



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

March 25, 2014 Government Records Council Meeting

Joseph Galligan
Complainant

Complaint No. 2013-163

v.

Township of West Deptford (Gloucester)
Custodian of Record

At the March 25, 2014 public meeting, the Government Records Council ("Council") considered the March 18, 2014 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 because the items requested are either part of, or related to, applications for Firearms Purchase Identification and/or Handgun Purchase Permits, they are exempt from disclosure pursuant to N.J.A.C. 13:54-1.15 and N.J.S.A. 47:1A-9(a); therefore, the Custodian has lawfully denied access. N.J.S.A. 47:1A-6.

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 25th Day of March, 2014

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 27, 2014



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2013 Council Meeting**

**Joseph Galligan¹
Complainant**

GRC Complaint No. 2013-163

v.

**Township of West Deptford (Gloucester)²
Custodial Agency**

Records Relevant to Complaint: A listing of all applications for Firearms Purchase Identification and/or Handgun Purchase Permits which were filed from January 2010 through December 2012 detailing (a) the type of application, (b) the date of application, (c) the approval date or disapproval date with the reason for disapproval, (d) case numbers and original charge for any application that resulted in charges being filed against the applicant.³

Custodian of Record: Amy Leso, Township Clerk

Request Received by Custodian: April 2, 2013

Responses Made by Custodian: April 8, 2013 and April 22, 2013

GRC Complaint Received: May 29, 2013

Background⁴

Request and Responses:

On April 2, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 8, 2013, the fourth (4th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that she needed an extension of time until April 22, 2013 to grant or deny access to the requested records. On April 22, 2013, the Custodian denied the Complainant’s request because it sought firearms permit records which are exempt from access. The Custodian cited Squicciarini v. Berkeley Township Police Department (Ocean), GRC Complaint No. 2011-18 (March 2012) in support of the denial.

¹ No legal representation listed on record.

² Represented by Anthony Ogozalek, Esq. of Beckman Roth Ogozalek & Perez (Gibbsboro, NJ).

³ There were other records requested that are not relevant to this complaint. Therefore, only the segments of the response in the Statement of Information relevant to the above-referenced requested record are set forth herein.

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.

Denial of Access Complaint:

On May 29, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that after his request was denied by the Custodian citing Squicciarini, GRC 2011-18, he forwarded a letter dated April 30, 2013 to the Custodian objecting to the denial based upon Squicciarini because he asserted that his request was not seeking advisory, consultative or deliberative (“ACD”) material; therefore, Squicciarini does not apply. The Complainant states that because he knew firearms applications “...are predominantly composed of confidential ACD material...I limited my request to only those areas of the [firearms] application that I could use to measure the department’s compliance...” The Complainant states that the Custodian on May 9, 2013, then provided him with a count of new firearms permit applicants, permits issued and applicants denied. The Complainant states that he e-mailed the Custodian on May 13, 2013, asking for a more complete response and that on May 16, 2013, the Custodian denied him further information citing MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).

Statement of Information:

On July 2, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA request on April 2, 2013 and responded to the request on April 8, 2013, April 22, 2013, May 9, 2013, May 13, 2013 and May 16, 2013.

The Custodian certifies that the records responsive to the Complainant’s request are “[a] listing of all Applications for Firearms Purchase Identification and/or Handgun Purchase Permits, filed from January 2012 (sic) through December 2012 detailing the (a) type of application, (b) the date of application, (c) approval date or disapproval date with reason for disapproval (sic), (d) case numbers and original charges for any application that resulted in charges being filed against the applicant.” The Custodian certifies that she denied the request for the Firearms Purchase Identification and/or Handgun Purchase Permits approval dates or disapproval dates with reasons for disapproval because same are exempt from disclosure pursuant to N.J.A.C. 13:54-1.15 and Squicciarini, 2011-18. The Custodian certifies that she denied the remaining items in the request because they seek information, not records, and therefore constitute an invalid request. The Custodian cited MAG, 375 N.J. Super. at 546 in support of her denial.

Analysis

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.

Here, the Complainant is seeking information which he clearly indicates would have to be gleaned from “applications for Firearms Purchase Identification and/or Handgun Purchase Permits.”

In Squicciarini, 2011-18, the Council held that a requested letter contained within the complainant’s gun permit application investigation file was exempt from disclosure. However, the Council went further and stated, “[i]t is further clear that not only is the letter at issue herein exempt from disclosure pursuant to N.J.A.C. 13:54-1.15, but the Custodian was under no obligation to provide *any records related to* the Complainant’s gun permit application investigation file. Id. (Emphasis added.)

N.J.A.C. 13:54-1.15, which is applicable as an exemption to the disclosure provisions of OPRA pursuant to N.J.S.A. 47:1A-9(a), provides:

Any background investigation conducted by the chief of police, the Superintendent or the county prosecutor, of any applicant for a permit, firearms identification card license, or registration, in accordance with the requirements of this chapter, is not a public record and shall not be disclosed to any person not authorized by law or this chapter to have access to such investigation, including the applicant. *Any application for a permit, firearms identification card, or license, and any document reflecting the issuance or denial of such permit, firearms identification card, or license, and any permit, firearms identification card, license, certification, certificate, form of register, or registration statement, maintained by any State or municipal governmental agency, is not a public record* and shall not be disclosed to any person not authorized by law or this chapter to have access to such documentation, including the applicant, except on the request of persons acting in their governmental capacities for purposes of the administration of justice. (Emphasis added.)

Id.

The regulation makes it clear that not only firearms applications, but also the broader category of personal firearms records, are not public records. By extension, this would include information gleaned from those records.⁵ Indeed, shortly after the Complainant submitted his request which formed the basis of this complaint, the Legislature amended OPRA to provide that, “[a] government record shall not include...personal firearms records, except for use by any person authorized by law to have access to these records or for use by any government agency, including any court or law enforcement agency, for purposes of the administration of justice.” N.J.S.A. 47:1A-1.1.

Accordingly, because the items requested are either part of, or related to, applications for Firearms Purchase Identification and/or Handgun Purchase Permits, they are exempt from disclosure pursuant to N.J.A.C. 13:54-1.15 and N.J.S.A. 47:1A-9(a); therefore, the Custodian has lawfully denied access. N.J.S.A. 47:1A-6.

⁵ There is nothing in the evidence of record to indicate that the Complainant was authorized by law to have access to such non-public records.

Because the Custodian lawfully denied the Complainant access pursuant to N.J.A.C. 13:54-1.15 and N.J.S.A. 47:1A-9(a), it is unnecessary for the Council to determine whether the requested items constitute information outside the scope of OPRA pursuant to MAG, 375 N.J. Super. at 546.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the items requested are either part of, or related to, applications for Firearms Purchase Identification and/or Handgun Purchase Permits, they are exempt from disclosure pursuant to N.J.A.C. 13:54-1.15 and N.J.S.A. 47:1A-9(a); therefore, the Custodian has lawfully denied access. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart, Esq.

Approved By: Dawn R. SanFilippo, Esq.
Senior Counsel

March 18, 2014