



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS

101 SOUTH BROAD STREET

PO BOX 819

TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

September 26, 2017 Government Records Council Meeting

Derrick B. Parreott, Sr.

Complainant

v.

Asbury Park School District (Monmouth)

Custodian of Record

Complaint Nos. 2016-20

and 2016-39

At the September 26, 2017 public meeting, the Government Records Council (“Council”) considered the September 19, 2017 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 portion of the Complainant’s December 16, 2015 OPRA request item No. 1 and January 22, 2016 OPRA request, seeking “[a]ll relevant documents” is invalid because it represents a request for a class of various records. Further, OPRA does not require the Custodian to perform the research necessary to location responsive records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent, 381 N.J. Super. at 37; Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ 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); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Shulz v. NJ State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015). Further, the portion of the Complainant’s December 16, 2015 OPRA request item No. 1 and all of item No. 3 are invalid because they did not include all of the Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010) criteria necessary to be considered valid. Thus, the Custodian did not unlawfully deny access to those requests, in part or whole as applicable. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied access to the employment applications sought in the Complainant’s December 16, 2015 OPRA request item No. 2 and January 22, 2016 OPRA request. N.J.S.A. 47:1A-6. Specifically, employment applications are exempt from access pursuant to N.J.S.A. 47:1A-10, Executive Order No. 26 (Gov. McGreevey, 2002), and Toscano v. NJ Dep’t of Human Serv., Div. of Health Serv., GRC Complaint No. 2010-147 (May 2011). *See also* Deutsch v. NJ Civil Serv. Comm’n, GRC Complaint No. 2011-361 (March 2013).



3. The Custodian has borne his burden of proof that he lawfully denied access to the Complainants' January 22, 2016 OPRA request because he certified in the SOI, and the record reflects, that no responsive résumés exist. N.J.S.A. 47:1A-6; *see Pusterhofer v. NJ Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005).

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 26th Day of September, 2017

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: September 29, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 26, 2017 Council Meeting**

Derrick B. Parreott, Sr.¹
Complainant

GRC Complaint No. 2016-20 and 2016-39²

v.

Asbury Park School District (Monmouth)³
Custodial Agency

Records Relevant to Complaint:

December 16, 2015 OPRA request:⁴ Hard copies via pickup and electronic copies via e-mail of:

1. "All relevant documents" regarding the hiring of Keith Coleman as head coach of the Asbury Park School District ("District") boys' high school basketball team, to include all memoranda and communications from the Monmouth County Superintendent ("Superintendent").
2. All applications disseminated, completed, and returned by all candidates considered by the District for the boys' and girls' basketball team head coaching position for 2014 and 2015.
3. Memoranda and/or any written communications or confirmations that David "Dave" Johnson withdrew his name from consideration of the boys' basketball team head coaching position.⁵

January 22, 2016 OPRA request:⁶ Hard copies via pickup and electronic copies via e-mail of:

1. "All relevant documents" regarding the hiring of Mr. Coleman as head coach of the District boys' high school basketball team, to include all résumés and applications.
2. "All relevant documents" regarding the hiring of Mr. Johnson as head coach of the District girls' high school basketball team, to include all résumés and applications.

Custodian of Record: Geoffrey Hastings

Request Received by Custodian: December 21, 2015; January 22, 2016

Response Made by Custodian: January 8, 2016; January 26, 2016

GRC Complaint Received: January 19, 2016, January 29, 2016

¹ No legal representation listed on record.

² The GRC consolidated these complaints for adjudication because of the commonality of the parties and issues.

³ Represented by Aaron Mizrahi, Esq., of Mizrahi, Warren, LLP (Orange, NJ).

⁴ This OPRA request is the subject of GRC Complaint No. 2016-20.

⁵ The Complainant requested additional records that are not at issue in this complaint.

⁶ This OPRA request is the subject of GRC Complaint No. 2016-39.

Derrick B. Parreott, Sr. v. Asbury Park School District (Monmouth), 2016-20 and 2016-39 – Findings and Recommendations of the Executive Director

Background⁷

Request and Response (GRC 2016-20):

On December 16, 2015, the Complainant submitted the first (1st) Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 8, 2016, the Custodian responded in writing, denying access to the Complainant’s OPRA request because the applicants for the head coaching position were involved in a “level IV grievance process.” N.J.S.A. 47:1A-1.1.

On January 11, 2016, the Complainant sent a letter to the Custodian to dispute the denial of access. The Complainant stated that the records at issue predated any filed grievance. Specifically, the Complainant averred that, although the grievance in question was filed on December 23, 2015, the Complainant identified thirteen (13) specific dates between September 17 and December 15, 2015, that may relate to responsive records. The Complainant contended that the records sought were not “generated by or on behalf of public employers or public employees in connection . . . with any grievance . . .” N.J.S.A. 47:1A-1.1. Moreover, the Complainant stated that N.J.S.A. 47:1A-3(a) allows an agency to exempt access to records pertaining to an investigation in progress, but does not allow an agency to deny access to records that were subject to disclosure prior to the commencement of the investigation. The Complainant asserted that the grievance exemption at N.J.S.A. 47:1A-1.1 did not apply to his OPRA request. The Complainant also noted that he would file a Denial of Access Complaint should the parties not come to an agreement on disclosure of responsive records.

On January 15, 2016, Custodian’s Counsel sent a letter to the Complainant. Therein, Counsel stated that notwithstanding the Complainant assertion that the records predate any filed grievance, the responsive records are not disclosable under other exemptions. Counsel stated that N.J.S.A. 47:1A-10 and Executive Order No. 26 (Gov. McGreevey, 2002)(“EO 26”) also apply to the responsive records; thus, the Custodian lawfully denied access.

Denial of Access Complaint:

On January 19, 2016, the Complainant filed the Denial of Access Complaint relevant to GRC Complaint No. 2016-20 with the Government Records Council (“GRC”). The Complainant provided no arguments as to why he disputed the Custodian’s denial of access but did include a copy of his January 11, 2016 e-mail rebutting the Custodian’s denial.

Request and Response (GRC 2016-39):

On January 22, 2016, the Complainant submitted the second (2nd) OPRA request to the Custodian, seeking the above-mentioned records.

⁷ 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.

Derrick B. Parreott, Sr. v. Asbury Park School District (Monmouth), 2016-20 and 2016-39 – Findings and Recommendations of the Executive Director

On January 26, 2016, the Custodian's Counsel responded in writing on behalf of the Custodian, denying access to the Complainant's OPRA request. Counsel first stated OPRA generally exempts access to personnel records, with limited exceptions. N.J.S.A. 47:1A-10. Counsel further that EO 26 only allows for the disclosure of résumés of successful candidates once hired. Counsel stated that neither EO 26 nor OPRA in general require the disclosure of employment applications under any circumstances.

Counsel stated that the District uses an online system known as AppliTrack to manage its hiring process. Counsel stated that individuals interested in a District position are not required to submit résumés; this is especially true for coaching and extracurricular activities, which the District fills based on in-person interviews. Counsel stated that the District reviewed Mr. Coleman and Mr. Johnson's application and determined that neither individual filed a résumé.

On January 28, 2016, the Complainant e-mailed Custodian's Counsel, stating that he sought résumés and applications, whether filed in hard copy or electronically. The Complainant further asked that, in the instance that no résumés exist, the individuals that interviewed the candidates provide affidavits in lieu of résumés. The Complainant asserted that these affidavits could "be synonymous to, and satisfy a nexus to the term 'application.'"

Denial of Access Complaint:

On January 29, 2016, the Complainant filed the Denial of Access Complaint relevant to GRC Complaint No. 2016-39 with the Government Records Council ("GRC"). The Complainant provided no arguments as to why he disputed the Custodian's denial of access.

Statement of Information:⁸

On May 25, 2016, the Custodian filed Statements of Information ("SOI") for both complaints. The Custodian averred that these matters arose out of litigation filed against the District resulting from the 2015-2016 girls' basketball coach hiring process. The Custodian alleged that the individual at the center of that litigation urged the Complainant to submit the subject OPRA requests and subsequently file the complaints. The Custodian argued that the complaints are essentially "strike suits" aimed at pushing the District to settle the litigation. The Custodian requested that the GRC dismiss both complaints and award the District costs because of the frivolous nature of the complaints.⁹

GRC 2016-20¹⁰

The Custodian certified that he received the Complainant's first (1st) OPRA request on

⁸ On February 19, 2016, these complaints were referred to mediation. Following unsuccessful efforts by the parties to mediate the matter, the complaints were referred back to the GRC on May 16, 2016, for adjudication.

⁹ The GRC notes that OPRA's fee shifting provision only applies to complainants. N.J.S.A. 47:1A-6.

¹⁰ The Custodian submitted correspondence that occurred during the mediation. Pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 *et seq.*, communications that take place during the mediation process are not deemed public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications which occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative, or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4.

Derrick B. Parreott, Sr. v. Asbury Park School District (Monmouth), 2016-20 and 2016-39 – Findings and Recommendations of the Executive Director

December 21, 2015. The Custodian certified that he responded in writing on January 8, 2016, denying access to the responsive records due to a pending level IV grievance. N.J.S.A. 47:1A-1.1.

The Custodian contended that the records responsive to the Complainant's OPRA request item Nos. 1 and 3, if any exist, are clearly part of an employee's personnel file. The Custodian asserted that the plain language of N.J.S.A. 47:1A-10 does not permit access to an individual's personnel record (with certain exceptions). The Custodian further asserted that the six (6) applications responsive to the Complainant's OPRA request item No. 2 are exempt under EO 26. N.J.S.A. 47:1A-9(a). Further, the Custodian certified that the District did not require the candidates to submit résumés; thus, none existed.

GRC 2016-39¹¹

The Custodian certified that he received the Complainant's second (2nd) OPRA request on January 22, 2016. The Custodian certified that Custodian's Counsel responded in writing on January 26, 2016, denying access to responsive records under N.J.S.A. 47:1A-10 and EO 26. The Custodian also affirmed that Counsel advised the Complainant that no résumés existed. Further, the Custodian argued that he lawfully denied access to the responsive applications based on N.J.S.A. 47:1A-10 and EO 26.

Additional Submissions:

On May 31, 2016, the Complainant submitted to the GRC a letter response to the SOI. Therein, the Complainant first disputed that the individual involved in the litigation directed him to file the subject OPRA requests. The Complainant asserted that the District's Superintendent actually reached out to him regarding the situation. The Complainant alleged that the District made the argument in an effort to conceal evidence of injustice in the hiring process.

The Complainant further alleged that the hiring issue in question is the type of injustice that the Legislature intended to combat by enacting OPRA. Asbury Park Press v. Cnty. of Monmouth, 406 N.J. Super. 1, 6-7 (App. Div. 2009). The Complainant argued that he is entitled to the records because of the alleged injustice and discrimination in the basketball coach hiring process. The Complainant also argued that the District's speculation regarding his connection to the individual in litigation is of no moment: the complaints are solely about access to the records at issue.

Analysis

Validity of OPRA Request

The New Jersey Appellate Division has held that:

¹¹ See F.N. 10.

Derrick B. Parreott, Sr. v. Asbury Park School District (Monmouth), 2016-20 and 2016-39 – Findings and Recommendations of the Executive Director

While 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.*

MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005)(emphasis added).

The Court reasoned that:

Most 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. at 549 (emphasis added).

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 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);¹² NJ Builders Assoc. v. NJ 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).

Regarding generic requests for “documents,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The Court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. *See also* Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

¹² Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Derrick B. Parreott, Sr. v. Asbury Park School District (Monmouth), 2016-20 and 2016-39 – Findings and Recommendations of the Executive Director

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking "[a]ny and all documents and evidence" relating to an investigation being conducted by the Somerset County Prosecutor's Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in [MAG], [Bent] and the Council's decisions in [Asarnow, GRC 2006-24] and Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (February 2008).

Id. See also Shulz v. NJ State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking "all documents" was overly broad and thus invalid).

Regarding requests for memoranda and other communications, the GRC has established criteria deemed necessary under OPRA to request them. In Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Council determined that to be valid, such requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See also Sandoval v. NJ State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). The GRC notes that the Council has routinely determined that requests omitting the specific date or range of dates are invalid. See Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014).

In the instant complaint, a portion of the December 16, 2015 OPRA request item No. 1 sought "[a]ll relevant documents" about the hiring of a basketball coach. Further, the Complainant's January 22, 2016 OPRA request similarly sought, in part, "[a]ll relevant documents" regarding the hiring of two (2) specific individuals as basketball coaches. For those portions of the subject OPRA requests, the GRC's prior case law supports that they are invalid because they failed to identify specific records. Much like the request in MAG, and Feiler-Jampel, those portions identified above would necessarily require research to determine what records existed.

Further, a portion of the Complainant's December 16, 2015 OPRA request item No. 1 and all of item No. 3 sought "memoranda" and "communications" regarding the hiring of Mr. Coleman and Mr. Johnson's alleged withdraw from consideration. In item No. 1, the Complainant identified a sender/recipient (the Superintendent) but did not identify same in item No. 3. In both respects, the request items were deficient under the Elcavage test and thus invalid.

Accordingly, the portion of the Complainant's December 16, 2015 OPRA request item No. 1 and January 22, 2016 OPRA request, seeking "[a]ll relevant documents" is invalid because it represents a request for a class of various records. Further, OPRA does not require the Custodian to perform the research necessary to location responsive records. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Feiler-Jampel, GRC 2007-190; Shulz, GRC 2014-390. Further, the portion of the Complainant's December 16, 2015 OPRA request item No. 1 and all of item No. 3 are invalid because they did not include all of the Elcavage criteria necessary to be considered valid. Thus, the Custodian did not unlawfully deny access to these requests, in part or whole as applicable. N.J.S.A. 47:1A-6.

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.

Employment applications

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

No 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

Id. (emphasis added).

Additionally, employment applications are not among the enumerated list of releasable records set forth at N.J.S.A. 47:1A-10 (allowing for limited disclosure of certain personnel information). Furthermore, EO 26 states that only *résumés* of successful candidates shall be disclosed once that candidate is hired. EO 26 makes no mention of employment applications being disclosed after the completion of the recruitment search. Moreover, the Council held in Toscano v. NJ Dep't of Human Serv., Div. of Health Serv., GRC Complaint No. 2010-147 (May 2011) that "the employment application sought by Complainant is not disclosable . . . because it is a personnel record which is exempt from disclosure pursuant to N.J.S.A. 47:1A-10, and [EO 26]. See N.J.S.A. 47:1A-9(a)." See also Deutsch v. NJ Civil Serv. Comm'n, GRC Complaint No. 2011-361 (March 2013).

Here, the Complainant's December 16, 2015 OPRA request item No. 2 and January 22, 2016 OPRA request sought "applications." However, EO 26 and precedential case law supports that the applications are not disclosable under OPRA.

Therefore, the Custodian lawfully denied access to the employment applications sought in the Complainant's December 16, 2015 OPRA request item No. 2 and January 22, 2016 OPRA request. N.J.S.A. 47:1A-6. Specifically, employment applications are exempt from access pursuant to N.J.S.A. 47:1A-10, EO 26, and Toscano, GRC 2010-147. *See also* Deutsch, GRC 2011-361.

Résumés

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. *See* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Custodian responded to Complainant's January 22, 2016 OPRA request, advising that no résumés existed. At that time, the Custodian explained that candidates were not required to submit résumés because the District typically filled coaching positions based on in-person interviews. The Custodian also noted that he reviewed the candidates' résumés to confirm that neither had submitted one. In the SOI, the Custodian certified that no résumés existed. There is no evidence in the record to refute that position.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the Complainant's January 22, 2016 OPRA request because he certified in the SOI, and the record reflects, that no responsive résumés exist. N.J.S.A. 47:1A-6; *see* Pusterhofer, GRC 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The portion of the Complainant's December 16, 2015 OPRA request item No. 1 and January 22, 2016 OPRA request, seeking "[a]ll relevant documents" is invalid because it represents a request for a class of various records. Further, OPRA does not require the Custodian to perform the research necessary to location responsive records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent, 381 N.J. Super. at 37; Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ 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); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Shulz v. NJ State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015). Further, the portion of the Complainant's December 16, 2015 OPRA request item No. 1 and all of item No. 3 are invalid because they did not include all of the Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010) criteria necessary to be considered valid. Thus, the Custodian did not unlawfully deny access to those requests, in part or whole as applicable. N.J.S.A. 47:1A-6.
2. The Custodian lawfully denied access to the employment applications sought in the Complainant's December 16, 2015 OPRA request item No. 2 and January 22, 2016

OPRA request. N.J.S.A. 47:1A-6. Specifically, employment applications are exempt from access pursuant to N.J.S.A. 47:1A-10, Executive Order No. 26 (Gov. McGreevey, 2002), and Toscano v. NJ Dep't of Human Serv., Div. of Health Serv., GRC Complaint No. 2010-147 (May 2011). *See also* Deutsch v. NJ Civil Serv. Comm'n, GRC Complaint No. 2011-361 (March 2013).

3. The Custodian has borne his burden of proof that he lawfully denied access to the Complainants' January 22, 2016 OPRA request because he certified in the SOI, and the record reflects, that no responsive résumés exist. N.J.S.A. 47:1A-6; *see* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

September 19, 2017