requesting on an intake level—in the manner which was previously provided to you. The DPPC cannot extract data on combined intakes in the method that you requested. As such, the DPPC has no responsive records."

In his March 29th petition to this office, Mr. Kassel asserts, "[a]t best, the DPPC has not offered a clear explanation as to why such records do not exist. It also seems possible that the DPPC is [capable] of extracting and providing the data we are seeking."

After this appeal was opened, DPPC provided a further response to this office and Mr. Kassel on April 8th. The DPPC reiterates, "[e]ssentially, [Mr. Kassel] wants DPPC to produce information in the manner in which information is organized and produced by DDS when it receives multiple intakes from DPPC. This is not possible."

You further explain in Footnote 5 and 6 in your April 8th letter:

“[t]he DPPC operates a 24 hour a day hotline and it is required, by statute to log each call to its hotline in real time, with calls being assigned intake numbers in real time. DPPC then refers certain intakes to DDS, which...imports them into a case management system which does not operate in real time and allows for data linkage. When the DPPC's intake-based data is compared to DDS's incident reporting, the DPPC's figures may be elevated in some instances, and may be deflated in others—depending on the nature of the comparison. The DPPC logs, tracks and organizes its data to meet its operation purposes, which are distinct from the purposes of DDS.”

Please be advised, the duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Under the Public Records Law, a public employee is not required to answer questions, or do research, or create documents in response to questions. See G. L. c. 66, § 10(a); 32 Op. Atty Gen. 157, 165 (May 18, 1977).

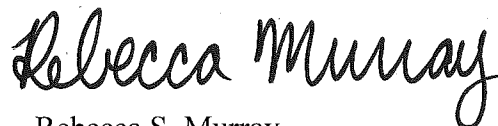
While the DPPC has informed Mr. Kassel and this office that it cannot extract the data in such a way to provide Mr. Kassel with the precise way that he wishes, the DPPC did not clarify whether it could produce the data to back-up the numbers DPPC uses to draft its Annual Reports. Mr. Kassel questions how it is possible that DPPC is able to report the number of abuse reports and number of investigations, if it cannot extract that data from its database. I find that DPPC must clarify this.

I understand that a Public Records Division staff attorney contacted you regarding this appeal.

Conclusion

Accordingly, the DPPC is ordered to provide Mr. Kassel with a response to clarify whether it can extract from its database the information used to produce its Annual Reports, in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: David S. Kassel