



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

January 25, 2011 Government Records Council Meeting

Anthony F. Argento, III
Complainant

Complaint No. 2010-124

v.

New Jersey Civil Service Commission
Custodian of Record

At the January 25, 2011 public meeting, the Government Records Council (“Council”) considered the January 18, 2011 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 because the evidence of record is clear that the requested records were generated by the NJ Civil Service Commission in connection with the administration of an examination for public employment, *i.e.*, the position of Police Sergeant, and that said record contain data pertaining to said examination such as candidates’ raw scores and seniority scores, the requested records are “examination data pertaining to the administration of an examination for public employment” and are therefore exempt from disclosure under OPRA pursuant to Executive Order 26 (McGreevey 2002) and N.J.S.A. 47:1A-9.a.

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 25th Day of January, 2011



Robin Berg Tabakin, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Charles A. Richman, Secretary
Government Records Council

Decision Distribution Date: February 7, 2011

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 25, 2011 Council Meeting**

**Anthony F. Argento III¹
Complainant**

GRC Complaint No. 2010-124

v.

**New Jersey Civil Service Commission²
Custodian of Records**

Records Relevant to Complaint: A copy of the Civil Service Notification of Eligibility Scorecard which was mailed on or about May 26, 2010 to notify all candidates for Police Sergeant of their scores, including the following fields: Symbol, Vet Status, Rank, Test Date, list Effective, List Expires, Test Score, Seniority and Final Average, for the following Police Sergeant candidates who achieved the highest scores in the state:

- William G. Martin, Jr. – Camden Police Department, Symbol #PM2661L
- John P. Stahl – North Bergen Department, Symbol #PM2714L
- Eric M. Colondres – Paterson Police Department, Symbol #PM2718L

Request Made: June 1, 2010

Response Made: June 10, 2010

Custodian: Christopher Randazzo

GRC Complaint Filed: June 22, 2010³

Background

June 1, 2010

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above electronically on an official OPRA request form.

June 10, 2010

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the seventh (7th) business day following receipt of such request stating that the OPRA request is denied because notifications of eligibility are system generated and copies are not maintained. The Custodian states that the particular fields sought by the Complainant are available on the New Jersey Civil Service Commission's ("NJCS") website. The Custodian further states that the other fields sought by the Complainant such as the candidate's raw test scores and seniority scores are not public information.

¹ No legal representation listed on record.

² Represented by DAG Lisa Dorio Ruch, on behalf of the NJ Attorney General.

³ The GRC received the Denial of Access Complaint on said date.

June 10, 2010

E-mail from the Complainant to the Custodian. The Complainant states that he is confused by the Custodian's response. The Complainant asks whether the Custodian misunderstood the OPRA request or is in fact denying access to the requested records. The Complainant notes that he did not request the eligible lists for the Police Sergeant Test but instead sought a copy of the score card (Notification of Eligibility dated May 26, 2010) which was sent to three (3) specific individuals who took the Sergeant's Test. The Complainant states that the score card contains the individuals' scores, seniority scores and other information, none of which is available on the NJCSC website. The Complainant asks the Custodian to clarify whether he will comply with the request or deny it and notes that it has been seven (7) business days since the Complainant's OPRA request.

June 10, 2010

E-mail from Wendy Marshall ("Ms. Marshall"), Senior Clerk Typist, to the Complainant. Ms. Marshall states that she is denying the Complainant's OPRA request because the notifications are system generated and copies are not maintained. Ms. Marshall also states that certain fields for veteran's status, rank, file average, and the effective and expiration date of the eligible lists are available on the website: <http://info.csc.state.nj.us/Eligiblelists/>. Lastly, Ms. Marshall states that raw score and seniority score are not public information.

June 22, 2010

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching a copy of a Notification of Eligibility scorecard from the NJCSC to the Complainant dated May 26, 2010 for the title of Police Sergeant, Bloomfield Police Department.⁴

The Complainant asserts that he submitted an OPRA request to the Custodian on June 1, 2010 seeking a copy of the Notice of Eligibility scorecard that was mailed out to notify the following police sergeant candidates of their scores to include seniority score and raw score:

- William G. Martin, Jr. Camden Police Department, Symbol PM2661L
- John Stahl, North Bergen Police Department, Symbol PM 2714L
- Eric M. Colondres, Paterson Police Department, Symbol PM 2718L

The Complainant asserts that the Custodian denied said request on June 10, 2010 stating that notifications of eligibility are generated through the computer system and are automatically sent to the eligible candidates; moreover, the New Jersey Civil Service Commission does not maintain copies of the notifications, but said notifications can be found on the Civil Service Commission's website at <http://info.csc.state.nj.us/EligibleLists/>. The Custodian's response also stated that once the Complainant reaches this site and enters the symbol numbers which he is seeking, the eligible lists will then appear.

⁴ The Complainant does not include a copy of his OPRA request with his Denial of Access Complaint.
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The Complainant states that in response to the Custodian's denial of access, the Complainant sent an e-mail to the Custodian in which the Complainant questioned whether the Custodian misunderstood the Complainant's request or was in fact denying same. The Complainant further states that in said e-mail, he noted that he did not request the eligible lists for the Police Sergeant Test but instead sought a copy of the score card (Notification of Eligibility dated May 26, 2010), which was sent to three specific individuals who took the Sergeant's test, which lists their scores, seniority scores and other information. The Complainant also states the e-mail observed that none of this information is available on the NJCSC website, and asked that the Custodian clarify whether he is able to comply with the OPRA request or whether he was denying access to the records requested.

The Complainant states that he subsequently received a telephone call from Wendy Marshall. Ms. Marshall informed the Complainant that the records requested was not public and that the NJCSC was denying the Complainant's OPRA request. The Complainant states that he requested that Ms. Marshall send said denial of access to him in writing.

The Complainant further states that he received an e-mail from the Custodian which confirmed the telephone conversation and stated that the Complainant's OPRA request was denied because notifications of eligibility are system generated and copies are not maintained, and reiterated that the particular fields sought by the Complainant may be accessed through the NJCSC's website. The Custodian's e-mail also stated that the candidate's raw test scores and seniority scores are not public information.

The Complainant contends that once the notifications of eligibility were generated by the computer and sent out to the candidates by the NJCSC, a public agency, said notifications became a public record subject to OPRA. The Complainant further contends that the notifications of eligibility may be easily reproduced by the NJCSC. The Complainant states that although the Custodian stated that the requested records are not public, the Complainant can find no provision of OPRA which exempts the requested records from disclosure. The Complainant notes that among the 24 exemptions from access enumerated in OPRA, none covers a test candidate's raw or seniority scores.

The Complainant states that the attached Notification of Eligibility which he received from the NJCSC shows the specific information he is seeking.

The Complainant agrees to mediation.

June 24, 2010

Offer of Mediation sent to the Custodian.

June 29, 2010

The Custodian agrees to mediate this Complaint.

September 9, 2010

The Complaint is referred back from mediation.

September 9, 2010

Request for the Statement of Information (“SOI”) sent to the Custodian.

September 16, 2010

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated June 1, 2010
- Letter from the Custodian to the Complainant dated June 9, 2010⁵
- E-mail from the Complainant to the Custodian dated June 10, 2010
- E-mail from Ms. Marshall and the Custodian to the Complainant dated June 10, 2010

The Custodian states that the Complainant’s requests were denied because the NJCSC does not have the records responsive and because the requested records are considered confidential.

The Custodian certifies that on June 1, 2010 the Complainant filed an OPRA request for three (3) Notifications of Eligibility scorecards, including seniority score and raw score, which were mailed to three individuals who sat for the Police Sergeant exam. The Custodian also certifies that on June 9, 2010 he denied the request stating that notifications of eligibility are computer generated and automatically sent to the candidates and copies of notifications are not maintained by the NJCSC. The Custodian also certifies that he informed the Complainant that the eligibility lists can be found on the NJCSC website.

The Custodian further certifies that the Complainant responded by stating that he did not request any eligible lists for the Police Sergeant Tests, but instead wanted a copy of the scorecards sent to three (3) individuals. The Custodian also certifies that the Complainant asked if the Custodian was denying his OPRA request. The Custodian certifies that Ms. Wendy Marshall telephoned the Complainant and told him the requested information was not public information and the request was being denied. The Custodian further certifies that the NJCSC sent a follow-up e-mail to the Complainant, stating that his OPRA request was denied because notifications of eligibility are computer generated and copies are not maintained. Lastly, the Custodian certifies that the Complainant could find certain information on the NJCSC’s website, but particular fields like the raw score and seniority score are not public information.

The Custodian certifies that the Complainant’s OPRA request for the Notification of Eligibility was denied because these notifications are computer generated and automatically mailed to the individual candidates. The Custodian certifies that the NJCSC does not maintain duplicate copies of these notifications and these notifications cannot be reproduced. The Custodian asserts that the NJCSC cannot produce these documents in response to the Complainant’s OPRA request.

The Custodian argues that the Complainant’s OPRA request was also denied because candidates raw test scores and seniority scores are not public information for the

⁵ The Custodian certifies that he sent the response June 10, 2010.

purposes of OPRA. The Custodian certifies that certain information could be found on the NJCSC's website, such as the symbol number of the exams, candidates' veteran's status, rank, file average and the effective and expiration dates of the eligible lists. The Custodian also contends that pursuant to N.J.A.C. 4A:2.1(h), "all examination applications shall remain confidential, except as the Commissioner may determine to be in the public interest."

The Custodian certifies that the final scores are available on the NJCSC website. The Custodian further certifies that the difference between a candidate's final score and raw score is the seniority score. Thus, the Custodian certifies that the release of a candidate's raw score would constitute an actual release of the candidate's seniority score. The Custodian certifies that the seniority score is determined by the employee's length of service in their current title measured from the regular appointment date to the closing date of the examination announcement. The Custodian also certifies that deductions from the length of service are made for suspensions up to five (5) years before the examination closing date, layoffs and regular leaves of absence without pay. Therefore, the Custodian certifies that the calculation may reveal confidential personnel information such as disciplinary actions and medical leaves of absence that OPRA requires the NJCSC to protect in the interests of the candidates' privacy.

In addition, the Custodian also argues that pursuant to Executive Order 26, Sections 3 and 4(c), which states that "resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing ... test questions, scoring keys, and other examination data pertaining to the administration of an examination for public employment or licensing are exempt from OPRA" should apply in this complaint.

The Custodian argues that the NJCSC was compelled to deny the Complainant's request for the seniority score in order to comply with exemptions to disclosure contained in OPRA and to protect the privacy interests of the candidates. The Custodian certifies that only the announcement of the examination, the description of the examination, the minimum required score and the list of candidates eligible for appointment are open to public. See N.J.A.C. 4A:4-2.6(b).

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document,

information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“... [t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA also provides:

“The provisions of this act...shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to ... Executive Order of the Governor N.J.S.A. 47:1A-9.a.

OPRA further states 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 government record and shall not be made available for public access, except that:

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 shall be a government record [;]” N.J.S.A. 47:1A-10.

Furthermore, Executive Order 26 (McGreevey 2002) states:

“The following records shall not be considered to be government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented: ...

(c) Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing.”

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.

In the matter before the Council, the Complainant made an OPRA request for the Notification of Eligibility scorecards mailed on or about May 26, 2010 to three (3)

specific candidates for Police Sergeant. The Custodian responded in writing within the statutorily mandated seven (7) business days denying access to the requested records and stating that the NJCSC does not maintain copies of these notifications. The Complainant contends that these notifications became public records once they were generated by the computer and sent out by the NJCSC. The Complainant also contends that this record can be easily reproduced.

The Complainant's request seeks Notification of Eligibility scorecards for three (3) Police Sergeant candidates. Because the evidence of record is clear that the requested records were generated by the NJCSC in connection with the administration of an examination for public employment, *i.e.*, the position of Police Sergeant, and that said records contain data pertaining to said examination such as candidates' raw scores and seniority scores, the requested records are "examination data pertaining to the administration of an examination for public employment" and are therefore exempt from disclosure under OPRA pursuant to Executive Order 26 (McGreevey 2002) and N.J.S.A. 47:1A-9.a.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the evidence of record is clear that the requested records were generated by the NJ Civil Service Commission in connection with the administration of an examination for public employment, *i.e.*, the position of Police Sergeant, and that said record contain data pertaining to said examination such as candidates' raw scores and seniority scores, the requested records are "examination data pertaining to the administration of an examination for public employment" and are therefore exempt from disclosure under OPRA pursuant to Executive Order 26 (McGreevey 2002) and N.J.S.A. 47:1A-9.a.

Prepared By: Harlynn A. Lack, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

January 18, 2011