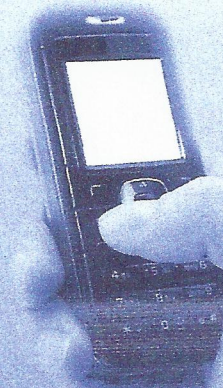


Protect People with Special Needs

**If You See or Suspect
Abuse or Neglect**

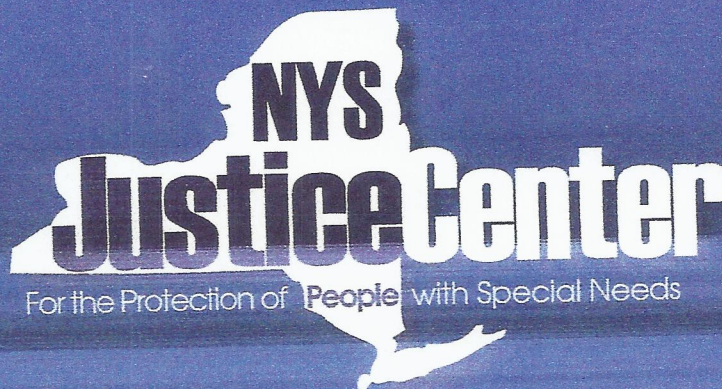
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Call the Vulnerable Persons Central Register Hotline

Toll Free: **1-855-373-2122**

TTY: 1-855-373-2123



Hotline receives calls 24 hours a day, seven days a week

Please clip these cards out to pass to your co-workers and to place in your wallet or purse for easy access.



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If you see or suspect abuse or neglect, call the toll-free
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Hotline operates 24/7

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FOR LEGAL PROFESSIONALS

- FindLaw
- Codes and Statutes
- US Code
- Title 42
- Chapter 154
- Subchapter I
- Part A
- Section 15009

42 U.S.C. § 15009 : US Code - Section 15009: Rights of individuals with developmental disabilities

Search 42 U.S.C. § 15009 : US Code - Section 15009: Rights of individuals with developmental disabilities

- Search by Keyword or Citation

Search

(a) In general

Congress makes the following findings respecting the rights of individuals with developmental disabilities:

- (1) Individuals with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities, consistent with section 15001(c) of this title.
- (2) The treatment, services, and habilitation (11) for an individual with developmental disabilities should be designed to maximize the potential of the individual and should be provided in the setting that is least restrictive of the individual's personal liberty.
- (3) The Federal Government and the States both have an obligation to ensure that public funds are provided only to institutional programs, residential programs, and other community programs, including educational programs in which individuals with developmental disabilities participate, that -
 - (A) provide treatment, services, and habilitation that are appropriate to the needs of such individuals; and
 - (B) meet minimum standards relating to -
 - (i) provision of care that is free of abuse, neglect, sexual and financial exploitation, and violations of legal and human rights and that subjects individuals with developmental disabilities to no greater risk of harm than

Breadcrumbs

[Home](#) [Recognize Abuse & Violence](#)

Prevalence of Violence

Violence committed against persons with disabilities is a frequently unrecognized and underreported problem that has reached epidemic proportions in the United States as reflected in the following statistics:

- 54 million Americans with disabilities (U.S. Department of Justice, Office of Crime Victim Bulletin, 1998);
- According to one study in 2000, approximately five (5) million crimes were committed against persons with developmental disabilities in comparison to 1.4 million child abuse cases and one (1) million elder abuse cases. (From Joan Petersilia, Ph.D., *When Justice Sleeps: Violence and Abuse Against the Developmentally Disabled*.)
- More than ninety percent (90%) of people (both male and female) with developmental disabilities will experience sexual abuse at some point in their lives. Forty-nine percent (49%) will experience ten or more abuse incidents. (Valenti-Hein, D. & Schwartz, L. (1995). *The Sexual Abuse Interview for Those with Developmental Disabilities*. James Stanfield Company. Santa Barbara: California)
- A study of psychiatric inpatients found that eighty-one percent (81%) had been physically or sexually assaulted. (From Jacobson & Richardson, *American Journal of Psychiatry*, 1987)
- Sixty-two percent (62%) of women with physical disabilities reported experiencing emotional, physical or sexual abuse. (From Nosek & Howland, 1998)
- Only three percent (3%) of sexual abuse cases involving people with developmental disabilities will ever be reported. (From Valenti-Hein, D. & Schwartz, L. (1995), *The Sexual Abuse Interview for Those with Developmental Disabilities*. California: James Stanfield Company.)
- Adults with developmental disabilities are at risk of being physically or sexually assaulted at rates four to ten times greater than other adults. (From Sobsey, Dick (1994). *Violence and Abuse in the Lives of People with Disabilities The End of Silent Acceptance?* Maryland: Paul H. Brookes Publishing Company.)
- Sixty-eight (68) to eighty-three (83) percent of women with developmental disabilities will be sexually assaulted in their lifetime, which represents a 50 percent higher rate than the rest of the population (Pease & Franz 1994, Warick, Jason (1997).
- The violence that women with disabilities experience includes verbal abuse, forced segregation, intimidation, abandonment and neglect, withholding of medications, transportation, equipment and personal assistance services and physical and sexual violence (Matsuda, 1996).
- Women with disabilities are raped, assaulted and abused at rates more than two times greater than women without disabilities.

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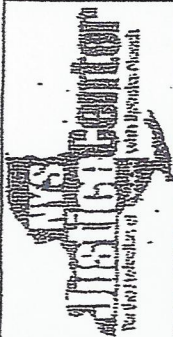
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New York State Penal Law 260.25

Endangering the Welfare of an Incompetent or Physically Disabled Person

§ 260.25 Endangering the welfare of an incompetent or physically disabled person in the first degree.

A person is guilty of endangering the welfare of an incompetent or physically disabled person in the first degree when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect. Endangering the welfare of an incompetent or physically disabled person in the first degree is a class E felony.



Calls Offered to Call Center by Hour
Cumulative Through Report Week and Daily
Week of Dec 8 - Dec 14, 2013

Hour of Day	Cum. thru Report Week ^a	4 Week Moving Average ^b		Sun	Mon	Tue	Wed	Thur	Fri	Sat	Week to Date Total	
		Daily	Weekend	8-Dec	9-Dec	10-Dec	11-Dec	12-Dec	13-Dec	14-Dec	# per hour	% per hour
12:00 AM	411	2.6	3.1	2	1	2	2				7	0.8%
2:00 AM	181	1.1	1.4	1	0	1	1				3	0.4%
4:00 AM	102	0.5	0.9	1	1	0	0				2	0.2%
6:00 AM	223	1.5	1.6	1	3	0	1				5	0.6%
8:00 AM	1,324	6.2	7.2	4	7	13	8				32	3.8%
10:00 AM	3,124	16.2	20.3	7	20	20	24				71	8.6%
12:00 PM	3,163	16.6	19.5	4	19	18	14				55	6.6%
2:00 PM	4,047	21.4	27.1	6	36	28	26				96	11.4%
4:00 PM	3,907	19.8	24.9	3	18	26	22				69	8.2%
6:00 PM	1,882	10.0	11.6	2	11	7	6				26	3.1%
8:00 PM	1,330	7.0	7.3	8	10	9	6				33	3.9%
10:00 PM	1,173	6.4	7.1	7	8	6	4				24	2.9%
Daily Total	41,934	219.8	266.0	82	275	253	230	0	0	0	840	100%

^a Cumulative counts include calls offered from June 30 through the current report week.

^b Averages based on the volume of calls in the most recent four week period including the report week.

Total Number of Reports Made to VPCR

Period Reported	Significant Incident	Abuse and Neglect	Financial	Death	Not NYJC Jurisdiction	Not an Incident	Type Not Reported	Total
June 30 to Dec 11, 2013	14,747	7,406	144	1,904	9,235	2,755	5	36,196

Investigation of Abuse and Serious Reportable Incidents, by Quarter

11/2008 - 9/30/2012

	1Q08	2Q08	3Q08	4Q08	1Q09	2Q09	3Q09	4Q09	1Q10	2Q10	3Q10	4Q10	1Q11	2Q11	3Q11	4Q11	1Q12	2Q12	3Q12	Total
Mistreatment	177	188	180	170	180	214	188	164	232	173	153	137	157	176	158	119	131	104	108	3,107
Neglect	948	1,123	1,162	961	1,082	1,146	1,128	1,012	1,226	1,114	1,024	738	829	924	921	757	747	689	671	18,221
Physical Abuse	874	889	897	941	1,006	947	879	892	978	1,002	897	850	881	1,085	971	889	921	829	885	17,733
Psychological Abuse	789	839	785	708	858	798	787	699	876	881	760	658	829	784	734	749	710	626	605	14,143
Seclusion	11	6	16	10	10	5	12	11	13	10	10	10	15	15	7	9	10	14	12	220
Sexual Abuse	335	384	378	301	403	513	295	306	350	369	354	277	320	365	329	285	309	288	307	6,146
Aversive conditioning	1	6	3	1	7	3	6	1	6	4	2	0	6	4	7	4	5	2	6	72
Restraint	24	25	23	24	19	22	21	22	17	27	19	14	16	15	29	17	17	19	19	393
Time-out	6	5	5	2	2	2	0	3	6	6	3	5	2	6	6	2	4	1	6	76
Civil rights	26	24	18	18	20	18	15	10	20	6	12	11	5	7	14	9	4	4	4	247
Total	3,161	3,570	3,433	3,141	3,464	3,460	3,267	3,108	3,712	3,608	3,228	2,690	2,987	3,326	3,162	2,830	2,937	2,657	2,806	80,113
Death	217	198	208	217	233	194	188	251	224	172	170	146	162	119	109	94	88	90	86	3,162
Injury	130	122	123	162	174	134	137	145	168	147	147	133	148	158	163	141	150	148	158	2,799
Medication Error	4	6	14	11	7	11	13	13	10	13	16	11	9	9	4	9	7	6	8	182
Missing Person	70	140	142	108	97	145	111	90	94	159	114	90	90	115	119	126	99	120	124	2,127
Possible Criminal Act	308	392	403	311	370	367	330	303	366	382	321	297	328	309	421	350	343	353	404	6,554
Restraint	10	10	9	7	7	4	6	7	6	4	10	2	1	5	2	3	1	1	0	83
Sensitive Situation	397	437	437	404	377	442	413	357	392	427	438	363	402	519	454	479	444	475	582	8,235
Total	1,123	1,289	1,317	1,207	1,255	1,291	1,195	1,159	1,250	1,281	1,209	1,038	1,127	1,413	1,253	1,185	1,101	1,184	1,368	23,249

Michael Carey

From: "OPWDD-FOIL Requests" <FOIL.Requests@opwdd.ny.gov>

To: [Redacted]

Sent: Friday, December 07, 2012 10:21 AM

Attach: MCareyFOILASRbyQtr.pdf pdf pdf pdf.pdf

Subject: FOIL Request

Mr. Carey,

As requested and in follow up to your FOIL request 12-0055, we are providing you with a quarterly report of allegations of abuse dating back to January, 2008.

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AMERICA NEW YORK LOCAL News Politics Sports Entertainment Opinion Living Photos Video Autos

Secret tape shows Assemblyman Andrew Hevesi saying that his leadership refuses to probe state agency

Hevesi, who chairs the chamber's investigations committee, said in the recording that he was not allowed to investigate the Justice Center for the Protection of People With Special Needs, even though Assembly Democratic leadership believe the agency is a fraud. He was speaking to activist Michael Carey, who made the recording.

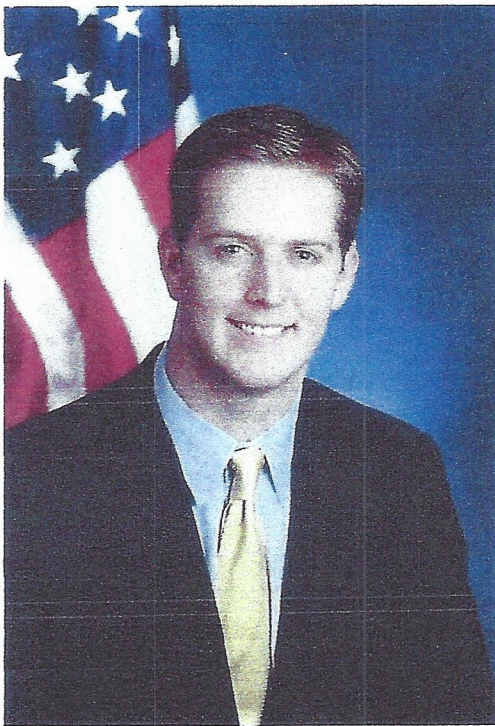
BY KENNETH LOVETT / NEW YORK DAILY NEWS / Monday, June 2, 2014, 11:02 PM

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HANDOUT

Assemblyman Andrew Hevesi was heard in a secret recording that the Assembly Democratic leadership would not let him investigate the Justice Center, even if the agency is believed to be a fraud.

ALBANY - A state assemblyman was secretly recorded saying that his leadership has refused to sign off on a potential probe into an agency designed to protect the developmentally disabled.

Assemblyman Andrew Hevesi (D—Queens), who chairs the chamber's investigations committee, said Assembly Democratic leadership believes the Justice Center for the Protection of People With Special Needs touted by Gov. Cuomo is a fraud but isn't prepared to investigate at this time.

"I didn't like their response," Hevesi is heard telling activist Michael Carey, who made the secret recording on May 7. "But the feedback I got was, 'We want to do this—we don't want to do this right now.'"

Carey, whose autistic son was suffocated as a state employee tried to restrain him, has claimed that the Justice Center is not referring most cases of abuse in

state facilities to the proper authorities.

Hevesi on the recording tells Carey his leadership wants him to start a preliminary review by meeting with Justice Center officials.

"I'm not thrilled, but I don't have a choice," Hevesi said.

But when Carey asks why he won't just subpoena documents, Hevesi said, "I'm not allowed to do that."

When Carey asked if Assembly Speaker Sheldon Silver blocked him, Hevesi responded: "He didn't say that to me, but I know the leadership is not willing to do that."

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Retire Mitch McConnell
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EDITOR'S PICKS

Queens gym teacher allegedly raped 2 teen students: sources

A Queens gym teacher accused of a year-long tryst with a student wrestler also bedded a second student.



Speaker Melissa Mark-Viverito wants \$15 min. wage in NYC

If the City Council speaker has her way, the city's minimum wage might not be so minimal.



Lottery ticket scam duo rips off four uptown victims

Here's the ticket to a scam. Cops uptown are on the hunt for a pair of perps who've duped unsuspecting



Washington Heights grandmother stuck in homeless shelter

A Washington Heights grandmother has spent 20 grueling months stuck in a dank, cramped homeless



Ex-DA Charles Hynes hides as allegations emerge

Former Brooklyn District Attorney Charles (Joe) Hynes was in hiding Tuesday after a scathing



FROM AROUND THE WEB



Toddler in a Coma After Being Injured in Police Raid Gone Wrong
(Stirring Daily)

Carey told Hevesi that he actually urged Silver not to bring the Justice Center bill to the floor for a vote in 2012 because it was a "fraudulent entity."



ANTHONY DELMUNDO/NEW YORK DAILY NEWS

When Michael Carey asked if Assembly Speaker Sheldon Silver (pictured) blocked him from investigating, Hevesi said: 'He didn't say that to me, but I know the leadership is not willing to do that.'

"You were right," Hevesi said. "They agree. They agree. That was one of the things they said. They said once we open this, it's going to be a huge mess and we want to do it. They're interested in doing it."

When asked why the leaders won't immediately sign off, Hevesi said "they won't give me answer why."

"I don't have an ability to push and I'll tell you why," Hevesi said as the provided taped segment ended.

Carey in a statement charged that Silver blocking a probe is "far worse than the the (Vito Lopez) sexual harassment scandal" that dogged Silver and the chamber.

Hevesi expressed disappointment that Carey secretly taped their conversation.

"After the heartbreaking death of his son, we in the Assembly have worked closely with Michael and his family," he said.

He added that "I have and will continue to monitor the Justice Center to ensure it is operating as intended."

Silver spokesman Michael Whyland said: "Protecting individuals with disabilities from mistreatment is something the Assembly Majority has worked toward for many years. The independent Justice Center was established last year and we continue to evaluate it. If an investigation is warranted in the future we will pursue one."

assaulted her in an elevator was arraigned on attempted



New FDNY honcho vows to improve diversity

Daniel Nigro was sworn in as the FDNY's 33rd commissioner on Monday and promised to make the



Grave mystery: abolitionist's tombstone turns up in Queens backyard!

He'd be rolling in his grave. The 153-year-old tombstone of famed



Pols: Shake up HS admissions to boost diversity

State lawmakers, city officials and the teachers union have teamed in a fresh push to increase



Bronx sentencing postponed after shooter refuses to attend

THE shooter who opened fire during a vigil in the Bronx in 2012 refused to



Brooklyn woman, 107, celebrates birthday in Bed-Stuy nursing home.

SHE'S BLOWN out enough candles. A Brooklyn woman exercised her centenarian's



Bronx seniors play Wii games to help stay sharp

More than 200 seniors — some in wheelchairs — are getting their electronic game on as they golf, bowl



Mister Softee spinoff banned by judge

A federal court judge banned Master Softee from operating its rogue fleet of ice cream trucks that blatantly rip off the Mister



Woman stabs boyfriend's estranged wife at N.J. Wawa: cops

A Queens woman stabbed her boyfriend's estranged wife in a bloody melee at a



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State's new Justice Center makes Bethlehem its home

Michael Carey criticizes new agency as more of the same

By [Marcy Velte](#)

First Posted: [Monday, July 15, 2013 -6 a.m.](#)

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BETHLEHEM — At the same time as the Gov. Andrew Cuomo administration announced the new Justice Center for the Protection of People with Special Needs would be coming to Bethlehem, Delmar resident Michael Carey made it known he feels the new agency will not go far enough to stop abuse.

The new state agency officially began operating on Delaware Avenue on Sunday, June 30. The center is part of a new state mandate to more heavily monitor, investigate and prosecute the abuse of those with disabilities within the state.

“I would more accurately call it an Unjust Center,” said Carey. “It will continue the process of internal investigating and most cases will never be seen by the police.”

Carey and his wife, Lisa, won a \$5 million settlement in 2011 against the state after their 13-year-old son died of asphyxiation while on an outing from the state facility he was living in. The couple have been advocates for improving the protections for those with disabilities for years. In 2004, they formed the Jonathan Carey Foundation, which is now a neighbor of the Justice Center.

Michael Carey believes the new agency will continue in the same vein as the state's former Commission on Quality Care of Care and Advocacy for Persons with Disabilities. The responsibilities of that commission have now been transferred into the Justice Center, along with the majority of its employees.

The new \$45 million program has been in development for about a year, after lawmakers approved the law following a series of articles in the New York Times detailing the low levels of reporting abuse to law enforcement.

When fully staffed, Executive Director Jeffrey Wise said 250 to 300 people would be employed with the agency to have jurisdiction over the Department of Health, the Office of Mental Health, the Office of Children and Family Services, the Office of Alcoholism and Substance Abuse Services and the State Education Department. The state is also responsible for overseeing various nonprofit organizations and homes that deal with the care of disabled children and adults, and several state camps.

(Continued on Next Page)

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State's new Justice Center makes Bethlehem its home

Michael Carey criticizes new agency as more of the same

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[continued](#) — About 80 employees will man a 24/7 hotline in Delmar for reporting cases of neglect or abuse. Patricia Gunning, the former Chief of the Special Victims Unit with the Rockland County District Attorney's office, was hired to be the agency's special prosecutor. She will work with about 20 special investigators.

Carey said he believes the new agency has given the state too much power to police itself and has greatly increased the areas of state government that are internally investigated. He also feels people reporting cases will feel less inclined to call the police.

"Employees will remain in the system and get a slap on the wrist," he said.

Wise said the Center is not a first response team, so those who feel immediate intervention should still call 911 or local law enforcement.

"We're meant to be like an added level of security," he said. "Our special prosecutor is meant to assist local district attorneys when needed."

Wise said many times smaller counties don't have the resources to take on bigger investigative cases and need help. Others may need assistance because they don't have a background in cases regarding people with disabilities and are looking for someone with more expertise. He said they would also go back to review cases where a local district attorney opted not to prosecute, but Justice Center investigators feel charges are needed.

Carey said he feels new legislation means much more evidence is now needed to prove abuse is taking place. He also called the new center "a slap in the face of the true justice (he's) been working on for years"

"I find it appalling that the Cuomo Administration has chosen to put the Justice Center a tenth of a mile down the road from the Jonathan Carey Foundation office, which is a daily reminder of how dangerous the mental health care field is in this state for the people who rely on it for care."

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- [Governor signs Jonathan's Law](#)
- [Jonathan Carey Foundation to hold benefit walk](#)



March 6, 2014

Mr. Michael Carey
90 Delaware Avenue
Delmar, NY 12054

Re: FOIL Appeal Decision (RA No. 466 and 468)

Dear Mr. Carey:

Your letter dated February 19, 2014 is an appeal under the Freedom of Information Law (FOIL), from the Justice Center Records Access Officer's determination of your FOIL requests dated November 18, 2013 (RA No.466 and 468).

For the reasons that follow I affirm the determination of the Justice Center's Records Access Officer stated in her letters to you, dated January 30, 2014.

Your FOIL appeal challenges three aspects of the FOIL response. Each of those challenges is listed below and addressed in turn.

First, you assert that the statistical data provided to you is "inaccurate".

You asked for:

"The number of calls received by the Justice Center to date,"

and,

"The breakdown of those calls by categories by the Justice Center.... By every category used by the Justice Center."

In response to these two separate requests, two sets of data were provided to you. The first set of data [Call Center Report for the Week of 12/8/2013-12/14/2013] reflects the number of phone calls received by the Justice Center's call center from June 30, 2013 to December 14, 2013. The second set of data [Total Number of Reports to the VPCR by Type as of 12/11/2013] reflects the number of reports received by the Justice Center and their corresponding categorization as of December 11, 2013. The difference you note between the number of phone calls to the Justice Center call center (41,934 phone calls) and the number of reports to the Justice Center (36,196

reports) reflects that more than one call may be made with respect to a single report. The data provided reflects the fact that, under Social Services Law § 491, each mandated reporter who witnesses or becomes aware of a reportable incident has an obligation to make a report to the VPCR. In addition, the Call Center Report contains data for three days more than the VPCR Report by Type data.

Given that the data provided to you is accurate, the determination of this aspect of your FOIL request is upheld.

Second, in your appeal you assert that “calls reported by the Justice Center to 911....” is information which the “Justice Center obviously has record of.”

Your FOIL request concerning 911 calls (RA #466) asked for:

“The number of calls taken in by the Justice Center and then reported by the Justice Center directly to 911.”

“The written Justice Center policy regarding when 911 is to be notified by the Justice Center.”

and,

“[a]ny and all other information the Justice Center has in its possession regarding 911 reporting, the requiring mandated reporters to report to 911 including what and when...”

In response to these aspects of your FOIL request, the Justice Center discretionarily provided you excerpts from the draft of the NYS Justice Center Intake Representative Procedure Manual regarding 911 reporting. You were also provided with the Justice Center Call Center Message Transcript and a link to a publically available power-point presentation issued by the Justice Center detailing mandated reporter responsibilities. Each of these records addresses how the Justice Center implements the obligation to call 911 if the mandated reporter or individual caller is witnessing or has knowledge of an emergency situation. As made clear in these records, the Justice Center does not call 911 directly, but instead directs call center staff to make appropriate inquiries to prompt callers to call 911 when it is believed that an emergency situation that may require immediate medical or law enforcement assistance exists.

In short, this procedural and policy information provided to you in response to your FOIL request regarding calls to 911, demonstrates, as a factual matter, how the Justice Center ensures that 911 is called. The records provided were responsive to your request and the Justice Center has no further documents that are responsive to your request. FOIL does not require an agency to prepare or create a record in response to a request. Public Officers Law §89(3). As a result, this aspect of the decision of the records access officer is also upheld, and your appeal is denied. The rationale for this decision is set forth in the Governing Law and Discussion sections below.

Third, you assert that “calls reported by the Justice Center to ..., the police and District Attorneys....” is information which the “Justice Center obviously has record of.”

Your FOIL request asked for (emphasis added):

“The *number of calls and cases reported to County elected District Attorney’s* [sic] by the Justice Center” and,

“The written Justice Center *policy* regarding when County elected District Attorney’s [sic] are to be notified.”

The Justice Center’s Special Prosecutor has concurrent jurisdiction with all 62 District Attorneys in New York and therefore has no obligation to report or notify a local District Attorney when it is investigating a potential criminal case. The law only requires the Justice Center to consult with a local district attorney in connection with the timing of the Special Prosecutor’s appearance in County or Supreme Court, or before a grand jury, or with regard to prior notice of the application for a search warrant. Executive Law §552(2)(b) and (2)(c). Therefore, the Justice Center does not have an obligation to systematically compile the type of data you have requested and the Justice Center does not maintain such a record. As a result, your request does not elicit any responsive records. This aspect of your appeal is therefore denied based on the law set forth below.

A. Governing Law

Public Officers Law §89(3)(a) provides that when an agency has the ability to extract information contained in an electronic information system with reasonable effort, it is required to do so. However, an agency cannot extract such information when search terms are insufficient for purposes of locating or identifying records sought. Konigsberg v. Coughlin, 68 NY2d 245, 249 (1986). When the FOIL request is for data, and there is no combination of search terms that would yield the universe of responsive documents or data requested, the search will be fruitless. In those cases, because the search terms bear no rational relationship to the organization of agency records, the request is not reasonably described and a database search cannot yield any responsive records. See, e.g., Asian Am. Legal Defense & Educ. Fund. v. New York City Police Dept., 41 Misc. 3d 471, 481 (Sup. Ct. NY County 2013) (Upholding denial of information pertaining to investigations of certain ethnic communities where “[r]espondents have sufficiently demonstrated in its papers that a database search ‘would be pointless, as there is no combination of search terms that would yield the universe of responsive documents,’ as the vast majority of its records are not organized along racial, religious, or ethnic classifications.”).

B. Discussion

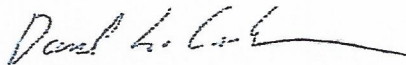
In this regard, please be advised that the Justice Center is a law enforcement agency with statewide concurrent jurisdiction with local law enforcement agencies, including local District Attorneys, to prosecute allegations of abuse and neglect committed against people with special needs in New York. In fulfilling these duties and responsibilities, the Justice Center works in close cooperation with local District Attorneys to pursue prosecutions in abuse and neglect cases that raise allegations of potential criminal wrongdoing committed against people with special needs. Indeed, one of the mandates of the Justice Center is to increase the capacity of local

district attorneys to prosecute cases involving special victims. In that regard, the support provided to police and local prosecutors is as significant whether the Justice Center Special Prosecutor or a local District Attorney appears in court on a criminal case, and it reflects the fluid nature of the relationship between the Special Prosecutor, local District Attorneys and other law enforcement agencies statewide. Given this fluid relationship, the complexity of the criminal justice process and its multiple stages, the search terms "calls and cases reported to local county elected district attorneys" or "the written ...policy when county elected district attorneys are to be notified," do not constitute a reasonable description of data or records in possession of the Justice Center, and thus do not yield any responsive documents or data.

For all of the above-mentioned reasons, your appeal of the letter determination of your FOIL request, as detailed in your appeal letter, is denied.

Should you wish to appeal this decision, you have a right, pursuant to Public Officers Law §89 to commence a proceeding pursuant to Article 78 of the Civil Practice Law and Rules in the Supreme Court of the State of New York, for a review of this determination.

Sincerely,



David L Cochran
FOIL Appeals Officer

cc: Committee on Open Government

Updated February 9, 2014, 12:50 p.m. ET

NY mum on thousands of reports of disabled abuse

Associated Press

"ALBANY, N.Y. — The agency established last year to protect the disabled in state-funded institutions has received nearly 25,000 reports of significant incidents, abuse, neglect and deaths in its first six months, though the public knows little about how many of those reports led to prosecutions, arrests and firings."

"Michael Carey, whose 13-year-old autistic son was killed in state care in 2007, said he believes the situation may even be worse now because caregivers believe they must report incidents to the Justice Center in suburban Albany instead of local police, keeping cases from being properly investigated."

<http://online.wsj.com/article/A Pf6309b71ca8545a4813fe4da866e66a0.html>

Most cases of abuse never go to 911 & are only internally investigated by providers

THE NEW YORK REPUBLIC

NY agency refuses to detail criminal cases from thousands of reports of disabled abuse

By MICHAEL VIRTANEN Associated Press
February 09, 2014 - 1:08 pm EST

THE NEW YORK TIMES

EDITORIAL

Protecting the Most Vulnerable

By THE EDITORIAL BOARD

Published: August 9, 2013

“Two-and-a-half years ago, The Times reported horrifying abuse of people with developmental disabilities or mental illnesses by state employees, who were rarely punished for it. Gov. Andrew Cuomo promised action. **But too little appears to have changed.**”

“Mr. Cuomo needs urgently to return to this issue, to use his political skills to get everyone in a room — state officials, patients’ advocates, the public workers’ unions — and figure out how to make lives safer for the thousands of people who cannot take care of themselves.

There is much the governor could do. He could require surveillance cameras in these facilities, just as prisons have them. He could make sure that the police get more involved.”

<http://www.nytimes.com/2013/08/10/opinion/protecting-the-most-vulnerable.html>

NEW YORK STATE SUPREME COURT
COUNTY OF ALBANY

In the Matter of the Application of
ALBANY LAW SCHOOL and
DISABILITY ADVOCATES, INC.,

Petitioners and Plaintiffs

— against —

AFFIDAVIT

In Support of Motion

Index No. 10371 - 08

NEW YORK STATE OFFICE of MENTAL RETARDATION
and DEVELOPMENTAL DISABILITIES and DIANA JONES
RITTER, in her Official Capacity as Commissioner of the Office
of Mental Retardation and Developmental Disabilities,

Respondents and Defendants,

For Judgment pursuant to CPLR Article 78.

STATE OF NEW YORK

ss.:

COUNTY OF SCHENECTADY

JANE G. LYNCH, being duly sworn, deposes and states the following:

1. I am the Chief Operating Officer of the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities (the "Commission") and I am fully knowledgeable concerning the facts asserted herein, except for those expressly stated upon the basis of information and belief.
 2. I offer this Affidavit in support of Respondent-Defendants' motion to dismiss the Petition and Complaint herein, insofar as Petitioner-Plaintiffs have incorrectly asserted that relevant New York State and Federal laws effectively invest in them authority equivalent to that
-

least superfluous.

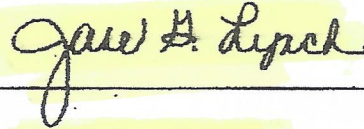
9. With its creation of the P&A system, Congress intended a balancing of legitimate interests among stakeholders, and so it designed tempered grant of authority which, while extraordinary, is nonetheless neither open nor on a par with the general oversight authority granted to the Commission under New York law. Moreover, to my knowledge, there is no indication in Congressional or New York legislative history relating to the P&A program that would suggest any design to create functioning duplicates of the Commission's role in the mental hygiene system, with concomitant authority to, *e.g.*, command the production of records on a broad scale as the Petitioner-Plaintiffs suggest. The Federal law discussed in ¶7 sets out the conditions under which a P&A office may request and expect to compel disclosure of records and information pertaining to residents of a mental hygiene facility, and MHL §45.09(b) echoes that law, neither augmenting nor diminishing anything granted to the P&As under the Federal enabling legislation, also known as the Developmental Disabilities Assistance and Bill of Rights Act ("the DD Act").

10. There are foreseeable, adverse consequences of an interpretation favoring Petitioner-Plaintiffs' expansive reading of their authority; one is the risk of confusion across the jurisdictional spectrum of providers subject to MHL Article 45 oversight that necessarily includes hospitals, community residences, and many other entities functioning within the State-licensed mental hygiene system. It is fundamentally important to a coherent oversight scheme that licensed providers distinguish and understand the differences between the Commission and the P&A system in terms of function and method, for example. More

concretely, it is simply critical that, for example, administrators and staff of a residential care facility licensed by the Office of Mental Retardation and Developmental Disabilities ("OMRDD") understand that a request for information and records by the Commission does not carry with it an overlay of potential litigation concerns. One element of the Commission's effectiveness, historically, is a carefully cultivated understanding among providers that unbridled disclosure and candor where Commission functions are concerned with neither lead to nor become an exhibit in litigation brought against the entity or its personnel.

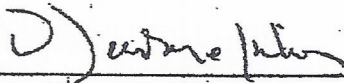
11. In the same vein, the history of this Commission's mandate reveals that it has always, and without exception, pursued its functions as intended by the Legislature, as an independent oversight agency. No aspect of its mandate has ever been delegated to other entities, including the P&A contract offices, which are themselves independently incorporated. Our activity within the mental hygiene system requires the dedication of appropriately qualified Commission staff whose authority under MHL Article 45 enables this agency to discover facts, receive information, make findings and issue reports on a range of matters that impact the lives of persons with mental disabilities. For their part, P&A offices within the system administered by the Commission are expected to engage in a range of activities that complement those of the Commission and further the expectations of Congress under the DD Act. These deliberate parallels in mission, design and function contribute to the robustness of the system, but as MHL §45.09(a) and (b) make clear, were never intended to suggest sameness of legal authority.

WHEREFORE, I respectfully submit that the Respondent-Defendant's motion to dismiss the Petition-Complaint be granted.



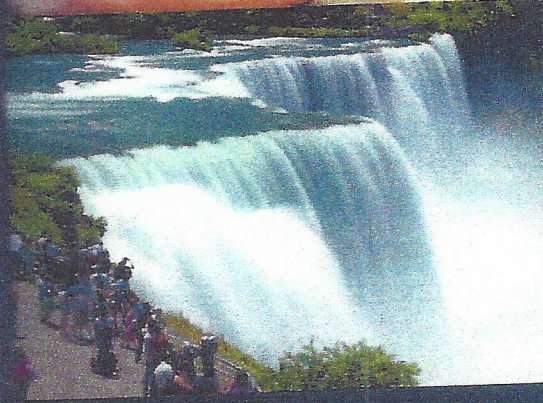
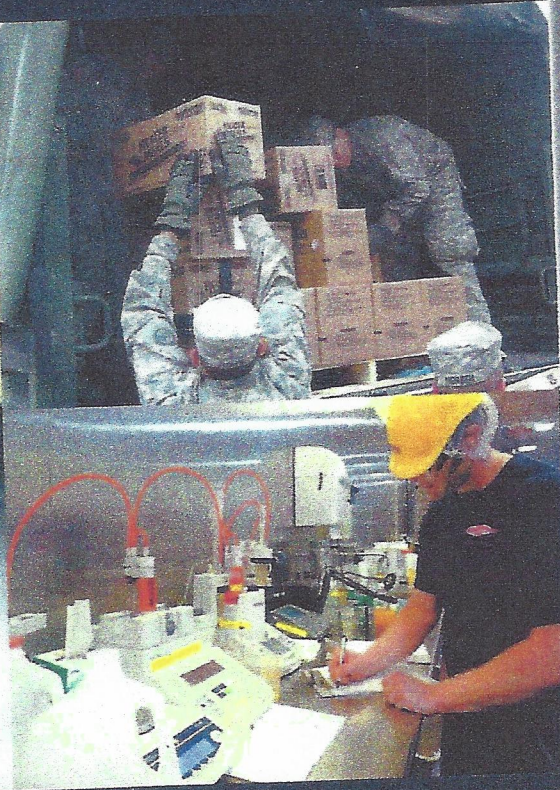
JANE G. LYNCH
Chief Operating Officer
Commission on Quality of Care and
Advocacy for Persons with Disabilities

Sworn to before me this
19th day of March, 2009.



Notary Public

V. JEROME LYNCH
Notary Public, State of New York
No. 402882
Qualified in Saratoga County
Commission Expires February 28, 2011



**Building on
Success**



2014 STATE OF THE STATE

January 8, 2014

Governor Andrew M. Cuomo

Provide Specialized Justice Center Training for Law Enforcement

The Justice Center for the Protection of People with Special Needs began operations on June 30, 2013. This independent State agency, enacted through the leadership of Governor Cuomo, was created to ensure that the more than one million vulnerable New Yorkers are protected from abuse, neglect, and mistreatment.

The Justice Center has established new standards and practices that reform and strengthen the State's system of incident reporting, investigations and disciplinary processes.



Beginning in 2014, Governor Cuomo will direct the Justice Center to conduct statewide training programs to educate local law enforcement agencies.

Beginning in 2014, Governor Cuomo will direct the Justice Center to conduct statewide training programs to educate local law enforcement agencies at every level about the mandate of the Justice Center, its jurisdiction and the critical role it plays in criminal

investigations related to the abuse and neglect of vulnerable New Yorkers. By providing this important information and engaging police officers and other law enforcement personnel, the Justice Center intends to build partnerships with law enforcement that will further protect New Yorkers with special needs.

In addition, the Justice Center in partnership with State public safety agencies will provide guidance on best practices for law enforcement response to situations and confrontations involving individuals with special needs. This training will focus on the sensitivities and special needs of people with both mental and physical disabilities and will include topics such as progressive approaches to addressing emergency situations, challenging behaviors and responsiveness, victimization of people with disabilities, and improved interaction skills. The training will promote collaboration among the Justice Center, law enforcement, emergency service workers and service providers to ensure that vulnerable New Yorkers are protected to the maximum extent possible.

Office of Investigations

The Office of Investigations is staffed by experienced and highly-trained law enforcement officers who thoroughly investigate allegations of abuse, neglect and misconduct received by the Justice Center. Their responsibilities include collecting and preserving all relevant documents and physical evidence that support such allegations. This evidence is used to pursue administrative sanctions and/or the criminal prosecution of employees who abuse people with special needs or who otherwise violate the law and/or the policies of the agencies where they work.



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

BRIAN M. KOLB
Minority Leader

May 30, 2014

The Honorable Andrew M. Cuomo
Governor, State of New York
Executive Chamber
State Capitol
Albany, New York 12224

Dear Governor Cuomo:

As you are aware, the Justice Center for the Protection of People with Special Needs (Justice Center) was created to ensure stronger oversight of the State programs and facilities that provide assistance for individuals with special needs.

The Justice Center was charged with reporting requirements intended to promote transparency, to ensure our most vulnerable are receiving the care and protections they deserve and to keep the public informed as to the progress in assisting individuals with special needs. Recent articles and claims are making it clear that this is not occurring.

It has been reported that approximately 7,500 calls to the Justice Center abuse hotline are made on average every month and approximately 11 deaths are reported on average every day. These statistics are staggering considering the Justice Center has failed to call 911 or notify authorities in order to ensure proper medical attention is received and criminal investigations are pursued where appropriate. It is clear the Justice Center is failing, and thus we are failing, to protect people with disabilities, our most vulnerable, from abuse and neglect.

I respectfully request that you take the steps necessary to investigate and guarantee the Justice Center is fulfilling its intended mission and develops protocols that mandate the calling of 911 to assure that proper medical treatment is received and appropriate independent investigative procedures are followed.

Thank you for your attention to this very important matter, our disabled community and their concerned families deserve nothing less.

Sincerely,

Brian M. Kolb
Assembly Minority Leader

BMK/pf

✓ cc: Mr. Michael Carey