



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

October 28, 2014 Government Records Council Meeting

Dudley Burdge
Complainant

Complaint No. 2013-350

v.

NJ Office of Information Technology
Custodian of Record

At the October 28, 2014 public meeting, the Government Records Council (“Council”) considered the October 21, 2014 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 has borne her burden of proof that she lawfully denied access to the redacted portions of the DPF-10 forms. N.J.S.A. 47:1A-6. The Custodian certified that she based her redactions in accordance with the Council’s prior order regarding DPF-10 forms in Healy v. N.J. Dep’t of Labor & Workforce Dev., GRC Complaint No. 2008-108 (Interim Order October 26, 2010). *See also* N.J.S.A. 47:1A-10. Furthermore, the Complainant has not provided any evidence to rebut the Custodian’s certification.

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 28th Day of October, 2014

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: October 30, 2014



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 28, 2014 Council Meeting**

**Dudley Burdge¹
Complainant**

GRC Complaint No. 2013-350

v.

**State of NJ Office of Information Technology²
Custodial Agency**

Records Relevant to Complaint: Electronic Copies of:

1. "All public postings for Government Representative positions for the New Jersey Office of Information Technology ("NJOIT") for calendar years 2010, 2011, 2012, and 2013."
2. "[A]ll requests from NJOIT to the Department of Treasury and/or the New Jersey Civil Service Commission seeking authority to hire for those posted positions as well as the request for Government Representative positions which were granted, if any."

Custodian of Record: Shelley Bates

Request Received by Custodian: November 22, 2013

Response Made by Custodian: November 26, 2013

GRC Complaint Received: December 4, 2013

Background³

Request and Response:

On November 22, 2013, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On November 26, 2013, the Custodian responded, in writing, producing records responsive to Item No. 1 of the Complainant's OPRA request. The Custodian denied access to records responsive to request Item No. 2 as containing advisory, consultative, or deliberative material ("ACD"), and therefore exempt from disclosure. *See N.J.S.A. 47:1A-1.1.*

¹ No legal representation listed on record.

² Represented by Thomas R. Hower, DAG.

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.

Denial of Access Complaint:

On December 4, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the records sought would not “impact on the development or modification” of approval policies for hiring Government Representatives. Therefore, the Custodian argued that such responsive documents to Item No. 2 would not constitute ACD material.

Statement of Information:

On September 19, 2014, the Custodian filed a Statement of Information (“SOI”).⁴ The Custodian certified that on November 26, 2013, she produced responsive records to Item No. 1 of the Complainant’s request. The Custodian also certified that she initially claimed that the responsive records to Item No. 2 were exempt from disclosure as containing ACD material.

Subsequently after the complaint was filed, the Custodian withdrew her objection to producing the records on the basis that they contain ACD material. Rather, on March 28, 2014, the Custodian produced the records to the Complainant with redactions pursuant to N.J.S.A. 47:1A-10 and Healy v. N.J. Dep’t of Labor & Workforce Dev., GRC Complaint No. 2008-108 (Interim Order, October 26, 2010). The Custodian identified the responsive records as “DPF-10” forms (“forms”).

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.

OPRA also states that:

[n]otwithstanding the provisions of [OPRA] . . . the personnel or pension records of any individual in the possession of a public agency . . . 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.

⁴ On December 4, 2013, the Custodian filed an initial SOI, but was later required by the GRC to resubmit a revised SOI.

Additionally, the Council has previously held that redacting information with no explanation is a violation of N.J.S.A. 47:1A-5(g), which provides that the Custodian “shall indicate the specific basis” for a denial of access. In Courier News v. Hunterdon County Prosecutor’s Office, 358 N.J. Super. 373 (App. Div. 2003), the court held that “[u]nder OPRA, a public agency seeking to restrict the public’s right of access to government records must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality.” Id. at 382-83.

In the current matter, the responsive records are the same as those explicitly sought in Healy. There, the Council held that DPF-10 forms are personnel records subject to N.J.S.A. 47:1A-10. GRC No. 2008-108. Additionally, after conducting an *in camera* review, the Council identified the portions of the form that must be disclosed:

d. On each of the fifty-five (55) Forms DPF-10: Disclose only the “individual’s name” (form box 1), current title (form box 2), position description (form box 9), approved salary (form box 11), and specific experiential, educational or medical qualifications (form box 20) pursuant to N.J.S.A. 47:1A-10.

Id.

Here, the Custodian certified that she produced the records with redactions in accordance with the Council’s order in Healy. The Custodian also certified that she identified Healy as the basis for the redactions in her letter of March 28, 2014. Moreover, there is no evidence in the record rebutting the Custodian’s certification, nor has the Complainant put forth a counter-argument.

The Custodian has borne her burden of proof that she lawfully denied access to the redacted portions of the DPF-10 forms. N.J.S.A. 47:1A-6. The Custodian certified that she based her redactions in accordance with the Council’s prior order regarding DPF-10 forms in Healy. *See also* N.J.S.A. 47:1A-10. Furthermore, the Complainant has not provided any evidence to rebut the Custodian’s certification.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne her burden of proof that she lawfully denied access to the redacted portions of the DPF-10 forms. N.J.S.A. 47:1A-6. The Custodian certified that she based her redactions in accordance with the Council’s prior order regarding DPF-10 forms in Healy v. N.J. Dep’t of Labor & Workforce Dev., GRC Complaint No. 2008-108 (Interim Order October 26, 2010). *See also* N.J.S.A. 47:1A-10. Furthermore, the Complainant has not provided any evidence to rebut the Custodian’s certification.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

October 21, 2014