

# OPRA GOVERNMENT RECORD & RIGHT TO ACCESS EXEMPTIONS

The following record types are considered exempt from disclosure pursuant to the referenced Statute, Regulation, Rule, or other law. The New Jersey Department of Environmental Protection will refer to these exemptions by Statute or other law in its responses to a submitted Open Public Records Act record request.

The Department has correlated the below citations with the General Records Council's (GRC) list of 24 Exemptions from Disclosure. See [www.nj.gov/grc/public/exempt](http://www.nj.gov/grc/public/exempt).

## OPEN PUBLIC RECORDS ACT (N. J. S. A. 47-1A1 et seq.)

### N.J.S.A. 47:1A-1 - Legislative, findings, declarations

#### Expectation of Privacy

- A public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy

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

#### Creating A Record – exemption N.J.S.A. 47:1A-9; GRC Exemption No. 23 [State or federal statutes and regulations, Executive orders, etc.]

- Pursuant to the definition of a Government Record, a State Agency does not have to provide a record that does not exist or create a record in response to requests. This was recognized by the court in Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 537 (App. Div. March 2005).

#### Deliberative – GRC Exemption No. 1.

- The definition of a Government Record shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

#### Legislative Records – GRC Exemption No. 2.

- information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit
- any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members

#### Medical Examiner Records – GRC Exemption No. 3.

- any copy, reproduction or facsimile of any photograph, negative or print, including instant photographs and videotapes of the body, or any portion of the body, of a deceased person, taken by or for the

medical examiner at the scene of death or in the course of a post mortem examination or autopsy made by or caused to be made by the medical examiner except:

- a. when used in a criminal action or proceeding in this State which relates to the death of that person,
- b. for the use as a court of this State permits, by order after good cause has been shown and after written notification of the request for the court order has been served at least five days before the order is made upon the county prosecutor for the county in which the post mortem examination or autopsy occurred,
- c. for use in the field of forensic pathology or for use in medical or scientific education or research, or
- d. for use by any law enforcement agency in this State or any other state or federal law enforcement agency;

**Criminal investigation** – *GRC Exemption No. 3.*

- Criminal investigatory records

**Victim's records** – *GRC Exemption No.3.*

- Victims' records, except that a victim of a crime shall have access to the victim's own records

**Trade Secrets & Proprietary info** – *GRC Exemption No. 4.*

- Trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this paragraph, trade secrets shall include data processing software obtained by a public body under a licensing agreement which prohibits its disclosure

**Attorney Client Privilege** – *GRC Exemption No. 5.*

- Any record within the attorney-client privilege. This paragraph shall not be construed as exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege

**Computer Security** – *GRC Exemption No. 6.*

- Administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security

**Building Security** – *GRC Exemption No. 7.*

- Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein

**Security measures and Techniques** – *GRC Exemption No. 8.*

- Security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software

**Advantage to Bidders** – *GRC Exemption No. 9.*

- Information which, if disclosed, would give an advantage to competitors or bidders

**Public Employee Related** – *GRC Exemption No.10.*

- Information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position

**Risk Management** – *GRC Exemption No. 11.*

- Information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office

**Court Orders** – *GRC Exemption No. 12.*

- Information which is to be kept confidential pursuant to court order

**Honorable Discharge  
Certificates** – *GRC Exemption No. 13.*

- Any copy of form DD-214, or that form, issued by the United States Government, or any other certificate of honorable discharge, or copy thereof, from active service or the reserves of a branch of the Armed Forces of the United States, or from service in the organized Militia of the State, that has been filed by an individual with a public agency, except that a veteran or the veteran's spouse or surviving spouse shall have access to the veteran's own records

**Personal Identifying Info** – *GRC Exemption No. 14 [SS#], 15 [CC#], 16 [Phone #] & 17 [DL#].*

- That portion of any document which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person; except for:
  - a. use by any government agency, including any court or law enforcement agency, in carrying out its functions,
  - b. or any private person or entity acting on behalf thereof
  - c. or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the Division of Motor Vehicles as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and
  - d. except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor.

## **Higher Education Exceptions – GRC Exemption No. 18.**

A government record shall not include, with regard to any public institution of higher education, the following information, which is deemed to be privileged and confidential:

- Pedagogical, scholarly and/or academic research records and/or the specific details of any research project conducted under the auspices of a public higher education institution in New Jersey, including, but not limited to research, development information, testing procedures, or information regarding test participants, related to the development or testing of any pharmaceutical or pharmaceutical delivery system, except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available;
- test questions, scoring keys and other examination data pertaining to the administration of an examination for employment or academic examination;
- records of pursuit of charitable contributions or records containing the identity of a donor of a gift if the donor requires non-disclosure of the donor's identity as a condition of making the gift provided that the donor has not received any benefits of or from the institution of higher education in connection with such gift other than a request for memorialization or dedication;
- valuable or rare collections of books and/or documents obtained by gift, grant, bequest or devise conditioned upon limited public access;
- information contained on individual admission applications; and
- information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.

## **N.J.S.A. 47:1A-1.2 - GRC Exemption No. 19.**

### **Restricted access to biotechnology trade secrets**

- Biotechnology Exemption**
- When federal law or regulation requires the submission of biotechnology trade secrets and related confidential information, a public agency shall not have access to this information except as allowed by federal law.
  - A public agency shall not make any biotechnology trade secrets and related confidential information it has access to under this act available to any other public agency, or to the general public, except as allowed pursuant to federal law.

## **N.J.S.A. 47:1A-2.2 – GRC Exemption No. 20.**

### **Access to create information by convicted prohibited; exceptions**

- a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or the provisions of any other law to the contrary, where it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information, the right of access provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented shall be denied.

## Limits to Convicts

- b. A government record containing personal identifying information which is protected under the provisions of this section may be released only if the information is necessary to assist in the defense of the requestor. A determination that the information is necessary to assist in the requestor's defense shall be made by the court upon motion by the requestor or his representative.
- c. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, or any other law to the contrary, a custodian shall not comply with an anonymous request for a government record which is protected under the provisions of this section.

**N.J.S.A. 47:1A-3** – *GRC Exemption No. 21.*

## Access to records of investigation in progress

- a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced. Whenever a public agency, during the course of an investigation, obtains from another public agency a government record that was open for public inspection, examination or copying before the investigation commenced, the investigating agency shall provide the other agency with sufficient access to the record to allow the other agency to comply with requests made pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

## Ongoing Investigations

- b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, the following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable, of a request for such information:
  - where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;
  - if an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notification of next of kin of any victims of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or Court Rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;
  - if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or Court Rule;
  - information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the release of such information is contrary to existing law or court rule;
  - information as to the identity of the investigating and arresting personnel and agency and the length of the investigation;
  - information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police; and
  - information as to circumstances surrounding bail, whether it was posted and the amount thereof.

- c. Notwithstanding any other provision of this subsection, where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release, such information may be withheld. This exception shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety. Whenever a law enforcement official determines that it is necessary to withhold information, the official shall issue a brief statement explaining the decision.

**N.J.S.A. 47:1A-5.a Times during which records may be inspected, examined, copied; access; copy fees**

**Record Access**

- The custodian of a government record shall permit the record to be inspected, examined, and copied by any person during regular business hours; or unless a government record is exempt from public access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

**N.J.S.A. 47:1A-5.f Form for requests**

Pursuant to the Open Public Records Act and the State of New Jersey General Records Council Advisory Opinion # 2006-01, the following standards must be adhered to when submitting a record request under N.J.S.A. 47:1A-1 et seq. Failure to adhere to these standards will result in the Department denying your request after an attempt has been made to rectify the matter with you to no result.

**Valid Request**

- An Open Public Records Act records request must be on the New Jersey Department of Environmental Protection's official Government Records Request form.
- An Open Public Records Act records request must request with specificity government records and not information.
- An Open Public Records Act records request must contain a "brief description" of the records sought. See Bent v. Twp. Of Stafford Police Dept., N.J. Super. 30, 33 (App. Div. 2005).

**N.J.S.A. 47:1A-5.g Times during which records may be inspected, examined, copied; access; copy fees**

**Substantially Disrupt Agency Operations**

- 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.

**N.J.S.A. 47:1A-9 Other laws, regulations, privilege unaffected**

**Executive Privilege**

- a. The provisions of this act, P.L.2001, c.404 (C.47:1A-5 et al.), shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.); any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.
- b. The provisions of this act, P.L.2001, c.404 (C.47:1A-5 et al.), shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

N.J.S.A. 47:1A-10 – GRC Exemption No.24.

### **Personnel. Pension records not considered public documents, exceptions**

#### **Access to Personnel & Pension Records**

Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that:

- an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;
- personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and
- data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

- Following Exempted pursuant to N.J.S.A. 47:1A-9; GRC Exemption No. 23 -

### **Executive Order # 11 :2 - Governor Brendan Byrne – November 15, 1979**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

- Except as otherwise provided by law or when essential to the performance of official duties or when authorized by a person in interest, an instrumentality of government shall not disclose to anyone other than a person duly authorized by this State or the United States to inspect such information in connection with his official duties, personnel or pension records of an individual, except that the following shall be public

#### **Personnel and Pension Records**

- a. An individual's name, title, position, salary, payroll record, length of service in the instrumentality of government and in the government, date of separation from government service and the reason therefor; and the amount and type of pension he is receiving;
- b. Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but in no event shall detailed medical or psychological information be released.

### **Executive Order # 79 :1 - Governor Brendan Byrne – October 1, 1979**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

#### **Procurement Records of Surveillance Equipment & Investigatory Services**

- Procurement documents of any State department or agency, concerning surveillance equipment and investigatory services, when disclosure of the equipment type and the subject matter of the

services could make known to the target of an investigation the fact that an investigation is in progress.

### **Executive Order # 79 :2 - Governor Brendan Byrne – October 1, 1979**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

#### **Procurement Records of Alarm Systems**

- Procurement documents of any State department or agency; concerning installation of intrusion and detection alarm systems, when disclosure could facilitate illegal entry.

### **Executive Order # 79 :3 - Governor Brendan Byrne – October 1, 1979**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

#### **Procurement Records of Computer Systems**

- Procurement documents of any State department or agency, concerning studies of computer system security, including final reports, when disclosure could facilitate fraudulent use of the information.

### **Executive Order # 21 :1A - Governor James E. McGreevey - July 8, 2002**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

#### **Domestic Security**

- Any government record where the inspection, examination or copying of that record would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.

### **Executive Order # 26 :3 - Governor James E. McGreevey - August 13, 2002**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

#### **Job Applicants Info**

- No public agency shall disclose the resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing. The resumes of successful candidates shall be disclosed once the successful candidate is hired. The resumes of unsuccessful candidates may be disclosed after the search has been concluded and the position has been filled, but only where the unsuccessful candidate has consented to such disclosure.

### **Executive Order # 26 :4A - Governor James E. McGreevey - August 13, 2002**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

#### **Harassment & Hostile Environment Records**

- Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments in accordance with the State Policy Prohibiting Discrimination, Harassment and Hostile Environments in the Workplace adopted by Executive Order No. 106 (Whitman 1999), whether open, closed or inactive.

### **Executive Order # 26 :4B - Governor James E. McGreevey - August 13, 2002**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

#### **Individual Info**

- Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation;
- Information in a personal income or other tax return;
- Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness except as otherwise required by law to be disclosed.

### **Executive Order # 26 :4C – Governor James E. McGreevey - August 13, 2002**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

#### **Examination Material**

- Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing.

### **Executive Order # 26 :4D - Governor James E. McGreevey - August 13, 2002**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

#### **Another Departments Records**

- Records of a department or agency in the possession of another department or agency when those records are made confidential by a regulation of that department or agency adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.

### **Executive Order # 26 :4E - Governor James E. McGreevey - August 13, 2002**

(Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

#### **Offsite Records**

- Records of a department or agency held by the Office of Information Technology (OIT) or the State Records Storage Center of the Division of Archives and Records Management (DARM) in the Department of State, or an offsite storage facility outside of the regular business office of the agency. Such records shall remain the legal property of the department or agency and be accessible for inspection or copying only through a request to the proper custodian of the department or agency.
- In the event that records of a department or agency have been or shall be transferred to and accessioned by the State Archives in the Division of Archives and Records Management, all such records shall become the legal property of the State Archives, and requests for access to them shall be submitted directly to the State Archives.

### **NJDEP Proposed Rule: N.J.A.C. 7:1D-3 & 4; Proposed Amendments: N.J.A.C. 7:1-1.3(b)**

(As published in the New Jersey Register on July 2, 2002, Pursuant to Governor Hughes Executive Order # 9 in 1963, and N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected, Affirmed by Governor James E. McGreevey Executive Orders 21 dated July 8, 2002, Executive Order 26 dated August 13, 2002 and as modified by Governor James E. McGreevey Executive Order # 26 attachment circular re: Summary of State Rule Changes dated August 13, 2002.)

#### **N.J.A.C. 7:1D-3.2.b “In but not Of” Agencies**

##### **“In but not Of” Agencies**

- The following agencies allocated to the Department to satisfy the requirements of Article V, Section 4, Paragraph 1 of the New Jersey Constitution, commonly known as “in but not of” agencies, shall designate a custodian of records who shall be responsible for requests for access to records held or controlled by that agency:

1. New Jersey Environmental Infrastructure
2. Board of Commissioners of Pilotage
3. Delaware & Raritan Canal Commission
4. Brownfield Redevelopment Task Force
5. Clean Ocean and Shore Trust
6. Environmental Risk Assessment & Risk Management Study Commission
7. The Pinelands Commission
8. New Jersey Water Supply Authority
9. New Jersey Highlands Council

### **N.J.A.C. 7:1D-3.4.a Submitting Record Requests to the Department**

#### **Method of Submitting Record Requests**

- Request forms shall be hand-delivered during normal business hours of the public agency, mailed, or transmitted electronically by e-mail or web site access by the requester to the Department Custodian of records. Request forms for the “in but not of” agencies listed in N.J.A.C. 7:1D-3.2 shall be hand-delivered or mailed to those agencies during normal business hours.

### **N.J.A.C. 7:1D-3.4.c Deficient Record Requests**

#### **Deficient Record Requests**

- Upon receipt of the request form, the custodian shall review the request form for clarity and completeness. If the request form is unclear as to the government record requested, the custodian shall advise the requester of the deficiency, provided contact information is included on the form. The custodian may require the requester to provide additional information to identify the record or to ascertain the requester’s identity and status to determine whether access is authorized. The custodian shall deny a request for access if the request is unclear or incomplete after attempting to reach a reasonable resolution with the requester. A request shall not be deemed complete until the pre-payment required under this section is received by the custodian.

### **N.J.A.C. 7:1D-3.4.i Substantially Disrupt Agency Operations**

#### **Substantially Disrupt Agency Operations**

- 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 resolution with the requester that accommodates the interests of the requester and agency.

### **N.J.A.C. 7:1D-3.10.b & c Requests for copies of a government record in a specified medium**

#### **Objects to Special Charge & Not Withdraws Request**

- If the agency does not maintain the government record in the medium requested, the custodian shall convert the record to the medium requested if reasonable or provide a copy in some other meaningful medium. If a requester asks for copies of a record in a medium not routinely used by the agency, not routinely developed or maintained by the agency, or requiring a substantial amount of manipulation or programming of information technology, the custodian may charge, in addition to the actual cost of duplication, a special charge which shall be reasonable and shall be based upon the cost of any extensive use of information technology or for the labor cost of providing the service actually incurred. The requester shall be given the opportunity to review and object to the charge prior to its being incurred. If the requester objects to the charge and refuses to withdraw the request, the custodian may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requester and the agency.

- Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined or copied is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the Department or agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies. The requester shall have the opportunity to review and object to the charge prior to its being incurred. If the requester objects to the charge and refuses to withdraw the request, the custodian may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requester and the agency.

### **N.J.A.C. 7:1D-4.2.a Records Designated Confidential**

- (a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other law, regulation promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court, or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:

#### **Green Acres & Natural Lands Trust Land Acquisitions**

1. Information related to Green Acres and Natural Lands Trust land acquisitions, program offerings and active projects, including appraisals, valuations and title investigations shall be made available for public inspection, examination and copying no later than 48 hours before formal action is to be taken on any land transaction, program offering or active project, unless the land transaction, program offering or active project is actively under negotiation, a binding contract has not been executed, or disclosure of the information would jeopardize the land transaction, program offering or active project.

#### **Mediation Proceedings**

2. Records relating to mediation proceedings conducted by or on behalf of the Department, except that any records that were open for public inspection, examination or copying prior to mediation shall continue to be available for public inspection, examination or copying during and after mediation. Final agreements resulting from mediation shall be available for public inspection, examination or copying.

#### **Identify of a Complainant**

3. Records that reveal the identity of a complainant;
4. The following information shall be withheld if the Department determines that the inspection, examination or copying of that record would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism:
  - i. Any inventory of enforcement resources, including standard operating procedures, compiled and any policies or plans compiled by the Department pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, including employee emergency contact information; and
  - ii. Information related to a nuclear power plant, which, if disclosed, would jeopardize the public health, safety and welfare or the security of the plant;
  - iii. Listing of Low Level Radioactive Waste generators including amounts of wastes generated and shielding designs for sources of radiation

#### **Terrorism & Homeland Security Concerns**

- iv. National defense related information from Lockheed Martin's Aegis Radar System facility;
- v. Environmental Emergency Procedures plans such as emergency procedures for Wastewater Treatment facilities pursuant to N.J.A.C. 7:14A-6.12(D); and
- vi. Inundation maps submitted as part of Emergency Action Plans pursuant to N.J.A.C. 7:20-1.7f and 1.11i.
- vii. Discharge Prevention Containment and Countermeasures and Discharge Cleanup;
- viii. Removal Plans and related general site plans;
- ix. Off-Site Consequence Analyses developed pursuant to the Toxic Catastrophe Prevention Act;
- x. Radioactive Materials Licenses issued by the Nuclear Regulatory Commission and advisories issued by the Nuclear Regulatory Commission that address "lessons learned", security or enforcement issues;

**EPA & Federal  
Confidential Records**

- 5. Information provided by any Federal agency, including the U.S. Environmental Protection Agency, on condition it be maintained confidential pertaining to enforcement of any Federally delegated program or joint Federal/State enforcement action

**NJDEP Proposed Rule: N.J.A.C. 7:1D-4a** (As published in the New Jersey Register on July 2, 2002, Pursuant to Governor Hughes Executive Order # 9 in 1963, and N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected, Affirmed by Governor James E. McGreevey Executive Orders 21 dated July 8, 2002, and being denied by the NJDEP in applying a common-law balancing test in claiming that the public interest for Confidentiality outweighs the private right to access pursuant to N.J.S.A.: 47:1A-8.)

**Threatened &  
Endangered Species**

- 1. The location of threatened and/or endangered plant and animal species, rare plant and animal species, and natural communities; and the location of historic and/or archeological sites where the record is not being used for permit or enforcement decisions;

**CASE LAW** (Pursuant to N.J.S.A. 47:1A-9a – Other laws regulations, privileges unaffected)

**Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 537 (App. Div. March 2005)**

In this decision the court reaffirmed that "the Government Records Council (Council), ...has explained that 'OPRA does not require record custodians to conduct research among its records for a requestor and correlate data from various government records in the custodian's possession.'

**Research & requests  
for Info**

**Gannett N.J. Partners v. Middlesex, 379 N.J. Super 205 (App. Div. July 2005)**

OPRA does not authorize a party to make a blanket request for every document a public agency has provided another party in response to an OPRA request... (or non-OPRA request such as a subpoena).

"In addition, such a request seeks access not merely to public records but also into the nature and scope of a third party's inquiry to a government agency." (i.e. Information)

## **GRC OPINION on Research & Requests for Information**

### **Reda v. Township of West Milford, GRC Case No. 2002-58 (January 17, 2003)**

An individual sought information regarding a municipality's liability settlements but did not request any specific record. In rejecting the request, the Council noted that OPRA only allows requests for records, not requests for information, and therefore, it is 'incumbent on the requestor to perform any correlations and analysis he may desire.

## **Copyright Protected Records**

**Copyright  
Protected**

Any records that meet the definition of government record pursuant to N.J.S.A. 47:1A-1 and is copyright protected shall not be permitted to be reproduced in any manner. The records will be made available for an internal inspection only.