

NJ Court Upholds OPRA Denial Over Personnel Records

by Sheri Siegelbaum on May 13, 2013

The Appellate Division recently sided with the Office of the Governor in a dispute over records requested under the New Jersey Open Public Records Act (OPRA). North Jersey Media Group, doing business as The Record newspaper, had sought records related to hiring decisions at the Port Authority of New York and New Jersey to support a series of news stories alleging favoritism.

The OPRA request specifically sought:

1) Any document received, maintained, or sent by the Authorities Unit, from Jan. 1, 2010 to the present, that contains a recommendation or referral of potential job applicants or candidates for any position at the Port Authority of New York and New Jersey. This includes any lists of referrals, memos, letters, e-mails or any other record related to a referral for a Port Authority position. 2) Any document received, maintained, or sent by the Authorities Unit, from Jan. 1, 2010 to the present, that identifies the specific person who requested the recommendation or referral referenced in the previous request. 3) Any application, resume, cover letter or other document related to the qualifications of the potential candidate or applicant for any Port Authority position, received, maintained, or sent by the Authorities Unit from Jan. 1, 2010 to the present.

The court ruled that the Governor's Office properly denied the request in reliance upon the personnel records exception. Citing *McGee v. Twp. of East Amwell*, 416 N.J. Super. 602, 615 (App. Div. 2010), the Appellate Division explained that "courts have tended to favor the protection of employee confidentiality" when interpreting the scope of the personnel records exception (N.J.S.A.47:1A-10).

In this case, the court concluded that the Law Division judge correctly determined that the records sought by plaintiff were personnel records exempt from disclosure. The court further held that OPRA's exemption for personnel records is not limited to records of persons employed by the State. Rather, it applies to personnel records of "any individual" that are in the possession of any government agency that is subject to OPRA.

As explained by the court in its opinion, "[OPRA] provides that government agencies have an obligation to protect a citizen's personal information from public access 'when disclosure thereof would violate the citizen's reasonable expectation of privacy.' Individuals undoubtedly have a reasonable expectation that their personnel records will remain confidential, except for records containing the limited information for which OPRA allows access."

The court further rejected North Jersey Media Group's argument that the judge erroneously narrowed its document request to resumes and recommendation letters from the Governor's Office to the Port Authority. According to the court, OPRA applies not only to the individuals' resumes and recommendations or referrals made by the Governor's Office, but also documents received or maintained by the Governor's Office pertaining to those referrals. These documents also qualify as "personnel records" under the exception.

For more information about this case or the legal issues involved, we encourage you to contact a member of Scarinci Hollenbeck's Public Law Group.