



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

March 26, 2024 Government Records Council Meeting

Vincent Conti
Complainant

Complaint No. 2022-513

v.

NJ Civil Service Commission
Custodian of Record

At the March 26, 2024 public meeting, the Government Records Council (“Council”) considered the March 19, 2024 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, through Mr. Lanzoni, lawfully denied access to the Complainant’s OPRA request, as clarified. N.J.S.A. 47:1A-6. Specifically, the requested applications are clearly exempt from disclosure under CSC’s regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 4A:4-2.16(b)(1). The GRC declines to address the Custodian’s remaining bases for denial as it has already determined the records are exempt from disclosure.

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 March 2024

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 1, 2024



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 26, 2024 Council Meeting**

**Vincent Conti¹
Complainant**

GRC Complaint No. 2022-513

v.

**N.J. Civil Service Commission²
Custodial Agency**

Records Relevant to Complaint: Copy of the Complainant’s 2015 application for the Investigator Secured Facilities examination.

Custodian of Record: Randy Belin

Request Received by Custodian: August 26, 2022

Response Made by Custodian: September 22, 2022

GRC Complaint Received: September 26, 2022

Background³

Request and Response:

On August 26, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On September 16, 2022, Human Resources Consultant Eugene Lanzoni⁴ e-mailed the Complainant seeking a working telephone number by which he could contact the Complainant to confirm his identity prior to disclosure. Mr. Lanzoni noted that the number on the OPRA request “does not seem to be usable.” On an unknown date, the Complainant purportedly verbally advised Mr. Lanzoni that he actually sought all applications for the 2015 exam and not his own.

On September 22, 2022,⁵ Mr. Lanzoni⁶ responded in writing denying the subject OPRA request on the basis that employment applications are exempt from disclosure under OPRA and Civil Service Commission (“CSC”) regulations. N.J.S.A. 47:1A-10; Executive Order No. 26 (Gov.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Craig S. Keiser.

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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

⁴ Mr. Lanzoni was temporarily substituting for the Custodian, who was out on a leave of absence.

⁵ The GRC notes that said response was beyond the seven (7) business days and results in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the GRC will not address this issue because the Complainant does not raise it in the Denial of Access Complaints.

⁶ Mr. Lanzoni was temporarily substituting for the Custodian, who was out on a leave of absence.

McGreevey, 2002) (“EO 26”); Toscano v. N.J. Dep’t of Human Servs., Div. of Health Servs., GRC Complaint No. 2010-147 (May 2011). Mr. Lanzoni noted that if the Complainant was seeking a copy of his own application, he would need to verify his identity to obtain same.

Denial of Access Complaint:

On September 26, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed CSC’s denial and argued that the applications sought related to a “public examination,” all applicants are public employees, and no records associated therewith are confidential. The Complainant contended that he was not seeking employment applications; all applicants are already employed and only applying to take an exam. The Complainant also noted that some of the responsive records were those he submitted for the exam.

Statement of Information:

On February 15, 2023, the Custodian filed a Statement of Information (“SOI”) attaching a legal certification from Mr. Lanzoni. The Custodian certified that Mr. Lanzoni received the Complainant’s OPRA request on August 26, 2022. The Custodian certified that Mr. Lanzoni subsequently spoke with the Complainant via telephone, where the Complainant advised that he “was not concerned about obtaining his own application material.” Lanzoni Cert. ¶ 9. The Custodian certified that Mr. Lanzoni responded in writing on September 22, 2022 denying the OPRA request under N.J.S.A. 47:1A-10, EO 26, and Toscano, GRC 2010-147. Lanzoni Cert. ¶ 11.

The Custodian argued that the Council should uphold the denial of access here because the records sought are personnel records and application materials exempt from access under EO 26 and CSC regulations. The Custodian stated that it is well established that OPRA exempts access to personnel records. N.J.S.A. 47:1A-10; see also Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 592 (2011). The Custodian further stated that EO 26 contains an exemption for information concerning job applicants during the recruitment process, and the New Jersey Superior Court has held that same remain confidential thereafter. N. Jersey Media Grp., Inc. v. State, Dep’t of Personnel, 389 N.J. Super. 527, 535 (July 21, 2006). The Custodian also stated that CSC’s regulations prohibit disclosure of personnel records, with certain exceptions that mirror OPRA’s personnel exemption. N.J.A.C. 4A:1-2.2(a)-(b); Shapiro v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2017-212 (July 2019).

The Custodian argued that CSC’s regulations are clear that personnel records are exempt from disclosure, except that “[i]ndividual personnel records . . . are not public records and shall not be released other than to the subject employee . . .” N.J.A.C. 4A:1-2.2(b). The Custodian argued that the Complainant is not entitled to all applications for the 2015 examination but could obtain his own materials. The Custodian argued that this did not occur because CSC could not verify his identity. The Custodian further argued that the forgoing is nonetheless irrelevant because the Complainant verbally told Mr. Lanzoni he was not interested in obtaining his own materials.

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.

Initially, the Complainant’s OPRA request only sought a copy of his own 2015 application. However, the Complainant subsequently argued in the Denial of Access Complaint that he was denied access to a wider range of records, noting that some of the responsive records were those he submitted for the exam.⁷ In the SOI, the Custodian averred that Mr. Lanzoni had a verbal discussion with the Complainant where he asserted that he “was not concerned about obtaining his own application material.”

Thus, the threshold issue here appears to be whether the GRC should continue the analysis addressing the original OPRA request as submitted or address the request as allegedly clarified by the Complainant. After careful review of the evidence before the Council, the GRC will proceed with an analysis reflective of the Complainant’s telephonic clarification that he was seeking all 2015 applications submitted excluding his own submission. In reaching this conclusion, the GRC relies on the Complainant’s Denial of Access Complaint arguments and Mr. Lanzoni’s certified SOI statements.

OPRA provides that “[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record . . .” N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik, 206 N.J. 581. Further, the personnel record exemption may apply to records that “. . . bear many of the indicia of personnel files.” N. Jersey Media Grp. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014).

OPRA further provides that:

The provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA] . . . any other statute; resolution of either or both Houses of the Legislature; *regulation promulgated under the authority of any statute* or Executive Order of the Governor; *Executive Order of the Governor*; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

⁷ The GRC notes that the Complainant filed nine (9) individual Denial of Access Complaints on August 26, 2022 containing an identical argument. The other eight (8) complaints are being concurrently adjudicated with this one.

To the above, CSC’s regulations address the retention and inspection of examination records as follows:

The following examination records shall be retained until the expiration of the eligible list:

1. The public announcement;
2. All applications;
3. The examination papers and scoring keys;
4. A description of the examination, including the date held, rating system and minimum score required, if any;
5. The list of eligibles;
6. The failure roster; and
7. Any other pertinent information.

. . . Examination records listed in (a)2 above shall not be open to public inspection but may be open to inspection by an appointing authority, on condition that the appointing authority not disclose the records to outside persons . . . Examination records listed in (a)6 above shall not be open to public inspection but shall be open to inspection by the appointing authority to which the eligible list has been certified, upon request by the appointing authority and on condition that the appointing authority not disclose the records to outside persons.

[N.J.A.C. 4A:4-2.16(a)-(b).]

Further, EO 26 provides 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. 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.

[Id.]

EO 26 is clear on the disclosability of resumes at the conclusion of the recruitment process: successful candidate resumes must be disclosed. Id. However, EO 26 is less clear on applications and “other information concerning job applicants.” To this end, the Council has previously held that employment applications were not disclosable, reasoning that EO 26 made no mention of employment applications being disclosed after the completion of the recruitment search. See Toscano, GRC 2010-147. The Council further equated applications to “personnel records” 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). See also Deutsch v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-361 (March 2013).

Here, the Complainant submitted an OPRA request seeking all applications associated with a 2015 examination. On behalf of the Custodian, Mr. Lanzoni denied the OPRA request under N.J.S.A. 47:1A-10, EO 26, and Toscano, GRC 2010-147. In his Denial of Access Complaints, the Complainant argued that: 1) records related to a “public examination” were not confidential; and 2) he was seeking exam applications and not employee applications. In the SOI, the Custodian’s maintained CSC’s position that a lawful denial of access occurred based on the cited exemptions. The Custodian also certified that the list of individuals who appealed their qualification status did not exist.

Initially, the Complainant’s assertion that the records sought are not confidential solely because the applicants were already public employees applying to take a “public examination” is incorrect. The fact that a current public employee may be seeking employment or advancement within their current or another public agency does not convert the underlying records to disclosable under OPRA. *See e.g. Vandy v. Burlington Cnty. Bd. of Social Servs.*, GRC Complaint No. 2016-319 (Interim Order dated November 13, 2018) (holding that multiple records submitted by current employees seeking an internal open position were exempt under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-10, and EO 26).

Turning to the OPRA request at hand, as verbally clarified, the GRC is satisfied that the Custodian lawfully denied access thereto. Specifically, the CSC’s regulations are clear that applications for a public examination are exempt from disclosure under N.J.A.C. 4A:4-2.16(b)(1) and that said exemption applies under OPRA through operation of N.J.S.A. 47:1A-9(a).

Accordingly, the Custodian, through Mr. Lanzoni, lawfully denied access to the Complainant’s OPRA request, as clarified. N.J.S.A. 47:1A-6. Specifically, the requested applications are clearly exempt from disclosure under CSC’s regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 4A:4-2.16(b)(1). The GRC declines to address the Custodian’s remaining bases for denial as it has already determined the records are exempt from disclosure.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian, through Mr. Lanzoni, lawfully denied access to the Complainant’s OPRA request, as clarified. N.J.S.A. 47:1A-6. Specifically, the requested applications are clearly exempt from disclosure under CSC’s regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 4A:4-2.16(b)(1). The GRC declines to address the Custodian’s remaining bases for denial as it has already determined the records are exempt from disclosure.

Prepared By: Frank F. Caruso
Executive Director

March 19, 2024