



STOCKTON UNIVERSITY
Office of The Open Public Records Custodian
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Phone: 609-652-4874
OPRArequest@stockton.edu
www.stockton.edu

March 26, 2021

Via Email at opra+request-20476-81a04841@requests.opramachine.com

S. Elaine

Re: OPRA Request No. 022621-1

Dear S. Elaine:

Stockton University's Open Public Records Act (OPRA) Custodian received your clarified OPRA Request on March 1, 2021 and the OPRA Custodian responded to your OPRA request on March 10, 2021.

Your OPRA Request, as clarified, sought access to the following:

Grant applications for the Stockton Performing Arts Center and Noyes Museum for FY21 and FY22 made to the New Jersey State Council on the Arts by Stockton University.

is information is held by:

Lia Bairaktaris, Acting Director

Pantelia.Bairaktaris@stockton.edu

(609) 626.3567

Include the most recent/final "Version Date" for FY21 and FY22 applications for both entities.

The Custodian responded to your request on March 10, and by email dated March 11, 2021 you acknowledged receipt, and with the following additional information:

I would like to clarify that I am again requesting the DATE this grant application submitted by Pantelia Bairaktaris, Assistant Grant Director, to Porche Hardy, Arts Education Specialist for The New Jersey Council on the Arts via SAGE.

On March 12, 2021, the OPRA Custodian replied to your correspondence via email with the following:

Your request sought information rather than documents. The University attempted to accommodate you by providing the application records submitted. It appears that this grant application was submitted online. I have requested verification of the method of submission and the date thereof.

I will update you with a further response the week of March 15 when the respective record keeper is in the office.

This response is being timely provided. As applicable, the attached index identifies the records produced, redacted and/or denied, in whole or in part, as well as the legal basis for subject action, as required by N.J.S.A. 47:1A-6. A list of OPRA's exemptions also is attached to this response letter. This response is being transmitted to you via email at opra+request-20476-81a04841@requests.opramachine.com, as per your request.

If your request for access to a government record has been denied, you have a right to challenge the decision to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511; by mail at P.O. Box 819, Trenton, NJ, 08625; by e-mail at grc@dca.state.nj.us; or, at its web site located at www.state.nj.us/grc. The GRC can also answer other questions about OPRA. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,

Ellen Bailey

Ellen Bailey
On behalf of the OPRA Custodian
Tel. 609.652.4874
OPRArequest@stockton.edu
www.stockton.edu

INDEX – ELAINE OPRA Request # 022621-1(A)

<u>Records Requested</u> – Your clarified OPRA request sought access to the following:	<u>Responses and/or documents responsive to OPRA Request</u>	<u>Bates Stamped #s of redacted pages OPRA022621-1(A) ELAINE 001-004</u>	<u>Justification for Redactions/Exemptions (Refer to LEGEND and EXEMPTIONS attachments) (see Responses column for common law justifications)</u>
Grant applications for the Stockton Performing Arts Center and Noyes Museum for FY21 and FY22 made to the New Jersey State Council on the Arts by Stockton University. This information is held by: Lia Bairaktaris, Acting Director <u>Pantelia.Bairaktaris@stockton.edu</u> (609) 626.3567. Include the most recent/final "Version Date" for FY21 and FY22 applications for both entities. Upon receiving the Custodian’s response, you submitted the following information: I would like to clarify that I am again requesting the DATE this grant application submitted by Pantelia Bairaktaris, Assistant Grant Director, to Porche Hardy, Arts Education Specialist for The New Jersey Council on the Arts via SAGE.	Response to “Grant applications for the Stockton Performing Arts Center and Noyes Museum for FY21 and FY22 made to the New Jersey State Council on the Arts by Stockton University . . .” was provided via the response from the OPRA Custodian dated March 10, 2021. Response to request for “the DATE this grant application submitted by Pantelia Bairaktaris, Assistant Grant Director, to Porche Hardy, Arts Education Specialist for The New Jersey Council on the Arts via SAGE”: Please see the attached documents Bates-stamped OPRA REQUEST 022621-1 ELAINE 001-004.	001-004	LEGEND = A. In addition, information redacted was confidential login data.

LEGEND: Legal explanation and statutory citation for the denial of access to records

A. Advisory, Consultative, Deliberative (general)

Content redacted includes “inter-agency or intra-agency advisory, consultative, or deliberative material” and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. See also Educ. Law Ctr. ex rel. Abbott v. N.J. Dep't of Educ., 198 N.J. 274 (2009) (quoting In re Liquidation of Integrity Ins. Co., 165 N.J. 75 (2000)), finding that the deliberative process privilege permits the government to withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated; and that the privilege exists to ensure free and uninhibited communication within governmental agencies so that the best possible decisions can be reached.

B. Advisory, Consultative, Deliberative (draft)

Content redacted is “inter-agency or intra-agency advisory, consultative, or deliberative material” and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. See also Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006) finding that draft meeting minutes that had not been approved by the governing body constitute inter-agency, intra-agency advisory consultative, or deliberative material and are exempt from disclosure.

C. Student E-mails

Student email(s) have been redacted pursuant to the Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. §1232g (implemented by regulations at 34 CFR Part 99) which regulates the disclosure of student information. Your request under OPRA must also be read in conjunction with FERPA. Though electronic mail addresses may be discloseable if designated by an institution as “directory information” under FERPA, the University, as permitted, elected not to include students’ electronic mail addresses as directory information. Accordingly, because under FERPA this information is protected, student electronic mail addresses are exempt from disclosure under OPRA.

D. Personal Identifying Information

The redacted content (e.g., home address, private/unlisted telephone number, social security number, etc.) contains “personal identifying information” and is therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and Burnett v. County of Bergen, 198 NJ 408 (2009) (holding that OPRA imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests).

E. Job Applicant, Prior Employment, and/or Personnel Information

The redacted content references a candidate who never accepted employment with the College or details prior employment information. Except for an individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received, personnel records shall not be considered a government record and shall not be made available for public access. N.J.S.A. 47:1A-10. See also Toscano v. New Jersey Department of Human Services, Division of Mental Health Services, GRC Complaint No. 2010-147 (May 2011). Additionally, Executive Order 26 (McGreevy 2002) provides: “The résumés of successful candidates shall be disclosed once the successful candidates is hired. The résumés of unsuccessful candidates may be disclosed after the search has been concluded and the position has been filled, but only where the unsuccessful candidate has consented to such disclosure.”

F. Attorney-Client Privileged Communication¹

Content redacted is “within the attorney-client privilege” and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. See also Farneski v. Hunterdon County Prosecutor’s Office, GRC Complaint No. 2010-20 (October 2011), finding that the attorney-client privilege protects communications between a lawyer and the client made in the course of that professional relationship, and particularly protects information which, if disclosed, would jeopardize the legal position of the client. N.J.S.A. 2A:84A-20; RPC 1.6. Also confidential are mental impressions, legal conclusions, and opinions or theories of attorneys. In Re Environmental Ins. Actions, 259 N.J. Super. 308, 317 (App.Div.1982).

And/or, , the content was redacted pursuant to the “common interest rule” which extends the confidentiality of attorney-client communications and attorney work product to information shared with attorneys representing separate clients, in the context of a request for production of public records pursuant to OPRA, and the common law right to access government records. O’Boyle v Borough of Longport, 218 N.J. 168 (2014) [Adopting the common interest rule articulated in Laporta v Gloucester County Board of Chosen Freeholders, 340 N.J. Super. 254 (App. Div. 2001), and recognizing that the common interest exception to waiver of confidential attorney-client communications or work product due to disclosure to third parties applies to communications between attorneys for different parties if the disclosure is made due to actual or anticipated litigation for the purpose of furthering a common interest, and the disclosure is made in a manner to preserve the confidentiality of the disclosed material and to prevent disclosure to adverse parties.]

G. Information which, if disclosed, would give an Advantage to Competitors or Bidders

Content redacted is “information which, if disclosed, would give an advantage to competitors or bidders” and therefore exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

H. Records in Pursuit of Charitable Contribution

Content redacted includes information concerning the pursuit of charitable contributions. N.J.S.A. 47:1A-1.1 provides “a government record shall not include, with regard to any public institution of higher education, the following information which is deemed to be privileged and confidential: records of pursuit of charitable contributions.”

I. Privacy Interest

A public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy. N.J.S.A 47:1A-1 (Legislative Findings); N.J.S.A. 47:1A-6. See also Burnette v. County of Bergen, 198 NJ 408, 436 (2009); Andrew J. Mayer v. Borough of Tinton Falls (Monmouth), GRC Complaint No. 2008-245 (April 2010) (“There is also a privacy interest in non-disclosure of an individual’s e-mail address because e-mail addresses maintain an individual’s anonymity. Anonymity could be compromised if e-mail addresses are released to the public, especially when an e-mail address is contemporaneously coupled with or later used to obtain other personal identifying information such as a name and home address.”).

¹ Relative to this records production, attorneys representing Stockton University include: Brian Kowalski, Esq., Ellen Bailey, Esq., Brittany Medio, Esq.

J. Certain records of higher education institutions

Pedagogical, scholarly and/or academic research records and/or the specific details of any research project, except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available.

K. Redactions of Stockton IT email addresses to obtain new computer accounts

[newaccounts@stockton.edu and information.security@stockton.edu] under N.J.S.A. 47:1A-1.1 exemption for "administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security"; and "security measures which, if disclosed, would create a risk to the safety of persons, property, electronic data or software."

OPRA EXEMPTIONS

(Exceptions are noted in italics)

N.J.S.A. 47:1A-1 (Legislative Findings)

- 1) Privacy Interest - “a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy.” See Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009).

N.J.S.A. 47:1A-1.1

- 2) Inter-agency or intra-agency advisory, consultative or deliberative material (Note: refers generally to draft documents or documents used in a deliberative process).
- 3) Legislative records. Specifically:
 - a. information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, *unless it is information the constituent is required by law to transmit*;
 - b. any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, *except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members*.
- 4) Medical examiner records – photographs, negatives, print, videotapes taken at the scene of death or in the course of postmortem examination or autopsy, *except*:
 - a. *when used in a criminal action or proceeding in this State which relates to the death of that person*,
 - b. *for the use as a court of this State permits, by order after good cause has been shown and after written notification of the request for the court order has been served at least five days before the order is made upon the county prosecutor for the county in which the post mortem examination or autopsy occurred*,
 - c. *for use in the field of forensic pathology or for use in medical or scientific education or research, or*
 - d. *or use by any law enforcement agency in this State or any other state or federal law enforcement agency*.
- 5) Criminal investigatory records - records which are not required by law to be made, maintained or kept on file that are held by a law enforcement agency which pertain to any criminal investigation or related civil enforcement proceeding. (Note: N.J.S.A. 47:1A-3.b. lists specific criminal investigatory information which must be disclosed).

6) Victims' records

- a. an individually-identifiable file or document held by a victims' rights agency which pertains directly to a victim of a crime except that a victim of a crime shall have access to the victim's own records. "Victims' rights agency" means a public agency, or part thereof, the primary responsibility of which is providing services, including but not limited to food, shelter, or clothing, medical, psychiatric, psychological or legal services or referrals, information and referral services, counseling and support services, or financial services to victims of crimes, including victims of sexual assault, domestic violence, violent crime, child endangerment, child abuse or child neglect, and the Victims of Crime Compensation Board.
- b. any written OPRA request by a crime victim for a record to which the victim is entitled to access, including, but not limited to, any law enforcement agency report, domestic violence offense report, and temporary or permanent restraining order;

7) Personal firearms records:

- a. *Except for use by any person authorized by law to have access to these records or for use by any government agency, including any court or law enforcement agency, for purposes of the administration of justice.*
- b. Personal identifying information received by the Division of Fish and Wildlife in the Department of Environmental Protection in connection with the issuance of any license authorizing hunting with a firearm. For the purposes of this paragraph, personal identifying information shall include, but not be limited to, identity, name, address, social security number, telephone number, fax number, driver's license number, email address, or social media address of any applicant or licensee.

- 8) Trade secrets and proprietary commercial or financial information obtained from any source. Includes data processing software obtained by a public agency under a licensing agreement which prohibits its disclosure.
- 9) Any record within the attorney-client privilege. *This paragraph does not allow for a denial of attorney invoices in their totality*; however, redactions may apply for information contained in the invoices that are protected under the privilege.
- 10) Administrative or technical information regarding computer hardware, software and networks which, if disclosed would jeopardize computer security.
- 11) Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.
- 12) Security measures and surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software.

- 13) Information which, if disclosed, would give an advantage to competitors or bidders.
- 14) Information generated by or on behalf of public employers or public employees in connection with:
 - a. Any sexual harassment complaint filed with a public employer;
 - b. Any grievance filed by or against an individual; or
 - c. Collective negotiations, including documents and statements of strategy or negotiating position.
- 15) Information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office.
- 16) Information which is to be kept confidential pursuant to court order.
- 17) Certificate of honorable discharge issued by the United States government (Form DD-214) filed with a public agency, *except that a veteran or the veteran's spouse or surviving spouse shall have access to the veteran's own records.*
- 18) Any copy of an oath of allegiance, oath of office, or any affirmation for incoming, current, and former officers and employees in State, County, or municipal government, and including members all members of the Legislative, Executive, and Judicial branches of government, *except that:*

Full name, title, and oath date are not confidential.
- 19) Personal identifying information. Specifically:
 - a. Social security numbers, *except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor.*
 - b. Credit card numbers
 - c. Unlisted telephone numbers
 - d. Drivers' license numbers.

Except for:

- a. *Use by any government agency, including any court or law enforcement agency, in carrying out its functions,*
- b. *or any private person or entity acting on behalf thereof,*
- c. *or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by*

the Division of Motor Vehicles as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4);

- 20) List of persons in need of special assistant during an emergency maintained at either the municipal or county level in accordance with section 1 of P.L.2017, c.266 (C.40:48-2.67) or section 6 of P.L.2011, c.178 (C.App.A:9-43.13).
- 21) Certain records of higher education institutions:
- a. Pedagogical, scholarly and/or academic research records and/or the specific details of any research project, *except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available.*
 - b. Test questions, scoring keys and other examination data pertaining to the administration of an examination for employment or academic examination.
 - c. Records of pursuit of charitable contributions or records containing the identity of a donor of a gift if the donor requires non-disclosure of the donor's identity as a condition of making the gift provided that the donor has not received any benefits of or from the institution of higher education in connection with such gift other than a request for memorialization or dedication.
 - d. Valuable or rare collections of books and/or documents obtained by gift, grant, bequest or devise conditioned upon limited public access.
 - e. Information contained on individual admission applications.
 - f. Information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.

N.J.S.A. 47:1A-1.2

- 22) Biotechnology trade secrets.

N.J.S.A. 47:1A-2.2

- 23) Limitations to convicts - personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information. *Information may be released only if the information is necessary to assist in the defense of the requestor. A determination that the information is necessary to assist in the requestor's defense shall be made by the court upon motion by the requestor or his representative.*

N.J.S.A. 47:1A-3(a)

- 24) Ongoing investigations – any records pertaining to an investigation in progress by any public agency if disclosure of such record or records shall be detrimental to the public

interest. *This provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced.*

N.J.S.A. 47:1A-5(k)

- 25) Public defender records that relate to the handling of any case, *unless authorized by law, court order, or the State Public Defender.*

N.J.S.A. 47:1A-9(a)-(b)

- 26) Upholds exemptions contained in other State or federal statutes and regulations, Executive Orders of the Governor, Rules of Court, Constitution of this State, or judicial case law.

N.J.S.A. 47:1A-10

- 27) Personnel and pension records, *except specific information identified as follows:*
- a. *An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation, and the amount and type of any pension received,*
 - b. *When required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest.*
 - c. *Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information.*

In accordance with OPRA's "catch-all" exemption at N.J.S.A. 47:1A-9, the following executive orders also apply as exemptions under OPRA:

Executive Order No. 21 (McGreevey 2002)

- 1) Records where inspection, examination or copying would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.
- 2) Records exempted from disclosure by State agencies' promulgated rules are exempt from disclosure by this Order.
- 3) Executive Orders No. 9 (Hughes), 11 (Byrne), 79 (Byrne) and 69 (Whitman) are hereby continued to the extent that they are not inconsistent with this Executive Order.

Executive Order No. 9 (Hughes) exemptions that are still active:

- a. Questions on examinations required to be conducted by any State or local governmental agency;
- b. Personnel and pension records (same as N.J.S.A. 47:1A-10);
- c. Records concerning morbidity, mortality and reportable diseases of named persons required to be made, maintained or kept by any State or local governmental agency;
- d. Records which are required to be made, maintained or kept by any State or local governmental agency which would disclose information concerning illegitimacy;
- e. Fingerprint cards, plates and photographs and other similar criminal investigation records which are required to be made, maintained or kept by any State or local governmental agency;
- f. Criminal records required to be made, maintained and kept pursuant to the provisions of R. S. 53:1-20.1 and R. S. 53:1- 20.2;
- g. Personal property tax returns required to be filed under the provisions of Chapter 4 of Title 54 of the Revised Statutes; and
- h. Records relating to petitions for executive clemency.

Executive Order No. 11 (Byrne) exemptions are the same as N.J.S.A. 47:1A-10.

Executive Order No. 79 (Byrne) exemptions are the similar to # 8, 9, 10 above under N.J.S.A. 47:1A-1.1.

Executive Order No. 69 (Whitman) exemptions that are still active: Fingerprint cards, plates and photographs and similar criminal investigation records that are required to be made, maintained or kept by any State or local governmental agency.

Executive Order No. 26 (McGreevey 2002)

1) Certain records maintained by the Office of the Governor:

- a. Any record made, maintained, kept on file or received by the Office of the Governor in the course of its official business which is subject to an executive privilege or grant of confidentiality established or recognized by the Constitution of this State, statute, court rules or judicial case law.
- b. All portions of records, including electronic communications, that contain advisory, consultative or deliberative information or other records protected by a recognized privilege.
- c. All portions of records containing information provided by an identifiable natural person outside the Office of the Governor which contains information that the sender is not required by law to transmit and which would constitute a clearly unwarranted invasion of personal privacy if disclosed.
- d. If any of the foregoing records shall contain information not exempted by the provision of the Open Public Records Act or the preceding subparagraphs (a), (b) or (c) hereof then, in such event, that portion of the record so exempt shall be

deleted or excised and access to the remainder of the record shall be promptly permitted.

- 2) Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing. *The resumes of successful candidates shall be disclosed once the successful candidate is hired. The resumes of unsuccessful candidates may be disclosed after the search has been concluded and the position has been filled, but only where the unsuccessful candidate has consented to such disclosure.*
- 3) Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments.
- 4) Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.
- 5) Information in a personal income or other tax return
- 6) Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed.
- 7) Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing.
- 8) Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by a regulation of that department or agency adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.
- 9) Records of a department or agency held by the Office of Information Technology (OIT) or the State Records Storage Center of the Division of Archives and Records Management (DARM) in the Department of State, or an offsite storage facility outside of the regular business office of the agency. Such records shall remain the legal property of the department or agency and be accessible for inspection or copying only through a request to the proper custodian of the department or agency. In the event that records of a department or agency have been or shall be transferred to and accessioned by the State Archives in the Division of Archives and Records Management, all such records shall become the legal property of the State Archives, and requests for access to them shall be submitted directly to the State Archives.