



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

April 28, 2015 Government Records Council Meeting

Clifford Wares
Complainant

v.

Passaic County Sheriff's Office
Custodian of Record

Complaint No. 2014-238

At the April 28, 2015 public meeting, the Government Records Council ("Council") considered the April 17, 2015 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 the Custodian lawfully denied access to the requested records because same are exempt from public access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10, N.J.S.A. 47:1A-6; *see also* Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004), and Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010). Because the requested records are exempt from public access under OPRA as personnel records, the Council declines to address any other claimed exemption raised by the Custodian.

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 28th Day of April, 2015

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: April 30, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2015 Council Meeting**

**Clifford Wares¹
Complainant**

GRC Complaint No. 2014-238

v.

**Passaic County Sheriff's Office²
Custodial Agency**

Records Relevant to Complaint:

“Personnel file for Sheriff [sic] Officer Javier Custodio, R. Torres, J. Passano, L. Aguilar, Jason Anderson, G. Rosenthal, Robert Weston Jr. and Michael Dunlop. The specific information I'm looking for in each of these officers personnel file is any and all outside complaints from the general public about these officers and any and all internal affairs investigations regarding any of these officers and any and all internal work related complaints, grievances, write ups, suspensions of any of these officers as a result of falsifying police reports, or [sic] false statements coercion tactics, etc. to name a few, anything dealing with internal and external grievances on the above matter.”

Custodian of Records: William J. Maer
Request Received by Custodian: June 2, 2014³
Response Made by Custodian: June 6, 2014
GRC Complaint Received: June 26, 2014

Background⁴

Request and Response:

On May 28, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records. On June 5, 2014, three (3) business days after receipt, the Custodian responded in writing, via e-mail, denying the request as exempt from disclosure pursuant to Executive Order No. 26 (McGreevey 2002), and as personnel files pursuant to N.J.S.A. 47:1A-10.

¹ No legal representation listed on record.

² Represented by James M. LaBianca, Esq. of Buglione, Hutton & DeYoe, LLC (Wayne, NJ).

³ The Custodian certified that the OPRA request was forwarded to him on June 2, 2014.

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 June 26, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not elaborate on the basis for his denial of access.

Statement of Information:

On July 16, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that after conducting a preliminary search for responsive records, he determined that the majority of the Complainant’s request was exempt pursuant to N.J.S.A. 47:1A-10, which covers personnel records.

Additionally, Custodian’s Counsel argued that the request was also overly broad and requires the Custodian to conduct research. *See* MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 546, 549 (App. Div. 2005). Custodian’s Counsel also contended that the Complainant’s request for records was invalid as it sought “internal and external grievances,” which is explicitly exempt pursuant to N.J.S.A. 47:1A-1.1.

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.

The New Jersey Appellate Division has held that OPRA “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.” MAG, 375 N.J. Super. at 546 (citing N.J.S.A. 47:1A-1) (quotations omitted).

The Court reasoned that:

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 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. at 549.

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.” Id. at 549; Bent, 381 N.J. Super. at 37; N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In contrast, the court in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) evaluated a request for “[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. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) found a request for the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. Id. at 176. The court emphasized that “the fact that the custodian of records in this case actually performed a search and was able to locate and identify records responsive to plaintiff’s request belies any assertion that the request was lacking in specificity or was overbroad.” Id. at 177.

Turning to requests for personnel information, OPRA mandates that:

[T]he personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access . . .

N.J.S.A. 47:1A-10. Notwithstanding this provision, OPRA also contains exceptions to the personnel record exemption. The following categories are personnel records, which *are* subject to public access:

- “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...
- personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and
- data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.”

N.J.S.A. 47:1A-10.

The specific records at issue in this complaint are complaints from the general public, internal grievances, internal affairs investigations, internal work-related complaints, and write-ups and suspensions filed against eight (8) named Passaic County Sheriff's Officers. These records are not included in any of the three (3) categories of personnel records listed above, which are available for public access. As such, it follows that the complaint records are personnel records, which are exempt from access under OPRA pursuant to N.J.S.A. 47:1A-10.

In fact, the Council has previously adjudicated complaints in which the records requested were complaints filed against police officers. In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004) the Council held that:

“[t]he Complainant’s request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian. N.J.S.A. 47:1A-10 provides in pertinent that “the personnel or pension records of any individual in the possession of a public agency, *including but not limited to* records relating to *any grievance filed by or against an individual*, shall not be considered a public record and shall not be made available for public access” [emphasis added]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.”

Further, in Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010) the Council held that:

“[a]lthough the Custodian violated OPRA at N.J.S.A. 47:1A-5.g. by failing to provide a response to the Complainant’s request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).”

The Custodian lawfully denied access to the requested records because same are exempt from public access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10. N.J.S.A. 47:1A-6; *see also* Merino, GRC No. 2003-110, and Vaughn, GRC No. 2009-177. Because the requested records are exempt from public access under OPRA as personnel records, the Council declines to address any other claimed exemption raised by the Custodian.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the requested records because same are exempt from public access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10. N.J.S.A. 47:1A-6; *see also* Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004), and Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010).

Because the requested records are exempt from public access under OPRA as personnel records, the Council declines to address any other claimed exemption raised by the Custodian.

Prepared By: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

April 17, 2015