



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

March 22, 2013 Government Records Council Meeting

Michael Deutsch
Complainant

Complaint No. 2011-361

v.

NJ Civil Service Commission
Custodian of Record

At the March 22, 2013 public meeting, the Government Records Council (“Council”) considered the March 15, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian lawfully denied access to the Complainant’s OPRA request for the following reasons: the Custodian properly notified the Complainant that the Civil Service Commission does not maintain the requested proof of veteran status or proof of disability and the Complainant must request said records from the NJ Department of Military and Veterans Affairs; the remainder of the Complainant’s OPRA request is invalid because the request fails to identify any specific government records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), or Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); the Custodian properly sought clarification of the Complainant’s invalid request; and the Complainant failed to provide adequate clarification of the request.
2. The Custodian lawfully denied access to the requested employment application because same is exempt from public access pursuant to N.J.S.A. 47:1A-10, Executive Order 26 (McGreevey, 2002) and Toscano v. New Jersey Department of Human Services, Division of Health Services, GRC Complaint No. 2010-147 (May 2011).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.



Final Decision Rendered by the
Government Records Council
On The 22nd Day of March, 2013

I attest the foregoing is a true and accurate record of the Government Records Council.

Robin Berg Tabakin, Esq., Chair
Government Records Council

Decision Distribution Date: April 1, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 22, 2013 Council Meeting**

**Michael Deutsch¹
Complainant**

GRC Complaint No. 2011-361

v.

**NJ Civil Service Commission²
Custodian of Records**

Records Relevant to Complaint: Copies of all information relating to Carmine Pellosie, including all application material, disabled veteran service, proof of disability and date thereof, in connection with Certification No. 0L111171, Certification Date: 10/1/11, Title Code: 02540, Title: MUSM CURTR, Location of Position: Paterson Library Code: N16080500, Prom. Date: 10/6/11, Symbol M2160N Rank 1.

Request Made: November 7, 2011

Response Made: November 14, 2011

GRC Complaint Filed: November 22, 2011³

Background⁴

The Complainant submitted his Open Public Records Act (“OPRA”) request on November 7, 2011 seeking the records listed above. On November 14, 2011, the third (3rd) business day following receipt of the request, the Custodian responded seeking clarification of the Complainant’s request. Specifically, the Custodian stated that pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), the Complainant must identify specific government records. The Custodian also stated that pursuant to N.J.S.A. 47:1A-10, the only personnel records available for public access are an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received. Additionally, the Custodian stated the Complainant must forward his request for proof of veteran status and proof of disability to the NJ Department of Military and Veterans Affairs. The Custodian stated that if he does not receive the Complainant’s clarification of the OPRA request by November 28, 2011, the request will be closed.

¹ No legal representation listed on record.

² Christopher J. Randazzo, Custodian of Records. Represented by DAG Pamela N. Ullman, on behalf of the NJ Attorney General.

³ The GRC received the Denial of Access Complaint on said date.

⁴ The parties may have submitted additional correspondence, or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

On November 15, 2011, the Complainant responded to the Custodian's request for clarification. The Complainant stated that he is seeking Carmine Pellosie's application materials and proof of veteran status for a New Jersey Civil Service Test.

On November 22, 2011, the Government Records Council ("GRC") received the Complainant's Denial of Access Complaint in which the Complainant challenges the Custodian's response to his request. Specifically, the Complainant contends that he submitted a valid OPRA request and has not yet received any records from the Custodian.

The GRC received the Custodian's Statement of Information ("SOI") on December 20, 2011 in response to the Complainant's Denial of Access Complaint. The Custodian certifies that he sought clarification of the Complainant's OPRA request because said request sought "all information" and failed to identify any specific records, as is required by MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Custodian also certifies that he notified the Complainant that he must submit his request for proof of veteran status and proof of disability to the NJ Department of Military and Veterans Affairs. The Custodian certifies that the Civil Service Commission does not retain documentation regarding disabled veteran status.

The Custodian certifies that the Complainant failed to provide clarification of the request, but rather responded that his request is valid. The Custodian certifies that he then received this Denial of Access Complaint on November 21, 2011. Thus, the Custodian certifies that on said date, he again sought clarification of the Complainant's OPRA request. In response, the Custodian certifies that the Complainant sought Carmine Pellosie's employment application. The Custodian certifies that on November 22, 2011, he denied said request pursuant to Executive Order No. 26 which exempts from public access, "the resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing..."

Analysis⁵

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The Complainant filed this Denial of Access Complaint challenging the Custodian's refusal to provide the requested records. The evidence of record provides that the Custodian denied access to the Complainant's request for proof of veteran status and proof of disability because the Civil Service Commission does not maintain said records and the Complainant must submit this request to the NJ Department of Military and Veteran's Affairs. The Custodian also

⁵ There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

certified in his SOI that he does not maintain said records. As such, the Custodian has lawfully denied access to the Complainant's request for proof of veteran status and proof of disability.

Additionally, the evidence of record provides that the Custodian sought clarification of the remainder of the Complainant's OPRA request on the basis that the Complainant failed to identify any specific records. Such a request is considered an overly broad or invalid request.

The New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'* N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

In determining that MAG Entertainment's request for "all documents or records" from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that:

"[m]ost significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." *Id.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),⁶ the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."⁷

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..."

⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁷ As stated in Bent, *supra*.

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) the Council held that “[b]ecause the Complainant’s OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).”

This matter is substantially different from the facts presented in Burnett v. County of Gloucester, 415 N.J.Super. 506 (App. Div. 2010). In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. Id. at 515-16.

In this instant matter, the Complainant sought “all information relating to Carmine Pellosie, including all application material...” Such a request fails to identify any specific records or types of records. It is unclear on its face what records would be responsive to “all information” or “all application material.” As such, the Complainant’s OPRA request is overly broad and invalid and the Custodian appropriately sought clarification of the request.

However, the Complainant failed to provide adequate clarification to the Custodian. Rather, the evidence of record provides that the Complainant again sought Carmine Pellosie’s application materials and proof of veteran status for a New Jersey Civil Service Test. Before the Custodian responded to the Complainant⁸, the Complainant filed this Denial of Access Complaint.

Therefore, the Custodian lawfully denied access to the Complainant’s OPRA request for the following reasons: the Custodian properly notified the Complainant that the Civil Service Commission does not maintain the requested proof of veteran status or proof of disability and the Complainant must request said records from the NJ Department of Military and Veterans Affairs; the remainder of the Complainant’s OPRA request is invalid because the request fails to identify any specific government records pursuant to MAG, *supra*, Bent, *supra*, New Jersey Builders, *supra*, and Schuler, *supra*; the Custodian properly sought clarification of the Complainant’s invalid request; and the Complainant failed to provide adequate clarification of the request.

Additionally, after the filing of this Denial of Access Complaint, the Custodian again sought clarification of the Complainant’s OPRA request. The Complainant clarified that he is seeking an employment application. The Custodian denied access to said application pursuant to Executive Order No. 26.

Executive Order 26 (McGreevey 2002) states in pertinent part that:

⁸ The Custodian indicated that the request would remain open until November 28, 2011.

“[n]o public agency shall disclose the resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing. The *resumes* of successful candidates shall be disclosed once the successful candidate is hired...” (Emphasis added).

Additionally, the employment application sought by Complainant is not among the enumerated list of releasable records set forth at N.J.S.A. 47:1A-10.⁹ Furthermore, Executive Order 26 (McGreevey 2002) states that only *resumes* of successful candidates shall be disclosed once that candidate is hired. Executive Order 26 (McGreevey 2002) makes no mention of employment applications being disclosed after the completion of the recruitment search. Moreover, the Council held in Toscano v. New Jersey Department of Human Services, Division of Health Services, GRC Complaint No. 2010-147 (May 2011) that:

“the employment application sought by Complainant is not disclosable pursuant to OPRA because it is a personnel record which is exempt from disclosure pursuant to N.J.S.A. 47:1A-10, and Executive Order 26 (McGreevey, 2002). *See* N.J.S.A. 47:1A-9.a.”

Therefore, the Custodian lawfully denied access to the requested employment application because same is exempt from public access pursuant to N.J.S.A. 47:1A-10, Executive Order 26 (McGreevey, 2002) and Toscano, supra.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian lawfully denied access to the Complainant’s OPRA request for the following reasons: the Custodian properly notified the Complainant that the Civil Service Commission does not maintain the requested proof of veteran status or proof of disability and the Complainant must request said records from the NJ Department of Military and Veterans Affairs; the remainder of the Complainant’s OPRA request is invalid because the request fails to identify any specific government records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), or Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); the Custodian properly sought clarification of the Complainant’s invalid request; and the Complainant failed to provide adequate clarification of the request.
2. The Custodian lawfully denied access to the requested employment application because same is exempt from public access pursuant to N.J.S.A. 47:1A-10, Executive Order 26 (McGreevey, 2002) and Toscano v. New Jersey Department of Human Services, Division of Health Services, GRC Complaint No. 2010-147 (May 2011).

⁹ “An individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be a government record.”

Prepared By: Dara L. Barry
Communications Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

March 15, 2013