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By the EdLaw Group at Lindabury

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TWO ALERTS

Format of Records Burden Met in OPRA Request

By Denise Del Priore

A recent New Jersey Superior Court letter decision found that a Borough did not have to provide documents requested under the Open Public Records Act (“OPRA”) in the specific format requested by the plaintiff. The Court ruled the Borough had met its burden under the law by providing the requested records to the plaintiff in the medium in which they are maintained.

Gannett Satellite Information Network, Inc. v. Borough of Raritan involved the plaintiff Gannett Satellite Information Network, Inc.’s (“Gannett”) request to access the Borough of Raritan’s (“Raritan”) payroll records under OPRA. The requested records were available in portable document format (PDF) at Borough Hall in Raritan and were accessible to any requesting party during normal business hours. The issue in the case was not whether the plaintiff Gannett was entitled to access the requested documents, but whether it was entitled to the requested reports in the particular format it desired, a non-PDF format, and who would bear the cost of producing those reports in that format.

The Court stated that OPRA was adopted in order to ensure that government records were “readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations of the right of access accorded by [the laws of this state], shall be construed in favor of the public’s right of access.” *N.J.S.A. 47:1A-5(d)*, which addresses the “medium” in which a requested record should be produced, provides that a record should be made available to a requestor in the medium requested if the public agency maintains the record in that medium. If the record is not maintained in the medium requested, the custodian of the particular record must convert the document to the medium requested or provide a copy in some other meaningful medium. In some circumstances, the agency may assess a special charge for producing records in a specific medium.

The Court found that Raritan met its burden under OPRA. The Court stated that under *N.J.S.A. 47:1A-5(d)*, if the “requestor submits his request for information in a medium that is not the one in which the records are ‘routinely used by the agency,’ said agency (cont’d ➔)

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may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on' various costs that are attendant to the request." The Court found that the PDF format was the medium that Raritan normally used to manage its payroll. Thus, Garnett was offered the requested records in the medium that the agency routinely used and, further, Garnett was offered the records in the format it desired for a "special charge" in accordance with *N.J.S.A.* 47:1A-5(d). Therefore, the Court determined that Raritan met its burden under OPRA.

Use of Competitive Contracting for School and District Improvement Services Now Permitted

by Paul E. Griggs

Pursuant to *N.J.S.A.* 18A:18A-4.1, a board of education is permitted to utilize competitive contracting in lieu of public bidding for procurement of specialized goods and services when the price of which exceeds the bid threshold for specific purposes. The specific purposes are set forth under the statute. The purposes listed may not be considered by a board of education as an extraordinary unspecifiable service pursuant to *N.J.S.A.* 18A:18A-5. In order to add purposes under which competitive contracting may be used, the New Jersey Department of Education ("Department"), in

accordance with *N.J.A.C.* 5:34-4.4, must apply to the Director of the Division of Local Government Services ("Division") for permission. Specifically, the Director must "...find(s) that the subject matter of the application is consistent with the intent of the statutory provisions encouraging competitive contracting."

In 2009, the New Jersey Department of Education requested approval from the New Jersey Division of Local Governmental Services ("Division") to include "school and district improvement services" under purchases which may be made through "Competitive Contracting." (*N.J.S.A.* 18A:18A-4.1(k) and *N.J.A.C.* 5:34-4.4.) The Division, in providing examples of school and district improvement services included "...training in supplemental reading instructional services, year-long training/coaching in math or language arts instruction, and providing consulting and professional development in school and district leadership." The Division approved the Department's request on January 15, 2010.

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The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.



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Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision.

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