



University Custodian of Records
65 Bergen Street, Ste. 1346
Newark, New Jersey 07101-1709

Phone: (973) 972-1981 Fax:(973) 972-2396 Email: opraru@ca.rutgers.edu

July 27, 2016

Via Email Only

David Hughes
Rutgers AAUP-AFT
11 Stone Street
New Brunswick, NJ 08904
dhughes@aesop.rutgers.edu

OPEN PUBLIC RECORDS ACT REQUEST #3095

Dear Mr. Hughes:

Please accept this letter as the University OPRA Administrator's response to your request for records pursuant to the Open Public Records Act ("OPRA"). On July 18, 2016 this office received your request for the following:

- "Academic Analytics analysis of GSNB Ph.D. programs.' The University produced this document in Spring 2013, Spring 2014, Spring 2015, and Spring 2016."

We have reviewed your request and are denying same because the document(s) you seek is advisory, consultative and deliberative. OPRA specifically states that government records "shall not include inter-agency or intra-agency advisory, consultative, or deliberative material." N.J.S.A. 47:1A-1.1. Courts have construed this exemption to encompass the deliberative process privilege. See *Ciesla v. N.J. Dept. of Health & Senior Servs.*, 429 N.J. Super. 127, 137 (App. Div. 2012). That 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." *Education Law Center. v. New Jersey Dept. of Education*, 198 N.J. 274, 285-86 (2009) (quoting *In re Liquidation of Integrity Ins. Co.*, 165 N.J. 75, 83 (2000)). Moreover, the deliberative process privilege is absolute, as OPRA "contains no limitation or qualification on this exemption." *Ciesla*, 429 N.J. Super. at 143.

Moreover, the Courts have consistently held that the advisory, consultative and deliberative exemption in OPRA is equivalent to the deliberative process privilege that exempts pre-decisional documents from public disclosure. OPRA thus "shields from disclosure documents 'deliberative in nature, containing opinions, recommendations, or advice about agency policies,' and 'generated before the adoption of an agency's policy or decision.'" *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 37 (App. Div. 2005)(quoting *Gannet New Jersey Partners LP v. County of Middlesex*, 379 N.J. Super. 205, 219 (App. Div. 2005)). Accordingly, your request for the internal audit report is denied.

Your request is also being denied because the document(s) sought is pre-decisional and thus exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1. The Courts have consistently held that the advisory, consultative and deliberative exemption in OPRA is equivalent to the deliberative process privilege that

exempts pre-decisional documents from public disclosure. OPRA thus “shields from disclosure documents ‘deliberative in nature, containing opinions, recommendations, or advice about agency policies,’ and ‘generated before the adoption of an agency’s policy or decision.’” *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 37 (App. Div. 2005)(quoting *Gannet New Jersey Partners LP v. County of Middlesex*, 379 N.J. Super. 205, 219 (App. Div. 2005)).

Furthermore, in *Education Law Center v. New Jersey Dept. of Education*, the New Jersey Supreme Court ruled that facts within a document are exempt from disclosure when the document is part of the decision-making process and would reveal deliberations that occurred during that process. See 198 N.J. 274 (2009). Thus, draft records of a public agency fall within the deliberative process privilege. See *Tousman v. Twp. of Edison*, GRC Complaint No. 2007-269 (February 27, 2008); *Antonucci v. City of Hoboken*, GRC Complaint No. 2009-125 (February 23, 2010); *Hobbs v. Twp. of Hillside*, GRC Complaint No. 2009-286 (November 30, 2010); *Rozsansky v. Twp. of Lakewood*, GRC Complaint No. 2010-89 (February 24, 2011).

Finally, your request for “Academic Analytics analysis of GSNB Ph.D. programs” is denied because the data you seek is proprietary. OPRA specifically exempts from public access “trade secrets and proprietary commercial or financial information obtained from any source.” N.J.S.A. 47:1A-1.1. Because the data produced as a result of Academic Analytics’ analysis of the University’s Ph.D. programs is proprietary, your request for same is denied.

If your request has been denied, you may take your appeal to the Government Records Council, which has mediation and dispute resolution procedures, or you may file a lawsuit with the New Jersey Superior Court, as provided by N.J.S.A. 47:1A-1, et seq. A brochure listing the procedures for appeal is being provided to you with this letter.

Sincerely,
/s/ Daniel E. Faltas, Esq.
OPRA Administrator