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DEPARTMENT OF COMMUNITY AFFAIRS
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

April 29, 2025 Government Records Council Meeting

Carly Ruiz
Complainant

v.

N.J. Motor Vehicle Commission
Custodian of Record

GRC Complaint No. 2023-32

At the April 29, 2025 public meeting, the Government Records Council (“Council”) considered the April 15, 2025 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 lawfully denied access to the Complainant’s OPRA request item Nos. 1, 2, and 7. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to these OPRA request items exist within the N.J. Motor Vehicle Commission’s universe of records. See N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The records sought in the Complainant’s OPRA request item Nos. 3 through 6 and 9 through 15 sought personnel records that are not disclosable under OPRA. N.J.S.A. 47:1A-10; Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 592 (2011); N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009). Thus, the Custodian lawfully denied access to these items. 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 29th Day of April 2025

John A. Alexy, 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 5, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2025 Council Meeting**

**Carly Ruiz¹
Complainant**

GRC Complaint No. 2023-32

v.

**N.J. Motor Vehicle Commission²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the following related to a Motor Vehicle (“MVC”) Supervisor 2 position in Cumberland County (“County”):

1. The New Jersey Civil Service Commission (“CSC”) list of test scores for position.
2. List of all eligible applicants for the position.
3. E-mail sent from Human Resources (“HR”) to all eligible candidates confirming interest in the position.
4. Response from Debra Fantini to HR expressing interest in the position.
5. Response from Christina Garcia to HR declining interest in the position.
6. E-mail from Ms. Garcia to HR retracting her denial of interest for the position.
7. Resume and cover letter from Ms. Fantini submitted to HR.
- ...
9. List of management representatives that interviewed applicants for position.
10. Date and attendance list for Ms. Fantini’s interview for the position.
11. Date and attendance list for Ms. Garcia’s interviews for the position.
12. “Any and all notes/scoring rubrics completed” by management representatives for all applicants interviewed for the position.
13. List of all employees eligible for the position that declined interest to HR.
14. List of all employees, inclusive of contact information, who declined interest in the position, but were contacted by management representatives or others on the interview panel to continue forward with the interview process.
15. List of all employees that retracted their denial of interest in the position and the corresponding e-mail.
16. List of all employees eligible for the position that declined interest but received the promotion anyway.³

¹ No legal representation listed on record.

² Represented by Deputy Attorney General John Lowenberg.

³ The Complainant sought an additional record that is not at issue in this complaint.

Custodian of Record: Jessica S. O'Connor
Request Received by Custodian: September 27, 2022
Response Made by Custodian: October 4, 2022
GRC Complaint Received: February 7, 2023

Background⁴

Request and Response:

On September 23, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 4, 2022, the Custodian responded in writing extending the response time frame through October 14, 2022, to ensure a thorough review of any responsive records. On October 14, 2022, the Custodian responded in writing extending the response time frame through October 28, 2022, to ensure a thorough review of any responsive records. On October 28, 2022, the Custodian responded in writing extending the response time frame through November 7, 2022, to ensure a thorough review of any responsive records.

On November 7, 2022, the Custodian responded in writing extending the response time frame through November 18, 2022, to ensure a thorough review of any responsive records. On November 18, 2022, the Custodian responded in writing extending the response time frame through December 5, 2022, to ensure a thorough review of any responsive records. On December 5, 2022, the Custodian responded in writing extending the response time frame through December 19, 2022, to ensure a thorough review of any responsive records. On December 19, 2022, the Custodian responded in writing extending the response time frame through December 27, 2022, to ensure a thorough review of any responsive records.

On December 27, 2022, the Custodian responded in writing first denying access to OPRA request item Nos. 1, 2, and 7 because the MVC did not maintain any responsive records. The Custodian noted that the Complainant may wish to contact the CSC to obtain records responsive to OPRA request item Nos. 1 and 2. The Custodian denied access to the remaining OPRA request items under the personnel records exemption at N.J.S.A. 47:1A-10. The Custodian noted that, while OPRA requires the disclosure of limited personnel information, none of the remaining items seek same.

Denial of Access Complaint:

On February 7, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that this OPRA request resulted from a discovery denial connected to a grievance filed over how the County MVC handled the Supervisor 2 promotion. The Complainant contended that managerial staff with the County MVC interfered with the process in a manner she believed was unethical and abusive.

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.

The Complainant stated that after seven (7) extensions, the Custodian denied every OPRA request item. The Complainant contended that the requested records are necessary to prove that County MVC officials compromised the Supervisor 2 promotional process. The Complainant contended that, without the requested records, the grievance filer will not be able to move forward with said grievance and their CSC appeal.

Statement of Information:⁵

On June 28, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on September 27, 2022. The Custodian certified that MVC caused HR to review the Supervisor 2 certification file and e-mail account of the individual assigned to that file. The Custodian certified that, following multiple extensions of time, she responded in writing on December 27, 2022, denying the Complainant’s OPRA request either because no records existed or because responsive records were exempt from disclosure under N.J.S.A. 47:1A-10. The Custodian noted that she also directed the Complainant to obtain records responsive to OPRA request item Nos. 1 and 2 from the CSC.

The Custodian stated that, in Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the Council held that no unlawful denial of access occurred where no records exist. The Custodian certified that, in relation to OPRA request item Nos. 1, 2, and 7, no responsive records exist. The Custodian argued that, based on Pusterhofer, she lawfully denied access to because no responsive records existed. The Custodian thus argued that this portion of the OPRA request should be dismissed.

The Custodian further stated that, per Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 592 (2011), OPRA begins with a presumption that all personnel records are exempt from disclosure except for limited information identified in N.J.S.A. 47:1A-10. The Custodian certified that MVC located forms, correspondence, and interview sheets responsive to the Complainant’s OPRA request item Nos. 3 through 6 and 9 through 15. The Custodian contended that she lawfully denied access to these records because they constituted personnel records to which no exception applied. The Custodian argued that disclosure of any information and communications between HR and employees regarding their level of interest in a position would reveal “private personnel information” exempt from access under OPRA. See Kovalcik, 206 N.J. at 592. The Custodian also argued that disclosing notes and interview scores would similarly conflict with OPRA’s personnel records exemption.

The Custodian finally contended that the evidence of record supports that her actions were reasonable and her denial of access lawful.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a

⁵ On February 22, 2023, this complaint was referred to mediation. On June 1, 2023, this complaint was referred back to the GRC for adjudication.

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.

OPRA request item Nos. 1, 2, and 7

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer, GRC 2005-49. Here, the Complainant’s OPRA request No. 1, 2, and 7 sought CSC test scores, a list of eligible applicants, and a resume for Ms. Garcia related to the County MVC Supervisor 2 position. The Custodian responded to all three (3) items advising that no records existed and directing the Complainant to CSC for item Nos. 1 and 2. In the Denial of Access Complaint, the Complainant argued that the records sought were integral to a dispute over MVC’s handling of the Supervisor 2 promotional process. The Complainant did not include any arguments disputing the Custodian’s response that no records existed. In the SOI, the Custodian certified that no records responsive to OPRA request item Nos. 1, 2, and 7 existed. Further, there is no evidence in the record to refute this certification. Thus, a conclusion in line with Pusterhofer is appropriate here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item Nos. 1, 2, and 7. Specifically, the Custodian certified in the SOI, and the record reflects, that no records responsive to these OPRA request items exist within MVC’s universe of records. See N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

OPRA request items 3-6 and 9-15

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. These include “an individual’s name, title, position, salary [and] payroll record.” Id. Further, the personnel record exemption applies to records that “bear many of the indicia of personnel files.” N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009).

Here, the Complainant’s OPRA request item Nos. 3 through 6 and 9 through 15 sought a several records associated with the Supervisor 2 promotional opportunity offered at the County MVC. Those records included e-mails to and from the potential candidates, various lists associated with interviews for the position, and interviewer notes and scores. Following several extensions, the Custodian responded in writing denying access to several records under N.J.S.A. 47:1A-10. This complaint followed, wherein the Complainant argued that one of the candidates needed the requested records to move forward with a grievance and appeal. The Complainant further argued that these records were integral to proving that the County MVC compromised the promotional process. In the SOI, the Custodian maintained her position that the requested records were personnel records exempt from disclosure under N.J.S.A. 47:1A-10.

A basic application of N.J.S.A. 47:1A-10 provides that records connected to a promotional hiring process do not fall within the scope of disclosable personnel information. Here, the records at issue clearly relate to a personnel matter, and specifically the Supervisor 2 promotional opportunity. Further, a plain reading of each OPRA request reveals that none of the records are part of the subset of disclosable information under N.J.S.A. 47:1A-10. Also, it is obvious that even if the records located by the Custodian were not within each individual personnel file, they “bear many of the indicia of personnel files” as contemplated in N. Jersey Media Grp., Inc., 405 N.J. Super. at 390.⁶ Finally, the Complainant’s reasoning for seeking disclosure of the records under OPRA is not contemplated as an exception to the longstanding presumption of nondisclosure to personnel records.

Accordingly, the records sought in the Complainant’s OPRA request item Nos. 3 through 6 and 9 through 15 sought personnel records that are not disclosable under OPRA. N.J.S.A. 47:1A-10; Kovalcik, 206 N.J. 581; N. Jersey Media Grp., Inc., 405 N.J. Super. at 390. Thus, the Custodian lawfully denied access to these items. N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request item Nos. 1, 2, and 7. Specifically, the Custodian certified in the Statement of Information, and the record reflects, that no records responsive to these OPRA request items exist within the N.J. Motor Vehicle Commission’s universe of records. See N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The records sought in the Complainant’s OPRA request item Nos. 3 through 6 and 9 through 15 sought personnel records that are not disclosable under OPRA. N.J.S.A. 47:1A-10; Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 592 (2011); N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009). Thus, the Custodian lawfully denied access to these items. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Executive Director

April 15, 2025

⁶ The GRC notes that Executive Order No. 26 (Gov. McGreevey, 2002) and the “inter-agency or intra-agency advisory, consultative and deliberative material” exemptions have also been applied to “other information concerning job applicants” and interview notes and scores respectively. See Vandy v. Burlington Co. Bd. of Social Serv., GRC Complaint No. 2016-319 (December 2018); McFarland v. N.J. Instit. of Technology, GRC Complaint No. 2018-289 (November 2020).