

OPRA Watchdog Has Gone Astray, Suit Says
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An open-government monitoring group says in court papers that the agency charged with enforcing the Open Public Records Act is itself in breach of the statute.

A suit in Mercer County alleges that the Government Records Council has wrongfully withheld information about people who have lodged complaints about OPRA violations — specifically, their e-mail addresses. "If the GRC is found to violate OPRA, that would be ... like the EEOC being found to engage in employment discrimination," says Montclair solo Richard Gutman, who represents the plaintiff New Jersey Foundation for Open Government.

NJFOG, a nonpartisan organization that monitors OPRA enforcement, says it asked for e-mail addresses of those complainants so it could contact them, find out more about their grievances and possibly convert them to the NJFOG cause. E-mail is a faster and less expensive alternative to physical mailing, Gutman says.

E-mail addresses are not among the data that OPRA allows agencies to purge from public documents for privacy reasons, such as Social Security numbers, credit card numbers, unlisted telephone numbers and driver's license numbers, NJFOG says.

NJFOG seeks an order granting it unfettered access to unredacted e-mail addresses. It also seeks to recover the costs of the suit. The suit marks the second time NJFOG has resorted to litigation. The first suit was filed last June, after the GRC refused to disclose the postal addresses of GRC complainants, and settled on Feb. 6 this year, when the GRC supplied those addresses.

On March 2, NJFOG asked the GRC for a database of all complaints received from June 2008 to the present, including the complainants' names and street and e-mail addresses.

On March 10, the GRC responded that its database did not include complainants' e-mail addresses at all.

On March 18, NJFOG requested copies of every message sent electronically to complainants in response to their petitions.

On March 27, the GRC responded with 69 messages from individual complaints with the e-mail addresses redacted. E-mail addresses from commercial complainants, attorneys and government records custodians were not redacted.

NJFOG alleges that the GRC's refusal to disclose, while flouting OPRA, also violates the Administrative Procedure Act, because the records sought are part of a quasi-judicial proceeding and cannot be kept from the public unless individually sealed by a judge for specific reasons. And it violates the common law right of access, which balances the requester's need for disclosure against the government's need for secrecy.

GRC Executive Director Catherine Starghill was not in her office Monday. Her office referred questions to the public information office at the state Department of Community Affairs, where a reporter's calls were not returned.

A June 26 hearing is scheduled before Assignment Judge Linda Feinberg in the suit, New Jersey Foundation for Open Government v. Government Records Council, MER-L-1177-09.