

Court Issues Jail Death Records Opinion - *NJ OPRA* Blog

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On June 4, 2018, the Appellate Division issued an unpublished OPRA opinion titled *Benedetto v Russo and Union County*. While the opinion is not binding on lower courts because it is unpublished, we think it is helpful in several ways.

First, the case involves very important records: incident reports regarding suicide and suspicious deaths within a County Correctional Facility. Given the widespread coverage regarding several deaths in the Hudson County Jail recently, it is important that the public has access to information about these deaths and the conditions inside the jail.

In this case, Union County argued that the incident reports regarding jail deaths could not be disclosed because N.J.A.C. 10A:31-6.10(a)(4) exempts “[a]ny information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.” Additionally, Union County argued that records relating to drug overdoses could not be disclosed pursuant to N.J.A.C. 10A:31-6.10(a)(3), which exempts a “record, which consists of any alcohol, drug or other substance abuse information, testing, assessment, evaluation, report, summary, history, recommendation or treatment.” Thus, Union County argued the incident reports were medical records and exempt pursuant to both of those regulations.

The trial court ruled that these exemptions did not apply. The Appellate Division affirmed, agreeing with the trial court that the requestor did not seek “inmate medical records,” but rather sought “incident reports.” This is an important ruling because public agencies frequently try to categorize a record as something it is not.

The second reason this case is important is because it reinforces the rule that public agencies cannot meet their burden of proving that a record is exempt simply by making factual assertions in legal briefs. Instead, public agencies must produce affidavits, certifications, or other “legally competent evidence” if it wishes to cite facts not in the record. Unsworn assertions by attorneys in a brief are simply not evidential.

Too often in an OPRA case, a public agency will produce no evidence whatsoever and will ask the trial court to accept what was argued in a brief or to make a ruling based on assumptions. This case confirmed that is not acceptable.