



# New Jersey

Dept. of Environmental Protection



## *OPEN PUBLIC RECORDS ACT* 2005 - 2006



4th Year Annual Report



Jon Corzine  
Governor of New Jersey

Open Public Records Act, 2006 Annual Report  
New Jersey Department of Environmental Protection



I'm pleased to present the New Jersey Department of Environmental Protection's Open Public Records Act Annual Report. This report details the number of Open Public Records Act (OPRA) requests received by the Department along with the cost to process these requests. As the report shows, the Department has received 41,972 OPRA requests in the four years since the OPRA legislation was implemented. This number represents sixty-five percent of all requests received by the state.

The Department takes very seriously the responsibility to remain open, accountable and accessible and strives to make it as easy as possible for people to obtain information. For example, the Department's web site enhances the efficiency, effectiveness and responsiveness of the Department's OPRA process by providing real-time access to public documents on line through the Department's Data Miner. This easy access reduces the number of OPRA requests submitted to the Department and provides the public with an immediate response to an inquiry. Data Miner may be accessed at <http://www.nj.gov/dep/opra/online.html>.

I firmly believe that an engaged and active citizenry can be a valuable partner in pursuit of the Department's mission to protect public health and the environment. Access to the Department's wealth of information empowers local community representatives and helps all of us at the Department do our job. While there are rare instances when the Department must withhold information pursuant to the OPRA law, OPRA staff always begins its review of a request for documents with the presumption that the more information the public has, the more effectively democratic government operates.

My thanks for your interest in our OPRA work, the work of the Department and New Jersey's environment.

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

Lisa P. Jackson  
Commissioner



**A  
Message  
from**

**Lisa P.  
Jackson  
Commissioner**

*"The Department takes very seriously the responsibility to remain open, accountable and accessible and strives to make it as easy as possible for people to obtain information."*

# I. Introduction

The Open Public Records Act (OPRA) took effect on July 7, 2002. The Open Public Records Act establishes strict timeframes for providing access to state and local documents. The definition of a government record is any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of official business or has been received in the course of official business. Access must be provided within 7 business days and immediate access for bills, vouchers and contracts. If a record is in storage or archived, the Department must identify a time by which it will be made available.

In an effort to process requests within the strict timeframes, the Department of Environmental Protection created the Office of the Record Custodian (ORC), which receives all record requests, determines whether a request is complete, inputs paper forms into a central database, assigns requests to the appropriate Assistant Commissioner Record Custodians (ACRC), makes policy/legal determinations, (i.e.; exceptions, confidentiality) and notifies requestors of the outcome of requests, copying costs and access arrangements.

The Department has assigned approximately 20 people to be ACRCs. These people monitor the tracking system each day and ensure that file officers in the program areas respond to requests from the Office of the Record Custodian. The ACRCs works with the staff in determining whether any requested records are confidential and need to be redacted. An ACRC also raises any policy questions to the Office of the Records Custodian.

The Department assigned approximately 150 people to be file officers. They are responsible for monitoring the computer system to identify new requests, review files and determine if requested records exist, update the database to reflect responses to requests The Department then notifies the requestor, both in writing and by phone.

The Department has established an Open Public Records Act web site at: [www.nj.gov/dep/opra](http://www.nj.gov/dep/opra) to explain the law and assist citizens in making records requests. The web site also contains links that provide immediate access to key documents. OPRA requests may be mailed, hand carried or submitted online. Most people elect to have their requests submitted to the Department online.

The following report provides information about Open Public Records requests since the OPRA law took effect.



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Management & Budget  
Ved Chaudhary, Assistant Commissioner

Office of the Records Custodian  
Richard Yarsinsky, Chief

Report prepared by:  
Wayne F. Grennier, Supervisor of Operations  
Office of the Records Custodian

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2006

## II. DEP Outreach



Since the implementation of OPRA, the Office of the Records Custodian (ORC) has provided presentations on the Open Public Records Act (OPRA) . Below is a listing of the presentations given by the ORC:

- **County Environmental Health Act Officials, 9/16/02**
- **Water Environment Association, 10/29/02**
- **Office of Information Resource Management / OPRA Overviews, 1/22/03**
- **Environmental Air Compliance Audit Seminar, Rutgers University, 3/25/03**
- **Association of Government Accountants Public / Administration Conference, 5/9/03**
- **Rutgers University, 6/10/03**
- **Chemical Council Fall Regulatory Conference, 12/3/03**
- **Rutgers University, 6/9/04**
- **NJWEA Seminar, 10/26/04**
- **Chinese Delegation, 12/9/04**
- **New Jersey Chapter of the Air Waste Management Association, 3/16/05**
- **New Jersey Environment Work Council, 6/22/05**
- **New Jersey Department of Transportation, 11/9/05**
- **Department of Public Advocate, 3/30/06**



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## III. Commendations

During the last four years, the New Jersey Department of Environmental Protection has received praise for the Department's OPRA Program.

*"...I want to commend you and your entire staff for their courtesy, willingness to offer assistance, and the remarkably expeditious manner in which they are able to put the requested files together. In 25 years working in New Jersey, I have never seen a new program come on line so quickly and effectively."*

–September 25, 2002  
Harry H. Elias, P.E. CHMM  
Director of Engineering  
Code Enviro-Sciences, L.L.C.

*"...For those who do not work in either a government agency or some other large bureaucracies, the idea of being able to take advantage of the new Open Public Records law is exciting but very intimidating. Most of us don't have a clue of even where to begin....Once I arrived there, she did everything she could to see that I got what I needed. If only all government employees were so helpful!"*

–February 16, 2003  
Mary Shaughnessy

*"...You guys are doing a terrific job...."*

–September 10, 2003  
Marc Pfeiffer, Acting Executive Director  
New Jersey Government Records Council

2002

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## Commendations

***“I am writing to express my appreciation for the Department’s help....”***

***“...The experiences between 10 years ago and today are different as night and day....”***

*“...I would like to take a minute of your time to compliment...(the)Open Records Office for updating and streamlining the document review process. Those of us who rely on NJDEP for specific site information appreciate what you’ve done to speed the process up...”*

-August 20, 2003  
-Ken Bolender  
Nationwide Insurance

*“I am writing to express my appreciation for the Department’s help....”*

-January 8, 2004  
John A. Rhodes, V. P.  
Haley & Aldrich

*“...It is noteworthy that of the 17,513 OPRA requests filed in the DEP, only two appeals of ORC decisions made it through the appropriate government or judicial venues. In both cases decisions were rendered in favor of the Department....”*

-August 31, 2004  
Kristina Bas, Staff  
Representative  
Local 1034, AFL-CIO, CLC

*“...First, please note that I have been dealing with the DEP for about 16 years. I have not made a request for documents in about 10 years. The experiences between 10 years ago and today are different as night and day...The request process via Internet is easy to use and effective. Many documents are actually available on line. However, what impressed me most was the turnaround time.”*

-December 22, 2004  
Ronald S. Bergamini, Esq.

*“I am writing to inform you of the commendable effort demonstrated by several received documents within a time frame that enabled me to meet a critical deadline....”*

-January 6, 2005  
Jennifer Allaire  
Kirkpatrick & Lockhart &  
Nicholson Graham, LLP



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# Commendations

*“...‘good job and keep up the good work’ to all...”*

*“...The Department of Environmental Protection responded quickly, professionally, courteously ...”*

*“...It was a pleasure meeting you on my recent visit to your offices... Please relay my gratitude to your colleague who also tried to help on my recent visit. Both of you were very kind and attentive.”*

-March 30, 2005  
Hector L. Navarro, Paralegal  
Greenberg Traurig

*“...In an attempt to identify areas for cost savings, between February 18 and 25 Assembly Republicans sent Open Public Records Act (OPRA) requests to every state department... The Department of Environmental Protection responded quickly, professionally, courteously allowing staff to see the requested documents immediately....”*

-March 30, 2005  
Press Release  
Assembly Republican News  
Assembly Republican Office

*“...I am sending this message to your Department to thank you and your staff for providing me with courteous and helpful services”..Please forward a good job and keep up the good work’ to all.*

-March 31, 2005  
Len Fritz  
Kluk Consultants

*“...The Office of the Records Custodian. Our many dealings with them have been the best, most professional, and most pleasant of any dealings we have ever enjoyed with representatives of government....”*

-December, 2005  
Robert J. Chitren  
Environmental Advocate

*“...I wanted you to know that I was speaking to a reporter end of last week regarding OPRA and state agencies. I held your department out as one of the best in keeping up with OPRA. This reporter had positive response from DEP in the past...”*

August 20, 2006  
Elizabeth Mason  
NJ Foundation for Open  
Government  
(NJFOG)



# NJDEP Process

## Office of the Record Custodian

Assigns requests to the appropriate program area Records Custodian(s)  
Develops policy and gives advice on what is and is not confidential  
Reviews findings from file officers and program Record Custodian(s)  
Contacts requesters, approves or denies requests and seeks legal advice when necessary

## Program Area Records Custodian

Assigns requests to appropriate file officers  
Reports the findings to the Office of the Records Custodian and ensures deadlines are met

## File Officers

Retrieves files  
Redacts confidential information  
Reports findings to their program area Record Custodian



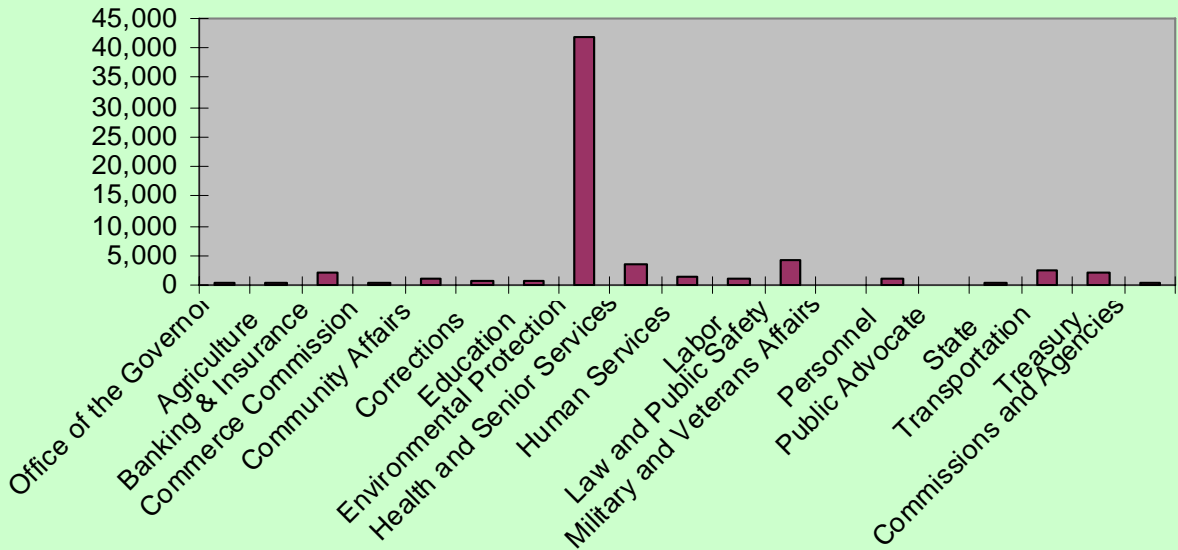
## **IV. Statistics for all State Agencies**

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# OPRA Requests Received

**NJDEP Received Over 65% of Requests to All State Agencies**

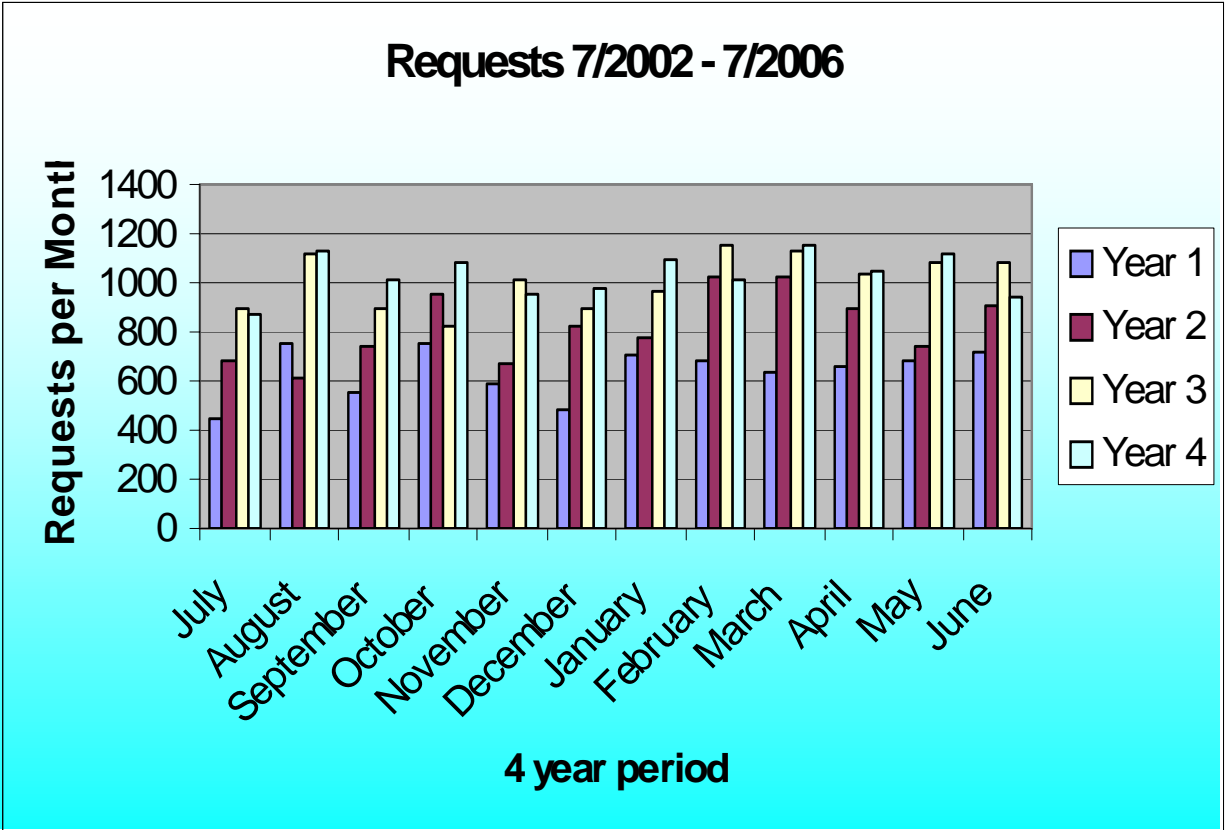


**NJDEP Received Over 65% of the 64,004 requests submitted**

Agency	4 Years
Office of the Governor	350
Agriculture	241
Banking & Insurance	1,990
Commerce Commission	205
Community Affairs	1,159
Corrections	854
Education	847
Environmental Protection	41,972
Health and Senior Services	3,686
Human Services	1,234
Labor	1,098
Law and Public Safety	4,090
Military and Veterans Affairs	104
Personnel	1,038
Public Advocate	1
State	312
Transportation	2,352
Treasury	2,195
Commissions and Agencies	276
<b>Grand Total</b>	<b>64,004</b>

## **V. Statistics for NJDEP**

## Requests Received Monthly

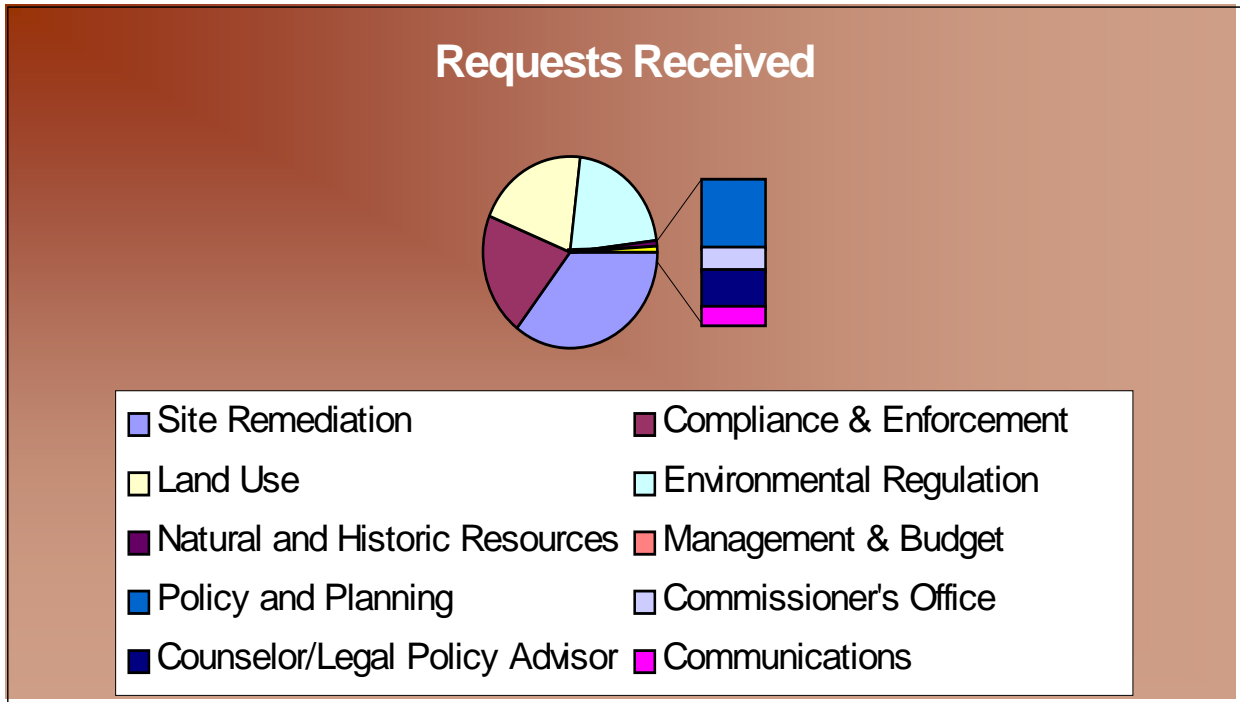


The above chart illustrates the number of requests submitted by month during the first four years of operation. The average number of requests submitted in our fourth year was 1,033 per month. (See page 22, for data table)





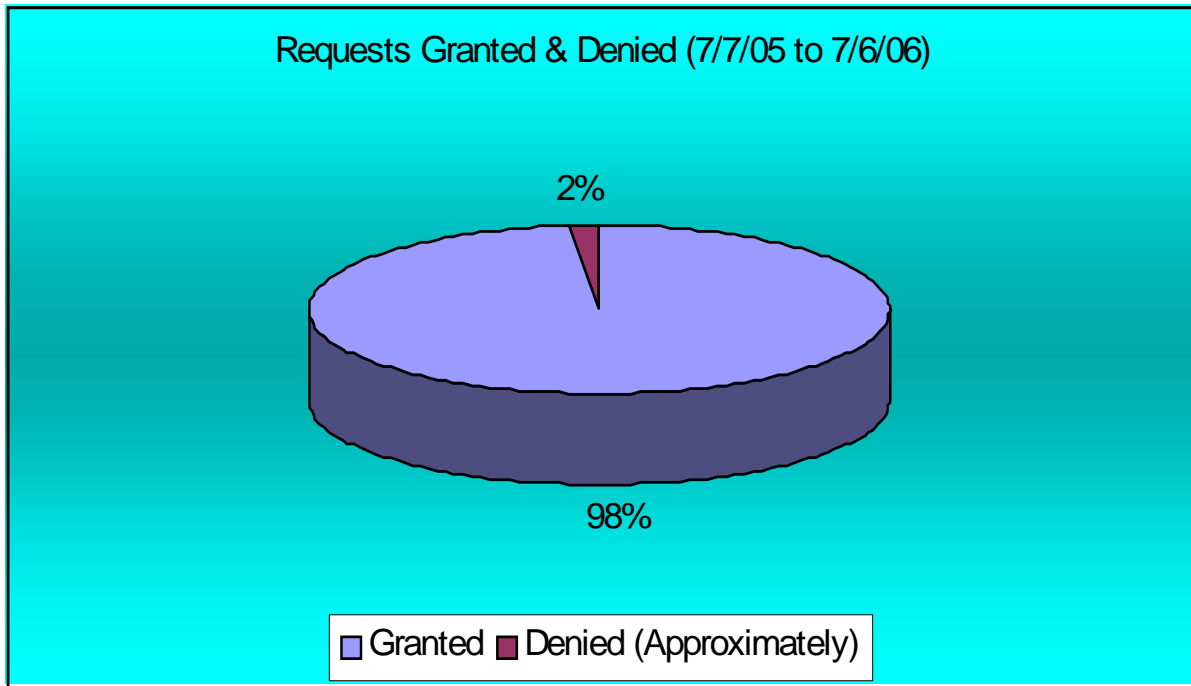
# Assignment of Requests



Each request received is assigned to the appropriate ACRC(s). This chart illustrates the primary program where each of the 12,392 requests was assigned. A single request may be assigned up to ten times (i.e.; to each of the Assistant Commissioner Programs). As a result, NJDEP's programs actually handled 30,590 requests. The table on page 22 is based on 30,590 "requests" figure; it shows the percentage handled by each of the programs based on that figure.

## Requests Granted and Denied

The following chart and table illustrate the number of requests granted and denied out of the 12,392 requests received by the Department in our fourth year. A request is marked “denied” for any of the following reasons: The request was improperly submitted, incomplete or subject to an exemption pursuant to the Open Public Records Act (i.e.; Deliberative, Attorney Client Privilege, Domestic Security). A request is considered “granted” when the file search is completed and the requestor has been notified. The chart below shows that more than 98% of all requests were granted.



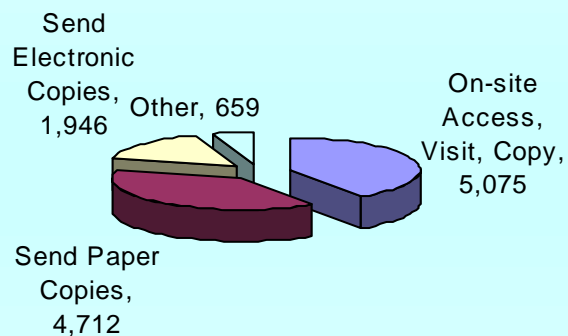
Disposition	Number of Requests	Percentage
Granted	12,179	98.28%
Denied (Approximately)	213	1.72%
Total	12,392	100.00%

# Method of Access

**41% elect to review documents at NJDEP Offices...**

Requestors are given several choices regarding how they wish to receive access to government records: in-person review (reviews the document at a NJDEP office); purchase paper copies; electronic copies; or other access method. The following chart and table illustrate what the requestors chose between 7/7/05 & 7/6/06. As the chart shows, 41% elected to come in to review documents at the NJDEP's office.

**Methods of Access Initially Requested**



Access Method	Number of Requests	Percentage
On-site Access, Visit, Copy	5,075	40.95%
Send Paper Copies	4,712	38.02%
Send Electronic Copies	1,946	15.70%
Other	659	5.32%
Totals:	12,392	100.00%

7/05 to 7/06

7/05 to 7/06

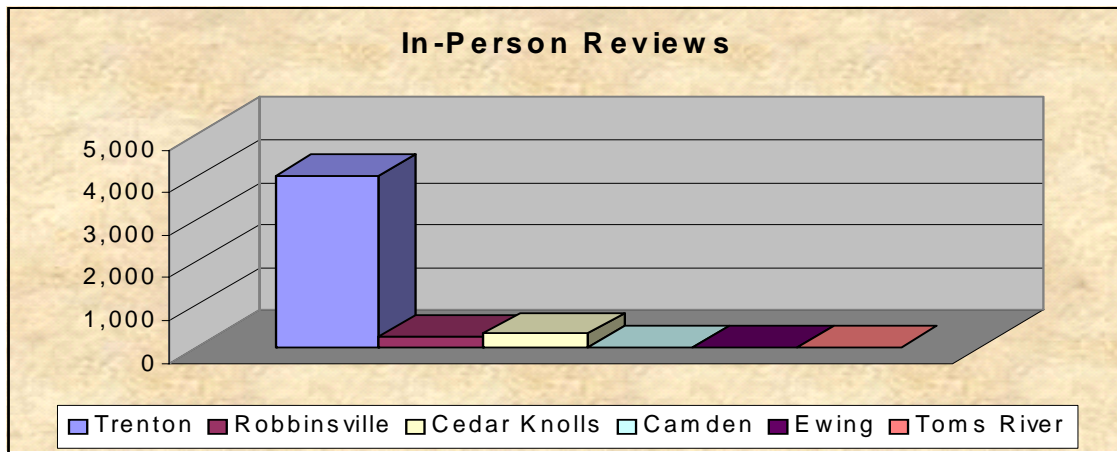
# In-Person Reviews

**14,457 Appointments  
in  
Four Year Period...**

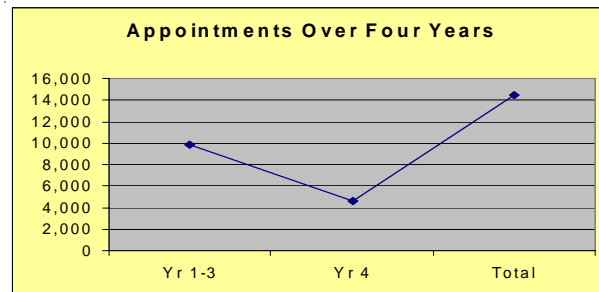


*OPRA Requestors  
Reviewing  
SRP Documents*

In-person reviews are an efficient way to provide requestors access for requests that generate a large number 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 7/7/05 & 7/6/06. In all, the Department scheduled 4,600 appointments in our fourth year. A total of 14,457 appointments were scheduled for the four-year period ending 7/6/06.



Location	# of In-Person Reviews
Trenton	4,022
Robbinsville	255
Cedar Knolls	314
Camden	5
Ewing	2
Toms River	2
<b>Total:</b>	<b>4,600</b>



7/02 to 7/06

7/02 to 7/06

## Copying & Special Service Charges

**In 4 Years,  
approximately  
\$1,312,125 Dollars  
was spent by  
requestors for copies**



*John Hartnagel and Steve Fischberg of the New Jersey Treasury Print Shop making copies for OPRA requestors*

Most copy jobs are sent to the Treasury Print Shop located within the DEP. Treasury has a staff of three full-time employees making copies.

The Treasury Print Shop invoiced \$425,282.46 in copying fees for the year ending July 6, 2006. Occasionally ORC and the program areas will complete copy jobs internally. The Department has collected \$11,459 during the year for these copying charges.

The copy rate is \$0.75 for one through ten pages, \$0.50 for eleven through twenty pages and \$0.25 for every page thereafter. Approximately 2,617 copy jobs have been processed between 7/07/05 & 7/06/06.

Agency	Year 1 invoiced Jul-03	Year 2 invoiced Jul-04	Year 3 invoiced Jul-05	Year 4 invoiced Jul-06
Treasury	185,082	295,825	334,960	425,282
NJDEP	22,086	18,382	19,049	11,459
Total invoiced by:			Treasury	1,241,149
			NJDEP	70,976
			4 Yr. Total	1,312,125

### Special Service Charges

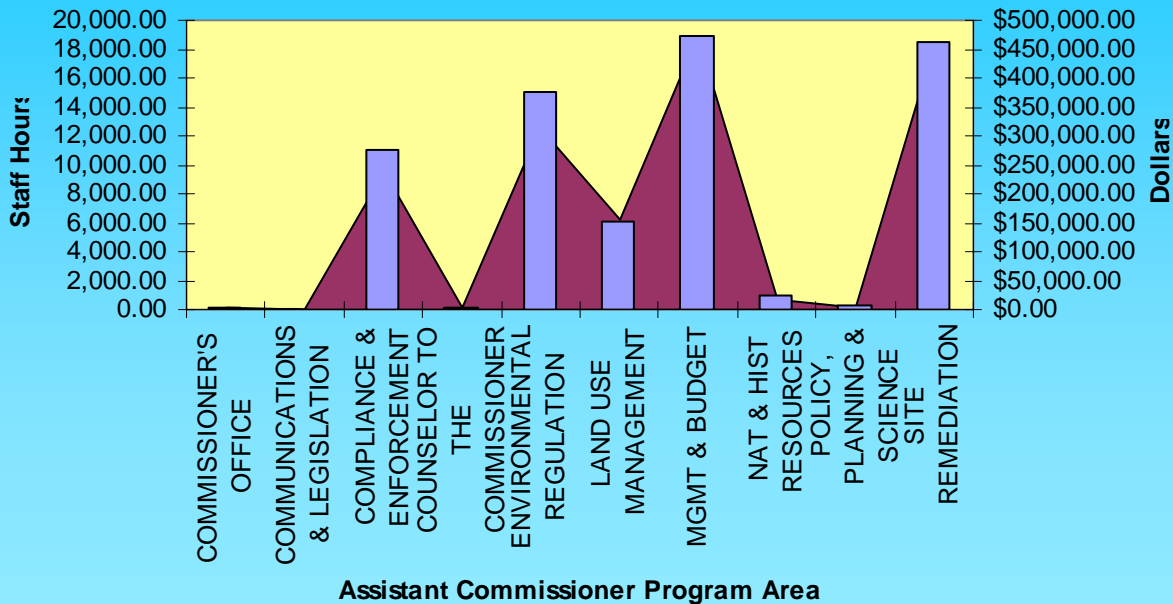
The OPRA legislation at N.J.S.A. 47:1A-5c, allows an agency to impose a special service charge where the agency must make an extraordinary expenditure of time and effort to accommodate a request to inspect government records. The Department has collected \$19,849 during the year in extraordinary time in processing these types of requests.

7/05 to 7/06

7/05 to 7/06

# Expenditures

**NJDEP Expenditures by Program Area (7/7/05 to 7/6/06)**



*DEP has spent over \$10 million plus in the last four years processing OPRA requests. The Department receives no additional funding to operate its OPRA program.*

Assistant Commissioner Program	Staff Hours	Dollars Spent
COMMISSIONER'S OFFICE	74.50	\$3,775.20
COMMUNICATIONS & LEGISLATION	5.65	\$208.51
COMPLIANCE & ENFORCEMENT	9,486.40	\$274,324.76
COUNSELOR TO THE COMMISSIONER	97.00	\$4,116.79
ENVIRONMENTAL REGULATION	12,546.75	\$376,461.87
LAND USE MANAGEMENT	6,197.60	\$153,060.55
MGMT & BUDGET	18,898.25	\$473,279.55
NATURAL & HISTORIC RESOURCES	749.60	\$23,251.00
POLICY, PLANNING & SCIENCE	167.50	\$7,667.44
SITE REMEDIATION	18,033.60	\$462,048.96
<b>Total</b>	<b>66,256.85</b>	<b>\$1,778,194.63</b>

First Four Years Expenditures	Dollars Spent
2002-2003	\$1,404,203.00
2003-2004	\$1,369,287.00
2004-2005	\$1,537,662.00
2005-2006	\$1,778,194.63
Sub-Total	\$6,089,346.63
Department Fringe Costs @ 32.75%	\$1,994,261.02
Sub-Total	\$8,083,607.65
Department In-Direct Costs @ 26.21%	\$2,118,713.57
<b>Grand Total</b>	<b>\$10,202,321.22</b>





7/02 to 7/06

7/02 to 7/06

## Data Tables for Charts

OPRA  
Requests  
Submitted  
Have Increased  
Over 162 %  
Since Year 1.

### Monthly Requests Data

	Year 1	Year 2	Year 3	Year 4
July	447	680	892	875
August	753	612	1118	1133
September	552	739	894	1014
October	755	958	822	1077
November	583	668	1015	950
December	481	820	896	977
January	711	780	964	1093
February	682	1023	1156	1012
March	631	1024	1131	1155
April	661	899	1039	1049
May	686	737	1084	1119
June	722	909	1086	938
<b>Total</b>	<b>7664</b>	<b>9849</b>	<b>12097</b>	<b>12392</b>

### Assignment of Requests - 7/05 to 7/06

Acrc Program Name	Requests Assigned	Percentage
Site Remediation	10,625	34.73%
Compliance & Enforcement	6,399	20.92%
Land Use Management	6,603	21.59%
Environmental Regulation	6,379	20.85%
Natural & Historic Resources	338	1.10%
Management & Budget	70	0.23%
Policy and Planning	85	0.28%
Counselor/Legal Policy Advisor	43	0.14%
Commissioner's Office	28	0.09%
Communications	20	0.07%
<b>Total Number:</b>	<b>30,590</b>	<b>100.00%</b>

## **VI. Appeals**

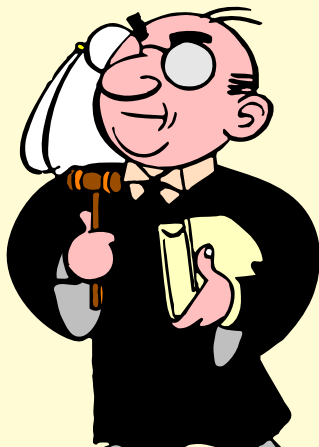
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# Appeals

**OPRA Requests  
to Date  
41,972**

**Appeals Lost  
0**



An appeal of a decision made regarding an OPRA request may be made to the Government Records Council (GRC) or directly to Superior Court. To date, of the 42,002 OPRA requests submitted to the New Jersey Department of Environmental Protection, there have been only three cases that went through the appeals process and the decisions were that the Department correctly denied access to the documents. There have been no decisions against the Department. There were five cases appealed but later withdrawn. Presently, there are three appeals pending. The following are brief summaries of those requests where a decision was made.

**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 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.”

**OPRA Request #4766/ Susan Steinman**

The OPRA request was submitted on February 21, 2003 requesting the following: Princeton Township Community Based Deer Management application for 2001-2002, including all attachments (i.e.; consent forms provided by property owners to permit net and bolt bait sites.) Princeton Township Based Deer Management Application for 2002-2003, with all attachments and consent forms. This request was denied for the reason that people that signed the consent forms have an expectation of privacy. An appeal was filed in Superior Court and the court upheld the denial.

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## Appeals - Continued

### **OPRA #29637 David Mann**

On June 10, 2005, David Mann faxed an OPRA request directly to the Department's file officer seeking a May 10, 2005 letter which outlines the December 21, 2004 engineering project. The file officer responded stating that the file could not be located. A Complaint was made with the New Jersey Government Records Council. The GRC ruled in the Departments favor since the OPRA request was faxed and therefore, it was an invalid OPRA request.

### **OPRA #37691/DiMattia**

On February 24, 2006, Mr. DiMattia submitted an OPRA request seeking all documents relating to a unit of the Department regarding daily bank deposit list, cash receipts, new internal controls, standard operation procedures, emails to staff, management improvement measures, etc. The Department denied the request since it was a broad request requiring a substantial amount of research. A Complaint was made to the New Jersey Government Records Council. The GRC ruled in the Departments favor stating that the OPRA request was invalid since the request was not submitted on an official OPRA request form.

### **Pending Appeals**

#### **OPRA Request #17261/ Allison Lassiter**

An OPRA request was submitted on June 29, 2004 requesting a complete digital copy of the NJEMS database for the whole state in database format and a data dictionary. This request was denied for a number of reasons (ie; proprietary, disruption to agency operations, trade secrets, computer security, ongoing enforcement). An appeal was made to the Government Records Council and the case was referred to the Office of Administrative Law for a hearing.

#### **OPRA Request #38277/Scott Fegley**

On March 9, 2006, Scott Fegley submitted an OPRA request seeking "Scoring forms entitled "Interview Questions for HSMS 1 Solid and Hazardous Waste Program" conducted on or about October 17, 2005, as well as any resumes on file for the following individuals: Robin Heston, Carolyn Hansel, Scott Frow, Jennifer Meyer, Mary Goldman, Timothy Disbrow, John Edwards and Ronald Wienckoski; Report of disposition of Certification PS052636 issued September 29, 2005, and returned December 8, 2005." The Department had four of the eight resumes requested and those were provided to the requestor. The request was partially denied. The partial denial stated that the scoring forms are

confidential pursuant to N.J.S.A. 47:1A-1.1 and N.J.A.C. 7:1D-4.2 (a) Test questions, scoring keys and other examination data pertaining to the administration of an examination is exempt. An appeal was made to the New Jersey Government Records Council.

#### **Tierra Solutions, Inc.**

Drinker Biddle Law firm submitted many OPRA requests for access to any and all documentation pertaining to discharges to the Passaic River. The Department denied several of these requests on the basis that the requests were broad-based requests for information that would have required extensive research. There were several requests made for lists of job/project numbers created. The Department denied these requests stating that the requested lists do not exist and would have to be have been created. There were several requests made for all documents pertaining to pertaining to job numbers. The Department denied these requests since it would have required the Department to conduct extensive research across numerous agency and Department program files to identify all personnel that coded to the requested job numbers and to compile, collate and analyze any potentially responsive records that might have been identified. The requestor filed Complaints against the DEP in New Jersey Superior Court.

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## VII. Internet Access

### Enhancing Communication

**Web site:** The DEP’s web site is rapidly becoming its most powerful communication medium. Everyday, the site averages 17,859 visitors who view an average of 86,169 web pages. To ensure the site meets users’ needs, it is continually updated with new items, new data downloads, reports, rules and event information.

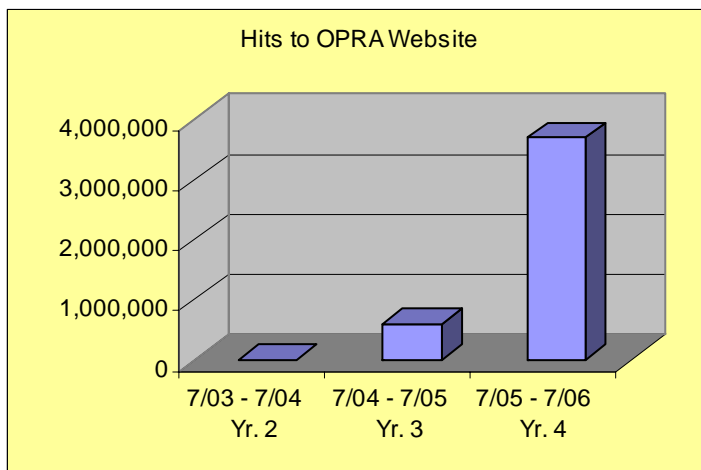
**Every day, right away:** Honoring the public’s right to know by offering better access to information about environmental protection, the DEP “Data Miner,” improved web site that provides easy, round-the-clock access to key environmental reports and other public documents seven days a week.

**Enforcement alerts:** To improve customer service and communications with its constituencies, the DEP began regularly issuing Enforcement Alerts to regulated communities to keep them informed about plans to target certain compliance problems and ways in which the department will continue to provide compliance assistance.

*“...Everyday, the site averages 17,859 visitors...”*

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 chart and table illustrate the number of hits to the NJDEP DataMiner between July 7, 2005 through July 6, 2006; the number totals over **3,708,000** hits. This represents a substantial increase in website traffic from our first year of operation.



Period	Year	Website Hits
7/03 - 7/04	Yr. 2	11,348
7/04 - 7/05	Yr. 3	593,048
7/05 - 7/06	Yr. 4	3,708,077
<b>Total</b>		<b>4,312,473</b>
Percent Increase Year (3) to Year (4)		625%

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)**

Open Public Records Act Requests may be made by contacting:

State of New Jersey  
Dept. of Environmental Protection  
Management & Budget  
Office of the Records Custodian  
PO Box 442  
Trenton, New Jersey 08625-0442  
(609) 341-3121

or online at:

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

The Office of the Records Custodian may be contacted if there are any questions regarding submission of an Open Public Records Act Request.



New Jersey Department of Environmental Protection