

Be Careful Citing Statutes in OPRA Requests

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It is common that a requestor will seek a record that is required by law to be made. Thinking that she is being helpful to the Records Custodian and making her request clearer, the requestor will often cite the particular law when making her request. Requestors who do this should be careful, as Records Custodians will often deny the request on the basis that it requires them to perform “research.”

A good example of this issue occurred in the case *Bart v. Passaic County Public Housing Agency*, 406 N.J. Super. 445 (App. Div. 2009). There, the requestor (Bart) sought “signs currently posted in conformance with N.J.S.A. 47:1A-5(j),” which is a provision of OPRA that requires the public agency to post a sign telling requestors of their right to appeal the denial of an OPRA request.

The County responded and provided documents, but not the signage that Bart was seeking. He filed a denial of access Complaint with the Government Records Council (GRC), which held that there was no violation because the request was invalid.

On appeal, the Appellate Division affirmed the GRC’s decision. The court held that a requestor must identify the records sought with “specificity” and that Bart’s request would have required the custodian to perform legal research to determine exactly what type of sign N.J.S.A. 47:1A-5(j) required in order to provide a response to Bart’s request.

It is important to remember that custodians are only required to search their files, not perform research. Even if a requestor feels that she is being more helpful by citing to a statute, or attempting to prove that the record must exist, be careful in citing to a statute. Rather, describe the document specifically, stating what type of record it is and what type of information it contains. If the custodian denies the request or says that such a record does not exist, then it would be proper to respond to the custodian, cite the statute, and state that the record therefore must exist.