



## State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
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JACQUELYN A. SUÁREZ  
Commissioner

### FINAL DECISION

#### July 30, 2024 Government Records Council Meeting

Maria Diamonte  
Complainant

v.

Rutgers University  
Custodian of Record

Complaint No. 2022-61

At the July 30, 2024 public meeting, the Government Records Council (“Council”) considered the July 23, 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:

1. The Custodian has borne her burden of proof that she lawfully denied access to copies of a cover letter for the *curriculum vitae*, a statement of research interests, a statement of teaching interests, and evidence of teaching effectiveness from Ariane Chebel, which are request items numbered 1, 2, 5 and 6, respectively. Specifically, the Custodian certified in the Statement of Information that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Because the GRC has concluded that the Custodian lawfully denied access to these records as they do not exist, it is unnecessary for the GRC to also determine whether the records are exempt from access as personnel records pursuant to N.J.S.A. 47:1A-10 and/or exempt from disclosure per Executive Order No. 26 (McGreevey 2002).
2. The Custodian has borne her burden of proving that she did not deny access to request item number 3, pre-employment writing sample(s) of Ariane Chebel. N.J.S.A. 47:1A-6. The Custodian provided the Complainant with a link to the internet address where the responsive record resided and also disclosed to the Complainant a writing sample authored by Ms. Chebel. Rodriguez v. Kean University, GRC Complaint No. 2013-69 (March 2014).
3. Pursuant to judicial notice of Diamonte v. Rutgers Univ., GRC Complaint No. 2022-25 (June 2024), the Custodian lawfully denied access to request item number 4, the pre-employment list of references for Ariane Chebel, because disclosure thereof would violate the reasonable expectation of privacy of those persons contained in a list of any such references.

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 30<sup>th</sup> Day of July 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: August 1, 2024**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
July 30, 2024 Council Meeting**

**Maria Diamonte<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-61**

v.

**Rutgers University<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of the following records submitted pre-employment to Rutgers University from Ariane Chebel:

1. Cover letter for CV<sup>3</sup>.
2. Statement of research interests.
3. Writing sample(s).
4. List of references.
5. A statement of teaching interests.
6. Evidence of teaching effectiveness.

**Custodian of Record:** Jewell Battle  
**Request Received by Custodian:** March 3, 2022  
**Response Made by Custodian:** March 9, 2022  
**GRC Complaint Received:** March 22, 2022

**Background<sup>4</sup>**

**Request and Response:**

On March 3, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 9, 2022, the Custodian responded to the Complainant in writing informing the Complainant that request items number 1, 2, 5, and 6 are exempt from access as personnel records pursuant to N.J.S.A. 47:1A-10, and under Executive Order No. 26 (McGreevey 2002) (“E.O. 26”), which provides in relevant part, “[n]o public agency shall disclose the résumés, applications for employment or other information concerning job applicants while a recruitment search is ongoing. In response to request item

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> As used here, CV is the abbreviation for *curriculum vitae*.

<sup>4</sup> 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.

number 3, the Custodian disclosed to the Complainant a writing sample authored by Ms. Chebel. The Custodian also provided a link to writings authored by Ms. Chebel: <https://spaa.newark.rutgers.edu/newsroom/research-brief-to-whom-black-lives-actually-matter-reflections-efficacy-and-sustainability>. In response to request item number 4, the Custodian denied access, informing the Complainant that the University does not publicly release applicant references as these are considered to be exempt pursuant to the privacy exemption. The Custodian cited Serrano v. S. Brunswick Twp., 358 N.J. Super. 352, 368 (App. Div. 2003). The Custodian attached a copy of E.O. 26 to the response.

On March 9, 2022, the Complainant replied to the Custodian's response. The Complainant asserted that the items she requested are not personnel records. The Complainant stated that the records are part of the CV. The Complainant further stated that E.O. 26 does not apply to her request.

#### Denial of Access Complaint:

On March 22, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that on March 3, 2022, she submitted her OPRA request to the Custodian. The Complainant stated that the Custodian responded on March 9, 2022, denying the request. The Complainant attached to the complaint a copy of her March 9, 2022 reply to the Custodian's response.

#### Statement of Information:

On April 8, 2022, the Custodian filed a Statement of Information ("SOF"). The Custodian certified that she received the Complainant's OPRA request on March 3, 2022, and responded to the request on March 9, 2022.

The Custodian certified that the records responsive to the Complainant's request for a cover letter for the CV, a statement of research interests, a statement of teaching interests, and evidence of teaching effectiveness, which are request items numbered 1, 2, 5 and 6, respectively, do not exist. The Custodian further certified that if the request items did exist, they would be exempt as personnel records with limited exceptions pursuant to N.J.S.A. 47:1A-10. The Custodian also certified that the request items would be exempt from access pursuant to E.O. 26.

With respect to request item number 3, which is a writing sample from Ms. Chebel, the Custodian certified that she granted access to this record by forwarding a link to the Complainant containing the responsive record. The Custodian also certified that she disclosed to the Complainant a writing sample authored by Ms. Chebel.

The Custodian certified that records responsive to request item number 4 are a list of references. The Custodian certified that the University does not disclose applicant references because they are not subject to disclosure pursuant to OPRA's privacy exemption. The Custodian certified that "OPRA specifically places on the University 'a responsibility to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure

thereof would violate the citizen's reasonable expectation of privacy.' Serrano, 358 N.J. Super. 352."

### Analysis

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.

Request item number 1 - A cover letter for a pre-employment CV from Ariane Chebel

Request item number 2 - A pre-employment statement of research interests from Ariane Chebel

Request item number 5 - A pre-employment statement of teaching interests from Ariane Chebel

Request item number 6 - Evidence of pre-employment teaching effectiveness from Ariane Chebel

In Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified in the SOI that the records responsive to request items number 1, 2, 5 and 6 do not exist. Upon review, the GRC is persuaded that no unlawful denial of access has occurred. There is nothing in the evidence of record that contradicts the Custodian's certification that no responsive records exist for these request items. Based on the forgoing, a conclusion in line with Pusterhofer is appropriate here.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to copies of a cover letter for the CV, a statement of research interests, a statement of teaching interests, and evidence of teaching effectiveness from Ariane Chebel, which are request items numbered 1, 2, 5 and 6, respectively. Specifically, the Custodian certified in the SOI that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49. Because the GRC has concluded that the Custodian lawfully denied access to these records as they do not exist, it is unnecessary for the GRC to also determine whether the records are exempt from access as personnel records pursuant to N.J.S.A. 47:1A-10 and/or exempt from disclosure per E.O. 26.

Request item number 3 - Pre-employment writing sample(s) from Ariane Chebel

In Rodriguez v. Kean University, GRC Complaint No. 2013-69 (March 2014), the complainant requested specific policy and procedures. The custodian provided the complainant

with a link to the website page where the responsive records could be found. The complainant then filed a complaint asserting that the custodian's response was not responsive to his request. The Council, in finding that the custodian did not deny access to the records, determined that "[d]irecting a requestor to the specific location of a government record on the Internet will save government, and thus taxpayers, time and money, while also providing an efficient and expedient way for a requestor to easily obtain and examine the responsive record as required under OPRA." Id.

Here, the Complainant's request item sought a pre-employment writing sample(s) from Ariane Chebel. In the SOI, the Custodian certified that she granted access to this record by forwarding a link to the Complainant containing the responsive record. Furthermore, the Custodian certified that she also disclosed to the Complainant a writing sample authored by Ms. Chebel.

Therefore, the Custodian has borne her burden of proving that she did not deny access to request item number 3, pre-employment writing sample(s) of Ariane Chebel. N.J.S.A. 47:1A-6. The Custodian provided the Complainant with a link to the internet address where the responsive record resided and also disclosed to the Complainant a writing sample authored by Ms. Chebel. Rodriguez, GRC 2013-69.

*Request item number 4 - Pre-employment list of references from Ariane Chebel*

OPRA provides that "... a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy . . ." N.J.S.A. 47:1A-1.

The Custodian denied the Complainant access to this request item because she certified that applicant references are not subject to disclosure pursuant to OPRA's privacy exemption. Conversely, the Complainant asserted that she was unlawfully denied the request item.

When privacy interests are at issue, as here, the GRC will require both the complainant and the custodian to respond to balancing test questions so the Council can employ the common law balancing test established by the New Jersey Supreme Court in Doe v. Poritz, 142 N.J. 1 (1995). The New Jersey Supreme Court has explained that N.J.S.A. 47:1A-1's safeguard against disclosure of personal information is substantive and requires "a balancing test that weighs both the public's strong interest in disclosure with the need to safeguard from public access personal information that would violate a reasonable expectation of privacy." Burnett v. Cnty. of Bergen, 198 N.J. 408, 422-23, 427 (2009).

N.J.A.C. 1:1-15.2(a) and (b) state that official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. The Appellate Division has held that it was appropriate for an administrative agency to take notice of an appellant's record of convictions because judicial notice could have been taken of the records of any court in New Jersey, and appellant's record of convictions were exclusively in New Jersey. See Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95 (App. Div. 1974).

As it relates to this item, the GRC must take judicial notice of that fact that the disclosability of references for Ariane Chebel was recently addressed in Diamonte v. Rutgers Univ., GRC Complaint No. 2022-25 (June 2024). There, the complainant sought “references submitted at time of hire” for Ms. Chebel. The custodian found responsive records in the form of letters of reference but denied access to them based on OPRA’s privacy exemption. The Council, on balancing the factors established in Doe, determined that the factors weighed in favor of not disclosing the letters of reference because disclosure thereof would violate the reasonable expectation of privacy of those persons submitting said letters.

Here, the Complainant sought a “list of references” for Ms. Chebel. Although the request is slightly different, the subject matter of the request is the same; to wit, “references.” The issue of whether references for Ms. Chebel are subject to disclosure was decided in Diamonte, GRC 2022-25, and the GRC here relies on the Council’s conclusion in that decision which found that:

Because . . . the Custodian has asserted valid reasons for denying access to said records, non-disclosure of the records is warranted. As such, the Custodian lawfully denied access to [references submitted at time of hire for Ariane Chebel] on the basis that disclosure of same would violate the reasonable expectation of privacy of those persons submitting letters of reference. N.J.S.A. 47:1A-1; Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009). See also Reynolds v. N.J. Bd. of Pub. Util., GRC Complaint No. 2008-14 (August 2009).

[Id. at 12.]

Accordingly, pursuant to judicial notice of Diamonte, GRC 2022-25, the Custodian lawfully denied access to request item number 4, the pre-employment list of references for Ariane Chebel, because disclosure thereof would violate the reasonable expectation of privacy of those persons contained in a list of any such references.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that she lawfully denied access to copies of a cover letter for the *curriculum vitae*, a statement of research interests, a statement of teaching interests, and evidence of teaching effectiveness from Ariane Chebel, which are request items numbered 1, 2, 5 and 6, respectively. Specifically, the Custodian certified in the Statement of Information that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Because the GRC has concluded that the Custodian lawfully denied access to these records as they do not exist, it is unnecessary for the GRC to also determine whether the records are exempt from access as personnel records pursuant to N.J.S.A. 47:1A-10 and/or exempt from disclosure per Executive Order No. 26 (McGreevey 2002).

2. The Custodian has borne her burden of proving that she did not deny access to request item number 3, pre-employment writing sample(s) of Ariane Chebel. N.J.S.A. 47:1A-6. The Custodian provided the Complainant with a link to the internet address where the responsive record resided and also disclosed to the Complainant a writing sample authored by Ms. Chebel. Rodriguez v. Kean University, GRC Complaint No. 2013-69 (March 2014).
3. Pursuant to judicial notice of Diamonte v. Rutgers Univ., GRC Complaint No. 2022-25 (June 2024), the Custodian lawfully denied access to request item number 4, the pre-employment list of references for Ariane Chebel, because disclosure thereof would violate the reasonable expectation of privacy of those persons contained in a list of any such references.

Prepared By: John E. Stewart

July 23, 2024