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Nicole Neily

NICOLE NEILY,  
  
Plaintiff,

v.

RUTGERS, THE STATE UNIVERSITY OF  
NEW JERSEY; MARY ANN KEYS, IN HER  
CAPACITY AS CUSTODIAN OF  
RECORDS, and CASEY WOODS, IN HIS  
CAPACITY AS ACTING CUSTODIAN OF  
RECORDS,

Defendants

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

Docket No.: ESX-L-

**VERIFIED COMPLAINT**  
  
**SUMMARY ACTION**

Plaintiff Nicole Neily (“Ms. Neily”), by and through undersigned counsel, brings this New Jersey Open Public Records Act (“OPRA”), N.J.S.A. § 47:1A-1, *et seq.*, suit against Defendants the State University of New Jersey (“Rutgers”), Mary Ann Keys, in her official capacity as custodian of records (“Keys”), and Casey Woods (“Woods”), in his capacity as acting Custodian

of Records, to fulfill Ms. Nicole Neily's request for records. In support thereof, Ms. Neily states as follows:

### **PARTIES**

1. Plaintiff Nicole Neily is a person permitted to request and obtain public records pursuant to OPRA.

2. Defendant Rutgers, is a public university in the State of New Jersey with campuses in Essex County and Middlesex County (among others). The campus in Essex County is where the University's OPRA operations are located and where OPRA requests are directed. Rutgers University is a "public agency" subject to OPRA. See N.J.S.A. § 47:1A-1.

3. Defendant Mary Ann Keys is the Ethics Training Officer and OPRA Administrator at Rutgers. Working with, and on behalf of Defendant Rutgers, Defendant Keys denied Ms. Neily's OPRA request. Defendant Keys is sued in her official capacity as OPRA Administrator.

4. Defendant Casey Wood, is the Director of Ethics, Training, Investigations, and Public Records, and based upon his email is the person responsible for responding to OPRA requests in Ms. Keys' absence.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to N.J.S.A. § 47:1A-6.

6. Venue is proper in Essex County because Defendants' principal office and the requested records are in Essex County, and Essex County is where Rutgers directs OPRA requests.

Id.

## FACTUAL BACKGROUND

7. This complaint is filed under New Jersey Open Public Records Act (“OPRA”), N.J.S.A. § 47:1A-1, et seq., challenging the failure of Defendants to fulfill Ms. Neily’s request for records.

### **a. Defendants Unlawfully Denied Ms. Neily’s OPRA Request**

8. On March 5, 2024, Ms. Neily submitted an OPRA request to Defendants, requesting records in Defendants’ possession.

9. Specifically, Ms. Neily’s OPRA request sought specific records in the possession of Rutgers employee Noura Erakat between the dates of October 7, 2023, and March 5, 2024. Ms. Neily limited her request to eleven search terms related to Ms. Erakat’s political activism on campus in the wake of the October 7th terrorist attack on Israel. **Ex. 1.** The request read, “I am submitting a public records request pursuant to the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1 et seq.) for records in the possession of Rutgers University employee Noura Erakat (ne146@africana.rutgers.edu) between the dates of October 7, 2023 and March 5, 2024 that contain the terms: ‘ Hamas’ ‘Al Aqsa’ ‘Gaza’ ‘Genocide’ ‘Apartheid’ ‘Ethnic cleansing’ ‘Colonialism’ ‘Zionist’ ‘Zionism’ ‘Antisemitism’ ‘Ghazi Hamad’.” Id.

10. Defendant Keys, who is the OPRA Administrator for Defendant Rutgers, responded to Ms. Neily’s request on behalf of Rutgers on March 20, 2024. **Ex. 2.** Defendant Keys indicated that 30,000 pages of responsive documents were found. Id. Defendant Keys then asked Ms. Neily to “greatly limit your keywords and/or date range in order for us to respond to your request.” Id. Defendant Keys further stated that if Rutgers did not receive a response within seven business days, then she would consider the request withdrawn and closed. Id.

11. On March 29, 2024, Ms. Neily timely responded to Defendant Keys's email and asked for further information regarding the burden to the Defendants before limiting her request. **Ex. 3.** Ms. Neily inquired about the number of documents at issue and whether Defendants anticipated any exemptions to apply. Id.

12. On April 2, 2024, Defendant Keys responded that they were only able to give a page count and that the Defendants "would flatly deny a request that had 30,000 pages as overly broad, burdensome, and disruptive to University operations." **Ex. 4.** Defendant Keys again demanded that Ms. Neily refine her already limited search. Id.

13. Pursuant to Defendant Keys's April 2 response, and within the seven-business day timeline identified by Defendant Keys, one of Ms. Neily's attorneys at Holtzman Vogel, , called Defendants' office on April 11, 2024, to discuss Ms. Neily's request on her behalf. However, Defendants did not answer, and that attorney left a voicemail and never received a response. .

14. Despite Ms. Neily's good faith attempts to resolve this OPRA matter, Defendant Keys emailed Ms. Neily on April 24 stating that, because she had "failed to provide the requested clarification," Defendants had withdrawn Ms. Neily's request and considered it closed. **Ex. 5.**

15. On April 30, 2024, counsel for Ms. Neily sent a letter to Defendants "shar[ing] our concerns that your request for clarification of Ms. Neily's open records request and subsequent decision to withdraw and close her request lack a sufficient basis and are unlawful." **Ex. 6.** Counsel detailed Ms. Neily's attempts to resolve this OPRA matter in good faith, explained the legal basis for why Defendants' denial was unlawful, and "welcome[d] the opportunity to resolve this dispute without litigation and to continue to discuss solutions that will enable the University to appropriately respond to Ms. Neily's request." Id.

16. On May 7, 2024, Casey Woods, Director of Ethics, Training, Investigations, and Public Records, responded to Ms. Neily's April 30 letter. **Ex. 7.** Mr. Woods' correspondence indicated that Ms. Keys is on leave and that Mr. Woods is responsible for responding to OPRA requests. Mr. Woods then noted that the call from one of Ms. Neily's Holtzman Vogel attorneys was not received, but even if it had been, it would not have been responded to because OPRA requests must be made in writing (even though the prior email indicated that a call was acceptable).

17. Mr. Woods indicated that the OPRA request would be "reopened" if a clarification or limitation was provided within 10 days.

18. On May 19, 2024, counsel to Ms. Neily communicated to Mr. Woods that Ms. Neily did not wish to narrow her requests and believed that they were reasonable in time, scope, and subject matter. **Ex. 8.**

19. On May 20, 2024, Mr. Woods responded that they once again would not respond as requested. If so, they claim it would take 750 hours. **Ex. 9.** This is not reasonable, realistic, and does not contain a specific fee. As such, it amounts to a continuing denial.

20. On May 29, 2024, Mr. Woods reached out again to request that the requests be limited. **Ex. 10.** However, Ms. Neily does not wish to limit her requests which are reasonable in time and scope.

21. Ms. Neily is now compelled to bring this suit to obtain the requested records pursuant to OPRA.

***b. The Public has a Strong Interest in the Requested Records Considering the Rise in Antisemitism on Defendants' Campuses***

22. As stated in Ms. Neily's April 30 letter to Rutgers, the public has a strong interest in the requested records considering the massacre of Israelis in October 2023, and the rise of antisemitism in universities across the United States.

23. On October 7, 2023, the terrorist organization Hamas launched a massacre across southern Israel, resulting in the death of 1,200 Israelis and 253 hostages taken.

24. Following these attacks, antisemitism across school campuses in the United States has skyrocketed.<sup>1</sup> For example, Hillel International, a Jewish campus organization, has reported a 700% increase in antisemitic incidents since last year.<sup>2</sup>

25. Rutgers’s campus, in particular, is a hotbed for antisemitic conduct—and Rutgers itself acknowledges that fact.

26. On May 3, 2024, Rutgers’s Chancellor and Distinguished Professor Francine Conway, Ph.D. issued a public statement recognizing “a disturbing increase [in antisemitic conduct] reports on our campus.”<sup>3</sup>

27. In one incident, “[s]omeone at Rutgers University cruelly plastered a Jewish freshman’s face on flyers for an anti-Israel referendum — the latest act of ‘unabated antisemitism’ at the New Jersey school.”<sup>4</sup>

28. This month, a different Jewish student at Rutgers sued the University, “claiming the school failed to protect the safety of Jewish students following a series of antisemitic incidents in recent years, signaling a ‘toleration of bullying, intimidation, harassment, discrimination, and retaliation against Jewish students [which] denies them their right to an adequate educational

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<sup>1</sup> Mary Ellen Flannery, Taking on Antisemitism on College Campuses, neaToday (Jan. 24, 2024), <https://www.nea.org/nea-today/all-news-articles/taking-antisemitism-college-campuses>.

<sup>2</sup> Id.

<sup>3</sup> Francine Conway, Update: Antisemitism and Harassment, Ph.D., Rutgers University (May 3, 2024), <https://newbrunswick.rutgers.edu/chancellor/communications/update-antisemitism-harassment#:~:text=May%203%2C%202024,tolerated%20at%20Rutgers%E2%80%93New%20Brunswick>.

<sup>4</sup> Deirdre Bardolf, Jewish freshman’s face plastered on anti-Israel flyers at Rutgers in act of ‘unabated antisemitism’, New York Post (Mar. 30, 2024), <https://nypost.com/2024/03/30/us-news/jewish-freshman-rivka-schafers-face-plastered-on-anti-israel-flyers-at-rutgers-in-act-of-unabated-antisemitism/>.

environment.”<sup>5</sup>

29. Rutgers professor and employee Noura Erakat—who is the subject of the OPRA request here—has led the antisemitic charge on Rutgers’s campus and caught headlines for her unabashed antisemitism.

30. According to the *New York Post*, “In November, [Rutgers professor] Erakat participated in anti-Israel rallies in Washington, DC and Philadelphia, where she claimed Israel is on a ‘depraved pursuit of wealth and privilege.’”<sup>6</sup>

31. Subsequently, “a month later, a controversial talk about ‘Race, Liberation, and Palestine’ that Erakat participated in was blasted by critics as ‘providing a platform’ for ‘well-known antisemites.’”<sup>7</sup>

32. And just four years ago, Erakat “participated in an online workshop along with senior Hamas leader Ghazi Hamad that was hosted by Palestinian nonprofit the Masarat Center, according to a post advertising the event.”<sup>8</sup> Hamas has been a U.S.-designated terrorist organization since 1997.<sup>9</sup>

33. The people of New Jersey, the students of Rutgers, and the public have a strong interest in knowing how Rutgers professor Noura Erakat’s recent actions and activism have affected the students and community she teaches.

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<sup>5</sup> Kendall Tietz, Progressive LGBTQ student sues Rutgers over 'hostile' environment for Jews: 'Laboratory of antisemitism' (May 14, 2024), <https://www.foxnews.com/media/progressive-lgbtq-student-sues-rutgers-hostile-environment-jews-laboratory-antisemitism>.

<sup>6</sup> Deirdre Bardolf, Rutgers slammed for allowing ‘antisemitic’ talks to continue — including one from a prof who appeared on panel with a Hamas official, *New York Post* (Feb. 24, 2024), <https://nypost.com/2024/02/24/us-news/rutgers-slammed-for-allowing-antisemitic-talks-to-continue-including-one-from-a-prof-who-appeared-on-panel-with-a-hamas-official/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> U.S. Department of State, Foreign Terrorist Organizations, [State.gov](https://www.state.gov/foreign-terrorist-organizations/) (accessed May 16, 2024), <https://www.state.gov/foreign-terrorist-organizations/>.

34. Indeed, Rutgers’s Chancellor and Distinguished Professor Dr. Conway was right when she stated, “To be clear, [Rutgers’s] work is far from over.”<sup>10</sup>

35. Thus, Ms. Neily seeks relief from this Court in the form of an order to release the requested records.

### LEGAL STANDARD

36. In enacting OPRA, the New Jersey Legislature declared “it to be the public policy of this State that: government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, . . . and any limitations on the right of access . . . shall be construed in favor of the public’s right of access; all government records shall be subject to public access unless exempt.” N.J.S.A. § 47:1A-1.

37. As stated by New Jersey courts, “OPRA is designed to give members of the public ‘ready access to government records’ unless the statute exempts them from disclosure.” Rivera v. Union County Prosecutor's Office, 250 N.J. 124, 140-41 (2022) (citing Burnett v. County of Bergen, 198 N.J. 408, 421 (2009)). “The law’s core concern is to promote transparency in government.” Id.

38. Absent a showing that records are specifically exempt from disclosure by OPRA, “a citizen’s right of access is unfettered.” ACLU of N.J. v. N.J. Div. of Criminal Justice, 435 N.J. Super. 533, 541 (App. Div. 2014). The records custodian has the burden to show that its denial of access was authorized by law. N.J.S.A. § 47:1A-6.

39. While a “general request for information that neither identifies nor describes with

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<sup>10</sup> Francine Conway, Update: Antisemitism and Harassment, Ph.D., Rutgers University (May 3, 2024), <https://newbrunswick.rutgers.edu/chancellor/communications/update-antisemitism-harassment#:~:text=May%203%2C%202024,tolerated%20at%20Rutgers%E2%80%93New%20Brunswick>.

any specificity or particularity the records sought” is invalid, an agency may not refuse to respond to a request that is specific enough to enable the agency to search for the records and respond. Burke v. Brandes, 429 N.J. Super. 169, 175 (App. Div. 2012) (internal citations omitted).

40. “[T]he fact that the custodian of records . . . actually performed a search and was able to locate and identify records responsive to [the] request belies any assertion that the request was lacking in specificity or was overbroad.” Id. at 177.

41. “A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian’s decision by filing an action in Superior Court.” N.J.S.A. § 47:1A-6. In such a proceeding, “[t]he public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed.” Id. If the requestor prevails, she “shall be entitled to a reasonable attorney’s fee.” Id.

## **CLAIM FOR RELIEF**

### **COUNT I - OPRA**

#### **(Unlawful Withholding of Agency Records in Violation of the OPRA)**

42. Ms. Neily realleges, and herein incorporates by reference, the allegations contained in the paragraphs above.

43. Ms. Neily submitted a valid and limited public records request on March 5, 2024.

44. Ms. Neily’s request was limited and specific enough to allow Defendants to respond. Indeed, Defendants identified over 30,000 pages of documents responsive to Ms. Neily’s request.

45. However, Defendants refused to produce those documents based on no justification other than doing so would be too “burdensome.”

46. In fact, Defendants admitted that their own policy is to “flatly deny” any records request that, like Ms. Neily’s, returns 30,000 pages of responsive documents.

47. Defendants’ justification is baseless under OPRA.

48. Despite multiple attempts to reach an amicable solution to produce the responsive documents, Defendants unlawfully denied and closed Ms. Neily’s records request.

49. To date, Defendants have not produced a single document to Ms. Neily, despite admitting that over 30,000 responsive pages exist.

50. Further, the special services fees are not authorized by N.J.S.A. 47:1A-5 because they are unreasonable, do not reflect actual costs, or include fees not permitted to be included in a special service fee. Additionally, no actual fee was provided.

51. The Defendants also indicated they would redact documents but have not reflected what redactions they expect to be made or why documents related to “ Hamas ” or “ terrorism ” would need to be redacted at all.

52. Thus, Defendants have violated OPRA by unlawfully withholding the requested records.

## **COUNT II – COMMON LAW**

### **(Unlawful Withholding of Agency Records in Violation of the Common Law Right of Access)**

53. Ms. Neily realleges, and herein incorporates by reference, the allegations contained in the paragraphs above.

54. Ms. Neily submitted a valid and limited public records request on March 5, 2024.

55. Ms. Neily’s request was limited and specific enough to allow Defendants to respond. Indeed, Defendants identified over 30,000 pages of documents responsive to Ms. Neily’s request.

56. However, Defendants refused to produce those documents based on no justification other than doing so would be too “burdensome.”

57. In fact, Defendants admitted that their own policy is to “flatly deny” any records request that, like Ms. Neily’s, returns 30,000 pages of responsive documents.

58. Defendants’ justification is baseless under the common law, which favors access to records.

59. The records were created by government officials in their official capacity and the documents are required to be maintained.

60. There is substantial public interest in these documents given the ongoing issues within the Middle East and its impact on college campuses, including at Rutgers.

61. There is no interest held by Rutgers which warrants withholding these documents.

62. Despite multiple attempts to reach an amicable solution to produce the responsive documents, Defendants unlawfully denied and closed Ms. Neily’s records request.

63. To date, Defendants have not produced a single document to Ms. Neily, despite admitting that over 30,000 responsive pages exist.

64. The very fact that one Rutgers professor has apparently produced 30,000 pages of documents related to “ Hamas ” and “ terrorism ” within an approximately six-month window is exactly the reason why there is such a high public interest in understanding the prolific activities on this topic by one professor.

65. Thus, Defendants have violated the common law right of access by unlawfully withholding the requested records.

## PRAYER FOR RELIEF

WHEREFORE, Ms. Neily respectfully requests that the Court:

- A. Declare that Defendants unlawfully withheld the requested records in violation of OPRA, N.J.S.A. §§ 47:1A-1, *et seq.*;
- B. Enjoin Defendants from withholding the requested records and order Defendants to release the requested records immediately in accordance with OPRA, N.J.S.A. §§ 47:1A-1, *et seq.* without cost to Ms. Neily;
- C. Determine that Defendants willfully and intentionally failed to comply with OPRA, N.J.S.A. §§ 47:1A-1, *et seq.* and impose appropriate penalties;
- D. Determine that Ms. Neily is also entitled to the requested documents under the common law right of access and order the documents produced without cost to Ms. Neily;
- E. Award Ms. Neily reasonable attorney's fees and costs in accordance with N.J.S.A. § 47:1A-6; and
- F. Award any further relief as the Court deems appropriate and just.

Dated: June 7, 2024

/s/ Matthew C. Moench  
Matthew C. Moench  
King, Moench & Collins, LLP  
51 Gibraltar Drive, Suite 2F  
Morris Plains, NJ 07950  
(973) 998-6860  
[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)

Respectfully submitted,

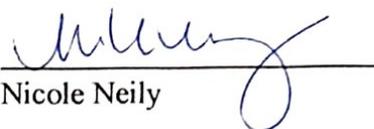
/s/ Jason Torchinsky  
Jason Torchinsky  
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(pro hac pending)

*Counsel for Plaintiff*

**VERIFICATION**

I hereby certify that the foregoing statements made within the Verified Complaint are true and accurate to the best of my knowledge, based upon the information available to me at this time. I am aware that if any of the statements made herein by me are willfully false, I am subject to punishment.

Date: 6/6/24

  
Nicole Neily

**Rule 4:5-1 Certification**

I certify that the matter in controversy is not the subject of any other action pending in any court or a pending arbitration proceeding, and no such action is contemplated. I know of no other parties that should be made part of this lawsuit. I recognize my continuing obligation to file and serve on all parties and the Court any amended certification, if there is a change in the facts stated in the original certification.

/s/ Matthew C. Moench.

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[Jtorchinsky@holtzmanvogel.com](mailto:Jtorchinsky@holtzmanvogel.com)

Dated: June 7, 2024

**Rule 1:38-7 Certification**

I certify that any of the defendant(s)' confidential identifiers have been redacted from the documents submitted to the Court and will be redacted from any documents submitted in the future, in accordance with R. 1:38-7(b).

/s/ Matthew C. Moench.

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/s/ Jason Torchinsky

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Dated: June 7, 2024

# Exhibit 1

 On 3/5/2024 3:02:35 PM, Rutgers Open Public Records Center wrote:

Dear Ms. Kurokawa:

Thank you for submitting your request for government records of **Rutgers, The State University of New Jersey**. Your request has been received and is being processed in accordance with the New Jersey Open Public Records Act (OPRA), NJSA 47:1 et seq. Your request was received through the online, public portal [Rutgers University Open Public Records Center](#) of this office on 3/5/2024 and **given the reference number R008743-030524**.

Your request will be forwarded to the Office of the Custodian of Records for review and processing, including determining the volume of responsive documents and any potential costs associated with satisfying your request. Please note, the N.J. Open Public Records Act does not require the University to create new documents, to conduct research, or to answer questions for information.

Records Requested: I am submitting a public records request pursuant to the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1 et seq.) for records in the possession of Rutgers University employee Noura Erakat (ne146@aficana.rutgers.edu) between the dates of October 7, 2023 and March 5, 2024 that contain the terms:

“Hamas”  
 “Al Aqsa”  
 “Gaza”  
 “Genocide”  
 “Apartheid”  
 “Ethnic cleansing”  
 “Colonialism”  
 “Zionist”  
 ”Zionism”  
 “Antisemitism”  
 “Ghazi Hamad”

I respectfully request a waiver or reduction of fees associated with this request; I do not intend to use the requested records for private commercial interests. The primary purpose of this request is to inform the public’s understanding of Ms. Erakat’s political activism on campus in the wake of October 7th.

To minimize the burden of production, I can accept records electronically and double-sided copies. That being said, if there are any fees for searching or copying these records, please inform me if the cost will exceed \$20.

The New Jersey Open Public Records Act requires a response to this request be made within 7 business days. If you expect a significant delay in responding to this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please state in writing the basis for the denial, cite each specific exemption you feel justifies the refusal to release the information, and notify me of the appeal procedures available to me under the law.

Thank you for considering my request, and please let me know if you have any questions.

The Office of the Custodian of Records uses the [Rutgers University Open Public Records Center](#) to communicate with you, respond to and track all open public records requests. If you have submitted your request electronically through Rutgers Open Public Records Center portal, you have already been required to create an account.

Notice to First Time Portal Users:

If you are a first time user and did not submit your request through the public portal, you are receiving this request because the Rutgers Office of the Custodian has created an account for you at the [Rutgers University Open Public Records Center](#).

To access your account and view your request:

1. Go to: [Rutgers University Open Public Records Center](#).
2. Select/open "My Records Center"
3. Enter your email and password as provided in your previously received Welcome Letter.

You can monitor your request through the [Rutgers University Open Public Records Center](#) at "My Request Center."

Thank you and if you have questions, you may contact the OPRA Administrator at (973) 972-1981.

Rutgers, The State University of New Jersey  
University Custodian of Records  
Office of Enterprise Risk Management, Ethics and Compliance  
65 Bergen Street, Ste. 1346  
Newark, New Jersey 07101-1709  
Phone: (973) 972-1981  
Fax: (973) 972-2396

 On 3/5/2024 3:02:29 PM, Nicole Kurokawa wrote:

Request Created on Public Portal

# Exhibit 2

 On 3/20/2024 10:51:07 AM, Rutgers Open Public Records Center wrote:

**Subject:** [Records Center] Open Public Records Act Request :: R008743-030524

**Body:** Reference: Rutgers Open Public Records Request, #R008743-030524

Dear Ms. Kurokawa,

Please accept this letter as the University Custodian of Records response to your request for records pursuant to the Open Public Records Act (“OPRA”). On March 05, 2024, this office received your request for the following:

“I am submitting a public records request pursuant to the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1 et seq.) for records in the possession of Rutgers University employee Noura Erakat (ne146@africana.rutgers.edu) between the dates of October 7, 2023 and March 5, 2024 that contain the terms:

“Hamas”

“Al Aqsa”

“Gaza”

“Genocide”

“Apartheid”

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“Colonialism”

“Zionist”

”Zionism”

“Antisemitism”

“Ghazi Hamad”

I respectfully request a waiver or reduction of fees associated with this request; I do not intend to use the requested records for private commercial interests. The primary purpose of this request is to inform the public's understanding of Ms. Erakat's political activism on campus in the wake of October 7th.

To minimize the burden of production, I can accept records electronically and double-sided copies. That being said, if there are any fees for searching or copying these records, please inform me if the cost will exceed \$20.

The New Jersey Open Public Records Act requires a response to this request be made within 7 business days. If you expect a significant delay in responding to this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please state in writing the basis for the denial, cite each specific exemption you feel justifies the refusal to release the information, and notify me of the appeal procedures available to me under the law.

Thank you for considering my request, and please let me know if you have any questions.”

This request has yielded over 30,000 pages of responsive documents. Please greatly limit your keywords and/or date range in order for us to respond to your request.

In order for our office to process the request, please provide a response to the above clarification. If we do not receive a clarification within seven (7) business days, we will consider this request withdrawn and closed.

You may contact the Office of the Custodian of Records through your account under "My Request Center" at the [Rutgers Open Public Records Center](#), phone, or via the regular mail to: Rutgers, The State University of New Jersey, University Custodian of Records, University Ethics and Compliance, 335 George Street, Suite 2100, New Brunswick, NJ 08901.

If you have any questions, please contact my office at 973.972.1981.

Sincerely,

Mary Ann Keys

University Ethics and Compliance  
Rutgers, The State University of New Jersey



# Exhibit 3

 On 3/29/2024 4:20:42 PM, Nicole Kurokawa wrote:

Ms. Keys,

This correspondence concerns my request, OPRA Request R008743-030524, and is in response to your email of March 20, 2024.

In that email, you stated that a search turned up 30,000 pages of responsive materials. Could you please let me know how many documents that is? Also, do you anticipate that any privilege or protection could apply to those documents?

I am willing to consider narrowing the request, but I want to better understand the potential burden to Rutgers before proceeding. As you know, New Jersey law strongly favors the public's right of access.

Thanks,

Nicole Kurokawa Neily

# Exhibit 4

On 4/2/2024 4:13:01 PM, Rutgers Open Public Records Center wrote:

**Subject:** [Records Center] Open Public Records Act Request :: R008743-030524

**Body:**

Reference: Rutgers Open Public Records Request, # R008743-030524

Dear Ms. Kurokawa,

Please accept this letter as the University Custodian of Records response to your request for records pursuant to the Open Public Records Act ("OPRA"). On March 05, 2024, this office received your request for the following:

"I am submitting a public records request pursuant to the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1 et seq.) for records in the possession of Rutgers University employee Noura Erakat (ne146@africana.rutgers.edu) between the dates of October 7, 2023 and March 5, 2024 that contain the terms:

"Hammas"

"Al Aqsa"

"Gaza"

"Genocide"

“Apartheid”  
“Ethnic cleansing”  
“Colonialism”  
“Zionist”  
”Zionism”  
“Antisemitism”  
“Ghazi Hamad”

I respectfully request a waiver or reduction of fees associated with this request; I do not intend to use the requested records for private commercial interests. The primary purpose of this request is to inform the public’s understanding of Ms. Erakat’s political activism on campus in the wake of October 7th.

To minimize the burden of production, I can accept records electronically and double-sided copies. That being said, if there are any fees for searching or copying these records, please inform me if the cost will exceed \$20.

The New Jersey Open Public Records Act requires a response to this request be made within 7 business days. If you expect a significant delay in responding to this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please state in writing the basis for the denial, cite each specific exemption you feel justifies the refusal to release the information, and notify me of the appeal procedures available to me under the law.

Thank you for considering my request, and please let me know if you have any questions.”

Our IT department runs the search of the requested individual(s) emails and we download the responsive emails as a single PDF document. Thus, I am not able to separate them out as individual "documents"; I'm only able to give you a page count. This page count is before we began the process of review and redaction for exempted materials. Without reviewing, I can't tell you how much will be exempted. However, we would flatly deny a request that had 30,000 pages as overly broad, burdensome, and disruptive to University operations. Thus, plus refine your search so that we will have a smaller universe of documents to review.

If you have any questions or need additional information, please feel free to contact my office at 973.972.1981.

Sincerely,

Mary Ann Keys

Rutgers, The State University of New Jersey



# Exhibit 5

**R008743-030524 - Open Public Records Act Request****Message History (6)**

 On 4/24/2024 2:45:36 PM, Rutgers Open Public Records Center wrote:

**Subject:** [Records Center] Open Public Records Act Request :: R008743-030524

**Body:**

Reference: Rutgers Open Public Records Request # R008743-030524

Dear Ms. Kurokawa,

Please accept this letter as the University Custodian of Records response to your request for records pursuant to the Open Public Records Act ("OPRA"). On March 05, 2024, this office received your request for the following:

"I am submitting a public records request pursuant to the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1 et seq.) for records in the possession of Rutgers University employee Noura Erakat (ne146@aficana.rutgers.edu) between the dates of October 7, 2023 and March 5, 2024 that contain the terms:

"Hamas"

"Al Aqsa"

"Gaza"

"Genocide"

"Apartheid"

"Ethnic cleansing"

"Colonialism"

"Zionist"

"Zionism"

"Antisemitism"

"Ghazi Hamad"

I respectfully request a waiver or reduction of fees associated with this request; I do not intend to use the requested records for private commercial interests. The primary purpose of this request is to inform the public's understanding of Ms. Erakat's political activism on campus in the wake of October 7th.

To minimize the burden of production, I can accept records electronically and double-sided copies. That being said, if there are any fees for searching or copying these records, please inform me if the cost will exceed \$20.

The New Jersey Open Public Records Act requires a response to this request be made within 7 business days. If you expect a significant delay in responding to this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please state in writing the basis for the denial, cite each specific exemption you feel justifies the refusal to release the information, and notify me of the appeal procedures available to me under the law.

Thank you for considering my request, and please let me know if you have any questions."

Upon receiving your request, the undersigned sent you an email seeking clarification of your request.

As of this writing, you have failed to provide the requested clarification. Therefore, at this time we are withdrawing your request and considering it closed. Should you wish to resubmit your revised request please do so by contacting the Office of the Custodian of Records through the Rutgers Open Public Records Center website, or via the regular mail to: Rutgers, The State University of New Jersey, University Custodian of Records, University Ethics and Compliance, 335 George Street, Suite 2100, New Brunswick, NJ 08901.

If you have any questions, please contact my office at 973.972.1981.

Sincerely,

Mary Ann Keys

University Ethics and Compliance  
Rutgers, The State University of New Jersey



# Exhibit 6

**KMC** | KING, MOENCH  
& COLLINS LLP

ATTORNEYS AT LAW

PETER J. KING ◊  
MATTHEW C. MOENCH \*  
MICHAEL L. COLLINS \*

ROMAN B. HIRNIAK ^  
KRISHNA R. JHAVERI \*+  
TIFFANY TAGARELLI

RYAN WINDELS

◊ Certified by the Supreme Court of New Jersey  
as a Municipal Court Attorney  
\* Also Member of the New York Bar  
+ Also Member of the Arizona Bar  
^ Of Counsel

Writer's Address:

51 Gibraltar Drive, Suite 2F  
Morris Plains, NJ 07950  
(973) 998-6860

Writer's E-Mail:

[MMoench@kingmoench.com](mailto:MMoench@kingmoench.com)



Monmouth County Office:  
225 Highway 35, Suite 202  
Red Bank, NJ 07701  
(732) 546-3670

Website:

[www.kingmoench.com](http://www.kingmoench.com)

A limited liability partnership of Peter J. King, LLC,  
Moench Law, LLC & Collins Law, LLC

April 30, 2024

**VIA EMAIL AND FEDERAL EXPRESS**

Mary Ann Keys  
Ethics Training Officer and OPRA Administrator  
University Ethics and Compliance  
Rutgers, The State University of New Jersey  
65 Bergen Street, Suite 1346  
Newark, NJ 07107  
[mk2292@uec.rutgers.edu](mailto:mk2292@uec.rutgers.edu)

**RE: Open Public Records Act Request R008743-030524**

Dear Ms. Keys:

We are attorneys at King, Moench & Collins, LLP, and Holtzman Vogel Baran Torchinsky & Josefiak PLLC, and we represent requestor Nicole Kurokawa Neily. We write to share our concerns that your request for clarification of Ms. Neily's open records request and subsequent decision to withdraw and close her request lack a sufficient basis and are unlawful.

On March 5, 2024, Ms. Neily submitted a request under the New Jersey Open Public Records Act ("OPRA"), N.J. Stat. Ann. §§ 47:1A-1, *et seq.*, seeking specific records in the possession of Rutgers University employee Noura Erakat between the dates of October 7, 2023, and March 5, 2024. Ms. Neily limited her request to eleven search terms related to Ms. Erakat's political activism on campus in the wake of the October 7th terrorist attack on Israel.

In response to that request, on March 20, you indicated that 30,000 pages of responsive documents exist. You asked Ms. Neily to "greatly limit your keywords and/or date range in order for us to respond to your request." You further stated that if you did not receive a response within seven business days, you would consider the request withdrawn and closed.

Ms. Neily timely responded to your request for clarification on March 29, asking for further information regarding the burden to the University before limiting her request, including the number of documents at issue and whether you anticipated any exemptions to apply. On April 2,

Mary Ann Keys  
April 30, 2024  
Page 2

you responded that you were only able to give a page count and that the University “would flatly deny a request that had 30,000 pages as overly broad, burdensome, and disruptive to University operations.” Again, you asked Ms. Neily to refine her already limited search.

Pursuant to this request, and within the seven business day timeline you previously gave for responding to requests for clarification, Mr. John Cycon called your office on April 11 to discuss Ms. Neily’s request on her behalf. However, your office did not answer, and Mr. Cycon left a voicemail. Mr. Cycon never received a response.

Despite these good faith attempts to resolve Ms. Neily’s records request with your office, on April 24, you emailed Ms. Neily that because she had “failed to provide the requested clarification,” your office had withdrawn her request and considers it closed.

Respectfully, we do not consider Ms. Neily’s request withdrawn or closed. Ms. Neily timely contacted you in response to your request for clarification. When you continued to demand that Ms. Neily narrow her already limited request, we attempted to reach your office by phone yet received no response. These attempts to contact your office were timely and consistent with the methods of communication outlined in your March 20 email. Your office’s failure to receive a clarification within the University’s seven business day window was not due to any fault of Ms. Neily. Therefore, we respectfully request that your office reconsider its decision to withdraw and close Ms. Neily’s OPRA request.

Additionally, your initial decision to deny Ms. Neily’s request lacks merit. Absent a showing that records are specifically exempt from disclosure by OPRA, “a citizen’s right of access is unfettered.” *ACLU v. N.J. Div. of Crim. Just.*, 435 N.J. Super. 533, 541 (App. Div. 2014). The records custodian has the burden to show that its denial of access was authorized by law. N.J. Stat. Ann. § 47:1A-6. To date, your office has failed to make such a showing.

Ms. Neily’s request is not “overly broad” or “burdensome.” While a “general request for information that neither identifies nor describes with any specificity or particularity the records sought” is invalid, an agency may not refuse to respond to a request that is specific enough to enable the agency to search for the records and respond. *Burke v. Brandes*, 429 N.J. Super. 169, 175 (App. Div. 2012). Ms. Neily’s request is highly circumscribed in scope: seeking records from just *one* individual, pertaining to *only eleven* terms, and spanning *just five* months. And your office was able to identify 30,000 pages responsive to the request. “[T]he fact that the custodian of records . . . actually performed a search and was able to locate and identify records responsive to [the] request belies any assertion that the request was lacking in specificity or was overbroad.” *Id.* at 177. Moreover, the fact that Ms. Erakat has apparently been so prolific in discussing terms such as “genocide,” “ethnic cleansing,” and “antisemitism” in the wake of the October 7th terrorist attack is no reason to deprive the public of access to the requested records.

Likewise, Ms. Neily’s request is not likely to substantially disrupt the University’s operations. Even though § 47:1A-5(g) permits an agency to deny access to a record if it would substantially disrupt agency operations, the agency must first attempt “to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” This

Mary Ann Keys

April 30, 2024

Page 3

provision “authorizes custodians to propose a broad range of ‘reasonable solutions’ that accommodate competing interests.” *N.J. Builders Ass’n v. N.J. Council on Affordable Hous.*, 390 N.J. Super. 166, 183 (App. Div. 2007). However, to date, you have not proposed any reasonable solution to accommodate Ms. Neily’s request. Rather, you place the burden on Ms. Neily to further narrow her already circumspect request without providing a legitimate explanation of the original request’s burden on the University.

Moreover, to our knowledge, no New Jersey court has held that the volume of responsive documents alone is sufficient to justify the denial of access based on substantial disruption. Rather, New Jersey courts have focused on whether the request would require the agency to engage in activity beyond its duties under OPRA. For example, one court held that a request that “would require the custodian to perform an unspecified number of interviews with the named individuals” to identify responsive records would substantially disrupt agency operations. *Port Auth. Police Benevolent Ass’n v. Port Auth. of N.Y. & N.J.*, 2018 N.J. Super. Unpub. LEXIS 2785, at \*22–23 (App. Div. Dec. 20, 2018). We understand that 30,000 is a significant number of pages to review. However, the University’s duty under OPRA to redact exempted materials cannot serve as the basis for denying a request in full based on a substantial disruption, even when that duty requires the University to review a substantial number of pages.

Should your office continue to refuse to produce records responsive to Ms. Neily’s request, she is prepared to pursue all remedies available to her under OPRA, including but not limited to, legal action to challenge your denial of access to responsive records. *See* N.J. Stat. Ann. § 47:1A-6. That said, we welcome the opportunity to resolve this dispute without litigation and to continue to discuss solutions that will enable the University to appropriately respond to Ms. Neily’s request.

Finally, it is important to take note of the context in which this request was made and improperly denied. That context makes plain that the New Jersey community has a pressing and palpable interest in the requested materials. In the wake of the October 7 massacre in which 1,200 Israelis, including dozens of Americans, were beheaded, raped, butchered, burned alive, and kidnapped by the terrorist organization Hamas, New Jersey’s Jewish community has felt the pain of the massacre in a profound way. Notwithstanding this time of pain for the Jewish community, Ms. Erakat—a public employee—apparently possesses over 30,000 pages of records discussing terms such as “genocide,” “ethnic cleansing,” and “antisemitism.” Thus, the public has a profound interest in the requested records.

With the importance of this request in mind, we ask that you please direct all future communications to the attorneys listed below. Thank you for your consideration in this matter. It is our hope that we can avoid litigation. But if Rutgers continues to obstruct Ms. Neily’s access to public documents under such tenuous legal theories, Ms. Neily will pursue her claims in court, including attorneys’ fees.

Mary Ann Keys  
April 30, 2024  
Page 4

Respectfully submitted,

KING MOENCH & COLLINS LLP

By: /s/Matthew C. Moench  
Matthew C. Moench, Esq.

HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK PLLC

By: /s/Jason Torchinsky  
Jason Torchinsky, Esq.

# **Exhibit 7**

**From:** Casey Woods <[caseywoo@uec.rutgers.edu](mailto:caseywoo@uec.rutgers.edu)>  
**Sent:** Tuesday, May 7, 2024 12:57 PM  
**To:** Matthew Moench <[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)>  
**Cc:** Elizabeth Minott <[eminott@ogc.rutgers.edu](mailto:eminott@ogc.rutgers.edu)>  
**Subject:** Rutgers OPRA Request R008743

Good afternoon,

We are in receipt of your correspondence dated April 30, 2024, regarding OPRA request R008743. You noted that John Cycon called our office on April 11, and left a message for Mary Ann Keys. Mary Ann Keys did not receive that message and you did not indicate what number you called. In any event, because OPRA requires that all requests be made in writing, we closed the request due to lack of response from your client.

We did note that your client could contact us to submit a revised request at any time. Therefore at this time we have reopened the request, and we ask that you or your client provide the requested clarification within ten (10) days.

Please note, Mary Ann is currently on leave, therefore I will be responding to this request on behalf of the University.

Sincerely,

Casey Woods  
Director of Ethics, Training, Investigations, and Public Records  
[University Ethics & Compliance](#)  
848.239.0042  
(he/him)

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# **Exhibit 8**

**From:** Matthew Moench  
**Sent:** Sunday, May 19, 2024 12:45 AM  
**To:** Casey Woods <[caseywoo@uec.rutgers.edu](mailto:caseywoo@uec.rutgers.edu)>  
**Cc:** Elizabeth Minott <[eminott@ogc.rutgers.edu](mailto:eminott@ogc.rutgers.edu)>  
**Subject:** RE: Rutgers OPRA Request R008743

Hi Casey –

My client does not see a reason to narrow her requests and also does not see how the requests could possibly result in an overwhelming number of documents. We would like Rutgers to respond as requested. Alternatively, we'll file appropriate OPRA litigation.

Matt

**Matthew C. Moench, Esq.**

KING MOENCH & COLLINS LLP

51 Gibraltar Drive, Suite 2F | Morris Plains, NJ 07950 | (973) 998-6860 | [mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)

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**From:** Casey Woods <[caseywoo@uec.rutgers.edu](mailto:caseywoo@uec.rutgers.edu)>  
**Sent:** Tuesday, May 7, 2024 12:57 PM  
**To:** Matthew Moench <[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)>  
**Cc:** Elizabeth Minott <[eminott@ogc.rutgers.edu](mailto:eminott@ogc.rutgers.edu)>  
**Subject:** Rutgers OPRA Request R008743

Good afternoon,

We are in receipt of your correspondence dated April 30, 2024, regarding OPRA request R008743. You noted that John Cycon called our office on April 11, and left a message for Mary Ann Keys. Mary Ann Keys did not receive that message and you did not indicate what number you called. In any event, because OPRA requires that all requests be made in writing, we closed the request due to lack of response from your client.

We did note that your client could contact us to submit a revised request at any time. Therefore at this time we have reopened the request, and we ask that you or your client provide the requested clarification within ten (10) days.

Please note, Mary Ann is currently on leave, therefore I will be responding to this request on behalf of the University.

Sincerely,

Casey Woods

Director of Ethics, Training, Investigations, and Public Records

[University Ethics & Compliance](#)

848.239.0042

(he/him)

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# Exhibit 9

**From:** Casey Woods <[caseywoo@uec.rutgers.edu](mailto:caseywoo@uec.rutgers.edu)>  
**Sent:** Monday, May 20, 2024 9:31 AM  
**To:** Matthew Moench <[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)>  
**Cc:** Elizabeth Minott <[eminott@ogc.rutgers.edu](mailto:eminott@ogc.rutgers.edu)>  
**Subject:** Re: Rutgers OPRA Request R008743

Hi Matt,

Thanks for the response. We regularly receive requests for emails that return a substantial amount of potentially responsive records, and we will make every effort to work with you and your client to find a reasonable solution that accommodates the interests of both your client and the University to narrow the request before making a denial pursuant to OPRA. *N.J.S.A. 47:1A-5(g)*.

In instances which would require an extraordinary expenditure of time and effort, the University will assess a special service fee. Typically, the University would assess a fee for any request for documents requiring review over 200 pages. However, in order to review and potentially redact the over 30,000 pages responsive to your client's request, at our estimated rate of 40 pages per hour, it would require 750 hours of time, which is approximately 5 months. The University receives hundreds of OPRA requests per year and we would be unable to spend that much time on any one request, because that would substantially disrupt operations, and our ability to respond to other OPRA requests.

Therefore, we reiterate our request that you limit your search in some way, such as including a shorter time frame and/or limiting your search to emails "sent" rather than both "sent" and "received." We have not reviewed the results of the previous search, however, it is likely that because of the global impact of the events related to these search terms, there may be newsletters, news articles, and other emails received by this individual which may be technically responsive to your search, but may also be publicly available.

If you are able to limit your search, at least initially, you may always make a more expanded request later after reviewing some of the records, or a more focused request for emails specifically relevant to your client.

I know we missed your initial voicemail to discuss this, but I'm happy to set up some time to discuss options so that we can attempt to reasonably accommodate your client's request. My cell phone number is below.

Sincerely,

Casey Woods  
Director of Ethics, Training, Investigations, and Public Records  
[University Ethics & Compliance](#)

848.239.0042  
(he/him)

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**From:** Matthew Moench <[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)>

**Date:** Sunday, May 19, 2024 at 12:44 AM

**To:** Casey Woods <[caseywoo@uec.rutgers.edu](mailto:caseywoo@uec.rutgers.edu)>

**Cc:** Elizabeth Minott <[eminott@ogc.rutgers.edu](mailto:eminott@ogc.rutgers.edu)>

**Subject:** RE: Rutgers OPRA Request R008743

Hi Casey –

My client does not see a reason to narrow her requests and also does not see how the requests could possibly result in an overwhelming number of documents. We would like Rutgers to respond as requested. Alternatively, we'll file appropriate OPRA litigation.

Matt

**Matthew C. Moench, Esq.**

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**From:** Casey Woods <[caseywoo@uec.rutgers.edu](mailto:caseywoo@uec.rutgers.edu)>

**Sent:** Tuesday, May 7, 2024 12:57 PM

**To:** Matthew Moench <[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)>  
**Cc:** Elizabeth Minott <[eminott@ogc.rutgers.edu](mailto:eminott@ogc.rutgers.edu)>  
**Subject:** Rutgers OPRA Request R008743

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We did note that your client could contact us to submit a revised request at any time. Therefore at this time we have reopened the request, and we ask that you or your client provide the requested clarification within ten (10) days.

Please note, Mary Ann is currently on leave, therefore I will be responding to this request on behalf of the University.

Sincerely,

Casey Woods  
Director of Ethics, Training, Investigations, and Public Records  
[University Ethics & Compliance](#)  
848.239.0042  
(he/him)

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# **Exhibit 10**

**From:** Casey Woods <[caseywoo@uec.rutgers.edu](mailto:caseywoo@uec.rutgers.edu)>  
**Sent:** Wednesday, May 29, 2024 12:12 PM  
**To:** Matthew Moench <[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)>  
**Cc:** Elizabeth Minott <[eminott@ogc.rutgers.edu](mailto:eminott@ogc.rutgers.edu)>  
**Subject:** Re: Rutgers OPRA Request R008743

Hi Matt,

Following-up once again to attempt to resolve this matter. Thanks!

As ever,

Casey  
848.239.0042

**From:** Casey Woods <[caseywoo@uec.rutgers.edu](mailto:caseywoo@uec.rutgers.edu)>  
**Date:** Monday, May 20, 2024 at 9:30 AM  
**To:** Matthew Moench <[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)>  
**Cc:** Elizabeth Minott <[eminott@ogc.rutgers.edu](mailto:eminott@ogc.rutgers.edu)>  
**Subject:** Re: Rutgers OPRA Request R008743

Hi Matt,

Thanks for the response. We regularly receive requests for emails that return a substantial amount of potentially responsive records, and we will make every effort to work with you and your client to find a reasonable solution that accommodates the interests of both your client and the University to narrow the request before making a denial pursuant to OPRA. *N.J.S.A. 47:1A-5(g)*.

In instances which would require an extraordinary expenditure of time and effort, the University will assess a special service fee. Typically, the University would assess a fee for any request for documents requiring review over 200 pages. However, in order to review and potentially redact the over 30,000 pages responsive to your client's request, at our estimated rate of 40 pages per hour, it would require 750 hours of time, which is approximately 5 months. The University receives hundreds of OPRA requests per year and we would be unable to spend that much time on any one request, because that would substantially disrupt operations, and our ability to respond to other OPRA requests.

Therefore, we reiterate our request that you limit your search in some way, such as including a shorter time frame and/or limiting your search to emails "sent" rather than both "sent" and "received." We have not reviewed the results of the previous search, however, it is likely that because of the global impact of the events related to these search terms, there may be newsletters, news articles, and other emails received by this individual which may be technically responsive to your search, but may also be publicly available.

If you are able to limit your search, at least initially, you may always make a more expanded request later after reviewing some of the records, or a more focused request for emails specifically relevant to your client.

I know we missed your initial voicemail to discuss this, but I'm happy to set up some time to discuss options so that we can attempt to reasonably accommodate your client's request. My cell phone number is below.

Sincerely,

Casey Woods  
Director of Ethics, Training, Investigations, and Public Records  
[University Ethics & Compliance](#)  
848.239.0042  
(he/him)

**R U Concerned?**  
We R Listening

Report your concerns to the [Rutgers Helpline](#) at [1.833.RU.ETHIC](tel:1.833.RU.ETHIC)

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**From:** Matthew Moench <[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)>  
**Date:** Sunday, May 19, 2024 at 12:44 AM  
**To:** Casey Woods <[caseywoo@uec.rutgers.edu](mailto:caseywoo@uec.rutgers.edu)>  
**Cc:** Elizabeth Minott <[eminott@ogc.rutgers.edu](mailto:eminott@ogc.rutgers.edu)>  
**Subject:** RE: Rutgers OPRA Request R008743

Hi Casey –

My client does not see a reason to narrow her requests and also does not see how the requests could possibly result in an overwhelming number of documents. We would like Rutgers to respond as requested. Alternatively, we'll file appropriate OPRA litigation.

Matt

**Matthew C. Moench, Esq.**

KING MOENCH & COLLINS LLP

51 Gibraltar Drive, Suite 2F | Morris Plains, NJ 07950 | (973) 998-6860 | [mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)

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**From:** Casey Woods <[caseywoo@uec.rutgers.edu](mailto:caseywoo@uec.rutgers.edu)>  
**Sent:** Tuesday, May 7, 2024 12:57 PM  
**To:** Matthew Moench <[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)>  
**Cc:** Elizabeth Minott <[eminott@ogc.rutgers.edu](mailto:eminott@ogc.rutgers.edu)>  
**Subject:** Rutgers OPRA Request R008743

Good afternoon,

We are in receipt of your correspondence dated April 30, 2024, regarding OPRA request R008743. You noted that John Cycon called our office on April 11, and left a message for Mary Ann Keys. Mary Ann Keys did not receive that message and you did not indicate what number you called. In any event, because OPRA requires that all requests be made in writing, we closed the request due to lack of response from your client.

We did note that your client could contact us to submit a revised request at any time. Therefore at this time we have reopened the request, and we ask that you or your client provide the requested clarification within ten (10) days.

Please note, Mary Ann is currently on leave, therefore I will be responding to this request on behalf of the University.

Sincerely,

Casey Woods  
Director of Ethics, Training, Investigations, and Public Records  
[University Ethics & Compliance](#)  
848.239.0042  
(he/him)

**R U Concerned?**  
We R Listening

Report your concerns to the [Rutgers Helpline](#) at [1.833.RU.ETHIC](tel:1.833.RU.ETHIC)

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(pro hac vice application forthcoming)

Attorneys for Plaintiff,  
Nicole Neily

---

NICOLE NEILY,

Plaintiff,

vs.

RUTGERS, THE STATE UNIVERSITY OF  
NEW JERSEY; MARY ANN KEYS, IN  
HER CAPACITY AS CUSTODIAN OF  
RECORDS, and CASEY WOODS, IN HIS  
CAPACITY AS ACTING CUSTODIAN OF  
RECORDS,

Defendants.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO.: ESX-L-

**ORDER TO SHOW CAUSE**

**SUMMARY ACTION**

This matter having been open to the Court by Matthew C. Moench, Esq., and Jason Torchinsky, Esq., attorneys for the Plaintiff, and seeking relief by way of summary action pursuant to R. 4:67-1(a) based upon the facts set forth in the Verified Complaint and supporting papers filed herewith; and the Court having determined this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for other good cause shown,

It is on this day of \_\_\_\_\_, 2024 **ORDERED** that Rutgers, the State University of New Jersey, Mary Ann Keys, in her official capacity as Custodian of Records, and Casey Woods, in his official capacity as acting custodian of records, to appear and show cause on the

day of \_\_\_\_\_, 2024 before The Honorable \_\_\_\_\_ at the Essex County Courthouse, 470 Dr. Martin Luther King, Jr. Blvd, Newark, New Jersey 07102 at \_\_\_\_\_ o'clock or soon thereafter as counsel can be heard, why judgment should not be entered as follows:

- A. Ordering Defendants to provide Plaintiff with immediate access to the records requested;
- B. Awarding Plaintiff counsel fees and costs of suit; and
- C. Awarding other such relief as may be fair, equitable and necessary.

And it is ***further ORDERED*** that:

1. A copy of the order to show cause, verified complaint and all supporting documents be served on the Defendants personally or by certified mail, return receipt requested, within \_\_\_ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.
2. The Plaintiff is to file with this Court proof of service of the pleadings on the Defendants no later than three days before the return date.
3. Defendants shall file and serve a written answer and opposition papers to this order to show cause and the relief requested in the Verified Complaint by \_\_\_\_\_, 2024. The answering opposition papers must be filed with the Clerk of the Superior Court in the County listed above and copy of the papers must be sent directly to the Chambers of the Judge.
4. Plaintiff must file any written reply to Defendants' opposition by \_\_\_\_\_, 2024. The reply papers must be filed with the Clerk of the Superior Court in the County listed above and a copy of the reply papers must be sent directly to the Chambers of the Judge.
5. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers and relief may be granted by default, provided the Plaintiff files a proof of service and proposed form of order at least 3 days prior to the return date.
6. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers and relief may be granted by default, provided the Plaintiff files a proof of service and proposed form of order at least 3 days prior to the return date.
7. Defendants take notice: the plaintiff has filed a lawsuit against you in the New Jersey Superior Court. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer in opposition papers and proof of service before the return date of the order to show cause. Paragraph 3 outlines the date by which you are required to respond. These documents must be filed with the clerk of the Superior Court in the county listed above. You must also send a copy of your answer and opposition papers

to the plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your answer and opposition papers (with the fee) or judgement may be entered against you by default.

8. Defendants take notice: the plaintiff has filed a lawsuit against you in the New Jersey Superior Court. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer in opposition papers and proof of service before the return date of the order to show cause. Paragraph 3 outlines the date by which you are required to respond. These documents must be filed with the clerk of the Superior Court in the county listed above. You must also send a copy of your answer and opposition papers to the plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your answer and opposition papers (with the fee) or judgement may be entered against you by default.
9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised the contrary.

---

J.S.C.



**KMC** | KING, MOENCH  
& COLLINS LLP

ATTORNEYS AT LAW

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+ Also Member of the Arizona Bar  
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A limited liability partnership of Peter J. King, LLC, Moench Law,  
LLC & Collins Law, LLC

June 7, 2024

**VIA E-COURTS**

Superior Court of New Jersey, Essex County Vicinage  
470 Dr. Martin Luther King, Jr. Blvd.  
Newark, New Jersey 07102

**RE: Neily v. Rutgers, The State University of New Jersey, et al.  
Docket No. ESX-L-**

Dear Judge:

Plaintiff initiates this action via Verified Complaint and Order To Show Cause to proceed on a summary basis against Defendants Rutgers, The State University of New Jersey (“Rutgers”), Mary Ann Keys (“Keys”), in her capacity as Custodian of Records, and Casey Woods (“Woods”), in his capacity as acting custodian of records (collectively, “Defendants”). Plaintiff seeks the disclosure of documents in possession of a Rutgers professor containing key words such as “Hamas”, “Genocide”, “Antisemitism”, “ethnic cleansing” and similar search terms for a five-month time period. The search is specific, limited in time, and requests documents subject to disclosure under OPRA and the common law right of access.

Rutgers has confirmed that documents exist, and in fact, this particular professor is apparently so prolific in discussing these topics that Rutgers indicates that 30,000 pages of responsive documents exist. However, despite the existence of the documents, and their

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responsiveness to the request, Rutgers is refusing to produce them based solely on the volume of documents and is continuing to demand that Plaintiff limit her search.

Defendants are a massive state university with plenty of resources to respond to OPRA requests. There is no basis for denying a request solely because of the number of documents responsive to the request. If a Rutgers professor can generate 30,000 pages of documents related to “Hammas” and “ethnic cleansing” in a five-month period, Rutgers University should be able to similarly produce those to a member of the public who seeks to review such documents generated by a professor at a publicly funded university.

Plaintiff brings this action to compel production of the requested documents and recover attorneys’ fees.

### **STATEMENT OF FACTS**

The following facts are adduced from the Verified Complaint.

On March 5, 2024, Plaintiff submitted an OPRA request to Defendant Rutgers seeking records in the possession of Noura Erakat, an employee of Defendant Rutgers. Specifically, the request sought records dated between October 7, 2023 and March 5, 2024 that included eleven search terms related to Ms. Erakat’s political activism on campus shortly after the October 7, 2023 terrorist attack on Israel. See Ex. 1 of Verified Complaint.

Defendant Keys, who serves as the OPRA Administrator for Defendant Rutgers, responded to the request on March 20, 2024 stating that the records search indicated that there were 30,000 pages of responsive documents. Further, Defendant Keys asked Plaintiff to “greatly limit your keywords and/or date range in order for us to respond to your request.” See. Ex. 2 of Verified Complaint. Defendant Keys also stated that if Plaintiff did not respond within seven business days, she would consider the request withdrawn and closed.

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On March 29, 2024, Plaintiff timely responded to Defendant Keys' email, asking for additional information regarding the burden to the Defendants before limiting her request, including whether Defendant Keys believed that any exemptions would apply. See Ex. 3 of Verified Complaint. On April 2, 2024, Defendant Keys replied that she could only provide a page count and that Defendants "would flatly deny a request that had 30,000 pages as overly broad, burdensome, and disruptive to University operations." See Ex. 4 of Verified Complaint. Defendant Keys also restated her demand for Plaintiff to further refine her request.

In response to Defendant Keys' April 2, 2024 email, one of Plaintiff's attorneys at Holtzman Vogel attempted to reach Defendant Keys by phone. However, neither his call nor his voicemail were returned.

On April 24, 2024, Defendant Keys emailed Plaintiff stating that because she had "failed to provide the requested clarification," Defendants had withdrawn her OPRA request and considered it closed. See Ex. 5 of Verified Complaint. On April 30, 2024, Plaintiff's counsel sent a letter to Defendants stating that Plaintiff had attempted to resolve the OPRA issue in good faith and that Defendants' ultimate denial of the OPRA request was unlawful. See Ex. 6 of the Verified Complaint. On May 7, 2024, Casey Woods, Defendant Rutgers' Director of Ethics, Training, Investigations, and Public Records replied to Plaintiff's April 30, 2024 letter. Mr. Woods' correspondence indicated that Ms. Keys was on leave and he was assuming her responsibilities as it relates to responding to OPRA requests. Mr. Woods additionally stated that the April 11, 2024 call from Plaintiff's counsel was not received, and even if it had been it would not be responded to as OPRA requests must be made in writing. See Ex. 7 of the Verified Complaint. This was contrary to Defendant Keys' email message on April 2, 2024 which indicated a call would be

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acceptable. Nevertheless, Mr. Woods indicated that the OPRA request would be reopened if Plaintiff clarified the request within ten days.

On May 19, 2024, Plaintiff's counsel communicated to Mr. Woods that Plaintiff did not wish to further narrow her requests and believed that they were reasonable in time, scope, and subject matter. See Ex. 8 of the Verified Complaint. On May 20, 2024, Mr. Woods replied stating that they would not respond and that it would take 750 hours for Defendants to produce the documents as requested. Mr. Woods did not include a specific fee for Defendants to review the records requested. See Ex. 9 of the Verified Complaint. On May 27, 2024, Mr. Woods reached out again to see if Plaintiff wished to limit her requests, which she does not. See Ex. 10 of the Verified Complaint.

### **LEGAL ARGUMENT**

#### **I. THIS ACTION SHOULD PROCEED IN A SUMMARY MANNER.**

The Open Public Records Act authorizes “[a] person who is denied access to a government record by the custodian of the record, . . . may institute a proceeding to challenge the custodian’s decision by filing an action in Superior Court.” N.J.S.A. 47:1A-6. Once instituted, “[a]ny such proceeding shall proceed in a summary or expedited manner.” Id. Here, because OPRA authorizes actions under it to proceed in a summary manner, the order to show cause should be granted so this matter may proceed in such fashion. R. 4:67-2(a). It a “procedural error” to deny a requester the ability to proceed in a summary manner and instead force OPRA cases through the litigation process and a summary judgment application. Courier News v. Hunterdon County Prosecutor’s Office, 358 N.J. Super. 373, 379 (App. Div. 2003). Therefore, in light of the foregoing and the Legislature’s directive that OPRA actions proceed in a summary manner, it is requested the Court

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sign the Order to Show Cause so that this action may proceed in a summary manner and expedited resolution.

**II. THE DEFENDANTS' RESPONSE TO DENY PLAINTIFF'S OPRA REQUEST WAS UNLAWFUL, AND SUBSEQUENT COMMUNICATIONS FROM DEFENDANTS AMOUNT TO A CONTINUAL DENIAL.**

As outlined in the Verified Complaint, Plaintiff requested records from a Defendant Rutgers employee that included eleven search terms over the span of about five months. Defendants then made several improper attempts that Plaintiff refine her request as there were 30,000 responsive records as originally requested. After attempts to further discuss the request, Plaintiff's OPRA request was effectively denied.

N.J.S.A. 47:1A-5(g) generally places the burden upon the custodian of a public record to state the 'specific basis' for the denial of access." Gannett New Jersey Partners, LP v. Cnty. Of Middlesex, 379 N.J. Super. 205, 215 (App. Div. 2005).

Defendants stated that the reason for the denial is that the request was broad, burdensome, and disruptive to the operations of Rutgers. N.J.S.A. 47:1A-5(g) further states that if "a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency." While that provision is not further defined by the law, in N.J. Bldrs Ass'n v. COAH, 390 N.J. Super. 166 (App. Div. 2007) the court addressed when a request could be considered substantially disruptive to warrant a government agency to deny a request and seek reasonable accommodations. There, the court found that a request would disrupt operations when the request did not comply with OPRA because it required the agency to do research and that a seven-day window to respond was not possible without significant disruption.

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In this case, none of those factors exist. The search terms are clearly defined, and the request is limited to documents from one professor in a five-month window. The fact that those searches produced 30,000 pages of documents does not show that the request would substantially disrupt operations. In fact, Rutgers has already conducted the search and did so within fifteen days of the request. There is no disruption in conducting the research and Rutgers has already had over two months since that time to review and redact if necessary. They have failed to do so unlawfully withholding the responsive documents.

Similarly, given the size and resource of Rutgers University there is no basis for claiming that producing documents which were created by or in the process of one professor for a five-month window is “unduly burdensome.” The fact that one professor could have such responsive documents in light of the limited and specific search terms shows that it is not impossible or impractical to produce such documents. Documents simply need to be reviewed for any privileges or exceptions, which should be relatively minimal given that the documents are those in the possession of a professor.

Finally, the notion that it would take 750 hours to review 30,000 pages of documents is not realistic or reasonable. However, ultimately that time or cost is incumbent upon Rutgers to bear.

This Court should find that Defendants improperly denied Plaintiff’s OPRA request as it is clear it is not unduly burdensome to conduct the search (which has already been done), and Rutgers has now had over two months to review and produce the documents.

### **III: PLAINTIFF IS ENTITLED TO RECOVER LEGAL FEES.**

If the Court orders Defendants to produce the records at issue, the Court must also find that Plaintiff is the prevailing party. Under OPRA’s fees-shifting provisions, Plaintiff must be awarded

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a reasonable attorneys' fee and costs. N.J.S.A. 47:1A-6; Mason v. City of Hoboken, 196 N.J. 51, 79 (2008).

### **CONCLUSION**

For the foregoing reasons, this Court should enter the Order to Show Cause allowing this litigation to proceed in a summary manner, and further Defendants to produce the requested records and pay Plaintiff's attorney fees.

Very truly yours,

s/Matthew C. Moench

MATTHEW C. MOENCH



# Civil Case Information Statement

## Case Details: ESSEX | Civil Part Docket# L-003948-24

**Case Caption:** NEILY NICOLE VS RUTGERS UNIVERSITY

**Case Initiation Date:** 06/07/2024

**Attorney Name:** MATTHEW C MOENCH

**Firm Name:** KING, MOENCH & COLLINS, LLP

**Address:** 51 GIBRALTAR DR STE 2F

MORRIS PLAINS NJ 079501254

**Phone:** 9739986860

**Name of Party:** PLAINTIFF : Neily, Nicole

**Name of Defendant's Primary Insurance Company**

(if known): None

**Case Type:** OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

**Document Type:** Verified Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Does this case involve claims related to COVID-19?** NO

**Are sexual abuse claims alleged by: Nicole Neily?** NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** NO **Title 59?** NO **Consumer Fraud?** NO

**Medical Debt Claim?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

06/07/2024

Dated

/s/ MATTHEW C MOENCH

Signed

