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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3023-15T2

HARRY SCHEELER,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY DEPARTMENT
OF CHILDREN AND FAMILIES, and
DARRYL RHONE, in his capacity
as Records Custodian for the
Department of Children and Families,

Defendants-Respondents.

Argued December 5, 2017 – Decided December 21, 2017

Before Judges Reisner, Hoffman and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Docket No. L-
0834-15.

Michael Zoller argued the cause for appellant
(Pashman Stein Walder Hayden, PC, attorneys;
CJ Griffin, of counsel and on the briefs;
Janie Byalik, on the briefs).

Christian A. Arnold, Assistant Attorney
General, argued the cause for respondents
(Christopher S. Porrino, Attorney General,
attorney; Andrea M. Silkowitz, Assistant
Attorney General, of counsel; Christian A.
Arnold, on the brief).

PER CURIAM

Plaintiff Harry Scheeler appeals from the November 19, 2015 Law Division order denying his application for disclosure of redacted portions of employee resumes of defendant New Jersey Department of Children and Families (DCF). Plaintiff claims defendant's redactions violated the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13. We affirm.

I

In January 2015, plaintiff filed an OPRA request¹ with defendant seeking "the names, date of hire, job title, salary[,] and resumes for all employees of the [CP&P]" Plaintiff's request arises from his concern regarding DCF employee qualifications, and "whether those employees have embellished, or perhaps even falsified, their qualifications on their resumes"

Originally, defendant rejected these requests, stating it did not possess the employee resumes; it directed plaintiff to the Civil Service Commission (CSC). According to plaintiff, the CSC stated it did not maintain the files, and directed him back to

¹ On January 27, 2015, plaintiff requested the resumes for Cape May and Sussex County Child Protection and Permanency (CP&P) employees. CP&P falls under DCF's umbrella. On February 2, 2015, plaintiff further requested the resumes of Atlantic and Cumberland County CP&P employees.

defendant. In response to plaintiff's threat of litigation, defendant produced some of the requested resumes, and explained, "The initial review was undertaken by a temporary employee and the employee reported that the records could not be found in the personnel records of the staff on the lists provided." Defendant informed plaintiff it would provide him with more resumes as it located them. Subsequently, defendant supplied the balance of the requested resumes; however, over plaintiff's objection, defendant only produced redacted resumes. These redactions included employee addresses, phone numbers, community involvement, clubs and hobbies, and volunteer experience, among other things.

In April 2015, plaintiff filed a verified complaint, contending defendant's refusal to provide unredacted resumes violated OPRA. Plaintiff asserted N.J.S.A. 47:1A-10, in conjunction with Executive Order 26, (Aug. 13, 2002), 34 N.J.R. 3043(b) (EO 26), mandates disclosure of unredacted resumes. N.J.S.A. 47:1A-10 generally exempts personnel files from disclosure, but states that "personnel or pension records of any individual shall be accessible when required to be disclosed by another law." EO 26 provides that "[t]he resumes of successful candidates shall be disclosed once the successful candidate is hired."

On November 16, 2015, the trial judge heard argument and issued an oral decision. She stated she was "hesitant to give the executive the power to overrule a statutory exemption," explaining that

[it is] unusual to have a whole section of OPRA devoted to a particular kind of record. And I think that shows the sensitivity that the Legislature showed to personnel . . . records. And so to me[,] to suggest that an executive order could order disclosed what OPRA specifically said should not be disclosed is . . . an [in]appropriate reading of the statute.

The trial judge further interpreted N.J.S.A. 47:1A-9 to provide that "the executive can go beyond OPRA and shield additional documents. . . . [but] it [does not] give [the executive] the authority to override an exemption [that has] been enshrined in the statute itself." Finally, the trial judge accepted defendant's concern that disclosure could jeopardize DCF employee safety because these employees work in a contentious, and potentially dangerous, field.

II

On appeal, we engage in a de novo review of the trial judge's legal decisions concerning access to public records under OPRA. See Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 497 (App. Div. 2011). However, we defer to the judge's underlying factual findings so long as they are

supported by sufficient, credible evidence. See Meshinsky v. Nichols Yacht Sales, Inc., 110 N.J. 464, 475 (1988).

"OPRA's purpose is 'to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.'" Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (quoting Asbury Park Press v. Ocean Cty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). To achieve this purpose, OPRA provides that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, [subject to] certain exceptions" N.J.S.A. 47:1A-1.

OPRA broadly defines the term "government record" to include:

any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, 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[, her,] or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the ordinary course of his[, her,] or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof

[N.J.S.A. 47:1A-1.1]

Certain government records, including personnel records, however, are exempt from public access under OPRA. See N.J.S.A. 47:1A-10. OPRA's personnel record exemption "begins with a presumption of non-disclosure and proceeds with a few narrow exceptions" Kovalcik v. Somerset Cty. Prosecutor's Office, 206 N.J. 581, 594 (2011). When interpreting this exemption's scope, "courts have tended to favor the protection of employee confidentiality." McGee v. Twp. of E. Amwell, 416 N.J. Super. 602, 615 (App. Div. 2010).

Furthermore, when interpreting statutes, courts must first consider the plain and ordinary meaning of the statute's words. See State v. Afanador, 134 N.J. 162, 171 (1993). However, when a statute's language is ambiguous and susceptible to multiple interpretations, "[t]his court's fundamental duty . . . is to ascertain the purpose and intent of the Legislature." Voges v. Borough of Tinton Falls, 268 N.J. Super. 279, 285 (App. Div. 1993); see also O'Connell v. State, 171 N.J. 484, 488 (2002). Accordingly, we must "afford a construction [that] considers [the statute's] words in the context of the entire statute, ascribing to them a common-sense meaning [that] advances the legislative purpose." Ibid.

Here, Plaintiff argues EO 26 constitutes "another law," as referenced in N.J.S.A. 47:1A-10. The trial judge, however, correctly noted that although N.J.S.A. 47:1A-1.1 lists twenty-one

record types that are exempt from disclosure, the Legislature devoted an entire OPRA section – N.J.S.A. 47:1A-10 – to personnel records, thus demonstrating the Legislature's heightened concern with maintaining the confidentiality of personnel records. As discussed below, we are not persuaded that an executive order constitutes "another law" that can mandate disclosure of employee resumes, particularly when OPRA otherwise provides that they are not subject to disclosure.

In particular, we are not persuaded by plaintiff's contention that the Legislature – via N.J.S.A. 47:1A-9 – expressly delegated the executive branch the power to override OPRA provisions designed to protect privacy. N.J.S.A. 47:1A-9 states:

The provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [this act]; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

However, as the trial judge noted, N.J.S.A. 47:1A-9 "specifically looked at how an executive order could create another exemption," rather than allowing an executive order to abrogate an entire OPRA section. See e.g., Williamson v. Treasurer, 357 N.J. Super. 253, 272 (App. Div. 2003) ("Simply put, an Executive Order cannot amend

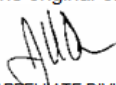
or repeal a statute."). Such a broad interpretation of section 9 would allow the executive branch to override the Legislature's intent by nullifying the protections it expressly afforded personnel records. Additionally, in section 9, where the Legislature intended to permit an executive order to create an exception, it used the specific term "Executive Order" rather than the general term "another law."

We also find defendant's safety concerns persuasive. Namely, defendant notes its employees often work with parents accused of abuse or neglect, and occasionally need to remove children from their parents' homes. In such emotionally charged situations, defendant reasonably fears that disclosure of the redacted information could place its employees in danger.

Accordingly, we conclude the trial court correctly determined defendant sufficiently responded to plaintiff's OPRA request by providing the redacted resumes.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION