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RUTGERS COUNCIL OF AAUP
CHAPTERS, AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS –
AMERICAN FEDERATION OF
TEACHERS, AFL-CIO

Plaintiff

v.

RUTGERS, THE STATE UNIVERSITY,
JEWELL BATTLE, and DANIELLE
MYRICS,

Defendants

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION – MIDDLESEX COUNTY

DOCKET NO.: MID-L-_____ - 20

**VERIFIED COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

Code 802 – OPRA summary matter

COMES NOW PLAINTIFF, Rutgers Council of AAUP Chapters, American Association of University Professors – American Federation Of Teachers, AFL-CIO (“Plaintiff” or “AAUP-AFT”), which by way of Verified Complaint against the Defendants, alleges and says:

INTRODUCTION

1. This case is brought pursuant to the New Jersey Open Public Records Act (“OPRA”) and the common law right to access public records. Plaintiff has sought specific, defined financial records on revenue, spending, and debt regarding Rutgers University’s

("Rutgers") deficit-ridden athletics program. In this time of severely reduced revenue to Rutgers, including reduced state appropriations, Rutgers is continuing to pour copious amounts of money into its athletics program, despite multi-year failures by it to generate sufficient revenue. The program remains in an annual deficit of tens of millions of dollars. For decades, University administrators promised that profitability for Rutgers athletics was just around the proverbial corner.¹ The more charitable and innocent explanation of these statements is that they were simply incorrect fiscal prognostications. But more sinister explanations are also plausible. In any event, history has shown these statements to have been utterly untrue. The precise extent and nature of Rutgers' diversion of its assets to athletics remains hazy under the disclosures that Rutgers has opted to make. Therefore, to fully vet Rutgers' justifications about the precise extent and propriety of this spending, and to meaningfully contribute to the public debate about same, Plaintiff sought narrowly-defined financial records. Contrary to Rutgers' obligations under OPRA and the common law, Defendants have wrongfully denied a substantial number of Plaintiff's OPRA requests, claiming justifications under the OPRA statute that are wholly without merit, and have denied Plaintiff's common-law access rights. Plaintiff now brings this action to vindicate its rights.

¹ Twenty-one years apart, different senior administrators of Rutgers said the same thing. Killingsworth, "*Will the Big Ten Make Rutgers rich? Don't count on it*" (Star-Ledger, Jun. 9, 2013) (quoting Rutgers' president that "Rutgers athletics will be 'self-sustaining' in five to eight years. . . . I can see us moving to budget neutrality in six years"); *Students Discover a Path to Power Through Lobbying* (N.Y. Times, Apr. 19, 1992), p. 35 (quoting Rutgers' treasurer that "Our hope is that if we invest in sports now it will turn a profit somewhere down the road").

PARTIES

2. Plaintiff AAUP-AFT is a labor organization that serves as the majority bargaining representative for specified Rutgers faculty, librarians, instructors, teaching assistants, and graduate assistants.

3. As the majority representative, AAUP-AFT has particular interests in the financial stability of Rutgers and the decision-making that affects that financial stability. It devotes substantial organizational efforts to advocate for fair compensation and benefits and the enforcement of statutory and contractual promises made to them and their members. Part of these efforts include the collection and analysis of information about the Rutgers University budget, including its past, current, and anticipated revenues and expenditures on Rutgers' intercollegiate athletics program. Its business address is 11 Stone Street, New Brunswick, NJ 08901.

4. AAUP-AFT and its members have historically devoted substantial effort to monitoring and commenting on the Rutgers University budget, including its past, current, and anticipated revenues and expenditures on Rutgers' intercollegiate athletics program, and will continue to do so. Both the organization and the members it represents regularly convey facts they have learned about athletics spending to the Rutgers community, and the larger New Jersey community, and provide commentary and analysis of same. *See, e.g., Sargeant, Rutgers faculty union blasts athletics report while calling on President Barchi to decrease spending on sports* (Star-Ledger, Feb. 1, 2019).

5. AAUP-AFT is in a better position to discuss and advocate for or against changes in budget appropriations and policy when its research and investigation is based on the complete set of available information, rather than incomplete information.

6. Defendant Rutgers, the State University is an agency and instrumentality of the State of New Jersey and a “public agency” within the meaning of the Open Public Records Act, with a principal address of 7 College Avenue, New Brunswick, New Jersey 08901.

7. Defendants Battle and Myrics (the “Custodian Defendants”) are the *de facto* and/or *de jure* custodians of the records sought by Plaintiff and responsible for the withholding of the records requested by Plaintiff.

JURISDICTION AND VENUE

8. This Court has jurisdiction to hear the within action pursuant to N.J.S.A. 47:1A-6. Venue is appropriate in Middlesex County because Rutgers is headquartered in Middlesex County and because the cause of action arose in this County.

FACTS

9. On or about May 28 2019, Plaintiff, through its duly authorized staff representative, made five requests to Rutgers’ Custodian of Records, as follows, invoking both OPRA and the common law right of access in each such request. Each request was assigned a number by Rutgers, and each request was responded to between June 3, 2019 and June 10, 2019. The relevant portion of each request and response follows:

REQUEST R005924-052820 (“5924”)

* * *

5. Documents utilized by Rutgers in preparing its responses to the questions, inquiries, or information requests posed each year by the Department of Education for the annual equity in athletics reports, commonly known as the EADA Report, identified in response to Request # 1. The response date is for documents from January 1, 2018 through the date of response.

6. Documents utilized by Rutgers in preparing its responses to the questions, inquiries, or information requests posed each year by the NCAA Membership Financial Reporting System, identified in response to Request # 2. The response date is for documents from January 1, 2018 through the date of response.

7. Documents utilized by Rutgers in preparing its responses to the questions, inquiries, or information requests posed each year by the NCAA Revenues and NCAA Expenses Reporting protocol, identified in response to Request # 3. The response date is for documents from January 1, 2018 through the date of response.

8. Documents furnished by Rutgers each year to its independent public accountant for preparation of its review pursuant to the “NCAA Agreed-Upon Procedures,” identified in response to Request # 1. The response date is for documents from January 1, 2018 through the date of response.

9. Documents constituting or evidencing any agreement, contract, or understanding between Rutgers and the Big Ten Conference by the loan, advance, or funds transfer, and for the repayment of such loan, advance, or funds transfer relating to revenue sharing for fiscal years 2017 to 2027.”

RESPONSE TO REQUEST 5924 (JUN. 3, 2020)

The University has reviewed your request and are denying **Items numbered 5 through 9** as improper and overly broad. OPRA provides access to “identifiable” government records that are not otherwise exempt. New Jersey courts have held that a request under OPRA must specifically describe the document sought. “A proper request for access to government records must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency’s documents.” *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 38 (App. Div. 2005). A blanket request for a class of various documents is not a request for specific identifiable documents, and a custodian is not required to conduct research to locate records potentially responsive to a request. See *Elcavage v. West Milford Twp.*, GRC Complaint No. 2006-64 (May 28, 2008). Moreover, OPRA does not require

a custodian to conduct research or an agency to expend “indisputably limited agency resources to sift through the [agency's] vast files and identify, analyze and select potentially relevant and responsive public records.” *Spectraserv v. Middlesex County Utilities Authority*, 416 N.J. Super. 565, 578 (App. Div. 2010), *Burnett v. Gloucester County*, 415 N.J. Super. 506, 515 (App. Div. 2010). Nor does OPRA require an agency to analyze, collate and compile records in order to respond to a request. *MAG Entertainment v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 549 (App. Div. 2005). “In short, OPRA does not countenance open-ended searches of an agency’s files.” *Id.* at 549. You may clarify your request or submit narrower search terms by including a time frame, or specifying precisely what records you are seeking.

REQUEST R005925-052820 (“5925”)

The following requests relate to an attached² Rutgers document entitled “Rutgers, the State University of New Jersey, Office of Debt Management and Capital Finance, Summary of Athletic Debt As of January 31, 2020 (“2020 Debt Summary”):

1. Documents such as promissory notes, bonds, agreements, memoranda, or any other writing that constitutes or evidences the “loans outstanding – external debt” identified in the 2020 Debt Summary (and any amendments thereto). Any document, to the extent it names a creditor who is a natural person and who holds less than 5% of the “loans outstanding – external debt” may be redacted as appropriate.
2. Documents such as promissory notes, bonds, agreements, memoranda, or any other writing that constitutes or evidences the “loans outstanding – internal debt” identified in the 2020 Debt Summary (and any amendments thereto). Any document, to the extent it names a creditor who is a natural person and who holds less than 5% of the “loans outstanding – internal debt” may be redacted as appropriate.
3. Documents sufficient to identify the name of each current creditor of any debt identified in the 2020 Debt Summary as “loans outstanding – internal debt.” Any document, to the extent it names a creditor who is a natural person and who holds less than 5% of the “loans outstanding – internal debt” may be redacted as appropriate.
4. Documents sufficient to identify the current rate of interest of any debt identified in the 2020 Debt Summary as “loans outstanding – external debt.”
5. Documents sufficient to identify the current rate of interest of any debt identified in the 2020 Debt Summary as “loans outstanding – internal debt.”
6. Documents constituting or evidencing the current payment or amortization schedule (including the current principal due, and/or the rate and amount of any periodic payment, and/or date of any final or balloon payment) of any debt identified in the 2020 Debt Summary as “loans outstanding – external debt.”
7. Documents constituting or evidencing the current payment or amortization schedule (including the current principal due, and/or the rate and amount of any periodic payment, and/or date of any final or balloon payment) of any debt identified in the 2020 Debt Summary as “loans outstanding – internal debt.”

² The attachments originally sent with Requests 5925 and 5926 are appended to end of this Complaint.

RESPONSE TO REQUEST 5925 (JUN. 9, 2020)

The University has reviewed your request and are denying same as improper and overly broad. OPRA provides access to “identifiable” government records that are not otherwise exempt. New Jersey courts have held that a request under OPRA must specifically describe the document sought. “A proper request for access to government records must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency’s documents.” *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 38 (App. Div. 2005). A blanket request for a class of various documents is not a request for specific identifiable documents, and a custodian is not required to conduct research to locate records potentially responsive to a request. See *Elcavage v. West Milford Twp.*, GRC Complaint No. 2006-64 (May 28, 2008). Moreover, OPRA does not require a custodian to conduct research or an agency to expend “indisputably limited agency resources to sift through the [agency’s] vast files and identify, analyze and select potentially relevant and responsive public records.” *Spectraserv v. Middlesex County Utilities Authority*, 416 N.J. Super. 565, 578 (App. Div. 2010), *Burnett v. Gloucester County*, 415 N.J. Super. 506, 515 (App. Div. 2010). Nor does OPRA require an agency to analyze, collate and compile records in order to respond to a request. *MAG Entertainment v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 549 (App. Div. 2005). “In short, OPRA does not countenance open-ended searches of an agency’s files.” *Id.* at 549. You may clarify your request or submit narrower search terms by including a time frame, or specifying precisely what records you are seeking.

REQUEST R005926-052820 ("5926")

[Records Request 5926-5820 was identical in all respects to R005925-2820 except that it made reference to the Rutgers, the State University of New Jersey, Office of Debt Management and Capital Finance, Summary of Athletic Debt As of January 24, 2019 ("2019 Debt Summary"), not the 2020 Debt Summary]:

RESPONSE TO REQUEST 5926

[The response to Records Request 5926 was identical in all material respects to that of Request 5295].

REQUEST R005927-052820 ("5927")

The following requests relate to the report by College Sports Solutions, "Rutgers University Intercollegiate Athletics Review, Fall 2018" available at https://scarletknights.com/documents/2019/1/31/CSS_Rutgers_Final_Report.pdf (hereinafter, the "CSS Report").

Page 24 of the CSS Report states as follows:

Debt to the University - Currently the [athletic] department has two primary sources of debt to the University those are:

- Capital expenditures for football stadium improvements (\$80.1M) and the Athletic Performance Center (\$30.8M), at an interest rate of 4.75%. The Stadium debt is scheduled to be retired in FY2039 and the Athletic Performance Center debt in FY2043.

The total debt (principal and interest) less institution funding and projected gifts is estimated at \$144.6M.

- Transitional expense and operating deficits for FY17 and FY18 totaling approximately \$43.4M (principal), at an interest rate of 5.75%.

The requests for documents are as follows:

1. Please produce the documents furnished by Rutgers to CSS concerning "Capital expenditures for football stadium improvement."
2. Please produce the documents furnished by Rutgers to CSS concerning "the Athletic Performance Center."
3. Please produce the documents furnished by Rutgers to CSS concerning "transitional expense."
4. Please produce the documents furnished by Rutgers to CSS concerning "operating deficits."
5. With respect to the "debt" arising from "transitional expense" identified in the CSS report, please produce:
 - a. Documents such as promissory notes, bonds, agreements, memoranda, or any other writing that constitutes or evidences the "debt" identified in the CSS Report for "transitional expense." Any document, to the extent it names a creditor who is a natural

person and who holds less than 5% of the “transitional expense” debt may be redacted as appropriate.

b. Documents sufficient to identify the name of each current creditor of any “debt” identified in the CSS Report for “transitional expense.” Any document, to the extent it names a creditor who is a natural person and who holds less than 5% of the “loans outstanding – external debt” may be redacted as appropriate.

c. Documents sufficient to identify the current rate of interest of any “debt” identified in the CSS Report for “transitional expense.”

d. Documents constituting or evidencing the current payment or amortization schedule (including the current principal due, and/or the rate and amount of any periodic payment, and/or date of any final or balloon payment) of any “debt” identified in the CSS Report for “transitional expense.”

6. With respect to the “debt” arising from “operating deficits” identified in the CSS Report, please produce:

a. Documents such as promissory notes, bonds, agreements, memoranda, or any other writing that constitutes or evidences the “debt” identified in the CSS Report for “operating deficits.” Any document, to the extent it names a creditor who is a natural person and who holds less than 5% of the “operating deficits” debt may be redacted as appropriate.

b. Documents sufficient to identify the name of each current creditor of any “debt” identified in the CSS Report for “operating deficits.” Any document, to the extent it names a creditor who is a natural person and who holds less than 5% of the “operating deficits” debt may be redacted as appropriate.

c. Documents sufficient to identify the current rate of interest of any “debt” identified in the CSS Report for “operating deficits.”

d. Documents constituting or evidencing the current payment or amortization schedule (including the current principal due, and/or the rate and amount of any periodic payment, and/or date of any final or balloon payment) of any “debt” identified in the CSS Report for “operating deficits.”

7. If there is any other “debt” for capital expenditures, transitional expense, or operating deficits

that is similar in kind to the “debt” identified in the CSS Report, but which was incurred after the CSS Report, or not described in the CSS Report, with respect to such debt, please produce:

- a. Documents such as promissory notes, bonds, agreements, memoranda, or any other writing that constitutes or evidences such “debt.” Any document, to the extent it names a creditor who is a natural person and who holds less than 5% of the “debt” may be redacted as appropriate.
- b. Documents sufficient to identify the name of each current creditor of any such “debt.” Any document, to the extent it names a creditor who is a natural person and who holds less than 5% of the “debt” may be redacted as appropriate.
- c. Documents sufficient to identify the current rate of interest of any such “debt.”
- d. Documents constituting or evidencing the current payment or amortization schedule (including the current principal due, and/or the rate and amount of any periodic payment, and/or date of any final or balloon payment) of any such “debt.”

RESPONSE TO REQUEST 5927 (JUN. 10, 2020)

The University has reviewed your request and are **denying items numbered 1 through 4** because the documents you seek are 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)).

For the items numbered 5 through 7 in your request, the University has reviewed your request and are denying same as improper and overly broad. OPRA provides access to "identifiable" government records that are not otherwise exempt. New Jersey courts have held that a request under OPRA must specifically describe the document sought. "A proper request for access to government records must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents." *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 38 (App. Div. 2005). A blanket request for a class of various documents is not a request for specific identifiable documents, and a custodian is not required to conduct research to locate records potentially responsive to a request.

See *Elcavage v. West Milford Twp.*, GRC Complaint No. 2006-64 (May 28, 2008). Moreover, OPRA does not require a custodian to conduct research or an agency to expend "indisputably limited agency resources to sift through the [agency's] vast files and identify, analyze and select potentially relevant and responsive public records." *Spectraserv v. Middlesex County Utilities Authority*, 416 N.J. Super. 565, 578 (App. Div. 2010), *Burnett v. Gloucester County*, 415 N.J. Super. 506, 515 (App. Div. 2010). Nor does OPRA require an agency to analyze, collate and compile records in order to respond to a request. *MAG Entertainment v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 549 (App. Div. 2005). "In short, OPRA does not countenance open-ended searches of an agency's files." *Id.* at 549. You may clarify your request or submit narrower search terms by including a time frame, or specifying precisely what records you are seeking.

REQUEST R005928-052820 (“5928”)

The following requests relate to Rutgers’ January 15, 2020 Financial Reporting to the NCAA (“2020 NCAA Report”)

On Page 12, Line 34 of the 2020 NCAA Report, it is stated that “Athletic Facilities Debt Service, Leases and Rental Fee” for Reporting Year FY 2019 totaled \$7,814,877.

The requests for documents are as follows:

1. Documents relied upon by Rutgers in computing the total amount of the “Athletic Facilities Debt Service, Leases and Rental Fee” as defined in Line 34.
2. Documents constituting or evidencing any agreement, contract, or understanding between Rutgers and the Big Ten Conference for the “debt” being “service[d]” as defined in Line 34.
3. Documents such as promissory notes, bonds, agreements, memoranda, or any other writing that constitutes or evidences the “debt” being “service[d]” as defined in Line 34.
4. Documents sufficient to identify the name of each current creditor of any “debt” being “service[d]” as defined in Line 34.
5. Documents sufficient to identify the current rate of interest of any “debt” being “service[d]” as defined in Line 34.
6. Documents constituting or evidencing the current payment or amortization schedule (including the current principal due, and/or the rate and amount of any periodic payment, and/or date of any final or balloon payment) of any “debt” being “service[d]” as defined in Line 34.
7. Documents constituting or evidencing any “leases” as defined in Line 34.
8. Documents constituting or evidencing any “rental fee[s]” as defined in Line 34.

On Page 7, Line 18 of the 2020 NCAA Report, it is stated that “Other Operating Revenue” for Reporting Year FY 2018 totaled \$15,385,310.

The requests for documents are as follows:

9. Documents relied upon by Rutgers in computing the total amount of the “Other Operating

Revenue” as defined in Line 18.

10. If any part of the “Other Operating Revenue” as defined in Line 18 constituted loan proceeds against other B1G earnings, please provide the following:

- a. Documents such as promissory notes, bonds, agreements, memoranda, or any other writing that constitutes or evidences the terms governing the loan proceeds against other B1G earnings.
- b. Documents sufficient to identify the name of each current creditor of any obligation created by Rutgers’ receipt of loan proceeds against other B1G earnings, if that creditor is not the B1G Conference.
- c. Documents sufficient to identify the current rate of interest applicable to loan proceeds against other B1G earnings.
- d. Documents constituting or evidencing the current payment or amortization schedule (including the current principal due, and/or the rate and amount of any periodic payment, and/or date of any final or balloon payment) for the repayment of any loan proceeds against other B1G earnings.”

RESPONSE TO REQUEST 5928

The University has reviewed your request and are denying items numbered **1 through 8 and number 10** as improper and overly broad. OPRA provides access to “identifiable” government records that are not otherwise exempt. New Jersey courts have held that a request under OPRA must specifically describe the document sought. “A proper request for access to government records must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency’s documents.” *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 38 (App. Div. 2005). A blanket request for a class of various documents is not a request for specific identifiable documents, and a custodian is not required to conduct research to locate records potentially responsive to a request. See *Elcavage v. West Milford Twp.*, GRC Complaint No. 2006-64 (May 28, 2008). Moreover, OPRA does not require a custodian to conduct research or an agency to expend “indisputably limited agency resources to sift through the [agency’s] vast files and identify, analyze and select potentially relevant and responsive public records.” *Spectraserv v. Middlesex County Utilities Authority*, 416 N.J. Super. 565, 578 (App. Div. 2010), *Burnett v. Gloucester County*, 415 N.J. Super. 506, 515 (App. Div. 2010). Nor does OPRA require an agency to analyze, collate and compile records in order to respond to a request. *MAG Entertainment v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 549 (App. Div. 2005). “In short, OPRA does not countenance open-ended searches of an agency’s files.” *Id.* at 549. You may clarify your request

or submit narrower search terms by including a time frame, or specifying precisely what records you are seeking.

As it relates to number 9 in your request please see the below:

The University wishes to refer you to the below for sources of other operating revenue:

Loan Proceeds against future B1G earnings \$12, 050, 642

RSF Revenue \$2,009, 895

Stadium Expansion: \$1,360,648

Outside Event Rentals:\$868, 000

The other items de minimis [sic] in nature

10. In summary, each of the requests identified a very specific document that the University had itself prepared (or which was prepared on its behalf) and sought very particularized backup, primary documentation for the claims made in each of these documents.

11. By way of example, Rutgers is obligated to make annual filings with the U.S. Department of Education and the National Intercollegiate Athletics Association which include very specific line items of financial data. Request 5924 asked for the documents used by Rutgers to compile the information it previously made in those filings. The request was for a defined 2-year time period. It was the very opposite of being a request for “all documents” unlimited in time and scope, or not being “specific” or “identifiable” as Defendants contend. On the contrary, the request sought the backup for the data certified to the Government and the NCAA as accurate. These documents have already been isolated and selected once, and this request does not require a new free ranging search of all records.

12. Similarly, Requests 5925 and 5926 focused on a page of budgetary documentation already released by Rutgers every year. The request sought backup and the primary documents for those ‘top-line’ numbers certified and disseminated to the public, such as the creditors, repayment terms, and interest rate of the “debt” acknowledged to exist. Illustratively, Plaintiff’s request gave examples of responsive items such as promissory notes, amortization schedules, and the like, used as backup to generate these two specific one-page reports. Once again, this hardly required searches or research of an unlimited number of records across multiple offices; it was highly specific and defined.

13. For Request 5927, the background of that request is as follows: in or about 2018, Rutgers chose to engage an outside consultant to make recommendations about its athletic programs and offer suggestions on its improvement. Rutgers also chose to make the report

public, which can be found at the URL cited above, soon after the report was finalized. One on page of the final 58-page report, there were a number of vague statements that did not fully square with other information in the public domain. These included but were not limited to the “stadium improvement” debt (characterized there as internal debt, but elsewhere as external debt); a peculiar description of “institution funding” as offsetting “debt”; and “transitional expense” of an unknown kind or amount. Request 5927 (Requests 1-4) asked Rutgers for what factual documents it had shared with the consultant, CSS, that might have caused the consultant to make these kinds of unconventional statements about revenues, expenses, debts, and finances. And Request 5927 (Requests 5-7) asked for the backup documentation in Rutgers’ possession that informed whatever it may have told its consultant. This is factual information, not policy deliberations that form the core of the advisory/consultative/deliberative privilege. Nor was it a request for a wild goose chase for unlimited or undefined documents; it asked for what documents had been previously given to an outside consultant and the documentary backup for those claims. It is wholly within the core of a permissible records request.

14. Finally, Request 5928 sought backup that Rutgers used to prepare a January 2020 report to the NCAA. On two of the report’s pages, there appeared to be confusion about the nature and extent of Rutgers athletics’ “debt” and the amount of funds required to amortize that debt (i.e., debt service). Further, Rutgers, in responding to Request 9 of Request 5928, seems to incorrectly conflate “operating revenue” with the proceeds of a loan or advance, and further claimed that “stadium expansion” earned it revenue (rather than the more expected circumstance, which is that stadium expansion would create debt or expenses or both). As with the other requests, Request 5928 was a carefully-drawn request for very specific backup documentation

about two pages of a publicly-available report, that was neither overbroad, nor indefinite, or “open-ended.”

15. Defendants do not deny that responsive records exist, nor have they given any basis for the denial of the records other than those stated on the face of each response.

16. No privilege log, *Paff* affidavit, *Vaughn* index, or further description of the records was provided.

COUNT ONE

17. Plaintiff repeats and realleges Paragraphs 1-16 as if fully set forth at length.

18. Plaintiff, and the individual who was authorized by Plaintiff to make the records request on behalf of the Plaintiff, are citizens of New Jersey entitled to make requests under OPRA.

19. Defendant is a “public agency” or “agency” within the meaning of N.J.S.A. 47:1A-1.1.

20. All documents requested are “government records” within the meaning of N.J.S.A. 47:1A-1.1.

21. The denial of access to the requested documents, which were made by Defendants between June 3, 2020 and June 10, 2020 are violations of OPRA.

22. The Custodian Defendants’ conduct is a knowing and willful violation of OPRA and has resulted in an unreasonable denial of access under the totality of the circumstances contrary to N.J.S.A. 47:1A-11.

23. The right to access to public documents is a substantive right, privilege, or immunity secured by the constitution and laws of the State of New Jersey.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants:

- A. Compelling the immediate production of all documents requested and set forth at length above;
- B. For the issuance of a penalty under N.J.S.A. 47:1A-11;
- C. For reasonable attorneys' fees under N.J.S.A. 47:1A-6 and N.J.S.A. 10:6-2(f).
- D. Retaining jurisdiction of the matter to oversee compliance with the production of the documents; and
- E. For such other and further legal and equitable relief as is just and proper.

COUNT TWO

- 24. Plaintiff repeats and realleges Paragraphs 1-23 as if fully set forth at length.
- 25. The records requested are common-law public records in that they are writings made or kept by a public officer who is authorized by law to keep them, or were made or kept at the behest of a public officer in the exercise of a public function.
- 26. The Plaintiff, for among other reasons, the wholesome public interests cited in Paragraphs 3 through 5 above, has a cognizable interest in the subject matter contained in the requested material.
- 27. The Plaintiff's interest in accessing the records outweighs any State interest in preventing disclosure. Denial of records under the common law can only be justified if there is a State interest in nondisclosure, without regard to whatever private interests in nondisclosure might be asserted.
- 28. Defendants' failure to produce the requested documents in their entirety and without redactions is a violation of the common law right of access to public documents.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants:

- A. Compelling the immediate production of all documents requested and set forth at length above;
- B. Retaining jurisdiction of the matter to oversee compliance with the production of the documents; and
- C. For such other and further legal and equitable relief as is just and proper.

Respectfully submitted,

WEISSMAN & MINTZ
Attorneys for Plaintiff

By: /s/ Flavio L. Komuves
Flavio L. Komuves (No. 018891997)

By: /s/ Patricia Villaneuva
Patricia Villanueva, Esq. (No. 308702019)

Dated: July 17, 2020

VERIFICATION

I have been duly authorized to execute this Verification on behalf of the Plaintiff. I have read the aforesaid complaint and certify that the factual statements made therein are true. I am aware that if any of the foregoing statements made by me are willfully false, that I am subject to punishment.

DAMON FILLMAN

Dated: July 17, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of R. 4:25-4 and R. 4:4-1(c), Flavio L. Komuves, Esq. is designated as trial counsel on behalf of Plaintiff in the within matter.

/s/ Patricia Villaneuva
Patricia Villanueva, Esq

Dated: July 17, 2020

RULE 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-1, I certify that the within matter in controversy is subject to no other action pending in any Court or arbitration proceeding and that the names of all parties who should be joined in this action are set forth in the Complaint and joined in the action.

/s/ Patricia Villaneuva
Patricia Villanueva, Esq

Dated: July 17, 2020

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY
OFFICE OF DEBT MANAGEMENT AND CAPITAL FINANCE

Summary of Athletics Debt
As of January 31, 2020

	<u>External Debt</u>	<u>Internal Debt</u>
Total Loans Outstanding	\$ 77,390,000	\$ 121,516,128
FY2019 Debt Service	\$ 5,496,903	\$ 1,838,120
Average interest rate	4.1%	4.8%
Final Maturity	2039	2048

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY
OFFICE OF DEBT MANAGEMENT AND CAPITAL FINANCE

Summary of Athletics Debt
As of January 24, 2019

	<u>External Debt</u>	<u>Internal Debt</u>
Total Loans Outstanding	\$ 80,170,000	\$ 45,378,286
FY2018 Debt Service	\$ 5,319,446	\$ 997,508
Average interest rate	4.1%	5.8%
Final Maturity	2039	2030
