

ORIGINAL

IN THE SUPREME COURT OF OHIO

Case No. 2014-1122

STATE OF OHIO ex rel. Stephanie Y. Clough

Relator

v.

FRANKLIN COUNTY CHILDREN'S SERVICES, OHIO et al.,

Respondents

ORIGINAL ACTION IN MANDAMUS

RELATORS REPLY TO RESPONDENTS MERIT BRIEF

Stephanie Y. Clough  
8060 Wright Road  
Broadview Heights, Ohio 44147  
Phone: 440-417-3382  
[stephanieclough@hotmail.com](mailto:stephanieclough@hotmail.com)

Franklin County Children's Services, Ohio  
Charles M. Spinning, Executive Director  
855 W. Mound Street  
Columbus, Ohio 43223  
Phone: 614-275-2571

RELATOR, PRO SE

and

Franklin County Children's Services, Ohio  
Anne O'Leary, Chief Legal Counsel  
855 W. Mound Street  
Columbus, Ohio 43223  
Phone: 614-275-2571

FILED  
DEC 17 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

RESPONDENTS

Franklin County Prosecuting Attorney  
Ronald J. O'Brien 17245  
373 S. High Street  
14<sup>th</sup> Floor  
Columbus, OH 43215  
Phone: 614-525-3555

COUNSEL OF RECORD

RECEIVED  
DEC 17 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

**TABLE OF CONTENTS  
AND ASSIGNMENTS OF ERROR**

	Page
PRELIMINARY STATEMENT.....	1
LAW AND ARGUMENT	
RESPONDENTS FIRST ARGUMENT.....	5
<b>Mandamus cannot compel the inspection or release of investigatory records compiled pursuant to R.C. §2151.421</b>	
AUTHORITIES:	
O.R.C. 2151.421.....	5
O.R.C. 5153.17.....	6
O.R.C. 3107.17.....	6
<i>State ex rel. Edinger v. C.C.D.C.F.S.</i> , 2005-Ohio-5453, ¶¶ 6-7 (8th Dist.).....	6
A.C 5105:2-36 & 37.....	7
RESPONDENTS SECOND ARGUMENT.....	8
<b>Mandamus cannot compel an agency to comply with internal policies and procedures.</b>	
RESPONDENTS THIRD ARGUMENT.....	9
<b>Revised code §1347.01. et seq. does not mandate disclosure of investigatory records compiled in compliance with R.C. §2151.421</b>	
AUTHORITIES:	
O.R.C. 2151.421 .....	10
CONCLUSION.....	10
PROOF OF SERVICE.....	13

## PRELIMINARY STATEMENT

Contrary to Respondents brief, Relator's request for explanations and the review of Franklin County Children Services (FCCS) case record for her minor daughter did not begin with a verbal request made by Relator's agent on April 22, 2014. Relator has been seeking answers and the right to review her daughter's case record since filing her first grievance with FCCS on September 28, 2009. Relator's mission to seek answers and the truth has been ongoing for five years. Relator attended three grievance hearings, issued multiple subpoenas, sought an independent investigation of her case record directly with the FCCS Board of Trustees, and made multiple requests to examine her case file. In every instance FCCS has declined to allow Relator access to her case files stating that the investigative records of a Public Children Service Agency are confidential pursuant to Ohio Revised code 2151.421 and 5101.131. The central word in this statement is confidential. Confidential does not mean records cannot be released it is only a means to protect information from unauthorized disclosure to ensure that only authorized individuals can view certain information. Furthermore, O.R.C. 2151.421 deals with Reporting Child Abuse or Neglect. The intent of the statute is to maintain the confidentiality of any individual making a report of physical abuse or neglect under Division A or B of the statute as well as the alleged victim's identity and personal information. The Report listed under O.R.C 2151.421 is described in detail under Division C: Any report made pursuant to division (A) or (B) of this section shall be made forthwith either by telephone or in person and shall be followed by a written report, if requested by the receiving agency or officer. The written report shall contain:

(1) The names and addresses of the child and the child's parents or the person or persons having custody of the child, if known;

(2) The child's age and the nature and extent of the child's injuries, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist, including any evidence of previous injuries, abuse, or neglect;

(3) Any other information that might be helpful in establishing the cause of the injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist.

Relator has long ago waived any confidentiality privilege associated with FCCS Case ID 1866149. It is common knowledge that Relator made the report concerning an injury occurring to the Relator's minor daughter following a visit with her father on June 21, 2009. The details of the report made pursuant to O.R.C. 2151.421 Division C, Subsection 1 – 3 were directly provided by the Relator. FCCS's argument that Relator cannot be granted access to her case file in order to protect the identity of the individual making the initial report and information detailed above is laughable and distasteful. FCCS reliance on O.R.C. 2151.421 falls flat as it is rendered irrelevant due to the Relator making the report and providing the detailed report information. Relator already possesses the information classified as confidential under O.R.C. 2151.421.

O.R.C. 2151.421(H)(I) – “[e]xcept as provided in divisions (H)(4) and (N) of this section, a report made under this section is confidential”. This statute utilized by FCCS to claim that it is not permitted to allow the Relator access to her case file, merely refers to the previously described report made on behalf of an abused or neglected child.

Curiously, FCCS never challenged or disputed Relator's Preliminary Statement or Statement of Facts. Additionally, O.R.C. 2151.421, Division (J) - mandates that when multiple Child Protective Service Agency's exist in the same county, they must enter into a Memorandum of Understanding (Relator's Exhibit G). The Memorandum of Understanding (MOU) must set forth the roles and responsibilities and the standards and procedures in handling and coordinating investigations of sexual or other forms of child abuse. The MOU also must establish the methods

of interviewing the child who is the subject of the report and who was allegedly abused or neglected, and the standards and procedures addressing the categories of the persons who may conduct the interview. Under the MOU signed, among others, by Eric Fenner, former Director of FCCS and Dr. Philip Scribano, former Director of the Center for Child and Family Advocacy at Nationwide Children's Hospital (CAC), the interview is to be conducted at CAC by a professionally trained, accredited, and certified Medical Forensic Interviewer. The procedures established for the interview required that the FCCS investigator attend the interview conducted by CAC, and the investigator Dana Robertson, was invited to attend. Not only didn't Ms. Robertson attend the interview, she apparently destroyed the report sent to her by CAC and made no mention of their involvement in the FCCS case file. FCCS wrongly interprets O.R.C. 2151.421 as a means to hide under a cloak of secrecy their failure to abide by all the statutory provisions contained in O.R.C. 2151.421.

FCCS also cited O.R.C. 5101.131 as legally restricting FCCS from allowing Relator access to her case file. A review of O.R.C. 5101.13, et seq. indicates that it refers solely to the Uniform Statewide Automated Child Welfare System. Relator has not requested access to the Uniform Statewide Automated Child Welfare System and, therefore, it is not relevant to deciding the merits of this instant case.

The relevant and only statute governing the maintenance of public children services records is O.R.C. 5153.17 -The public children services agency shall prepare and keep written records of investigations of families, children, and foster homes, and of the care, training, and treatment afforded children, and shall prepare and keep such other records as are required by the department of job and family services. Such records shall be confidential, but, except as provided by division (B) of section 3107.17 of the Revised Code, shall be open to inspection by the agency, the director of job and family services, and the director of the county department of job

and family services, and by other persons upon the written permission of the executive director. This has been established through statutes and case law. *State ex rel. Edinger v. C.C.D.C.F.S.*, 2005-Ohio-5453, ¶¶ 6-7 (8th Dist.).

The optimum phrase in the statute is *by other persons upon the written permission of the executive director*. This phrase by its plain reading clearly establishes that it is legally permissible to allow access to children services records to authorized individuals. In her response to Relator's agents initial request for the release of records, Respondent O'Leary stated that the "Executive Director did not find good cause to release the records" (Relator's Exhibit B, ¶ 5). Additionally, in her response to Relator's agent written request for the release of records, Respondent O'Leary stated, "while the executive director may authorize the release of certain records, he is not exercising his discretion to do so regarding these records" (Relator's Exhibit D, ¶ 3).

By her own written word, Respondent O'Leary destroys any argument that the inspection and release of records contained in FCCS ID 1866149 is against prevailing state statutes. Respondent Spinning can't invoke his authority and exercise discretion to deny Relator the right of inspection and release of records and then fall back on claiming that the statutes restrict him from do so in the case of Relator's records.

FCCS has the burden of establishing that the inspection and release of the records Relator is seeking is against the law, and fails to meet that burden if it has not proven that the requested records fall squarely within the relevant statute. FCCS has failed to point to any law that specifically lists the records Relator has requested as "must not release". In fact, current law does allow for the release of children services records.

Relator takes exception to Respondents statement that Relator made "unsupported allegations" in her merit brief. Based on a reading of Respondents brief it appears that

Respondents were claiming that Relator maintains she never received a reason for denying her access to her case records (Respondents Merit Brief, p. 2, ¶2). This statement is false, Relator never made that statement in her brief, what Relator stated was that “Franklin County Children Services failed to respond to Relator’s complaint and offers no law that specifically lists the records requested as “must not release”. Relator was noting that the Respondents never replied to Relator’s Original Action in Mandamus. Additionally, in her Original Action in Mandamus, Relator stated that FCCS’s response to her records request was inadequate and illegal (Relator’s Complaint, p. 2, ¶6). Relator included the written responses in her original complaint and in her submission of evidence.

### **RESPONDENTS FIRST ARGUMENT**

#### **Mandamus cannot compel the inspection or release of investigatory records compiled pursuant to R.C. §2151.421**

Respondents inappropriately claim that O.R.C.2151.421 covers and classifies Relator’s FCCS Case ID 1866149 as confidential and that its inspection or release is prohibited by law. This interpretation of O.R.C. 2151.421 is false. O.R.C. 2151.421 pertains solely to the report prepared when an individual covered under Divisions (A) or (B) of the statute makes a report of child abuse or neglect. Relator is the individual that made the report of alleged abuse to her minor child in this case and is thoroughly aware of all the pertinent information contain in the report, therefore this statute is not relevant in this instance. O.R.C. 2151.421, Division (J) does, however, mandate that when multiple child protective service agencies exist in the same county, they shall establish a MOU for the coordinated handling and investigation of child abuse cases. The law also mandates that the MOU must set forth the roles and responsibilities and the standards and procedures in handling and coordinating investigations of sexual or other forms of child abuse. The MOU also must established the methods of interviewing the child who is the

subject of the report and who was allegedly abused or neglected, and the standards and procedures addressing the categories of the persons who may conduct the interview.

Respondents didn't challenge or dispute Relator's statements that FCCS failed to follow protocols prescribed under an MOU signed, among others, by former FCCS Director Eric Fenner, and former CAC Director Dr. Philip Scribano established for the coordinated investigation and disposition of the maltreatment of children.

The statute governing the maintenance of public children services records is O.R.C. 5153.17 -The public children services agency shall prepare and keep written records of investigations of families, children, and foster homes, and of the care, training, and treatment afforded children, and shall prepare and keep such other records as are required by the department of job and family services. Such records shall be confidential, but, except as provided by division (B) of section 3107.17 of the Revised Code, shall be open to inspection by the agency, the director of job and family services, and the director of the county department of job and family services, and by other persons upon the written permission of the executive director. This has been established through statutes and case law. *State ex rel. Edinger v. C.C.D.C.F.S.*, 2005-Ohio-5453, ¶¶ 6-7 (8th Dist.).

Statutes contained in R.C. 3107.17 (B) deal with adoption records and are not relevant in this matter.

O.R.C 5153.17 unequivocally grants Respondents the authority under law to allow open inspection of children services agency records including investigations of family and children. Under FCCS Board Policies (Relator's Exhibit A, p. 8, ¶14) it states "any person having the legal capacity to consent to the release of information regarding an Agency client may do so consistent with Ohio and Federal laws or rules" Respondents agree that the executive director may grant permission to review records after demonstrating "good cause" that outweighs any need to keep

the records confidential, and even cites legal precedent (Respondents Merit Brief, p. 3, ¶1). Good cause means when it is in the best interests of the child or when the due process rights of other subjects of the record are implicated (Respondents Merit Brief, p. 3, ¶1). This is exactly Relator's contention, her due process rights and those of her minor child were violated by FCCS.

As a brief history, Relator made a report alleging that her minor child was abused at the hands of the child's father on June 21, 2009. Relator made the report on June 23, 2009. FCCS investigator, Dana Robertson, did not even take Relator's, her mother's or her minor child's statement until July 1, 2009, and only after US Representative Steve LaTourette pressured FCCS on Relator's behalf. The delay in Ms. Robertson taking statements was in violation of O.R.C. 2151.421 and Administrative Code 5101:2-36, 5101:2-37. Ms. Robertson failed to attend an interview of Relator's minor child at CAC on July 9, 2009 as required under a binding and legal MOU agreement. Most serious was that Ms. Robertson destroyed the subsequent report issued by CAC that resulted in a finding with a high degree of medical certainty that Relator's minor child was abused at the hand of her father. Ms. Robertson not only destroyed relevant evidence she made no mention of CAC's involvement in Relator's daughter's file. This despite an MOU establishing coordinated investigation and disposition of child abuse cases. Later, Relator was told during two separate grievance hearings that FCCS would be changing their disposition to indicative of abuse. During the first hearing, grievance hearing officer, Jesse Looser informed Relator that he had obtained CAC's report and had spoken with Dr. Scribano and would be changing the disposition to indicative of abuse, then failed to do so. Dr. Scribano was also under the impression that the disposition would be changed (Relator's Exhibit U). FCCS also failed to follow proper protocols under the MOU to jointly review and resolve differing dispositions by separate agencies covered under a MOU agreement. Additionally, Director Eric Fenner also told Relator during another grievance hearing that he would be changing the disposition to indicative

of abuse, then without explanation abruptly changed his mind. In his letter to Relator (Relator's Exhibit H) he stated that he was unable to substantiate abuse due to the historical conflicts between the Relator and father of her children. Director Fenner went even further and stated that present and historical conflict was so serious that it required professional intervention. Relator has an absolute right to review any personal information that describes Relator, or actions done by or to Relator, or any information that pertains to Relator's personal characteristics. It is clear from reading Director Fenner's disposition letter that his decision was based on some information about the Relator obtained from an unknown source. These undisputed facts are sufficient to establish "good cause" under Relator's and her minor child's due process rights.

Furthermore, this matter represents the very reason why the Public Records Act was enacted by the General Assembly. The enactment of the Public Records Act is meant to ensure transparency and accountability of public agencies and to ensure and vindicate the rights of the public to their records. Respondents are clearly attempting to conceal improper and/or illegal conduct by FCCS. FCCS' response clearly shows that they believe that they are above the law and above reproach.

Respondents first argument is without any legal status.

## **RESPONDENTS SECOND ARGUMENT**

### **Mandamus cannot compel an agency to comply with internal policies and procedures.**

Respondents' claims that the Grievance Policies and Procedures approved and authorized under the Board of Trustees affording Client's the right to inspect and review their case files are internal policies is ludicrous. FCCS Board Policies covering the grievance policy and consumer rights are safeguards mandated by Ohio and Federal as noted by Board Policy (Relator's Exhibit A, p. 7, ¶A). Board policies further establish an ombudsman to ensure compliance with client's

rights and grievance procedures. The right of a client to access and review information pertaining to the Relator or her child is an absolute right afforded under Ohio and Federal law.

FCCS's position regarding the investigation, decision, grievance process and now Relator's records request is that all matters are internal and at their sole discretion. FCCS conducted the investigation and decided this case on their own volition. This was against state statutes and a signed MOU with, among others, the Child Advocacy Center. Even after it was clearly shown to FCCS that the Child Advocacy Center issued a finding for abuse, FCCS disregarded their finding and even apparently destroyed CAC's report. This is also against MOU protocols when conflicting decisions are reached between covered agencies. In the event of a conflicting decision MOU procedures require that a hearing be conducted comprised of a representative from all agencies covered under the MOU to resolve and agree on one joint decision. FCCS ignored this policy and maintained and asserted their initial disposition. FCCS also conducts all grievance hearings internally. There are no checks and balances and history has shown that when one individual or agency assumes too much power the potential for abuse exists. Now, FCCS is attempting to prevent the Relator from exercising the only safeguard she has remaining, the right to inspect her case file. FCCS purpose is clear; they are attempting to seal the records. Under Ohio and Federal law the right to review records is an essential safeguard and protection afforded the citizenry. It should be clear to any reasonable person that FCCS is attempting hide improper and illegal activity. Ohio and Federal law permits exceptions to confidentiality laws when they are being used to cover improper or illegal acts.

Respondents second argument is without merit.

### **RESPONDENTS THIRD ARGUMENT**

**Revised code §1347.01. et seq. does not mandate disclosure of investigatory records compiled in compliance with R.C. §2151.421**

Relator has already aptly described the records referred to under O.R.C. 2151.421. These specific records pertain to the individual filing a report of child abuse or neglect under Division (A) or (B). O.R.C. 2151.421 does not address investigative or other case records maintain by a child serves agency, only that the investigation be conducted and coordinated under a MOU when multiple child protective service agencies exist in the same county. The confidentiality of the records covered under O.R.C. 2151.421 are not relevant in this instance because Relator reported the alleged abuse. The relevant statute pertaining to child service records is O.R.C. 5153.17 which even Respondents agree permits inspection of records upon the written permission of the executive director. Relator has shown “good cause” why she should be granted access to inspect and copy all records in her daughter’s case file. Respondents are arguing semantics and grasping for straws stating that Relator is only requesting for the first time records relating to her grievance hearings. Relator has requested as far back as November 20, 2009, in a written letter to Jesse Looser following his affirming the original disposition after stating he was changing it to indicative of abuse, access to inspect her entire case file including any notes made by FCCS personnel. Relator and her agent have made it abundantly clear that her records request was a complete review of the file that pertains to her minor child. There is only one case file, ID 1866149 and Relator has made multiple requests to review the entire file. It appears that FCCS is more concerned with protecting themselves than the child that was harmed

Respondents third argument is without merit.

## **CONCLUSION**

Relator has established that she has a clear right guaranteed under law to inspect and/or copy records in her Children Services Case Record. There is no law that specifically states the

records “must not be released”. The burden of proof that an exception exists resides with FCCS and they must show the exception falls squarely within the law. Respondents fail miserably in this respect. Furthermore, Relator is a subject of the case record and state statutes and FCCS’s Board Policy grants Relator the right to access and review information related to themselves or their child(ren) that is contained in the Children Services Case Record whether the case is open or closed. Relator has no adequate remedy in the ordinary course of law. This case also presents as the very reason the Public Records Act was enacted by the General Assemble. The Public Records Act was intended to ensure transparency and accountability of public agencies. FCCS never conducted the investigation under guidelines established under Administrative Code 5101:2-36-03, or state statutes requiring a Memorandum of Understanding for the joint investigation and disposition of the alleged maltreatment of children when more than one child protective service agency exists in the same county. Additionally, the interview and assessment conducted by the Child and Family Advocacy Center was apparently expunged from the children services case record prior to the initial disposition released on July 24, 2009. Finally, during two grievance hearings Relator was told that the disposition would be changed from unsubstantiated to indicative of abuse. FCCS abruptly changed their mind without offering any explanation. The issuance of a writ of mandamus will serve the public interest and provide a public benefit, inter alia, encouraging and promoting compliance in the future by FCCS personal with their own policies and procedures, and expose the operations of FCCS and failure to follow protocols established under a signed Memorandum of Understanding with multiple child(ren) protective services agencies to public scrutiny. Such action is necessary for the safety and protection of our most cherished citizens, our children.

Based on the foregoing, Relator seeks that this Honorable Court issue a Writ of Mandamus commanding Respondents to immediately afford the Relator her right to review and

copy her case file and notes established under law and FCCS Board Policy governing “Grievance and Consumer Rights” together with any award for statutory damages and costs associated with filing this original action in mandamus, as well as all other relief to which Relator may be entitled in law or in equity.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'S Y Clough', is written over a horizontal line.

Stephanie Y. Clough  
8060 Wright Road  
Broadview Heights, Ohio 44147  
Phone: 440-417-3382  
[stephanieclough@hotmail.com](mailto:stephanieclough@hotmail.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I served the above *Reply Brief of Relator Stephanie Y. Clough* to the following by regular U.S. Mail this 16 day of December, 2014.

Franklin County Children's Services, Ohio  
Charles M. Spinning, Executive Director  
855 W. Mound Street  
Columbus, Ohio 43223  
Phone: 614-275-2571

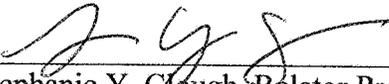
and

Franklin County Children's Services, Ohio  
Anne O'Leary, Chief Legal Counsel  
855 W. Mound Street  
Columbus, Ohio 43223  
Phone: 614-275-2571

RESPONDENTS

Franklin County Prosecuting Attorney  
Ronald J. O'Brien 17245  
373 S. High Street  
14<sup>th</sup> Floor  
Columbus, OH 43215  
Phone: 614-525-3555

COUNSEL OF RECORD

  
Stephanie Y. Clough, Relator Pro se  
8060 Wright Road  
Broadview Heights, Ohio 44147  
Phone: 440-417-3382  
[stephanieclough@hotmail.com](mailto:stephanieclough@hotmail.com)