

Open Government Symposium - Fixing Open Government in New Jersey
Sponsored by the New Jersey Foundation for Open Government
September 25, 2009
9:30 am -12:30 pm
State Capitol Complex - Committee Room #6

TRENTON — The Open Public Records Act (OPRA) still needs a lot of work, according to a panel of experts on the law, and the state is moving glacially toward improving it.

At a seminar sponsored by the New Jersey Foundation for Open Government and funded by a grant from the Rutgers School of Law-Newark, Pratt Bequest Fund, five panelists generally agreed that OPRA is far from the open-records law that New Jersey needs and is pockmarked by intransigent record-keepers, wide-open gaps in the law and fuzzy case decisions that sometimes conflict with each other. The result, most of them agreed, is that citizens and attorneys have a difficult time obtaining the documents and records they need.



(Above pictured l-r) Panel members included Thomas Cafferty, the general counsel for the New Jersey Press Association; Guy Baehr, a former Star-Ledger reporter; Vincent Maltese, the former chairman of the GRC; Walter Luers, panel chair and a member of the NJ FOG board and attorney who specializes in open-records issues; Richard Gutman, an attorney who recently won a major case against the Government Records Council; and John Paff, a public-records activist and member of the New Jersey Libertarian party.



Prior to the panel, the approximately 40 members of the audience heard from Matthew Boxer, the state comptroller. Boxer complained about the multiple layers of government in New Jersey and the fact that each one hires its own auditor. Some of the auditors, he said, have been working for the same local agency for up to 60 years.



Matthew Boxer, New Jersey State Comptroller

New Jersey has more government agencies per capita than any other state, Boxer noted, and even his office, which came into existence in 2008, works to keep up with what each one is doing. He said it is a difficult job and suggested that the state ought to streamline and combine the various local and county entities so that state officials can keep better track of their finances.

“Some claim they’re not a public entity,” Boxer said, and they therefore believe they do not have to adhere to some of the stringent requirements that official agencies must meet.

During the panel discussion, which followed, Cafferty, who is one of the authors of OPRA, said that most of the litigation he handles is designed to “make some law.” He said OPRA still needs refining, and many questions are left unanswered by the 2002 law.

The GRC, which was written into the law to administer disputes and settle issues, refers testimony cases to the Office of Administrative Law, Luers said.

This system “does create delays,” said Gutman. He suggested that the GRC ought to regionalize its activities with north, central and south New Jersey hearing offices “to resolve cases at that level.”



Panelists Guy Baehr and Vincent Maltese

Baehr reminded the group that the GRC in concept was supposed to be less rigid and formalistic in its approach to open records.

“The original intent was to get out to the people, have mediators, a telephone hotline,” he said. “The language in the statute says the GRC should get out and resolve things as quickly and easily as possible. But the GRC has taken a more formalistic view, possibly from bad advice from the Attorney-General.”

That issue was discussed for quite a while. The fact that the GRC uses the A-G’s office as its attorney causes some bizarre and ironic twists.

Maltese, who said he tried to regularize the agency, said the A-G told the GRC that, if the GRC disagreed with the A-G attorney's advice, and the case went to appeal, "the A-G's office would not represent us; we had to get independent counsel, and there was no money in the budget for independent counsel."

Now, he said, there is.

Eventually, the discussion turned to the high cost of photocopying. Cafferty said the cost is too high because it was based on the old right-to-know law.

"It angers people to feel the government is extracting a profit from them," added Baehr, who noted the 75-cents-a-copy for the first 10 copies is outrageous. NJFOG has urged the state Supreme Court to set costs at a more modest 10 cents a copy, he said.

Paff, who has filed lawsuits against scores of municipal governments, says he gets around the high cost by requesting records as faxes or in email.

"Half the time, they don't ask for payment," he said.

When they ask for 75 cents a page, he said he sends the local agency a letter quoting Catherine Starghill, the GRC executive director, who said an agency cannot charge for a fax. Each time, Paff said, he gets a letter back saying the agency will not charge him. Another tactic he uses is to make his OPRA requests as narrow as possible. Instead of asking for three years' records, he said, he may ask for three months, one month or even one day. That keeps the records entity from declaring that special charges will be necessary to facilitate the request.

Sometimes, Maltese added, municipal clerks and other record keepers will try to make obtaining records a difficult job for citizens almost for spite.

"Is it gamesmanship or is it a reasonable request?" he asked.

NJ FOG President Ron Miskoff concluded the session with a call to support citizen action against the unfair practices of various agencies. He said one way to do this is to support the efforts of NJ FOG. This would help the overall open-records situation for "private citizens...to do a better job watching their planning board, the community of attorneys who argue public-access cases, politicians who feel it's better to assist citizens who want to know more about their government than to fight them tooth and nail, and journalists who find it easier to cover stories that jump out at them than to dig and uncover corruption."

He suggested that the various stakeholders of government in New Jersey join the organization and support its goals. NJ FOG's website is at njfog.org.

The session was chaired by Deborah Spigner-Mohammed and was administered by the NJ FOG administrator, Tina Renna.