

New Jersey Law Journal

Council Is Ordered To Obey the Law It Was Created To Enforce

Mary Pat Gallagher

07-28-2009

The Government Records Council has found itself at the losing end of a lawsuit that alleges it violated the Open Public Records Act it is supposed to help enforce.

A Mercer County judge held on July 17 that the New Jersey Foundation for Open Government is entitled to full copies of 69 requested e-mails in their unredacted form and that the GRC must turn them over by Aug. 14.

The GRC provided them in March but only after scrubbing the recipients' e-mail addresses. On May 8, NJFOG v. GRC , MER-L-1177-09, was filed. The e-mails are notices of acknowledgment sent by the GRC to those who lodged complaints over the denial of access to government records in 2009. They confirm receipt of the complaints and provide information such as docket numbers and case managers' names.

The GRC claimed it was protecting complainants' privacy by shielding their home e-mail addresses.

Deputy Attorney General Debra Allen argued in a brief for the that home e-mail addresses are "unique personal identifiers," akin to unlisted telephone numbers, whose disclosure poses a greater risk of privacy invasion than business e-mail addresses, especially in conjunction with other personal information.

NJFOG, a nonprofit organization that advocates for public access to government records and meetings, says it wants the e-mail addresses to contact complainants without lawyers and offer them assistance; to recruit potential members to help NJFOG with its work; and to aid its efforts to "evaluate and monitor the GRC's performance in handling individual complaints."

The litigation over the e-mail addresses continues a battle that began last year when NJFOG requested a database of complaints filed with the GRC. The GRC provided the database but removed the column containing the complainants' street addresses, asserting they were "exempt from disclosure due to privacy concerns."

Richard Gutman, NJFOG's lawyer in both cases, says the 2008 case was never decided because the GRC handed over the information after NJFOG filed its brief.

Earlier this year, when NJFOG asked for the database of complaints filed since Jan. 1, 2009, it was told the GRC stopped including street addresses as of June 30, 2008, two weeks after NJFOG asked for them, says Gutman, a Montclair solo. The GRC also allegedly told him it never maintained e-mail addresses in the database.

So NJFOG asked instead for copies of the complaint acknowledgment notices, which are sent by e-mail.

On March 27, the GRC forwarded the 69 e-mails minus the complainants' home e-mail addresses.

NJFOG filed suit on May 8, alleging that was a violation of OPRA, the common law right of access to public records, and N.J.S.A. 1:1-14.1(a), which provides a right of access to quasi-judicial records of administrative agencies.

Superior Court Judge Douglas Hurd, who ruled from the bench and did not issue a written opinion, decided the case solely under OPRA, says Gutman.

Gutman analogizes the GRC's effort to withhold the addressees to the Equal Employment Opportunity Commission "violating the law against discrimination."

"It's ironic that the GRC, which was established to help requestors challenge improper denials of government records, violated the very law it was created to enforce," says NJFOG president Ron Miskoff.

GRC spokeswoman Lisa Ryan declines comment on Hurd's order, saying the council just received it on Tuesday and was still reviewing it.

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