

NEWS RELEASE

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New Jersey Government Records Council sued for violating state's Open Public Records Act

New Jersey Foundation for Open Government challenges GRC's withholding of email addresses of those filing complaints of improper denial of requests for government records

Lawsuit follows victory for non-profit civic group in similar case against GRC involving mailing addresses

Newark – The New Jersey Foundation for Open Government announced today that it has filed suit against the New Jersey Government Records Council because it believes the agency is violating the state's Open Public Records Act (OPRA). (Docket #: MER-L-1177-09)

NJFOG contends the GRC is illegally withholding the email addresses of people who have filed complaints concerning improper denial of their requests for public records held by state and local government bodies.

The civil lawsuit, New Jersey Foundation for Open Government (NJFOG) v. Government Records Council (GRC), was filed in Mercer County Superior Court by Richard Gutman, a Montclair attorney specializing in public records access cases who is representing NJFOG. It is scheduled for a hearing in Trenton on June 26 before Superior Court Judge Linda R. Feinberg.

NJFOG President Ron Miskoff said, "This case is important because while the GRC claims it is protecting the privacy of those seeking help in obtaining government records which have been denied to them, what it is actually doing is trying to protect itself from accountability to the public. It's also ironic that the GRC, which was established to help requestors challenge improper denials of

government records, is instead violating the very law it was created to enforce.”

NJFOG (www.njfog.org) is a non-profit, non-partisan coalition of individuals and civic, community and journalistic organizations founded in January 2001 that advocates for open government and helped win unanimous legislative approval for OPRA and the creation of the GRC in 2002.

On March 18, 2009, NJFOG requested copies of all the emails sent by the GRC since Jan. 1, 2009 to record requesters acknowledging receipt of their complaints concerning denial of record requests by state or local government officials. On March 27 the GRC provided copies of the 69 emails but redacted from each the email address of the individual complainant on the grounds of privacy, although the GRC has in the past routinely supplied such email addresses to NJFOG and others.

Miskoff said NJFOG was seeking the email addresses for three reasons: first, to offer general assistance or support where needed since many requesters do not have lawyers and are filing their complaints on their own; second, to seek potential members of NJFOG to help with its open government work; and, third, as a way to evaluate and monitor the GRC’s performance in handling individual complaints.

NJFOG’s brief argues that the GRC must release the email addresses because they are part of a quasi-judicial procedure in which such information, like other court records, cannot be kept from the public unless individually sealed by a judge for specific reasons.

In addition, withholding the emails violates OPRA because email addresses, like home addresses, are not among the personal information specified by the Legislature and the Governor as requiring privacy protection. Under the act the specific personal information in government records that agencies are directed to keep confidential includes only social security numbers, credit card numbers, unlisted telephone numbers and driver license numbers.

Finally, the brief argues that NJFOG has a right to the email addresses under the state’s common law which balances the requester’s need for disclosure against the government’s need for secrecy.

It states that “NJFOG is the only organization in New Jersey with the sole mission of protecting and expanding public access to government records and meetings. It is a statewide, nonpartisan, non-profit coalition of organizations and individuals and is a member of the National Freedom of Information Coalition. It operates a website at www.njfog.org. As part of its monitoring of the GRC, NJFOG has issued an extensive report reviewing and criticizing the performance of the GRC. NJFOG needs the email addresses to contact the GRC complainants in furtherance of NJFOG’s nonprofit, civic activities, including monitoring the GRC and enlarging NJFOG. Nonprofit civic, political and religious organizations, like NJFOG, enjoy a First Amendment free speech right to contact citizens in their homes to discuss issues, recruit members and solicit contributions... Thus, NJFOG needs the addresses to further its constitutionally protected activities, which outweighs GRC complainants’ minimal, or non-existent, expectation of privacy.”

NJFOG’s current lawsuit follows its earlier challenge to the GRC’s refusal in May of last year to disclose the postal addresses of GRC complainants. Following that denial, NJFOG filed a lawsuit on June 17, 2008 seeking the mailing addresses on grounds similar to the current lawsuit. The suit was settled on Feb. 6, 2009, when the GRC supplied the mailing addresses to NJFOG.

However, on March 2, 2009, when NJFOG sought a copy of the GRC’s database of complainants from June 2008 to the present, including complainant’s name, street address and email address, the GRC informed NJFOG that it had stopped including street addresses effective June 30, 2008 and that the database did not include email addresses.

That led NJFOG to request copies all the individual emails sent to complainants acknowledging receipt of their complaints.

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