



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 30, 2019 Government Records Council Meeting

Linda D. Walls
Complainant

Complaint No. 2017-52

v.

Newark Public Schools (Essex)
Custodian of Record

At the April 30, 2019 public meeting, the Government Records Council (“Council”) considered the April 23, 2019 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 has borne her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, no “deemed” denial of access occurred here. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).
2. The requested date on which an individual obtained tenure is exempt from disclosure as “personnel records.” N.J.S.A. 47:1A-10. Thus, the Custodian lawfully denied access to the Complainant’s OPRA request. 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 30th Day of April 2019

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: May 3, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
April 30, 2019 Council Meeting**

**Linda D. Walls¹
Complainant**

GRC Complaint No. 2017-52

v.

**Newark Public Schools (Essex)²
Custodial Agency**

Records Relevant to Complaint: “Date Chunda Stafford-Watson received tenure.”

Custodian of Record: Pamela D. Luke
Request Received by Custodian: February 21, 2017
Response Made by Custodian: February 22, 2017
GRC Complaint Received: March 10, 2017

Background³

Request and Response:

On February 20, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 22, 2017, the Custodian responded in writing, denying access to the record as seeking personnel records exempt under OPRA. N.J.S.A. 47:1A-10.

Denial of Access Complaint:

On March 10, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian did not respond to the request upon initially acknowledging receipt.

Statement of Information:

On April 10, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 21, 2017. The Custodian certified that she responded in writing on February 22, 2017, denying access to the record.

¹ No legal representation listed on record.

² Represented by Brenda C. Liss, Esq., of Riker, Danzig, Scherer, Hyland, Peretti, LLP (Morristown, NJ).

³ 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

The Custodian asserted that the Complainant's request fell under the personnel records category, and were therefore exempt from disclosure under N.J.S.A. 47:1A-10. The Custodian noted that the exceptions for certain personnel information under the statute did not include the date an employee obtained tenure. Therefore, the Custodian contended that the denial was lawful.

Additionally, the Custodian argued that the request did not seek specifically identifiable government records. See N.J. Builders Ass'n v. N.J. Council on Affordable Hous. 390 N.J. Super. 166 (App. Div. 2007). The Custodian contended that this was another reason why the request was denied. Thus, the Custodian asserted that the matter be dismissed.

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁴ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

In the instant matter, the Complainant submitted her complaint arguing that the Custodian failed to respond to her OPRA request beyond initially acknowledging receipt. However, the Custodian certified in her SOI that she received the request on February 21, 2017. The Custodian further affirmed that she responded on February 22, 2017, denying access to the request. The Custodian included in the SOI a copy of the e-mail response sent to the Complainant dated February 22, 2017. Thus, the evidence of record supports that no "deemed" denial occurred.

Therefore, the Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, no "deemed" denial of access occurred here. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).

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.

⁴ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

Regarding personnel records, OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 594 (2011). These are:

[A]n 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 government record;

[P]ersonnel 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

[D]ata 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.

[Id.]

In the current matter, the Complainant requested the date on which an identified individual obtained tenure. This information does not fall under the identified information above, as tenure is a status of employment granted to a teacher after a probationary period. See “Tenure.” Merriam-Webster, Merriam-Webster, www.merriam-webster.com/dictionary/tenure (last accessed March 25, 2019). Under OPRA, access to an individual’s employment status is limited to the length of service and date of separation. Therefore, the GRC is satisfied that the Custodian lawfully denied access to Complainant’s request for the date an individual obtained tenure.

Accordingly, the requested date on which an individual obtained tenure is exempt from disclosure as “personnel records.” N.J.S.A. 47:1A-10. Thus, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, no “deemed” denial of access occurred here. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).
2. The requested date on which an individual obtained tenure is exempt from disclosure as “personnel records.” N.J.S.A. 47:1A-10. Thus, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado
Staff Attorney

April 23, 2019