



MANCHESTER TOWNSHIP

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May 29, 2024

Just Curious

c/o opra+request-61928-4235bfce@requests.opramachine.com

Re: OPRA 2024-367

Dear Requestor:

Manchester Township received your May 20, 2024 OPRA request and provides this timely response denying that request. Your OPRA request sought:

Written recommendation provided to the appropriate authority, Mayor Robert Arace from Chief Robert Dolan, regarding his recommendation for replacement as Chief of Police.

Response: Pursuant to Manchester Township Police General Order, Vol. 2, Chapter: 18 "Promotions" an outgoing Chief is required to provide a written recommendation for his/her replacement to the Appropriate Authority. The Mayor is the Appropriate Authority for Manchester Township. The letter issued by the Chief of Police to the Mayor is both a personnel record and falls under the advisory-consultative-deliberative exception and may not be released.

Personnel: OPRA mandates "all government records shall be subject to public access unless exempt." N.J.S.A. 47:1A-1. OPRA, at N.J.S.A. 47:1A-10, further limits which portions of a personnel file may be released:

"... 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;

personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.”

Further, even when applications and resumes remain on file, the State has further limited access to candidates who were not hired:

“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.” (Emphasis added).

Executive Order 26 (McGreevey 2002).

While the personnel record is not a “resume” per se, the spirit of that Executive Order is that unsuccessful applicants have a right to privacy and knowing that they sought a job and did not obtain it could, in fact, impact their current employment or other future employment. That issue is still relevant here and falls under the “other information” section. Without the former employee’s consent prior to release, the Township may not release the record requested.

Advisory-Consultative-Deliberative exception: The advisory, consultative or deliberative (“ACD”) privilege exception is imbedded in the definition of a “government record” under OPRA:

‘Government record’ or ‘record’ means any paper, ... [or] 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 in the course of his or its official business ... The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material. N.J.S.A. 47:1A-1.1.

In O’Shea v. West Milford Board of Education, GRC Complaint No. 2004-93 (April 2006), the Government Council stated that “neither the statute nor the courts have defined the terms... ‘advisory, consultative, or deliberative’ in the context of the public records law.” The

GRC looked to an analogous concept, the deliberative process privilege, for guidance in the implementation of OPRA's ACD exemption. Both the ACD exemption and the deliberative process privilege enable a governmental entity to shield from disclosure government material that is pre-decisional and deliberative in nature. Deliberative material contains opinions, recommendations, or advice about agency policies. In Re the Liquidation of Integrity Insurance Company, 165 N.J. 75, 88 (2000); In re Readoption With Amendments of Death Penalty Regulations, 182 N.J. 149 (App. Div. 2004). Here, the document is prepared with the sole purpose to assist the decision maker in making that decision and therefore it is deliberative in nature and protected from disclosure.

This communication completes your OPRA request.

Sincerely,



Teri Giercyk, RMC/CMC
Municipal Clerk
Records Custodian