



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**

Paul Serdiuk  
Complainant

Complaint No. 2012-27

v.

NJ Department of Military & Veterans Affairs  
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 conducted a reasonable search for the requested records based on the information provided in the Complainant’s OPRA request, namely, that the Complainant sought access to vacancy announcements for the position of “Superintendent, Veteran’s Haven.” The Custodian reasonably searched the Department’s vacancy announcements for the position of “Superintendent” and located the “Superintendent Residential Group Center” announcement from 1998. Without any knowledge that another vacancy announcement existed under the title of “Principal Staff Officer 1,” it would be unreasonable for the Custodian to conduct an open-ended search of reading through every vacancy announcement from the past 15 years. As such, the Custodian has not unlawfully denied access to the May 2005 vacancy announcement for “Principal Staff Officer 1 (Superintendent, Veterans Haven.” See Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-253 (September 2009). See also Paff v. Township of Blirstown (Warren), GRC Complaint No. 2009-53 (February 2010). Nevertheless, the Custodian provided the Complainant access to said record on March 6, 2012.
2. The Custodian conducted a reasonable search for the requested records based on the information provided in the Complainant’s OPRA request and thus, did not unlawfully deny access to the May 2005 vacancy announcement for “Principal Staff Officer 1 (Superintendent, Veterans Haven.” Therefore, the Custodian did not knowingly and willfully deny access or unreasonably deny access under the totality of the circumstances.

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 22<sup>nd</sup> 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**

**Paul Serdiuk<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-27**

**v.**

**NJ Department of Military & Veterans Affairs<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Copies of all vacancy announcements/postings (promotional or open competitive) for the past 15 years for the position of Superintendent, Veteran's Haven.
2. Copies of "all individuals interviewed for those openings."

**Request Made:** January 18, 2012

**Response Made:** January 23, 2012

**GRC Complaint Filed:** January 31, 2012<sup>3</sup>

**Background<sup>4</sup>**

On January 18, 2012, the Complainant submitted his Open Public Records Act ("OPRA") request seeking the records listed above. The Custodian responded to the Complainant's OPRA request on January 23, 2012, the third (3<sup>rd</sup>) business day following receipt of said request, granting access to a vacancy announcement dated August 14, 1998 for the position of "Superintendent Residential Group Center."

The Complainant filed this Denial of Access Complaint on January 31, 2012 stating that the he sought access to all vacancy announcements for the past 15 years and the Custodian only provided access to one (1) announcement dated August 14, 1998. The Complainant asserts that he discovered another job posting for the same position dated May 31, 2005, which the Custodian purposely and willfully denied.

On March 8, 2012, the GRC received the Custodian's Statement of Information ("SOI") in response to the Complainant's Denial of Access Complaint. The Custodian certifies that after receiving the Complainant's OPRA request on January 18, 2012, she conducted an alphabetical

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Loreta Sepulveda, Custodian of Records. Represented by DAG Michael Kennedy, on behalf of the NJ Attorney General.

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> 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.

search of the Department's record for vacancy announcements with the job title of "Superintendent, Veteran's Haven." The Custodian certifies that said search generated only one (1) successful result, Announcement No. 11-98, which she provided to the Complainant along with the name of the successful applicant on January 23, 2012. The Custodian certifies that she did not provide any information regarding other applicants pursuant to Executive Order No. 26 (McGreevey 2002).<sup>5</sup>

The Custodian states that the additional vacancy announcement the Complainant included with his Denial of Access Complaint is entitled "Principal Staff Officer 1 (Superintendent, Veteran's Haven)." The Custodian certifies that this announcement was stored under "Principal Staff Officer 1" and not "Superintendent, Veteran's Haven," which is why said announcement did not appear in her search of the Department's files. The Custodian contends that she did not purposely or willfully deny access to any records. The Custodian certifies that she searched for the requested records using the position title identified by the Complainant. The Custodian certifies that because it appears the Complainant is seeking additional records, she will provide same under separate cover letter.<sup>6</sup>

### Analysis<sup>7</sup>

#### 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 asserting that the Custodian purposely denied access to a vacancy announcement from 2005. The Custodian legally certified in her SOI submission that said vacancy announcement did not turn up in her search for the requested records because it was filed under a different position title than the title provided by the Complainant in his OPRA request. The Custodian certified that she searched for responsive records using the "Superintendent" title and located one (1) vacancy announcement for "Superintendent Residential Group Center."

To determine whether the Custodian unlawfully denied access to the vacancy announcement the Complainant located from 2005, the Council must address whether the

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<sup>5</sup> Executive Order No. 26 (McGreevey 2002) provides that, "[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. The resumes of unsuccessful candidates may be disclosed after the search has been concluded and the position has been filled, but only where the unsuccessful candidate has consented to such disclosure."

<sup>6</sup> The Custodian encloses a letter dated March 6, 2012 wherein she provides the Complainant access to the vacancy announcement for "Principal Staff Officer 1 (Superintendent, Veteran's Haven) as well as the name of the successful candidate.

<sup>7</sup> 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.

Custodian conducted a reasonable search for the requested records. First, the Complainant's OPRA request specifically sought access to all vacancy announcements for the position of "Superintendent, Veteran's Haven" for both promotional and open competitive positions. The Custodian certified that in response to the Complainant's OPRA request, the Custodian searched the Department's vacancy announcements alphabetically for the job title, "Superintendent, Veteran's Haven" and located only one (1) announcement entitled, "Superintendent Residential Group Center." The evidence of record provides that the Custodian's search for vacancy announcements beginning with the word "Superintendent" was reasonable because the Complainant specifically used this title in his OPRA request.

However, the vacancy announcement from 2005 that the Complainant located separately is entitled, "Principal Staff Officer 1 (Superintendent, Veterans Haven)." As such, said announcement did not result in the Custodian's search because said announcement does not begin with "Superintendent."

Pursuant to *N.J.A.C. 1:1-15.2(a)* and (b), official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. The Appellate Division has held that it was appropriate for an administrative agency to take notice of an appellant's record of convictions, because judicial notice could have been taken of the records of any court in New Jersey, and appellant's record of convictions were exclusively in New Jersey. *See Sanders v. Division of Motor Vehicles*, 131 N.J. Super. 95 (App. Div. 1974).

Thus, the GRC takes judicial notice of the New Jersey Civil Service Commission's website: <http://info.csc.state.nj.us/TitleList/StateList.aspx>. The New Jersey Civil Service Commission's website contains an alphabetical listing of all the civil service job titles in State government. The evidence of record provides that the job titles at issue in this complaint are civil service titles because the Complainant specifically identified said titles as "promotional or open competitive," terms used by the Civil Service Commission. On March 7, 2013, GRC staff accessed this website and located the "Superintendent Residential Group Center" job title and description by clicking on the letter "S" and located the "Principal Staff Officer 1" job title and description by clicking on the letter "P." The job description for "Principal Staff Officer 1" does not reference "Superintendent" or "Veteran's Haven" anywhere in its description. Additionally, the Complainant did not reference the title of "Principal Staff Officer 1" anywhere in his OPRA request.

As such, the evidence of record indicates that in searching for the requested records using the Civil Service Commission's job titles, it is reasonable that the Custodian would not have located the vacancy announcement from 2005 because it was filed under "Principal Staff Officer 1," not "Superintendent Residential Group Center."

The Council has previously addressed the reasonableness of a custodian's records search when responsive records are subsequently located or discovered. In *Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint No. 2008-253 (September 2009), the Council held that:

“[b]ecause the Custodian conducted a reasonable search for the requested executive session meeting minutes, and because the Custodian certified that he was not aware of the existence of the additional executive session meeting minutes which were misfiled within the Custodian’s office, the Custodian did not unlawfully deny access to said minutes and has borne his burden of proving his due diligence in searching for said records pursuant to N.J.S.A. 47:1A-6.”

Further, in Paff v. Township of Blairstown (Warren), GRC Complaint No. 2009-53 (February 2010), the Council held that:

“[t]he Custodian’s search for the requested settlement agreement which included her own files, the Police Department, the Township Attorney and the Risk Management Consultant, was reasonable. Without any knowledge that any settlement agreement existed, and a specific request in place for the Township Attorney to be notified of any settlement discussions, it would be unreasonable for the Custodian to conduct an open-ended search for the requested settlement agreement. As such, the Custodian has not unlawfully denied access to the requested settlement agreement...”

In this instant complaint, the Custodian conducted a reasonable search for the requested records based on the information provided in the Complainant’s OPRA request, namely, that the Complainant sought access to vacancy announcements for the position of “Superintendent, Veteran’s Haven.” The Custodian reasonably searched the Department’s vacancy announcements for the position of “Superintendent” and located the “Superintendent Residential Group Center” announcement from 1998. Without any knowledge that another vacancy announcement existed under the title of “Principal Staff Officer 1,” it would be unreasonable for the Custodian to conduct an open-ended search of reading through every vacancy announcement from the past 15 years. As such, the Custodian has not unlawfully denied access to the May 2005 vacancy announcement for “Principal Staff Officer 1 (Superintendent, Veterans Haven.” See Verry, supra. See also Paff, supra. Nevertheless, the Custodian provided the Complainant access to said record on March 6, 2012.

### **Knowing & Willful**

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J.Super. 86, 107 (App. Div. 1996).

In this instant complaint, the Complainant contends that the Custodian purposely and willfully denied access to a vacancy announcement. However, the Custodian conducted a reasonable search for the requested records based on the information provided in the Complainant's OPRA request and thus, did not unlawfully deny access to the May 2005 vacancy announcement for "Principal Staff Officer 1 (Superintendent, Veterans Haven." Therefore, the Custodian did not knowingly and willfully deny access or unreasonably deny access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian conducted a reasonable search for the requested records based on the information provided in the Complainant's OPRA request, namely, that the Complainant sought access to vacancy announcements for the position of "Superintendent, Veteran's Haven." The Custodian reasonably searched the Department's vacancy announcements for the position of "Superintendent" and located the "Superintendent Residential Group Center" announcement from 1998. Without any knowledge that another vacancy announcement existed under the title of "Principal Staff Officer 1," it would be unreasonable for the Custodian to conduct an open-ended search of reading through every vacancy announcement from the past 15 years. As such, the Custodian has not unlawfully denied access to the May 2005 vacancy announcement for "Principal Staff Officer 1 (Superintendent, Veterans Haven." See Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-253 (September 2009). See also Paff v. Township of Blirstown (Warren), GRC Complaint No. 2009-53 (February 2010). Nevertheless, the Custodian provided the Complainant access to said record on March 6, 2012.
2. The Custodian conducted a reasonable search for the requested records based on the information provided in the Complainant's OPRA request and thus, did not unlawfully deny access to the May 2005 vacancy announcement for "Principal Staff Officer 1 (Superintendent, Veterans Haven." Therefore, the Custodian did not knowingly and willfully deny access or unreasonably deny access under the totality of the circumstances.

Prepared By: Dara L. Barry  
Communications Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

March 15, 2013