

**Certified Translation**

Commonwealth of Puerto Rico  
COURT OF APPEALS  
SAN JUAN- CAGUAS JUDICIAL REGION  
PANEL I

WILSON J. SOTO NIEVES, *	*	Administrative
MARITZA G. RIVERA and *	*	Review originating in
the conjugal partnership *	*	the Department of the
comprised by them *	KLRA20180019	Family
	*	*
Petitioner *	*	
	*	*
vs. *	*	Case No.:
	*	R16-03-13063
DEPARTAMENTO DE LA *	*	*
FAMILIA; ADMINISTRA- *	*	*
CIÓN DE FAMILIAS Y *	*	*
NIÑOS; ADMINISTRACIÓN *	*	Re:
AUXILIAR DE PROTECCIÓN *	*	Petition for Information
SOCIAL A MENORES *	*	
	*	
Respondents *	*	
	*	
	*	

(Note: There are three sets of initials on the left-hand margin of every page. There is a note in small font on the left-hand bottom of this page which reads as follows:  
Identifier Number  
SEN2018\_\_\_\_\_).

Panel integrated by its President, Judge Ramírez Nazario, Judge Surén Fuentes and Judge Candelaria Rosa.

Candelaria Rosa, Judge Stating the Opinion

**JUDGMENT**

In San Juan, Puerto Rico, on May 31, 2018.

Come now before us Wilson J. Soto Nieves, Maritza G. Rivera and the Conjugal Partnership comprised by both (the Soto-Riveras or the petitioners). By means of a writ

which they entitle *Review of the Administrative Decision*, they question a finding of the Administración de Familias y Niños of the Department of the Family (the ADFAN), in which they were denied the copy of the grievance or referral, due to reasons of confidentiality. On the basis of the grounds that we state as follows, the respondent finding is confirmed.

As arises from the findings of fact contained in the respondent communication, on March 9, 2016, *Referral R-16-03-13063* was received through the Social Emergencies Mistreatment Program Line. In that referral, the informant person notified about a possible negligence on the part of the Soto-Riveras regarding a minor, reason why an investigation about the matter was started. Said investigation concluded on April 18, 2016 and it was determined that the referral resulted *Without Grounds*. After the Investigations Unit notified its finding to the petitioners, these requested the information that would have been available in the Central Registry of Cases for the Protection of Minors. In response to it, the Central Registry issued a communication by means of a letter, and notified copy of the document that appeared in the registry.

Not being in conformity, the Soto-Riveras once again requested from ADFAN all the information available in the Central Registry; in particular, the copy of the grievance or referral. In addition, they requested that their names be eliminated from the registry. Once again, the Central Registry notified copy of the document that appeared in the registry and informed the petitioners that their names were eliminated from the registry. The Soto-Riveras came before this Court of Appeals, due to their understanding that their claim over the petition of the copy of the referral or grievance had not been dealt with. By means of September 23, 2016 *Judgment*, in case KLRA201600912, a colleague panel resolved that there existed no final finding from the agency that could be reviewed by this Court, since the notice that was being challenged did not comply with the relevant regulatory requirements.

Faced with it, the Soto-Riveras presented a writ of *mandamus* before the Court

of the First Instance on December 13, 2017, and requested that the Department of the Family produce the information being requested. Later, ADFAN issued a notice entitled *RE: SOLICITUD DE INFORMACION DE LA INVESTIGACIÓN R16-03-13063. (Petition for Information about Investigation R16-03-13063)*. The same is dated January 29, 2018. In it, the agency reiterated its position to not provide information supplied by the informant person, as well as their identity. It based its decision on the fact that the Referral turned out to be *Without Grounds*, and not *Unfounded*, reason why the information supplied and his/her identity should be maintained in strict confidentiality. Therefore, the Department of Justice appeared before the primary forum and requested the dismissal of the writ of *mandamus*, on February 1, 2018. It adduced therein that the same had become moot, since the Department of the Family had already issued its final finding.

Without waiting for the finding of the Court of the First Instance with regard to the writ of *mandamus*, the Soto-Riveras appear before us and formulate the following finding of error:

The Department of the Family erred, via the Administración de Familias y Niños (Administration of Families and Children), Administración Auxiliar [de] Protección Social/Centro Estatal de Protección a Menores (Assistant Administration for Social Protection/State Center for Protection of Minors) when it denied the appellants copy of the grievance or referral #R16-03-13063 and other relevant information, or, in the alternative, the information contained in said grievance or referral and which may arise from the Central Registry. The denial does not proceed because it was not established in an attesting manner that the information being requested was offered in good faith and therefore it proceeded to maintain the confidentiality of the same.

In our juridical system, there exists a fundamental right of access to public information, which has been recognized as corollary to the freedom of speech, press and association expressly consecrated in our Constitution. *Ortiz v. Dir. Adm. de los Tribunales*, 152 D.P.R. 161 (2000). It parts from the premise that, without access to public information, the citizen would not be in a position to judge government actions or to demand the compensation of damages caused by the same. *Soto v. Secretario*

*de Justicia*, 112 DPR 477 (1982). In addition, this would be in opposition to our democratic principles that guarantee the right of the people to pass oversight check over all the actions and findings of the government. *Ortiz v. Dir. Adm. de los Tribunales, supra.*

In a similar sense, Article 409 of the *Code of Civil Procedure* creates a general right of access to public information in the power of the State. In particular, this provides that "any citizen is entitled to inspect and make copies of any public document of Puerto Rico, except what is expressly provided to the contrary by the law." 32 L.P.R.A. Sec. 1781. In this way, it has been pointed out that any citizen, due to the mere fact of being one, is entitled to examine the public documents. *Trans Ad de PR v. Junta de Subastas*, 174 D.P.R. 56 (2008). However, that right is neither absolute nor unlimited, since there can exist pressing interests on the part of the state which justify a claim of confidentiality on their part. *Angueira v. J.L.B.P. I*, 150 D.P.R. 10 (2000). With regard to the matter, it has been resolved that a claim of confidentiality on the part of the state is justified when: (1) a law so declares it; (2) the communication is protected by some of the evidentiary privileges that the citizens can invoke; (3) revealing the information could hurt fundamental rights of third parties; (4) we are dealing with the identity of an informant or (5) it is official information in conformity to Rule 314 of the Rules of Evidence. *Trans Ad de PR v. Junta de Subastas, supra*. Therefore, faced with a state claim of confidentiality, we, the courts are called to evaluate the same *vis a vis* the right of the citizen to have access to the information. In that way, the applicable examination or judicial scrutiny would depend on the exception invoked by the State as grounds for is denial to provide access to public information. *Ortiz v. Dir. Adm. de los Tribunales, supra*, page 178.

On the other hand, by means of Act No. 246-2011, known as the *Safety, Welfare and Protection of Minors Act* (Act No. 246), 8 LPRA sec. 1101 et seq., the Legislative Assembly

declared as "public policy of the Government of Puerto Rico ensuring the best interest and integral protection of the minors". Said law has the purpose of ensuring that the procedures in the cases of mistreatment of minors are dealt with diligently, and focused on attaining safety and protection, as well as the physical, emotional and psychological welfare of the minor, above any other interest. *See, Exposición de Motivos* (Statement of Motives), Act No. 246. It, with the objective that the State, when exercising its *parens patriae* power, watch out for the safety, the best interest and welfare of infants and adolescents. *Rivera v. Morales*, 167 DPR 280 (2006).

Article 21 of Act No. 246, 8 LPRA sec. 1131, establishes that "[t]he information supplied by any person, by virtue of this article, shall be maintained in strict confidentiality, as well as the identity of the person who supplied the information". The exception to that norm are those cases of unfounded reports in which, knowingly, the information being offered is false. *Id.* In addition, Article 25 of Act No. 246, 8 LPRA sec. 1135, is entitled to request that they be given copy of the information that appears in the Central Registry and which refers to their case. Notwithstanding, that right may be exercised "as long as it is not contrary to the best interest of the minor and taking the necessary measures to protect the confidentiality of the person who, in good faith, informed the referral or who cooperated during the investigation of the same". *Id.* Later, Article 26 of Act No. 246, 8 LPRA sec. 1136, reiterates the confidential nature of the reports and the files, when it points out that "[a]ll the files relating to cases of protection, including the reports of any offices, public, private or privatized entities generated in the compliance with this Law, shall be confidential and shall not be revealed, except in the cases and circumstances specifically authorized by this Law".

In addition, the *Regulation for the Safety, Welfare and Protection of Minors*, Regulation No. 8319 (the Regulation), establishes the procedure to follow at the moment of investigating a referral for mistreatment, institutional mistreatment, negligence or

institutional negligence. With that goal, Chapter II, Section VI of the Regulation, reiterates the confidentiality of the reports and the files, when it indicates that "[i]t is the policy of the Department of the Family to protect and preserve the right to privacy of any person about which it maintains information in the files of the cases of protection." Chapter V, Section II of the Regulation, even imposes penalties on any employee of the Department of the Family who allows, helps or promotes the unauthorized making public of the confidential information contained in the reports and the files, prepared as part of any procedure under Act No. 246.

On the other hand, the "Manual de normas y procedimientos del continuo de servicios de protección social a menores" (Manual of norms and procedures of the continuum of social protection services for minors) (the Manual), details in its Section 703.7(a) the possible results of an investigation carried out by ADFAN. In that way, it establishes that the agency's finding regarding a potential mistreatment or negligence are: (1) Unfounded or False; (2) Not Located; (3) Without Grounds, and (5) With Grounds. In that sense, a result of *Unfounded* is produced when "there exists information and evidence that the informant made a referral, although he/she knew that the information offered was false". On the other hand, a result of *Without Grounds*, is produced when there did not exist sufficient evidence to conclude that the minor was, is or could be at risk of being the victim of mistreatment or negligence.

Talking about the review of administrative findings, it's known that it corresponds to us to grant them deference and not replace the specialized criterion characteristic of the agencies with ours. *López Borges v. Adm. Corrección*, 185 DPR 603 (2012). The administrative findings enjoy a presumption of legality and correction that shall subsist while there is not sufficient evidence produced such as to defeat it. *Batista, Nobbe v. Jta. Directores*, 185 DPR 206 (2012). On the other hand, the aforementioned judicial deference in the administrative review does not imply the waiver of the appellate courts of their

faculty to intervene in appropriate and meritorious situations. It, given that "in the supposition that the administrative agency erred when applying the law, said action would be invalid". *Calderón-Otero v. CFSE*, 181 DPR 386, 396 (2011).

In the case before us, the ADFAN did not err when it denied copy of the referral or of the information contained in it to the Soto-Riveras. Act No. 246, as well as Regulation No. 8319, clearly establish the confidentiality of the files relating to the investigations carried out by the Department of the Family. As we indicated, although ordinarily, the right to inspect a document in the power of the State exists, in certain exceptional cases, the claim of the government regarding confidentiality is justified; among those exceptions, there is that a law declare the document as confidential or that we are dealing with the identity of this informer. Keeping in mind that both circumstances are present in the situation of the caption, the legitimacy of the claim for the confidentiality of the State is not in discussion, especially when the same aspires to have the incidents of mistreatment to minors to be reported by the citizens without fear of reprisals.

On the other hand, the Soto-Riveras do not cite any legal source whatsoever that obligates ADFAN to consign the facts reported, the identity of the informant or how did the informant obtain knowledge of the same to review the category of *Unfounded* or *Without Grounds* as an alternate route to make greater information known. On the contrary, we conclude that the agency in conformity to the applicable norms when it notified certain information - such as the copy of the document which appeared in the Central Registry - and withhold another -such as the copy of the referral and identity of the informant. See, Art. 25 of Act No. 246, *supra*.

In summary, it is evident that the related legal order prevents us from intervening with an administrative finding with regard to which we are not placed in a position to determine that it has been made without a basis in the administrative

file, in an arbitrary or illegal manner, to the point that it constitutes an unreasonable action in abuse of administrative discretion.

Wherefore, the respondent finding is confirmed.

It was so agreed and ordered by the Court and certified by the Clerk of the Court of Appeals.

(signed)  
Mrs. Mildred Ivonne Rodríguez Rivera  
Acting Clerk of the Court

**I CERTIFY that the foregoing is a faithful and true translation from its original in Spanish.**

*Patricia Beckerleg*  
Certified Court Interpreter and Translator  
Administrative Office of the U.S. Courts