



State of New Jersey

OFFICE OF THE STATE COMPTROLLER
P.O. Box 024
TRENTON, NJ 08625-0024

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

MARC LARKINS
Acting State Comptroller

October 8, 2014

Mr. John Paff
1605 Amwell Rd
Somerset, New Jersey 08873
paff@pobox.com

Re: OPRA Request W90361

Dear Mr. Paff:

The Office of the State Comptroller (OSC) received your Open Public Records Act (OPRA) request W90361 on September 22, 2014. The seven (7) business day deadline to respond to your request was October 1, 2014. On October 1, 2014, pursuant to N.J.S.A. 47:1A-5.i, the OSC requested an additional five (5) business days to respond to your request. This response is being provided to you on October 8, 2014, the 5th business day after the custodian's request for an extension of time.

Your OPRA request sought access to the following documents:

"1. The list of the 332 PERS-enrolled professionals [referenced on Page 7 of the Comptroller's July 17, 2012 report "Improper Participation By Professional Service Providers In The State Pension System, and] 2. A list of the 228 local units that retained those 332 enrollees."

A search was conducted and records were located responsive to your request. However, access to these records is respectfully denied for the reasons stated below.

Access is denied because disclosure of these records would violate the individual citizens' "reasonable expectation of privacy" N.J.S.A. 47:1A-1. An individual has a reasonable expectation of privacy in not publicizing the fact that he or she is under investigation by a public agency. The reputational harm to targets of investigations in the absence of confidentiality is well-recognized. See, e.g., State v. Clark, 191 N.J. 503, 512-13 (2007); State v. Stroger, 97 N.J. 391, 409 (1984); Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 219 (1979); Fund for

Const. Gov't v. Nat'l Archives and Records, 656 F.2d 856, 864 (D.C. Cir. 1980); see also McCutcheon v. U.S. Dept. of HHS, 30 F.3d 183 (D.C. Cir. 1994).

Additionally, because the requested material is part of an ongoing investigation, it is not subject to disclosure pursuant to N.J.S.A. 47:1A-3.a. In support of this exemption to the disclosure laws, the Government Records Council has held that disclosure of records pertaining to an ongoing investigation "...would be inimical to the public interest because such disclosure would jeopardize the state agency's ability to conduct such [an] investigation..." Henderson v. New Jersey Department of Law and Public Safety, Division of Alcoholic Beverage Control, GRC Complaint No. 2010-139 (May 2011). As indicated in the State Comptroller's July 17, 2012 report, the list of names and local units were referred to the Division of Pensions and Benefits for review. The Pension Fraud and Abuse Unit, established pursuant to Executive Order 138, is directed to "receive referrals from the Office of the State Comptroller on claims of potential fraud and abuse." Investigation within the Division of Pensions and Benefits is still on-going and therefore access to the requested records is denied at this time pursuant to N.J.S.A. 47:1A-3.a.

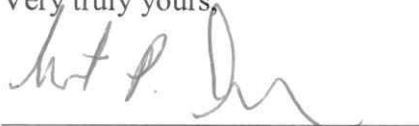
Moreover, confidential pension information obtained by the State Comptroller during its investigation remains confidential under N.J.S.A. 47:1A-10 since an individual's pension record is not a government record subject to public access, except as to the limited information set forth in the statute.

You also made your request for these records under the common law right of access. Access is denied under the common law because the public's interest in confidentiality of the documents outweighs the requestor's interest in access. Nero v. Hyland, 76 N.J. 213, 223-24 (1978).

In addition to the reasons for denial set forth above, the Office of the State Comptroller reserves the right to supplement the reasons herewith with any additional basis for exception to public access as may hereinafter also be determined to apply.

If you are not in agreement with the determination above you have the right to challenge the decision by the Office of the State Comptroller. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint in writing with the Government Records Council (GRC). You may contact the GRC by toll-free telephone at (866) 850-0511, by mail at P.O. Box 819, Trenton, New Jersey, 08625, by email at grc@dca.state.nj.us, or at their web site at www.nj.gov/grc.

Very truly yours,



Robert Shane
Alternate Records Custodian