

PUBLIC NOTICE

LAW AND PUBLIC SAFETY

OFFICE OF THE ATTORNEY GENERAL

Notice of Action on Petition for Rulemaking

Government Records; Procedures for Requests

N.J.A.C. 13:1E-2.4

Petitioner: Gavin C. Rozzi.

Take notice that on November 29, 2017, the New Jersey Department of Law and Public Safety (Department) Office of the Attorney General received a petition for rulemaking from the above petitioner. On January 16, 2018, a notice of receipt of the petition was published in the New Jersey Register at 50 N.J.R. 680(b). The petitioner requested that the Attorney General amend N.J.A.C. 13:1E-2.4(a) to permit e-mail submission of Open Public Records Act (OPRA) requests to agencies within the Department subject to the Attorney General's supervision. The petitioner states that e-mail is no longer a luxury or special technical feat in the year 2017, and that it has now become ubiquitous among citizens, and both the private and public sectors make extensive use of the technology. The petitioner respectfully urges the Attorney General to amend N.J.A.C. 13:1E-2.4(a) and treat e-mail requests sent to agencies within the Department subject to the Attorney General's supervision, just as they do the OPRA requests received from the State's online request system. The petitioner believes that amending subsection (a) to permit the submission of requests via any e-mail address, not just the State's online request system, would remove an unreasonable burden placed on requestors seeking to gain access to public records under OPRA.

Take further notice that the Attorney General certifies that the petition was duly considered pursuant to law and, upon due deliberation, has determined that the request that the Attorney General amend N.J.A.C. 13:1E-2.4(a) to permit e-mail submission of Open Public Records Act requests to agencies within the Department subject to the Attorney General's supervision is denied.

Pursuant to existing rules, N.J.A.C. 13:1E-2, and long-standing policy and practice of the Department, submission of OPRA requests by facsimile transmission or e-mail is not permitted. N.J.A.C. 13:1E-2.4(b) provides, in part: "Only the appropriate division or agency custodian of the record requested is authorized to accept receipt of an OPRA request on behalf of that division or agency." N.J.A.C. 13:1E-2.4(a) states: "Written Open Public Records Act (OPRA) requests shall be hand-delivered during normal business hours of the public agency, mailed or submitted electronically to the appropriate division or agency custodian of records over the Internet by means of a web-enabled OPRA request form, which can be found on the Department of Law and Public Safety OPRA website, www.state.nj.us/lps/opra. Submission of requests by facsimile transmission or e-mail is not permitted."

These restrictions are supported by New Jersey case law. In 2009, the Appellate Division stated in *Renna v. County of Union*, 407 N.J. Super. 230 (App. Div. 2009), "the primary objective of the statutory construct is that the requestor set forth in writing, and in a cogent and clear manner, the nature of the request and the other information required by N.J.S.A. 47:1A-5(f)." On the same day, the Appellate Division held in *Paff v. City of East Orange*, 407 N.J. Super. 221 (App. Div. 2009):

We conclude that the authority N.J.S.A. 47:1A-5 (f) (1) confers upon a custodian of government records to adopt a form for

requesting access to a government record, which includes ‘specific directions and procedures for requesting a record,’ authorizes a custodian to direct that a request for a government record must be transmitted only by methods specified in the form, which need not include every method of transmission mentioned in N.J.S.A. 47:1A-5(g).

The Department’s records request form, in relevant part, states:

1. State Law requires that in order to request access to government records, you must complete, sign and date a written request for access and deliver it in person or by mail during regular business hours to the appropriate custodian of the record requested. You may also complete and submit a web enabled version of this request form at www.nj.gov/opra. L&PS will not accept submission of a written request for access by fax or e-mail. Your request is not considered filed until the written request has been received by the appropriate custodian of the record requested.
2. If you 1) submit a request for access to government records to someone other than the appropriate custodian; or 2) do not complete a written request containing the information required in this form; or 3) make a request for access by telephone, e-mail or fax, the Open Public Records Act and its deadlines, restrictions and remedies will not apply to your request.

The online OPRA request process is designed for the ease and convenience of requestors. Use of the online request form better assures that a requestor meets the requirements of OPRA and case law, setting forth in writing the nature of the request and the other information required by N.J.S.A. 47:1A-5(f). Unlike submission by e-mail, use of the online OPRA request process assures that OPRA requests are not lost, misdelivered, or insufficiently transmitted. Additionally, the Department does not accept requests by e-mail for the reason that an attachment to an e-mail (such as an OPRA request form) creates a ready avenue for a computer virus to enter and infect the Department's e-mail system, and that protection systems, such as anti-virus software and firewalls, automatically delete or quarantine such e-mails or strip off attachments. This can present problems and difficulties for both the requestor and the custodian because a custodian may not be aware that a purported OPRA request was e-mailed while the requestor may mistakenly believe that the e-mail request was delivered, accepted, and in the process for a response under the OPRA time requirements. In contrast, OPRA requests submitted by means of the online OPRA request process can be tracked with certainty by the division/agency OPRA custodian, the Department's OPRA custodian, and by the requestor.

When an OPRA request is submitted through the online OPRA request system, three important events occur: 1) the request is automatically entered into the LPS OPRA Tracking System; 2) the requestor automatically receives an acknowledgment with a tracking number for the request; and 3) an e-mail notice regarding the OPRA request is automatically sent by the System to the Records Custodian for the appropriate Department division/agency. A requestor does not need to search for the identity and e-mail address of a division/agency OPRA custodian; the online System performs that task. In the past five calendar years, January 1, 2013 through

December 31, 2017, 10,957 OPRA requests were filed with the Department; 85 percent of those requests (9,291) were submitted using the online OPRA request system.

OPRA requests submitted to the Department over the Internet using the online LPS OPRA Tracking System request process are trackable, deliverable directly to the designated division/agency OPRA custodian, and fulfill the requirements for submitting requests set forth in OPRA and case law.

A copy of this public notice has been mailed to the petitioner.