



MANCHESTER TOWNSHIP

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OFFICE OF THE TOWNSHIP CLERK

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September 26, 2023

D. Michaels
C/O OPRA Machine opra+request-53356-0684b00d@requests.opramachine.com

RE: OPRA 2023-617

Dear Mr. D. Michaels:

Manchester Township received your Open Public Records Act and common law right of access request for documents related to an applicant for hire by the Township. The Township denies this request under both OPRA and the common law for the reasons expressed herein. Your request sought:

"Any and all reports, investigation reports, applications, résumé, and police background investigator reports for employment for Timothy Poss over the last 10 years. Also any associated reports, letters, correspondence, or background investigation reports on file or stored on the background investigating officer's computer regarding Timothy Poss over the last 10 years."

The purpose of OPRA, N.J.S.A. 47:1A-1 to -13, is plainly set forth in the statute: "to insure that government records, unless exempted, are readily accessible to citizens of New Jersey for the protection of the public interest." Mason v. City of Hoboken, 196 N.J. 51, 57 (2008) (citing N.J.S.A. 47:1A-1). 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.”

The individual that you inquired about was not employed by the Township. When an individual is not employed, the public agency is required to keep the application on file for three years and then the file may be destroyed. (NJ Treasury Records Retention Schedule for Municipalities, M100000016). There are no files within the last three years for this individual.

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.”

Executive Order 26 (McGreevey 2002).

Based on the above, your request is denied under the Open Public Records Act. Turning then to the common law right of access, your request did not provide a reason for the Clerk’s Office to consider in balancing the right of access against the need for privacy. Therefore, in such a situation, the balancing test, especially considering the Governor’s Executive Order, weighs strongly in favor of non-disclosure for requests for application materials for non-hired individuals.

This completes your OPRA and common law right of access request.

Sincerely,



Teri Giercyk, RMC/CMC
Municipal Clerk