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ANNUAL REPORT

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# OPEN PUBLIC RECORDS ACT

JULY 2004

Governor James E. McGreevey  
State of New Jersey

Commissioner Bradley M. Campbell  
New Jersey Department of Environmental Protection

Office of the Records Custodian



# Foreword

I'm pleased to present the New Jersey Department of Environmental Protection's (NJDEP) Open Public Records Act, July 2004 Annual Report. This report details the number of Open Public Records Act requests received within the Department along with the monies spent processing these requests. As the report shows, the NJDEP receives the bulk of all Open Public Records Act requests within the State.

We continue to strive to make it as easy as possible for people to obtain information. For example, the NJDEP just recently announced the launch of a newly improved Web site that provides easy access to key environmental reports and other public documents seven days a week at no charge. The improved Web site further enhances the demonstrated efficiency, effectiveness and responsiveness of DEP's OPRA process. Easier, faster, real time access to public documents online through DEP Data Miner likely will reduce the number of OPRA requests submitted to the NJDEP. DEP Data Miner may be access at:

<http://www.nj.gov/dep/opra/online.html>

I have directed staff to continue to be responsive, accountable and open regarding providing of access to documents. The public's rights to know and have access to information are an essential part of the First Amendment. Therefore, we are committed to making sure people have easy and swift access to documents. The citizens of New Jersey deserve nothing less.

If you have any questions regarding this report, please contact the Office of the Records Custodian at 609-341-3121.

Bradley M. Campbell  
Commissioner

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Counselor and Legal Policy Advisor  
Dante DiPirro

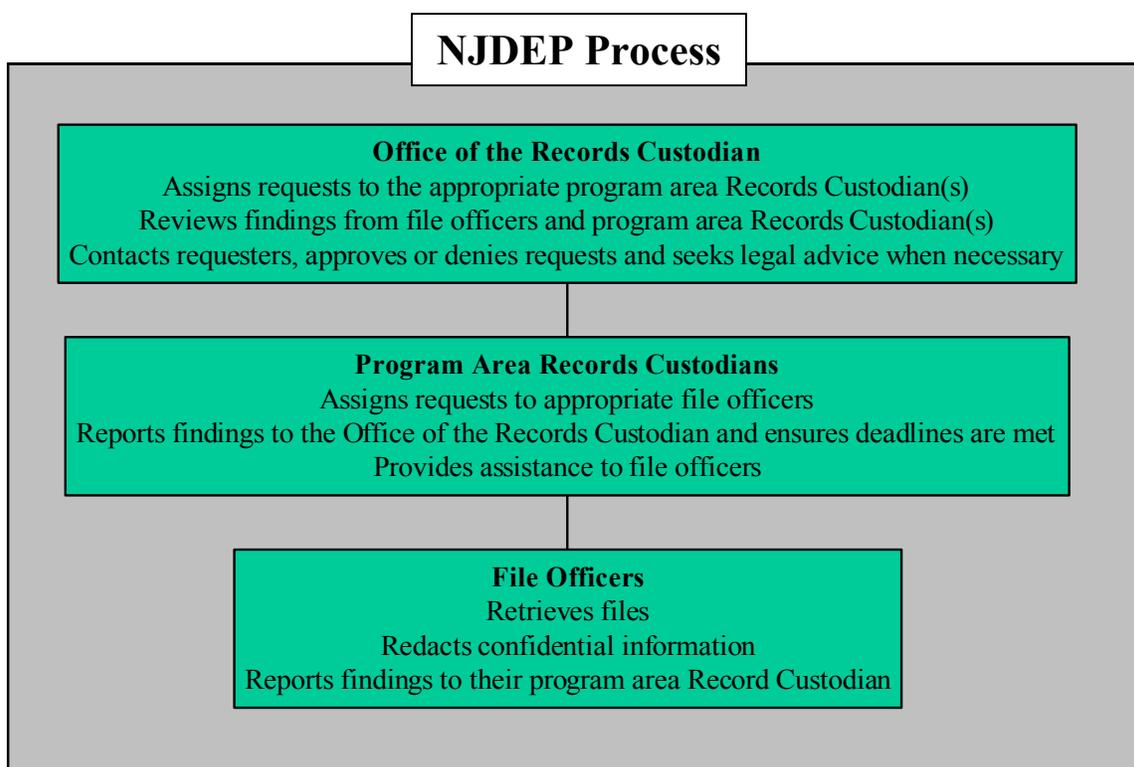
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# I. Introduction

The Open Public Records Act (OPRA) took effect on July 7, 2002. It establishes strict timeframes for providing access to New Jersey government records. Access must be provided within 7 business days except access to bills, vouchers and contracts must be immediate. If a record is in storage or archives, the agency must identify a time for the records to be made available.

In order to process requests within the strict timeframes, the New Jersey Department of Environmental Protection (NJDEP) created the Office of the Record Custodian (ORC) with a central staff of 9 employees. The ORC oversees all of the Department's OPRA activities and policy decisions. The NJDEP also assigned 10 Records Custodians and back ups in the various program areas of the Department along with approximately 150 file officers. The NJDEP not only puts it in writing to those submitting requests regarding whether or not records were located, but also provides those submitting OPRA requests with a courtesy phone call advising of the status of the request. The below chart illustrates the organizational structure and the related duties of NJDEP staff to comply with the directives of the Open Public Records Act:

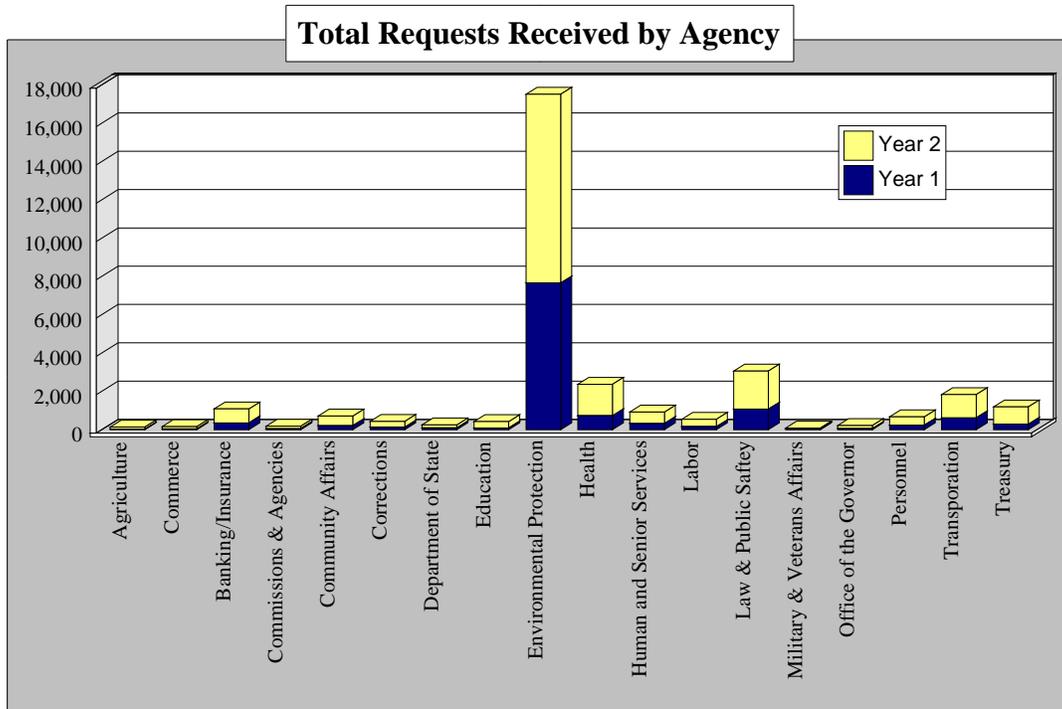


The NJDEP's OPRA process has proven efficient, effective and responsive. This report provides statistical information related to the handling of OPRA requests by the NJDEP and the state generally. The NJDEP has received 9,849 OPRA requests during its second year, which is in fact more than 55% of requests submitted to all state agencies.

## **II. Statistics for All State Agencies**

# OPRA Requests Received to Date

The following chart and table illustrate the number of OPRA requests received in the first and second year. The NJDEP has received 17,513 OPRA requests since inception, which is the majority of all requests received. In fact, more than half (55.06%) of all OPRA requests to a state agency were submitted to the NJDEP. The NJDEP received 2,185 more requests in its second year than its first. This represents a 28.5% increase in the number of requests handled by the NJDEP in the second year.

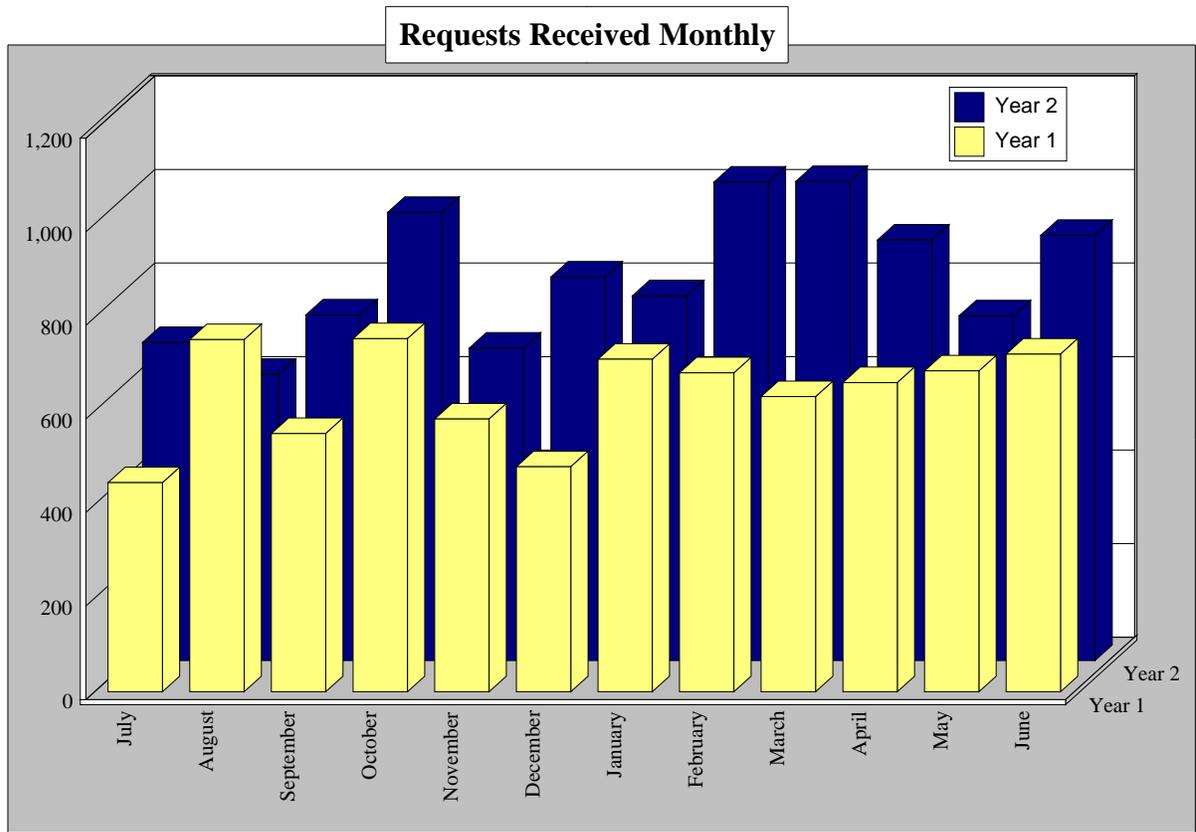


Department	Year 1	Year 2	Number of Requests	Percentage
Environmental Protection	7,664	9,849	17,513	55.06 %
Law & Public Safety	1,073	1,987	3,060	9.62 %
Health	735	1,637	2,372	7.46 %
Transportation	620	1,214	1,834	5.77 %
Treasury	293	897	1,190	3.74 %
Banking/Insurance	358	727	1,085	3.41 %
Human and Senior Services	336	587	923	2.90 %
Community Affairs	222	493	715	2.25 %
Personnel	237	440	677	2.13 %
Labor	165	378	543	1.71 %
Corrections	143	286	429	1.35 %
Education	90	336	426	1.34 %
Department of State	97	154	251	0.79 %
Office of the Governor	70	147	217	0.68 %
Commissions & Agencies	66	121	187	0.59 %
Commerce	52	110	162	0.51 %
Agriculture	32	108	140	0.44 %
Military & Veterans Affairs	35	51	86	0.27 %
<b>Total</b>	<b>12,288</b>	<b>19,522</b>	<b>31,810</b>	<b>100.00 %</b>

### **III. Statistics for NJDEP**

# Request Received Monthly

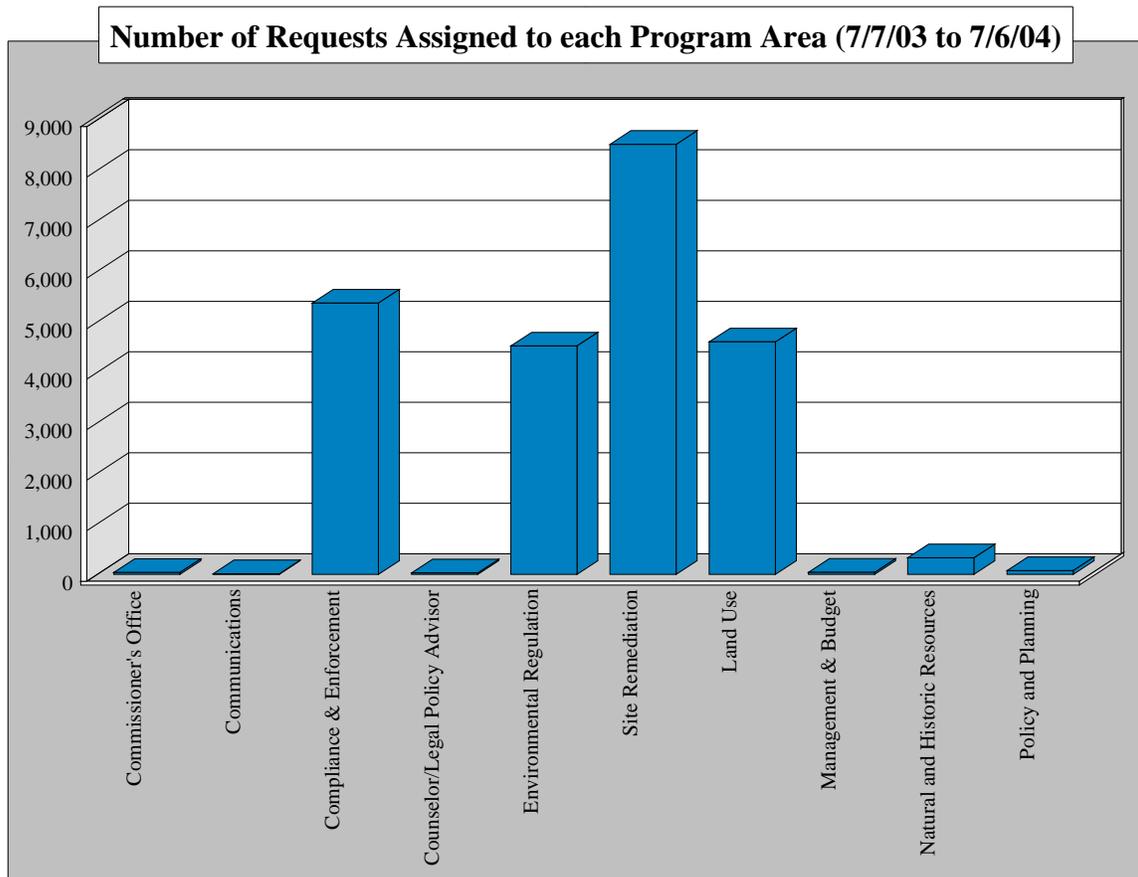
The following chart and table illustrate the number of requests submitted by month during the first two years of operation. The average number of requests submitted in our second year was 825 per month.



	Year 1	Year 2
July	447	680
August	753	612
September	552	739
October	755	958
November	583	668
December	481	820
January	711	780
February	682	1,023
March	631	1,024
April	661	899
May	686	737
June	722	909
<b>Total</b>	<b>7,664</b>	<b>9,849</b>

# Assignment of Requests

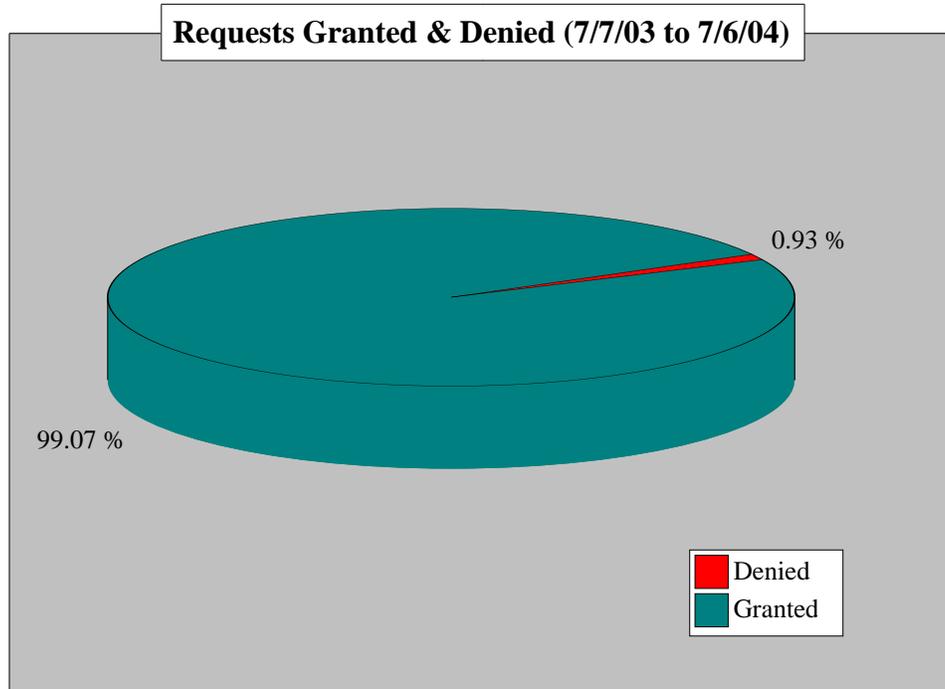
Each request received is assigned to the Record Custodian(s) in the appropriate program area(s). The NJDEP received a total of 9,849 OPRA requests between 7/7/03 - 7/6/04. However, multiple programs must often respond to single OPRA request. For example, a request for all Department records for a given site may require file searches by a number of program areas (Site Remediation, Land Use, etc.). As a result, NJDEP's programs actually handled 23,530 "requests" over this time period. By way of example, our Site Remediation program was involved in 8,514 of the 9,849 requests submitted to the Department (i.e. over 80%). The bar chart below is based on the 9,849 request figure; it shows the number of requests assigned to each program area. The table below is based on the 23,530 "requests" figure; it shows the percentages handled by each of the programs based on that figure.



Program Area	Number of Requests Assigned	Percentage
Site Remediation	8,514	36.18 %
Compliance & Enforcement	5,371	22.83 %
Land Use	4,603	19.56 %
Environmental Regulation	4,523	19.22 %
Natural and Historic Resources	329	1.40 %
Policy and Planning	73	0.31 %
Management & Budget	41	0.17 %
Commissioner's Office	36	0.15 %
Counselor/Legal Policy Advisor	29	0.12 %
Communications	11	0.05 %
<b>Total</b>	<b>23,530</b>	<b>100.00 %</b>

# Requests Granted & Denied

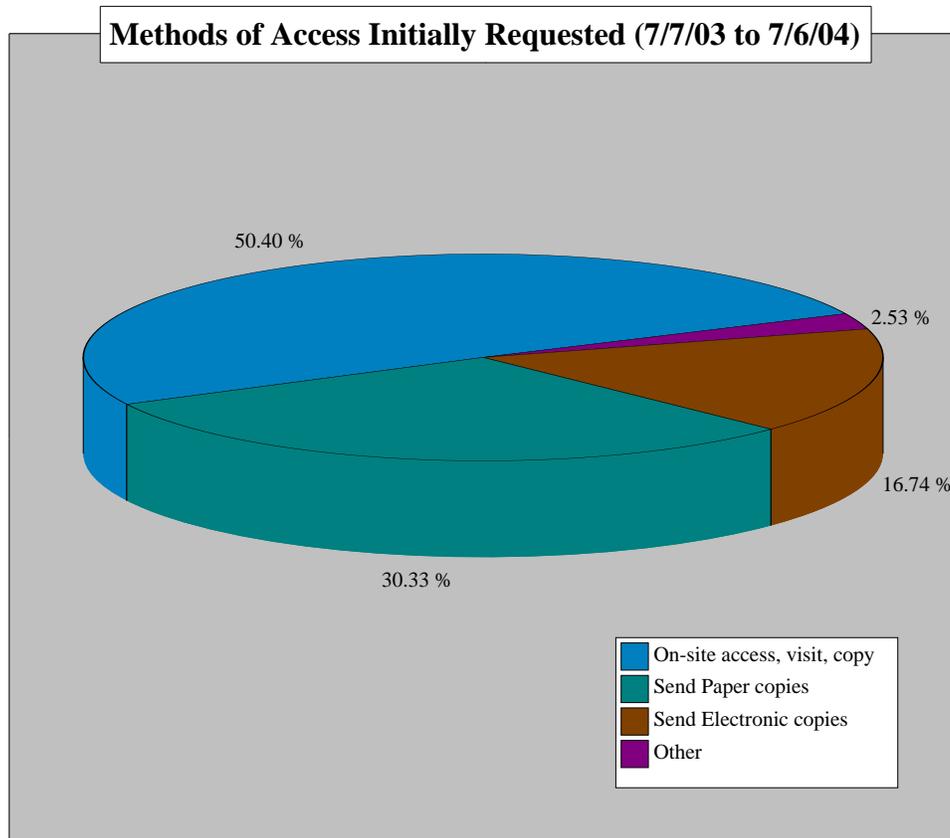
The following chart and table illustrate the number of requests granted and denied out of the 9,849 requests received by the Department in our second year. A request is marked "denied" for any of the following reasons: the request was improperly submitted, incomplete or subject to an exception. A request is considered "granted" when the file search is completed and the requestor has been notified. The chart below shows that 99% of all requests were granted.



Disposition	Number of Requests	Percentage
Granted	9,757	99.07 %
Denied	92	0.93 %
<b>Total</b>	<b>9,849</b>	<b>100.00 %</b>

# Methods of Access

Requestors are given several choices on how they wish to receive access to a government record: in-person review (reviews the documents at a NJDEP office); purchase of paper copies; purchase of electronic copies; or other access method. The following chart and table illustrate what the requestors chose between 7/7/03 & 7/6/04. As the below chart shows, almost half elected to come in to review their requested documents at the NJDEP's offices.

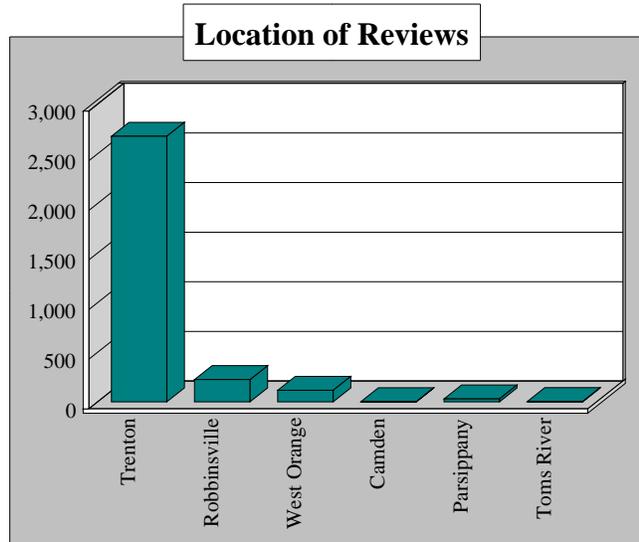


Access Method	Number of Requests	Percentage
On-site access, visit, copy	4,964	50.40 %
Send Paper copies	2,987	30.33 %
Send Electronic copies	1,649	16.74 %
Other	249	2.53 %
<b>Totals:</b>	<b>9,849</b>	<b>100.00 %</b>

# In-Person Reviews

In-person reviews are an efficient way to provide requestors access for requests that generate large numbers of records. Requestors schedule appointments and come to our offices to conduct their own file review. The table and chart below show the number of file reviews scheduled at all of NJDEP's main offices between 7/7/03 & 7/6/04. In all, the Department had scheduled 3,053 appointments in our second year. In our first year a total of 1,702 appointments were scheduled. This represents a nearly 80% increase in the number of appointments scheduled for our second year. It should be noted requestors often schedule a single appointment for multiple requests. As such, a total of 4,229 requests were scheduled for appointments in our second year.

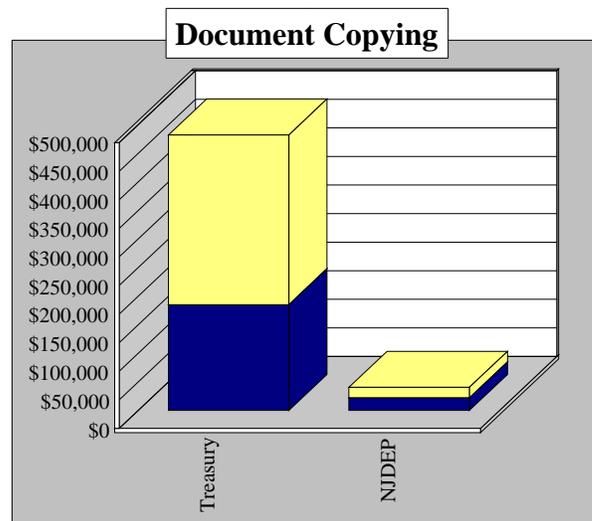
Location	# of In-Person Reviews
Trenton	2,677
Robbinsville	225
West Orange	116
Camden	2
Parsippany	30
Toms River	3
<b>Total</b>	<b>3,053</b>



# Document Copying

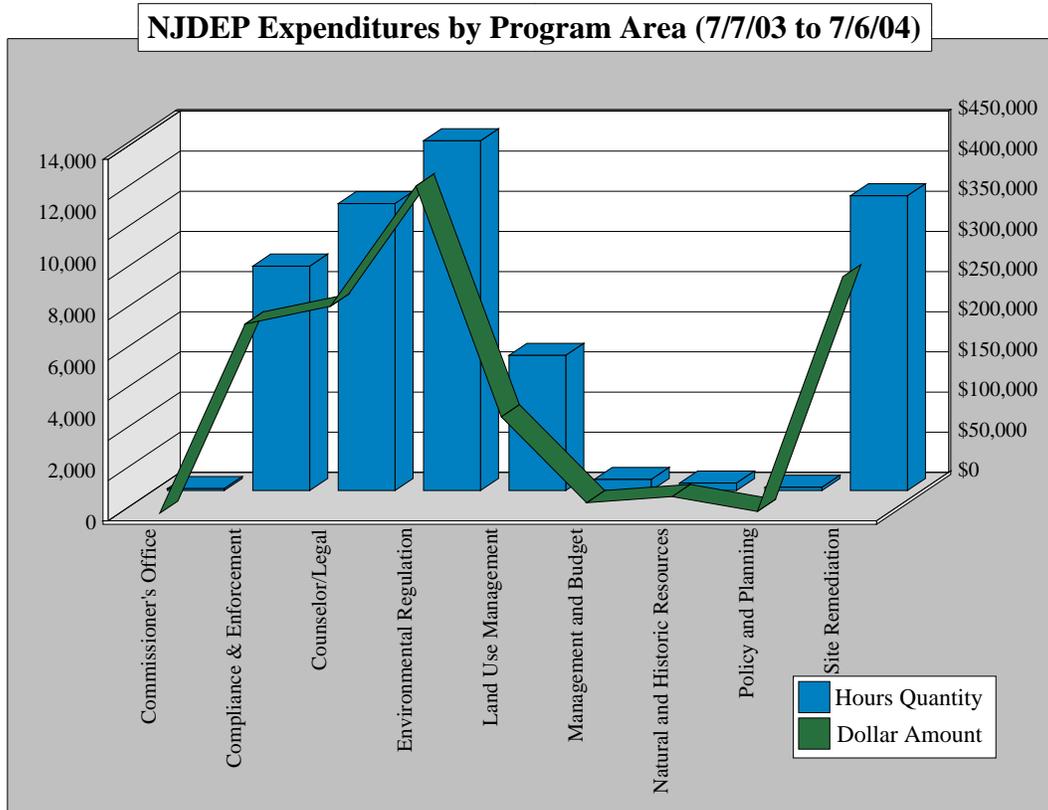
Most copy jobs are sent to the Treasury Print Shop located within the 401 building. Treasury has a staff of 3 full time employees making copies. The Treasury Print Shop collected \$296,835 in copying fees. The copy rate is \$.75 for one through ten pages, \$.50 for eleven through twenty pages and \$.25 for every page thereafter. Occasionally and for special circumstances the ORC and the program areas will complete copy jobs internally. The chart below shows that Treasury collected nearly 90% of all revenue. In all, over 1,900 copy jobs have been processed between 7/7/03 & 7/6/04.

Agency	First Year Revenue	Second Year Revenue	Total Revenue
Treasury	\$185,082	\$296,835	\$481,917
NJDEP	\$22,084	\$18,382	\$40,466
<b>Total</b>	<b>\$207,166</b>	<b>\$315,217</b>	<b>\$522,383</b>



# Expenditures

The following chart and table illustrates the Department's expenditures for administering the Open Public Records Act between 7/7/03 & 7/6/04. Expenditures are shown by program area. The Department spent a total of \$1,369,287 not including equipment, supplies, etc. The Department has not received any additional funding from the legislature for the processing of OPRA requests.



Assistant Commissioner Program Area	Dollars Spent	Staff Hours
Environmental Regulation	\$409,292.27	13,549.30
Site Remediation	\$296,598.87	11,417.90
Counselor/Legal	\$259,816.18	11,117.50
Compliance & Enforcement	\$237,516.24	8,695.30
Land Use Management	\$122,040.15	5,233.00
Natural and Historic Resources	\$22,685.85	288.70
Management and Budget	\$15,161.94	425.50
Policy and Planning	\$4,161.75	126.50
Commissioner's Office	\$2,013.25	72.30
<b>Total</b>	<b>\$1,369,286.50</b>	<b>50,926.00</b>

<b>First Year Expenditures</b>	\$1,404,203
<b>Second Year Expenditures</b>	\$1,369,287
<b>Total</b>	<b>\$2,773,490</b>

## **IV. Appeals**

# Appeals

## Summary

**OPRA Requests Submitted to Department to Date = 17,513**  
**Appeals Filed (Government Records Council or Superior Court) = 2**  
**Appeals Decided in Departments Favor = 2**  
**Pending Appeals = 0**

An appeal to a decision made regarding an OPRA request may be made to the Government Records Council or directly to Superior Court. To date, out of over 17,500 OPRA requests submitted to the New Jersey Department of Environmental Protection, there have been only two cases that went through the appeals process and the decisions were that the Department correctly denied access to the documents. Therefore, there have been **-0-** decisions ruled against the Department. Presently, there are **-0-** appeals pending. The following are brief summaries of those requests.

## **Appeals That Went to Decision**

### OPRA Request #8619/James Lockwood.

Requestor submitted an OPRA request seeking the name and address of the woman involved in a bear incident on Wingdam Trail in Wawayanda State Park on Aug. 10, 2003, as well as the incident report and any other additional records that may exist regarding the incident. The DEP, while producing the records, redacted the portions that revealed the woman's identity and an appeal was filed with the Government Records Council (GRC). The GRC ruled on April 8, 2004 that the Department acted properly because, as the person who reported the incident to the DEP, the woman was entitled to confidentiality under the "identity of a complainant" OPRA exception.

### OPRA Request #9353/Jordan Mariano

Requestor submitted an OPRA request seeking a list of chlorine gas users which was denied for domestic security reasons and an appeal was filed. The GRC ruled in March 2004 that the Department correctly denied access to these records because "the information requested falls squarely within the ambit of Executive Order No. 21 and falls under the exceptions set forth in N.J.S.A. 47:1A-1."

## **Appeals Filed and Later Withdrawn**

### OPRA Request #11615/N. LaRusso

Requestor submitted an OPRA request on December 16, 2003 requesting all correspondence, memos, reports and other documents related on any way to any studies or research being developed, proposed or planned by NJDEP (to be undertaken or funded by NJDEP) with regard to chromium, including without limitation any studies or research by Dr. Max Costa and any and all data related thereto. The Department responded stating in part that the request for material between DEP and Dr. Max Costa with regard to Chromium is exempt under OPRA: N.J.S.A. 47:1A and that his work involves new and unpublished research in which he has commercial and proprietary interest. The requestor was provided with records relating in any way to chromium studies between January 1, 2000 and April 1, 2004. An appeal was made to Superior Court. The appeal was later withdrawn.

### OPRA Request #3528/Ann Barron

Requestor submitted an OPRA request on December 30, 2002 requesting the file & documents on the sightings and reporting of species in the Rutgers Ecological Preserve, as reported both by experts and non-experts. The request was denied since, the Natural Heritage Database contained no records for plants or natural communities in that area, therefore, the Department had no documents. The requestor appealed to the Government Records Council and later withdrew the appeal.

### OPRA Request #8569/George Warholak

Requestor submitted an OPRA request on August 11, 2003 seeking a "Statement of qualifications" page from an application submitted by someone for a Waste Water License. This request was denied for the reason that the document involved an application for public employment or licensing. An appeal was made to the Government Records Council. The requestor later withdrew the appeal.

### OPRA Request #7595/Mitchell Rait

Requestor submitted an OPRA request on June 27, 2003 requesting a list of approximately 9,000 sites recently given to outside counsel for the Department to pursue "natural resources" claims. The requestor was advised that the outside counsel did not receive a list of 9,000 sites. In truth, outside counsel was provided access to the Known Contaminated Site List, which link is available to the public on the NJDEP website at [www.nj.gov/dep/srp/business](http://www.nj.gov/dep/srp/business).

### OPRA Request #12038/Steven Dalton

Requestor submitted an OPRA request on April 26, 2004, requesting any and all documents and/or information referring or relating to sightings or other recorded

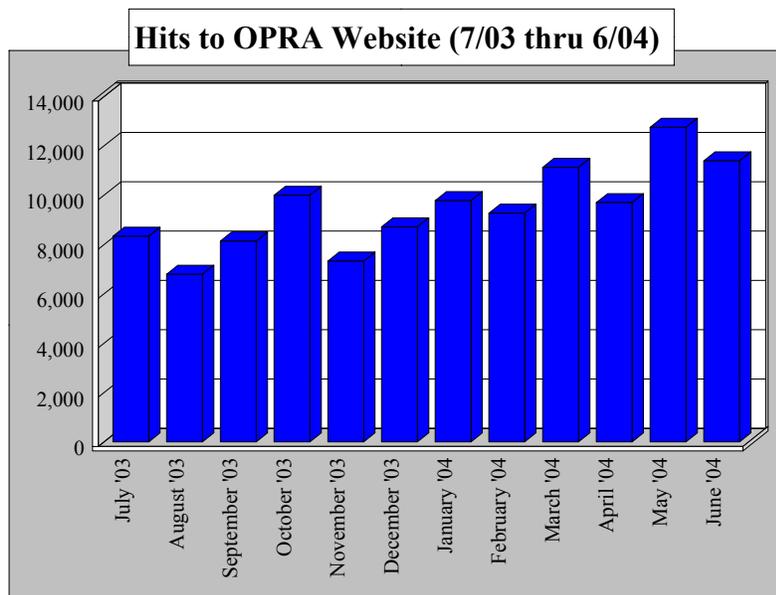
evidence of past use of northern pine snake and timber rattlesnake on or near the property identified as Block 3205, Lot 5, Winslow Township, Camden County, New Jersey; and Sightings or other recorded evidence of past use of pine barren tree frog on or within one quarter mile of the property. This request was denied pursuant to N.J.A.C. 7:1D-4.2 (a), which provides that the information related to the precise location of threatened, endangered and rare (plants or animals) shall not be made public where the disclosure would jeopardize the species or the site. After subsequent clarification of the request, the Department was able to advise the requestor that there are no documents within the Department involving sightings or other recorded evidence or past use of northern pine snakes, timber rattlesnakes or pine barren tree frogs on or near the parcel as set forth in the OPRA request. An appeal was made to Superior Court. The requestor later withdrew the appeal.

## **V. OPRA and Internet Access**

# OPRA and Internet Access

The NJDEP has made it very easy to submit a request online (through the NJDEP OPRA website, [www.nj.gov/dep/opra](http://www.nj.gov/dep/opra) ). The Department also continues to provide important information and has continued to increase access to its key documents on its website, allowing people to obtain certain information and documents in a quick manner.

The below chart and table illustrate the number of hits to the OPRA website between July 2003 thru June 2004; the number totals over 100,000 hits. This represents a 23% increase in website traffic from our first year of operation.



Month	Website Hits
July '03	8,337
August '03	6,793
September '03	8,141
October '03	9,998
November '03	7,333
December '03	8,718
January '04	9,781
February '04	9,272
March '04	11,130
April '04	9,702
May '04	12,748
June '04	11,393
<b>Total</b>	<b>113,346</b>

The NJDEP OPRA website which includes Online reports, Data Miner, OPRA submittal forms, OPRA rules and other useful information may be accessed at:

[www.nj.gov/dep/opra](http://www.nj.gov/dep/opra)