



Oct 08, 2024

Categories:

[General Litigation](#)

[Gibbons](#)

Authors:

[Thomas J. Cafferty](#)

Just Poor Form? How the New OPRA Request Form Creates Confusion for Custodians and Requestors Alike

Recent amendments to the Open Public Records Act, [N.J.S.A. 47:1A-1, et seq.](#) (OPRA), became effective on September 3, 2024. One of those amendments, which may be of particular interest to litigators, prohibits certain OPRA requests by attorneys who are representing parties in legal proceedings. The parameters of the prohibition, however, are not so clear.

The provision, contained in [Section 5\(g\)](#) of OPRA, prohibits a “party to a legal proceeding,” which includes “a party subject to a court order, any attorney representing that party, and any person acting as an agent for or on behalf of that party,” from requesting a government record if that record “is the subject of a court order, including a pending discovery request.” OPRA expressly states that a custodian is not required to complete such a request.

What is unclear is whether this provision prohibits **only** requests for government records that are the subject of a court order (one example of which is a court order addressing a pending discovery request) or whether it prohibits requests for government records that are **either** the subject of a court order **or** the subject of a pending discovery request. Further confusing the issue is the fact that Section 5(g) requires a requestor to certify whether the government record is being sought in connection with a legal proceeding and to identify the proceeding, yet it does not impose any obligation on a requestor to certify that the record sought is the subject of a court order or pending discovery request. Such a certification, of course, lacks the very information the custodian needs in order to determine whether he or she must complete the request.

[Section 7\(b\)](#) of OPRA may offer guidance on the issue, although the language in that Section lacks precision, too. It requires the Government Records Council to promulgate rules and regulations to establish a uniform request form that “shall include certification

that a party to a legal proceeding may not request a government record if the record sought is the subject of a court order or a pending discovery request.” Based on this language, it seems as though the uniform request form should include a certification that: (1) the requestor is/is not a party to a legal proceeding; and (2) the record sought is/is not the subject of a court order or a pending discovery request. But that is not what the new uniform request form provides. Rather, the form contains a certification, which, if false, is a fourth-degree crime under N.J.S.A. 2C:28-3, that simply reads, “I am/am not seeking records in connection with a legal proceeding.” It makes no mention of a court order or a pending discovery request and provides no space to identify the legal proceeding.

The inconsistent provisions within OPRA, together with the language on the uniform request form, create uncertainty as to how the form’s certification will be interpreted and which requests custodians need not complete. Will custodians be required to elicit additional information from requestors seeking records in connection with a legal proceeding in order to determine whether those records are the subject of a court order or a pending discovery request? Alternatively, will custodians take the position that requests for *any* records sought in connection with a legal proceeding do not have to be completed, despite the lack of support for that position in OPRA? Only time will tell.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.