

**PETITION FOR RULEMAKING  
TO THE OFFICE OF THE ATTORNEY GENERAL**

In compliance with the provisions of **N.J.A.C. 13:1D-1.2** *et seq.*, please accept the following as a petition for rulemaking to amend the rules of the Office of the Attorney General – Department of Law & Public Safety:

**1. The full name and address of the petitioner**

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Lanoka Harbor, New Jersey 08734

**2. The substance or nature of the rulemaking which is requested**

An amendment to **N.J.A.C. 13:1E-2.4(a)** to ensure effective public access to agency and division records by permitting email submission of Open Public Records Act (OPRA) requests to existing agency and division custodian email addresses.

**N.J.A.C. 13:1E-2.4(a)** currently provides:

- (a) 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](http://www.state.nj.us/lps/opra). Submission of requests by facsimile transmission or e-mail is not permitted.

In accordance with **N.J.A.C. 13:1D-1.2 (b)** Petitioner proposes amending and supplementing **N.J.A.C. 13:1E-2.4(a)** with the following insertions and deletions:

- (a) 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](http://www.state.nj.us/lps/opra). OPRA requests shall also be accepted by way of email to the designated address of each division or agency custodian. Upon receipt of an emailed request, the custodian or their designee shall manually enter it into the agency or division request database. Submission of requests by facsimile transmission ~~or email~~ is not permitted.

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**3. The problem or purpose which is the subject of this request**

The Office of the Attorney General (“OAG”)’s current policy of constraining the electronic submission of OPRA requests is negatively impacting the ability of members of the public to submit OPRA requests to OAG and component divisions by way of the same email addresses that are linked to received requests emailed in from the state’s OPRA Central web form that the OAG directs all electronic requestors to. In 2017, email is a basic and essential means of communication. To arbitrarily restrict the ability of citizens to use this tool to submit OPRA requests is an unreasonable burden to the submission of OPRA requests electronically, and in the interest in maximizing transparency, the OAG should accept requests that are submitted via email in the interest of transparency.

The Office of the Attorney General and its component divisions already have the technical capabilities and means to respond to emailed OPRA requests. The Office of the Attorney General’s current blanket policy of refusing all emailed OPRA requests is inimical to the public interest and contrary to the public policy goals inherent in OPRA of ensuring an informed citizenry.

The Petitioner has analyzed the publicly available HTML source code<sup>1</sup> of OPRA Central and has ascertained that information submitted via the OPRA Central form is sent by way of email to the following dedicated records custodian addresses embedded within the source code of the web application:

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<option value="66:Law and Public Safety:ABC:Division of Alcoholic Beverage Control:abc.records@lps.state.nj.us" >Division of Alcoholic Beverage
ion>
<option value="66:Law and Public Safety:CA:Division of Consumer Affairs:dca.records@lps.state.nj.us" >Division of Consumer Affairs</option>
<option value="66:Law and Public Safety:CJ:Division of Criminal Justice:dj.records@lps.state.nj.us" >Division of Criminal Justice</option>
<option value="66:Law and Public Safety:CE:Division of Gaming Enforcement:records.dge@sjdgs.org" >Division of Gaming Enforcement</option>
<option value="66:Law and Public Safety:LAW:Division of Law:Records.Law@dol.lps.state.nj.us" >Division of Law</option>
<option value="66:Law and Public Safety:SP:Division of State Police:dsp@gw.njsp.org" >Division of State Police</option>
<option value="66:Law and Public Safety:CR:Division on Civil Rights:dcr.records@lps.state.nj.us" >Division on Civil Rights</option>
<option value="66:Law and Public Safety:ELC:Election Law Enforcement Commission:Custodian.Records@elec.state.nj.us" >Election Law Enforcement
option>
<option value="66:Law and Public Safety:JJC:Juvenile Justice Commission:Records.JJC@jjc.nj.gov" >Juvenile Justice Commission</option>
<option value="66:Law and Public Safety:RC:New Jersey Racing Commission:njrc.records@lps.state.nj.us" >New Jersey Racing Commission</option>
<option value="66:Law and Public Safety:HTS:Office of Highway Traffic Safety:hts.records@lps.state.nj.us" >Office of Highway Traffic
on>
<option value="66:Law and Public Safety:HSP:Office of Homeland Security and Preparedness:ohsp.records@ohsp.state.nj.us" >Office of Homeland
Preparedness</option>
<option value="66:Law and Public Safety:OAG:Office of the Attorney General:oag.records@lps.state.nj.us" >Office of the Attorney General</option>
<option value="66:Law and Public Safety:ECE:State Ethics Commission:Records.Ethics@ethics.nj.gov" >State Ethics Commission</option>
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<sup>1</sup> Screenshot from source code of [https://www16.state.nj.us/NJ\\_OPRA/getDivision](https://www16.state.nj.us/NJ_OPRA/getDivision)

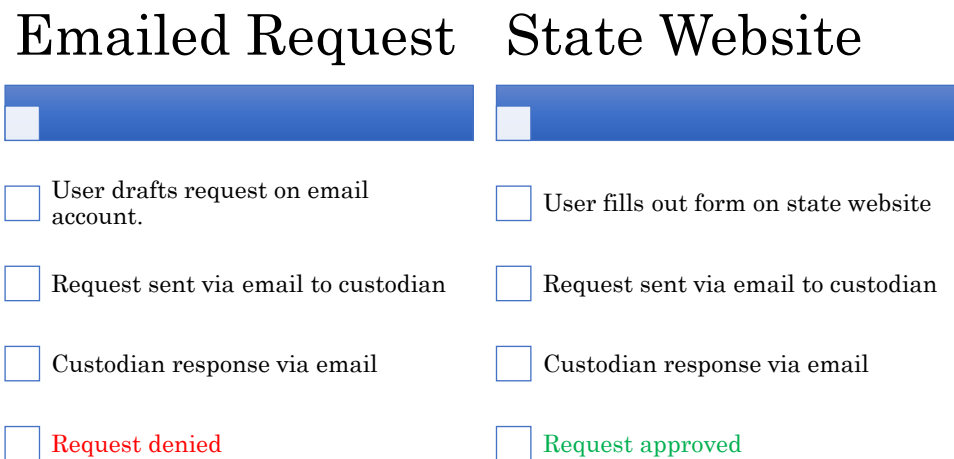
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Under current interpretations of subsection (a), both the Office of the Attorney General and these component agencies are refusing to answer OPRA requests that are sent via email to the email addresses that are plainly listed in the source code of the OPRA Central application.

At the end of the day, there is no major technical difference between the written requests submitted to the Office of the Attorney General and its component agencies, with the end result of both being a message delivered to the Custodian's email inbox, it is arbitrary for OAG to continue its policy of refusing to answer OPRA requests via email outside of OPRA Central.

Since, like most web-based contact forms, OPRA Central is rooted in email technology, the Office of the Attorney General has shown that it does indeed have the technical capability of receiving and responding to OPRA requests by way of email, it simply chooses not to respond to otherwise legally valid OPRA requests sent to the same email endpoint through which the OAG responds to OPRA requests.

The following chart is illustrative of the two methods in which OPRA requests have been arriving in both the OAG and division custodian email inboxes. It is well within the technical capability of both OAG and its divisions to handle emailed OPRA requests, based on the source code above and as this chart will show. From the agency's end, there's a minimal difference between the two requests:



This pattern and practice undertaken by Attorney General's office under the current regulatory scheme in place under subsection (a) is akin to marking certain emails as spam just because they are sent from a Gmail or Hotmail address rather than one that ends in state.nj.us. It invidiously discriminates

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against otherwise legally valid OPRA requests that are delivered to the same electronic endpoint of the agency on the basis of which email platform used by the requestor to submit the request.

But for the specific method of email-based submission, the OAG would have accepted a number of otherwise facially valid OPRA requests. There is no rational basis to any legitimate public policy interest in restricting which online tool may be used to submit Open Public Records Act requests.

Requiring the public to use the state's dated OPRA Central system when both the OAG and its component divisions already maintain functional email addresses designed to receive written OPRA requests is an unnecessary hurdle and undue burden to the public's ability to submit requests electronically to the OAG and its components. Postal mail (and its costs) are not good enough in 2017, as many have come to rely upon email.

Both the Office of the Attorney General and its component divisions have refused to accept OPRA requests via email, yet they have shown that they have the technical capability to respond to the emailed requests stating that they are refusing to honor them. Even in correspondence with requestors, some of the same email addresses that both the Petitioner and members of the public making use of the Petitioner's web system are directed to send OPRA-related correspondence and inquiries.

Email is no longer a luxury or special technical feat in the year 2017. 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 Office of the Attorney General to amend **N.J.A.C. 13:1E-2.4(a)** and treat requests emailed to their email addresses just as they do the OPRA requests their email addresses receive from the state web form. In the 21<sup>st</sup> century, email does what postal mail never was able to do. Unlike postal mail, citizens can make use of free email accounts in order to gain access to public records. Email allows citizens to quickly (and privately if they so choose) request public records.

Because the requests delivered electronically via email to the Office of the Attorney General are in writing and substantially the same as requests received via the state's OPRA Central web system (they are both just emails at the end of the day), the Office of the Attorney and L&PS divisions should respond to requests submitted via their custodian email addresses that are already in use.

Indeed, if the OAG records custodian, DAG Bruce Solomon, has the technical means to respond to otherwise valid OPRA requests sent to the agency custodian email address, then the agency must certainly have the technical capability to

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respond to requests received via email, and scan in + send responsive documents to requestors. It should be no burden whatsoever for the OAG and its components to simply respond to the requests received via rather than denying them on the basis that they were not submitted via the state's online request form web page.

By amending subsection (a) to permit the submission of requests via any email address, not just the state's online request system, this agency would be removing an unreasonable burden placed on requestors in order to gain access to public records under OPRA.

**4. The petitioner's interest in the request, including any relevant organization affiliation or economic interest**

Petitioner is the creator of OPRAmachine.com, a statewide online OPRA request submission system that currently covers all 565 municipalities and 21 counties within the State of New Jersey. Petitioner's online system generates a unique email address for each outgoing OPRA request, for the purpose of tracking the timeliness and responses to requests made to public agencies around the state. Prior to the creation of Petitioner's OPRA website, the Petitioner has maintained an interest in ensuring the effective implementation of the New Jersey Open Public Records Act ("the act"), by making public records requests in his capacity of an independent journalist, and to that end has successfully pursued actions at the Government Records Council and in New Jersey Superior Court to cure violations of the act by state and local agencies subject to its provisions.<sup>2</sup>

Since the launch of the Petitioner's online OPRA request submission & publication system earlier in 2017, it has helped to spur the release of hundreds of pages of government documents from state and local government agencies under OPRA. By being allowed to see each request and response, the public is more aware of the types of records they can obtain, along with the types of activities being undertaken by state and local authorities, along with the timelines for responses under the law. Petitioner's website has enabled citizens to submit, track and share both their initial requests and public documents provided by agencies in order to serve as a repository of accurate, authoritative public information, without requiring public agencies to do anything other than

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<sup>2</sup> See *Rozzi v. Lacey Township Board of Education*, GRC Complaint 2015-224, *Rozzi v. Ocean County Prosecutor's Office*, GRC Complaint 2015-250, *Rozzi v. Borough of Seaside Park and Libertarians for Transparent Government v. New Jersey State Police* (Certification of Gavin Rozzi in support of Plaintiff's Order to Show Cause).

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reply to an email. The requests & responses stored on the Petitioner's website have served as a valuable research tool for public officials tasked with implementing OPRA and its statutory mandates, as well as private citizens and journalists who use the site to conduct research into the activities of state and local government. Unlike the limitations suffered by the state's OPRA Central, which has not been updated or improved in over four years,<sup>3</sup> the Petitioner's website is based on state of the art open source code that allows requestors and custodians to update the site in real time, with requests and responses being disclosed to the public at every stage of the process, in order to ensure an informed public.

Petitioner has no economic interest in the outcome of this rule decision. The OPRA services provided by the Petitioner's website are completely free of charge, and the service provides a freely accessible archive of documents and requests from all levels of New Jersey government.

**5. The statutory authority under which the Attorney General may take the requested action**

N.J.S.A. 47:1A-1 et seq.,

**6. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request**

N.J.S.A. 47:1A-1 et seq.,

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<sup>3</sup> See copyright date of <http://www.state.nj.us/opra/> as of the date this petition was prepared.

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**Conclusion:**

For all of the foregoing reasons, the Office of the Attorney General should amend N.J.A.C. 13:1E-2.4(a) to permit the submission of Open Public Records Act (OPRA) requests to OAG and its component divisions via email to the same email addresses already used by agency and division custodians by way of the OPRA Central application.

Respectfully submitted,

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GAVIN C. ROZZI  
*Petitioner*