



State of New Jersey

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Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

March 26, 2024 Government Records Council Meeting

Vincent Conti
Complainant

v.

NJ Civil Service Commission
Custodian of Record

Complaint No. 2022-512, 2022-515
2022-516 and 2022-517

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 four (4) OPRA requests. N.J.S.A. 47:1A-6. Specifically, the requested applications are clearly exempt from disclosure under the Civil Service Commission's regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 4A:4-2.16(b)(1). Also, the Complainant failed to show that he intended to waive his confidentiality necessary to obtain his own application. Finally, the remaining requested lists, regardless of their existence, are nonetheless exempt from disclosure as personnel records. N.J.S.A. 47:1A-10; Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581 (2011).

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. 2022-512, 2022-515
2022-516 and 2022-517²**

v.

**N.J. Civil Service Commission³
Custodial Agency**

Records Relevant to Complaint:

OPRA Request No. 1:⁴ Copies of all applications for the 2022 Open Competitive Examination for Position No. 32645 (Senior Investigator Parole & Security County Safety & Corrections).

OPRA Request Nos. 2, 3, and 4:⁵ Copies of the following related to Position No. 32645:

1. List of all applicants.
2. List of all applicants deemed qualified to take the exam.
3. List of all applicants deemed not qualified to take the exam.
4. List of those applicants that appealed their qualification status.
5. All applications for the August 2022 exam.

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

Background⁶

Request and Response:

On August 26, 2022, the Complainant submitted four (4) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On September 22,

¹ No legal representation listed on record.

² These complaints have been consolidated due to commonality of parties and issues.

³ Represented by Deputy Attorney General Craig S. Keiser.

⁴ This OPRA request is the subject of GRC 2022-512.

⁵ These OPRA requests are the subject of GRC 2022-515, 2022-516, and 2022-517 respectively.

⁶ 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.

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2022,⁷ Human Resources Consultant Eugene Lanzoni⁸ responded in writing denying all four (4) OPRA requests 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. McGreevey, 2002) (“EO 26”); N.J.A.C. 4A:4-2.1(h); Toscano v. N.J. Dep’t of Human Servs., Div. of Health Servs., GRC Complaint No. 2010-147 (May 2011).

Denial of Access Complaint:

On September 26, 2022, the Complainant filed four (4) Denial of Access Complaints with the Government Records Council (“GRC”). The Complainant disputed CSC’s denial and argued that the records 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 four (4) OPRA requests on August 26, 2022. Lanzoni Cert. ¶ 7. The Custodian certified that Mr. Lanzoni responded in writing on September 22, 2022 denying all four (4) OPRA requests under N.J.S.A. 47:1A-10, EO 26, N.J.A.C. 4A:4-2.1(h), and Toscano, GRC 2010-147. Lanzoni Cert. ¶ 8.

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).

The Custodian argued that CSC’s regulations list those specific examination records required to be retained until the expiration of the corresponding eligible list, including “[a]ll applications . . . [t]he list of eligibles . . . [t]he failure roster; and [a]ny other pertinent information.” N.J.A.C. 4A:4-2.16(a)(2); (5)-(7). The Custodian argued that the same regulation expressly shields from public access “[a]ll applications . . . [t]he failure roster; and [a]ny other pertinent information.” N.J.A.C. 4A:4-2.16(b)(1)-(2). The Custodian argued that here, the Complainant’s

⁷ 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.

⁸ Mr. Lanzoni was temporarily substituting for the Custodian, who was out on a leave of absence.

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four (4) OPRA requests sought exactly the above type of information considered exempt from disclosure. The Custodian contended that the Council has already held that such information was not subject to disclosure under OPRA. Shapiro v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2017-212 (July 2019).

The Custodian further argued that the portions of the OPRA requests seeking lists of eligibles was lawfully denied. The Custodian noted that in Shapiro, the Council corrected noted that the term “list of eligibles” in N.J.A.C. 4A:4-2.16 is a specific term referring to those individuals who submitted an application and were permitted to take an exam. Shapiro, GRC 2017-212 at 4 n.6. The Custodian averred that the “list of eligibles” are comprised of those individuals who have already taken an exam, and not those who applied to take it. Lanzoni Cert. ¶ 9. The Custodian argued the requested lists are thus clearly not disclosable. N.J.S.A. 47:1A-10; N.J.A.C. 4A:1-2.2; EO 26; Shapiro, GRC 2017-212. The Custodian also argued disclosing any of the requested lists would allow the Complainant to compare it to the “list of eligibles” and compile a failure list, which is expressly prohibited from disclosure under N.J.A.C. 4A:4-2.16(b)(2). See also United Ass’n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus., Local No. 598 v. Dep’t of the Army, Corps of Eng’rs, 841 F.2d 1459, 1465 (1988) (addressing a courts hesitation to require disclosure where the result could be stigma or embarrassment); Ripskis v. Dep’t of Hous., Urban Dev., 241 U.S.App. D.C. 1, 3 (D.C. Cir. 1984). The Custodian finally noted that the CSC does not maintain a list of individuals that appealed their qualification status; however, decisions issued by the Commission thereon are public and can be obtained via OPRA. Lanzoni Cert. ¶ 10.

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 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 exceptions include disclosure “when authorized by an individual in interest” Id.; see McGee v. Twp. of East Amwell (Hunterdon), GRC Complaint No. 2007-305 (March 2011) (holding that a waiver of the personnel exemption requires the requestor to know of their confidentiality rights and intent to waive same). 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).]

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 four (4) OPRA requests seeking all applications and several lists associated with a 2022 Open Competitive Examination for Position No. 32645. On behalf of the Custodian, Mr. Lanzoni denied those OPRA requests under N.J.S.A. 47:1A-10, EO 26, N.J.A.C. 4A:4-2.1(h), 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; 2) he was seeking exam applications and not employee applications, and 3) he submitted a portion of the responsive records. 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 requests at hand, the GRC is satisfied that the Custodian lawfully denied access thereto. First, 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).⁹ Further, regarding the Complainant’s own application, that he may have applied to take the exam does not automatically require disclosure thereof to him under OPRA. Instead, and as in McGee, GRC 2007-305, the Complainant has not established that he knew of his right to confidentiality expressed in N.J.S.A. 47:1A-10 and intended to waive same. As for the remaining requested lists of individuals that applied and their status, regardless of existence, said records obviously have the “indicia” of personnel records to which none of the exceptions set forth in N.J.S.A. 47:1A-10 apply. For this reason, the requested lists are equally exempt from disclosure under OPRA.

Accordingly, the Custodian, through Mr. Lanzoni, lawfully denied access to the Complainant’s four (4) OPRA requests. 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-

⁹ The GRC notes that N.J.A.C. 4A:4-2.1(h), which Mr. Lanzoni cited in his response, also expressly exempts access to “all examination applications . . .” Id.
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2.16(b)(1). Also, the Complainant failed to show that he intended to waive his confidentiality necessary to obtain his own application. Finally, the remaining requested lists, regardless of their existence, are nonetheless exempt from disclosure as personnel records. N.J.S.A. 47:1A-10; Kovalcik, 206 N.J. 581.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian, through Mr. Lanzoni, lawfully denied access to the Complainant's four (4) OPRA requests. N.J.S.A. 47:1A-6. Specifically, the requested applications are clearly exempt from disclosure under the Civil Service Commission's regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 4A:4-2.16(b)(1). Also, the Complainant failed to show that he intended to waive his confidentiality necessary to obtain his own application. Finally, the remaining requested lists, regardless of their existence, are nonetheless exempt from disclosure as personnel records. N.J.S.A. 47:1A-10; Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581 (2011).

Prepared By: Frank F. Caruso
Executive Director

March 19, 2024