

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

GOVERNMENT RECORDS COUNCIL

Complaint Adjudication and Open Public Records Act Information Inquiry Procedures

Proposed Amendments: N.J.A.C. 5:105-1.3, 1.4, 1.5, 1.6, 2.1, 2.3, 2.6, 2.8, 2.12, 2.13, and 2.14

Proposed New Rules: N.J.A.C. 5:105-1.7 and 5:105 Appendix

Authorized By: Government Records Council, Frank F. Caruso, Executive Director.

Authority: N.J.S.A. 47:1A-7.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2026-055.

Submit written comments by December 4, 2026, to:

Dominic Giova
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625
Fax No. (609) 984-6696
Dominic.Giova@dea.nj.gov

The agency's proposal follows:

Summary

The Government Records Council (Council) is proposing a series of amendments and a new rule at N.J.A.C. 5:105, which are intended to, in part, implement the provisions at P.L. 2024, c. 16, which amended the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (OPRA). Specific changes are listed below together with the rationale for each. Finally, as the Council has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Subchapter 1. General Provisions

1. N.J.A.C. 5:105-1.3 — the Council proposes to amend this section to allow the Council to issue an Administrative Complaint Disposition to summarily decide complaints that present jurisdictional, procedural, or other defects, or where it is clear that, after a review of the complaint and the statement of information from the custodian, that there are no genuine disputes of material fact and that one of the parties is entitled to prevail as a matter of law. These decisions would require a *de minimis* analysis by the Council. The revision will increase the Council's efficiency and enhance production, thus resulting in a more expeditious adjudication process. Moreover, the proposed replaced definition incorporates the

summary disposition language already utilized by the Office of Administrative Law at N.J.A.C. 1:1-12.5. This will provide a clear expectation to both requestors and custodians as to the standard the Council will utilize to administratively decide complaints. The proposed amendment also adds a basic definition for a "Uniform OPRA Request Form," which all public agencies in the State are required to adopt and for which OPRA now requires the Council to promulgate rules and regulations. N.J.S.A. 47:1A-5.f and 7.b.

2. N.J.A.C. 5:105-1.4 — the Council proposes to amend this section to reflect the new composition of the Council as set forth at N.J.S.A. 47:1A-7.a, pursuant to P.L. 2024, c. 16. The proposed revision also recognizes the Council's statutory responsibility to review its website from time to time to ensure accessibility and usefulness as set forth at N.J.S.A. 47:1A-7.b, pursuant to P.L. 2024, c. 16.

3. N.J.A.C. 5:105-1.5 — the Council proposes to amend this section to codify its responsibility to periodically review and adjust the information and the format of its website to ensure that all of the information is "clearly presented, accessible, and useful for the general public."

4. N.J.A.C. 5:105-1.6 — the Council proposes to remove the regulatory exemption for complaint documents during an adjudication, in conformance with the Appellate Division's ruling in *In re Adoption of N.J.A.C. 5:105-1.6(a)(1)*, 479 N.J. Super. 301 (App. Div. 2024).

5. New N.J.A.C. 5:105-1.7—the Council proposes this section to establish a uniform OPRA request form, as set forth at N.J.S.A. 47:1A-7.b. These provisions are based on the current form made available to public agencies on August 28, 2024, through the GRC's "Adoptable OPRA Request Form" Portal, with certain exceptions. The new rule also imposes the requirement that a requestor must answer three questions as part of their OPRA request: 1) whether the requestor has been convicted of an indictable offense; 2) whether the requestor will use the records for a commercial purpose; and 3) whether the records sought are connected to a legal proceeding. However, to clarify the legal proceeding question, the GRC proposes changing the wording to reflect verbiage set forth at N.J.S.A. 47:1A-7.b rather than the current form wording reflecting N.J.S.A. 47:1A-5.g. This new wording, consistent with the amended provisions pursuant to P.L. 2024, c. 16, will eliminate a custodian's requirement to engage in a two-step process to determine if records sought in the OPRA request are also part of the court order, including a pending discovery request. The new rule will also provide limited flexibility to allow agencies to assist requestors by including as part of their form, a checklist of commonly requested items. The new rule will also eliminate from the existing OPRA request form the "Request for Records Under Common Law" section, as the provisions of OPRA and the common law process are separate, as codified at N.J.S.A. 47:1A-1. The new rule sets a 45-calendar-day time frame within which agencies must adopt the most current version of the Uniform OPRA Request Form after notification of changes thereto.

Subchapter 2. Complaint Process

6. N.J.A.C. 5:105-2.1 — the Council proposes amendments to this section to reflect the Legislature's reduction in the regulatory statute of limitations from 60 days to 45 days as set forth at N.J.S.A. 47:1A-6. The proposed revisions also provide a process for public agencies to submit an objection to a complainant's motion to file within time. The proposed revisions also include language recognizing the inclusion of an adjudication time frame set forth at N.J.S.A. 47:1A-7.e in a way that would not require a regulatory change should that time frame be changed in future legislative amendments. The proposed revisions also clarify that the Council's timeline to adjudicate a complaint pursuant to the Act does not begin until the conclusion of the mediation process as set forth at N.J.A.C. 5:105-2.5. This will ensure that the Council's timeframe to adjudicate complaints is not interrupted by the mediation process, and will avoid an otherwise fragmented adjudication period. The proposed revisions further clarify that any submission to the Council exceeding 50 pages must be submitted in hard copy. This requirement already applies to Denial of Access Complaints and Statements of Information pursuant to N.J.A.C. 5:105-2.3(c) and 2.4(c), respectively.

7. N.J.A.C. 5:105-2.3 — the Council proposes revisions to amend the timeframe to submit an amended complaint from 30 business days to 30 calendar days. This shortened timeframe will ensure that the Council is able to operate within the required statutory adjudication timeframe, even if an amended Denial of Access Complaint is received. The proposed revisions also remove the anonymous requestor application process at N.J.A.C. 5:105-2.3(j) and (k) and the reference to anonymous complainants at N.J.A.C. 5:105-2.3(l) and replaces them with language consistent with the prohibition of anonymous requestors from the complaint process set forth at N.J.S.A. 47:1A-5.f and 47:1A-6, pursuant to P.L. 2024, c. 16.

8. N.J.A.C. 5:105-2.5 — the Council proposes revisions to allow the Council to administratively dismiss a complaint upon a mediator's receipt of written affirmation from both parties indicating that a matter has been resolved through mediation. Pursuant to the existing rules, the parties are required to execute a formal mediation agreement for the mediator before the Council can administratively dismiss a complaint. However, OPRA does not require a formal agreement, and specifies that mediation is intended to be informal. N.J.S.A. 47:1A-7.d. In practice, the Council has found that, oftentimes, matters that are resolved through mediation and the parties come back to the Council for a formal adjudication because one or both of the parties fail to execute a formal mediation agreement. Over time, the needless adjudication of resolved matters impairs the Council's ability to expeditiously adjudicate other matters. Therefore, the Council proposes to remove this formal requirement.

9. N.J.A.C. 5:105-2.6 — the Council proposes to add new subsection (e) to address the process by which a complaint shall be dismissed without prejudice as set forth at N.J.S.A. 47:1A-6, where a custodian has provided responsive records to the underlying OPRA request within seven days of the complainant's filing. The new subsection also sets forth the notification that the Council requires to dismiss the complaint without prejudice and details that the Council will consider as part of the dismissal whether the complainant is entitled to attorneys' fees. Finally, the new subsection provides a definitive 45-calendar-day timeframe for a complainant to file a new complaint should the complainant believe that the custodian has unlawfully denied access to records in whole or in part.

10. N.J.A.C. 5:105-2.8 — the Council proposes revisions that would authorize it to request a specific number of *in camera* copies contingent on the number of Council members and Council staff members directly involved in the review. The revisions also afford the custodian the option of either delivering physical copies of the documents in a sealed envelope to the Council or uploading the documents to a secure, online portal to be established by the Council. The Council anticipates that the portal will be established and made available to custodians by the time these rules are formally adopted.

11. N.J.A.C. 5:105-2.12 — the Council proposes to amend this section to provide a clear and definitive timeframe for requesting a stay of a final agency decision from the Council. The Council believes this amendment will prevent undue and unnecessary delays in both requesting a stay from a decision and seeking an appeal of a final decision of the Council.

12. N.J.A.C. 5:105-2.13 — the Council proposes to amend this section to reflect the permissive prevailing party fee language, and those instances where fees become mandatory, as set forth at N.J.S.A. 47:1A-6, pursuant to P.L. 2024, c. 16.

13. N.J.A.C. 5:105-2.14 — the Council proposes to amend this section to clarify that the public agency employing public officials, officers, employees, or custodians, found to have knowingly and willfully violated OPRA is subject to the civil penalty as set forth at N.J.S.A. 47:1A-11, pursuant to P.L. 2024, c. 16.

Uniform OPRA Request Form

13. N.J.A.C. 5:105 Appendix — the Council proposes to add the "Uniform OPRA Request Form," as is now required pursuant to N.J.S.A. 47:1A-5(f), as an appendix to its rules.

Social Impact

The Council anticipates that the proposed amendments and new rules would have a positive social impact. As described above, the vast majority of the proposed amendments and new rules mirror and implement the language of the Legislature's recent amendments to OPRA at P.L. 2024, c. 16, as well as the directive of the Appellate Division in the matter of *In re Adoption of N.J.A.C. 5:105-1.6(a)(1)*, 479 N.J. Super. 301 (App. Div. 2024). The proposed amendments and new rules also include corrections and clarifications based on experience with the practical application of the existing rules previously promulgated in November 2022. The proposed amendments and new rules continue the stated purposes and intent of OPRA by refining the Council's procedures for receiving and adjudicating complaints, especially in light of OPRA's new statutory adjudication time limit. The proposed amendments and new rules are consistent with the underlying philosophy and purposes of the spirit of OPRA, which is to provide transparency in government and expedited adjudications. The proposed amendments and new rules are anticipated to impact members of the public who have submitted, or may submit, a request for records pursuant to OPRA, or who may challenge a response from a public agency to a request before the Council, as well as the custodians of those records from public agencies and municipalities. The Council does not expect that the proposed amendments and new rules will create a differential impact on different segments of the public.

Economic Impact

The Council anticipates that the proposed amendments and new rules would result in administrative costs higher than currently appropriated through the most recent fiscal year's budget to ensure that the Council is adequately staffed to adhere to the 90-day adjudicatory timeframe. The Council will not receive any new revenue associated with the proposed rulemaking because OPRA prohibits it from charging a filing fee pursuant to N.J.S.A. 47:1A-7.f. The Council anticipates no additional costs to members of the public who file a challenge before the Council. Specifically, parties are already required to send hardcopies of submissions over 50 pages to the Council, thus resulting in little to no change in the current economic impact. Further, as noted above, the Council's adjudication process will remain free of charge. However, P.L. 2024, c. 16, and this rulemaking may result in increased costs for public agencies, including municipalities, in the event of a successful challenge by a requestor because public agencies, including municipalities, are now responsible for paying the assessed civil penalty where their custodian, official, or employee(s) are found to have knowingly and willfully violated OPRA pursuant to N.J.S.A. 47:1A-11.

Federal Standards Statement

No Federal standards analysis is required for the proposed amendments and new rules because the amendments and new rules are not being proposed to implement, comply with, or participate in any program established pursuant to Federal law or a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The proposed amendments and new rules are expected to create new staffing opportunities with the Council to comply with P.L. 2024, c. 16.

Agriculture Industry Impact

It is not expected that the proposed amendments and new rules will impact the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments and new rules will not introduce any new recordkeeping, reporting, or compliance requirements on small businesses nor will they require small businesses to employ additional professional services in order to comply, as the rules impose requirements on public entities and not the requestors of information.

Housing Affordability Impact Analysis

It is not expected that the proposed amendments and new rules will have any impact on the affordability of housing in New Jersey or evoke a change in the costs associated with the production of affordable housing, as the rules impact requests for information pursuant to OPRA.

Smart Growth Development Impact Analysis

It is not expected that the proposed amendments and new rules will have any impact upon housing production within Planning Areas 1 and 2, or within designated centers, pursuant to the State Development and Redevelopment Plan, as the rules impact requests for information pursuant to OPRA.

Racial and Ethnic Community Criminal Justice and Public Safety Impact Analysis

The Council has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

5:105-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...
 “Administrative Complaint Disposition” means [a decision of the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal] **a summary decision of a complaint by the Government Records Council** based on jurisdictional, procedural, or other defects of the complaint, **about which there is no genuine issue as to any material fact challenged and where one party is entitled to prevail as a matter of law.**
 ...

“Uniform OPRA Request Form” means the form promulgated by the Government Records Council and which shall be used by any “public agency” subject to OPRA pursuant to N.J.S.A. 47:1A-5.f.
 ...

5:105-1.4 Description of the Council

(a) The Council shall consist of the Commissioner[s] of the Department of Community Affairs [and the Department of Education.] or their designee[s], **who shall serve as chairperson**, and [three] **eight** members of the public (not more than [two] **four** of which can be of the same political party) appointed by the Governor [with the advice and consent of the Senate pursuant to] **consistent with the requirements at** N.J.S.A. 47:1A-7.a. The Council is supported by an Executive Director, and professional and clerical staff.

(b)-(c) (No change.)

(d) The Council’s website, www.nj.gov/grc, shall [contain] **set forth** the Act, the Council’s public meeting schedule, denial of access complaint forms, Council and legal decisions, frequently asked questions, and other reference materials that the Council deems appropriate. **The Council shall periodically review and make changes to the website as needed to ensure accessibility and usefulness.**

5:105-1.5 Powers and duties of the Council

(a) The Council shall have the following powers and duties pursuant to N.J.S.A. 47:1A-7.b:

1.-4. (No change.)

5. Maintain a toll-free [help-line] **helpline** and **periodically updated** website to assist the public and custodians in obtaining information about

the Act, the Council, and issues and matters regarding access to government records;

6.-8. (No change.)

5:105-1.6 Records designated confidential

(a) In addition to records designated as confidential pursuant to the provisions at N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated [under] **pursuant to** 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 rule, 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.:

[1. Denial of access complaint submissions, including, but not limited to, statements of information and sur-replies during the pendency of an adjudication by the Council;]

Recodify existing 2.-3. as **1.-2.** (No change in text.)

5:105-1.7 Establishment of “Uniform OPRA Request Form”

(a) **The Council establishes a Uniform OPRA Request Form, incorporated herein by reference, at N.J.A.C. 5:105 Appendix. This form is required to be adopted by all public agencies subject to OPRA pursuant to N.J.S.A. 47:1A-5.f.**

(b) **The Uniform OPRA Request Form shall, at a minimum, be composed of:**

1. Space for the name, address, email address, and telephone number of the custodian;

2. Space for the name, address, email address, and telephone number of the requestor and a brief description of the government record sought;

3. Space for the custodian to state which record will be made available, when such record will be available, and the fees, if any, to be charged;

4. Specific directions and procedures for requesting a record, including directions on how to submit electronic government record request forms, if applicable;

5. A statement as to whether prepayment of fees or a deposit is required;

6. The time period within which the public agency is required pursuant to N.J.S.A. 47:1A-1 et seq., to make the record available;

7. A statement of the requestor’s right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;

8. Space for the custodian to list reasons if a request is denied in whole or in part;

9. Space for the requestor to sign and date the form;

10. Space for the custodian to sign and date the form if the request is fulfilled or denied; and

11. The following three questions:

i. I have/have not been convicted of any indictable offense pursuant to the laws of New Jersey, any other state, or the United States.

ii. I, or another person, will/will not use the requested government records for a commercial purpose.

iii. I am/am not seeking records that are the subject of a court order or a pending discovery request in connection with a legal proceeding.

(1) **The Uniform OPRA Request Form shall provide a space for the requestor to identify the proceeding if they answer in the affirmative or “I am” to this question.**

(c) **The Uniform OPRA Request Form may include the following:**

1. A list of commonly requested records broken down by type and/or department within a particular public agency; and/or

2. A list of exemptions that a custodian may use to assist in identifying the specific lawful basis for denying an OPRA request.

(d) **The Uniform OPRA Request Form shall not include a section allowing a requestor to simultaneously seek records pursuant to the common law, which is a separate and distinct request process.**

(e) **Public agencies subject to OPRA shall be required to adopt the Council’s Uniform OPRA Request Form within 45 calendar days of any change to this section or to N.J.A.C. 5:105 Appendix.**

SUBCHAPTER 2. COMPLAINT PROCESS

5:105-2.1 General provisions

(a) Any requestor who is denied access, in whole or in part, to a government record by a custodian, at the option of the requestor, may file a complaint with the Council pursuant to N.J.S.A. 47:1A-6. Such filing shall be made within [60-calendar] **45 calendar** days or, if the last day of the period is a Saturday, Sunday, or legal holiday, within the next business day, pursuant to N.J.A.C. 1:1-1.4, after the requestor receives a response from the custodian that grants or denies access or, if the custodian does not respond within seven business days of the request, within [60-calendar] **45 calendar** days following the expiration of such seven-business-day period, whichever is later, unless accompanied by a motion to file within time, showing good cause.

1. Upon receipt of the motion to file within time and notification to the custodian thereof, the Council shall provide the custodian five business days to submit objections to the motion.

(b) (No change.)

(c) The Council will handle complaints in a summary or expedited manner pursuant to N.J.S.A. 47:1A-6 [of the Act] **and within any applicable time frame set forth at N.J.S.A. 47:1A-7, exclusive of any time during which the parties to the complaint are engaged in the mediation process pursuant to N.J.A.C. 5:105-2.5.**

1. For purposes of the mediation process exclusion, a complaint is considered to be in the mediation process upon filing unless one of the parties declines mediation or until a complaint is referred back to the Council for adjudication pursuant to N.J.A.C. 5:105-2.5(k).

(d)-(f) (No change.)

(g) Discovery shall be limited to the submissions of the parties submitted to the Council. **Physical copies of any submission exceeding 50 pages shall be submitted to the Council at 101 South Broad Street, PO Box 819, Trenton, NJ 08625.**

(h)-(j) (No change.)

5:105-2.3 Complainant document submissions to the Council

(a)-(f) (No change.)

(g) A complainant may amend their complaint as a matter of right within 30 [business] **calendar** days after the filing of the initial complaint. Such amendments must be submitted, in writing, to the Council with copies served simultaneously on all parties.

1. (No change.)

(h)-(i) (No change.)

[(j)] The Council shall determine whether a complaint may proceed with the complainant remaining anonymous. To remain anonymous, the complainant must first make a clear and convincing showing that compelling circumstances exist such that:

1. There is a genuine risk of physical harm;
2. The complaint will entail revelation of highly personal and private information;
3. The very relief sought would be defeated by revealing the complainant's identity; or
4. Other substantial reasons why identification of the party would be improper.

(k) If the Council determines that the complainant has demonstrated compelling circumstances pursuant to (j) above, the Council shall then weigh the complainant's privacy interests against the public interest. If the complainant does not meet the burden of showing why they should proceed anonymously, the Council shall notify the complainant of the decision by administrative order. The Council shall dismiss the complaint unless the complainant submits a written statement expressing his or her willingness to proceed on a non-anonymous basis to the Executive Director within 30 days of receiving the Council's decision.]

(j) Anonymous requestors, including those who have not accurately identified themselves by name on their OPRA request, shall not be permitted to file a Denial of Access Complaint pursuant to N.J.S.A. 47:1A-5.f and 47:1A-6

[(l)] (k) All complaints[, including authorized anonymous complaints,] shall include the complainant's name, address, telephone number or fax number, and email address, if available.

5:105-2.5 Mediation

(a)-(l) (No change.)

(m) The Council shall administratively dismiss any complaint upon the mediator's receipt of [a written mediation agreement fully executed by the parties that stipulates] **affirmation, in writing, from both parties** that the matters presented in the complaint have been resolved and notification from the mediator that the complaint has been settled. The Council shall provide the parties notice of any dismissal by issuing an administrative complaint disposition on the complaint.

5:105-2.6 Council complaint deliberations — no hearing

(a)-(d) (No change.)

(e) The Council shall dismiss a complaint without prejudice upon notification that the public agency has disclosed the records at issue within seven business days after receipt of the corresponding complaint.

1. For purposes of this subsection, notification shall be in the form of a motion to dismiss the complaint supported by a legal certification and documentation to support the public agency's disclosure.

2. The Council will consider, as part of its dismissal, whether the complainant is entitled to reasonable attorneys' fees if the custodian knew, or should have known, that the denial violated OPRA.

3. The complainant may file a new complaint with the Council within 45 days of the dismissal without prejudice if the complainant believes that the custodian has unlawfully denied access to any of the requested records in whole or in part.

5:105-2.8 *In camera* inspections

(a) The Council may, at its discretion, issue an administrative order or interim order for *in camera* inspection of the documents that are the subject of a denial of access complaint. Both parties will be notified that an *in camera* inspection has been ordered through an administrative order or interim order. **The Council shall specify in its administrative order or interim order, the number of copies required for the *in camera* inspection based upon the number of Council members and GRC staff members involved in the review.**

(b) (No change.)

(c) [Presentation of documents to the Council:] The custodian, or their representative, **when presenting documents to the Council for an *in camera* inspection**, shall:

1. Deliver the documents for inspection, **either physically in a sealed envelope, or electronically through a secure method or platform established by the Council**, to the Executive Director of the Council, or such other person as the Council may designate; and

2. (No change.)

3. The requirements [in] **at (c)2 above shall be presented in the format of a document index consistent with the document index required on the Statement of Information form that may be obtained from Council's staff or downloaded from the GRC website (www.nj.gov/grc).**

(d)-(l) (No change.)

5:105-2.12 Stays of the Council's administrative orders, interim orders, and final decisions

(a) Requests for a stay of a final decision must be in writing, delivered to the Council, and simultaneously served upon all parties **within 45 calendar days after receipt of the decision.**

(b)-(f) (No change.)

5:105-2.13 Prevailing party attorney's fees

(a) Reasonable attorney's fees [shall] **may** be awarded when the complainant [has] **is a prevailing party. A complainant is a prevailing party when they have achieved the desired result because the complaint brought about a change, voluntary or otherwise, in the custodian's conduct, and because there is a factual causal nexus [exists] between the complainant's filing of a Denial of Access Complaint and the relief ultimately achieved.**

(b) Reasonable attorney's fees shall be awarded when:

1. A public agency unreasonably denies access;
2. A public agency acts in bad faith; or
3. A public official, officer, employee, or custodian is found to have knowingly and willfully violated OPRA.

Recodify existing (b)-(g) as **(c)-(h)** (No change in text.)

PROPOSALS

COMMUNITY AFFAIRS

5:105-2.14 Knowing and willful violations of the Act; penalties

(b)-(f) (No change.)

(a) [Public] **The public agency employing public** officials, officers, employees, or custodians who knowingly and willfully violate the Act and are found to have unreasonably denied access [under] **pursuant to** the totality of the circumstances shall be subject to a civil penalty pursuant to N.J.S.A. 47:1A-11.

APPENDIX



AGENCY NAME HERE
OPEN PUBLIC RECORDS ACT REQUEST FORM
 Agency Address
 Agency Telephone Number & Fax Number
 Agency e-mail address
 Name of Agency Custodian



Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name _____ MI _____ Last Name _____

E-mail Address _____

Mailing Address _____

City _____ State _____ Zip _____

Telephone _____ FAX _____

Preferred Delivery: ☐ Pick Up ☐ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail _____

Under penalty of N.J.S.A. 2C:28-3, I certify that

1. I ☐ HAVE / ☐ HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States;
2. I, or another person, ☐ WILL / ☐ WILL NOT use the requested government records for a commercial purpose;
3. I ☐ AM / ☐ AM NOT seeking records that are the subject of a court order or a pending discovery request in connection with a legal proceeding.

Signature _____ Date _____

Payment Information

Maximum Authorization Cost \$ _____

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Letter size pages - \$0.05 per page
 Legal size pages - \$0.07 per page
 Other materials (CD, DVD, etc) – actual cost of material

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

Note: If you confirmed above that the records sought are in connection with a legal proceeding, identification of that proceeding is required below.

AGENCY USE ONLY	AGENCY USE ONLY	AGENCY USE ONLY								
Est. Document Cost _____ Est. Delivery Cost _____ Est. Extras Cost _____ Total Est. Cost _____ Deposit Amount _____ Estimated Balance _____ Deposit Date _____	Disposition Notes Custodian: If any part of request cannot be delivered in seven business days, detail reasons here. In Progress - Open _____ Denied - Closed _____ Filled - Closed _____ Partial - Closed _____	Tracking Information <table style="width: 100%;"> <tr> <th style="text-align: left;">Tracking #</th> <th style="text-align: left;">Total</th> </tr> <tr> <td>Rec'd Date _____</td> <td>Deposit _____</td> </tr> <tr> <td>Ready Date _____</td> <td>Balance Due _____</td> </tr> <tr> <td>Total Pages _____</td> <td>Balance Paid _____</td> </tr> </table> Records Provided _____ Custodian Signature _____ Date _____	Tracking #	Total	Rec'd Date _____	Deposit _____	Ready Date _____	Balance Due _____	Total Pages _____	Balance Paid _____
Tracking #	Total									
Rec'd Date _____	Deposit _____									
Ready Date _____	Balance Due _____									
Total Pages _____	Balance Paid _____									

DEPOSITS

The custodian may require a deposit against costs for reproducing documents whenever the custodian anticipates that the documents requested will cost in excess of \$5 to reproduce. N.J.S.A. 47:1A-5(f).

Where a special service charge is warranted under OPRA, that amount will be communicated to you as required under the statute. You have the opportunity to review and object to the charge prior to it being incurred. If, however, you approve of the fact and amount of the special service charge, you may be required to pay a deposit or pay in full prior to reproduction of the documents.

YOUR REQUEST FOR RECORDS IS DENIED FOR THE FOLLOWING REASON(S):

(To be completed by the Custodian of Records – check the box of the numbered exemption(s) as they apply to the records requested. If multiple records are requested, be specific as to which exemption(s) apply to each record. Response is due to requestor as soon as possible, but no later than seven (7) or fourteen (14) business days. See page 5 for additional response details)

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

- ☐ Inter-agency or intra-agency advisory, consultative or deliberative material
- ☐ Legislative records
- ☐ Law enforcement records:
 - ☐ Medical examiner photos
 - ☐ Criminal investigatory records (however, N.J.S.A. 47:1A-3(b) lists specific criminal investigatory information which must be disclosed)
 - ☐ Victims' records and/or OPRA requests submitted by victims seeking their own records
- ☐ Personal firearms records or personal identifying information connected to any license authorizing hunting with a firearm.
- ☐ Trade secrets and proprietary commercial or financial information
- ☐ Any record within the attorney-client privilege
- ☐ Administrative or technical information regarding computer hardware, tablets, telephones, electronic computing devices, software applications, and networks or devices operation them which, if disclosed would jeopardize computer security
- ☐ 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 surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software
- ☐ Security alarm system activity and access reports, including video footage the disclosure of which does not compromise the integrity of the security system
- ☐ Information which, if disclosed, would give an advantage to competitors or bidders including detailed or itemized cost estimates prior to bid opening
- ☐ Information generated by or on behalf of public employers or public employees in connection with:
 - ☐ Any sexual harassment complaint filed with a public employer
 - ☐ Any grievance filed by or against an employee
 - ☐ Collective negotiations documents and statements of strategy or negotiating
- ☐ Information that is a communication between a public agency and its insurance carrier, administrative service organization or risk management office
- ☐ Information that is to be kept confidential pursuant to court order
- ☐ Certificate of honorable discharge issued by the United States government (commonly Form DD-214 or NGB-22) filed with a public agency
- ☐ Oath of allegiance, oath of office, or other affirmation; except that full name, title, and oath date.
- ☐ Privacy Information:
 - ☐ Social security numbers
 - ☐ Credit card or debit card numbers
 - ☐ Bank account information
 - ☐ Month and day of birth
 - ☐ Personal e-mail address required by a public agency for government applications, services, or programs
 - ☐ Telephone numbers
 - ☐ Drivers' license numbers
 - ☐ Primary or secondary addresses for covered persons or immediate family members per N.J.S.A. 47:1B-1 (Daniel's Law)
- ☐ Portion of any document disclosing personal information of any person provided to a public agency for sole purpose of receiving official notifications
- ☐ Lists (including personal information) of persons identifying as in need of special assistance in the event of an emergency maintained by a municipality or county
- ☐ Portion of any record disclosing the personal identifying information of a person under 18 years old
- ☐ Personal identifying information contained on domestic animal permits, license, and registrations.
- ☐ Metadata
- ☐ New Jersey Firemen's Association financial relief applications
- ☐ Owner and maintenance manuals
- ☐ HIPAA information and indecent or graphic images of a person's intimate parts as defined in N.J.S.A. 47:1A-5.2
- ☐ Certain records of higher education institutions:
 - ☐ Research records
 - ☐ Questions or scores for exam for employment or academics
 - ☐ Charitable contribution information
 - ☐ Rare book collections gifted for limited access
 - ☐ Admission applications

- ☐ Student records, grievances or disciplinary proceedings revealing a students' identification
- ☐ Biotechnology trade secrets N.J.S.A. 47:1A-1.2
- ☐ Convicts requesting their victims' records N.J.S.A. 47:1A-2.2
- ☐ Ongoing investigations of non-law enforcement agencies (must prove disclosure is inimical to the public interest) N.J.S.A. 47:1A-3(a)
- ☐ Public defender records N.J.S.A. 47:1A-5(k)
- ☐ Upholds exemptions contained in other State or federal statutes and regulations, Executive Orders, Rules of Court, and privileges created by State Constitution, statute, court rule or judicial case law N.J.S.A. 47:1A-9
- ☐ Personnel and pension records (however, the following information must be disclosed:
- An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation, and the amount and type of any pension received
 - 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 US, or when authorized by an individual in interest
 - 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 N.J.S.A. 47:1A-10

N.J.S.A. 47:1A-1

- ☐ "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."

Burnett v. County of Bergen, 198 N.J. 408 (2009). Without ambiguity, the court held that the privacy provision "is neither a preface nor a preamble." Rather, "the very language expressed in the privacy clause reveals its substantive nature; it does not offer reasons why OPRA was adopted, as preambles typically do; instead, it focuses on the law's implementation." "Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests."

Executive Order No. 21 (McGreevey 2002)

- ☐ Records where inspection, examination or copying 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.
- ☐ Records exempted from disclosure by State agencies' proposed rules.

Executive Order No. 26 (McGreevey 2002)

- ☐ Certain records maintained by the Office of the Governor
- ☐ Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing
- ☐ Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments
- ☐ 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
- ☐ Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing
- ☐ Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by regulation or EO 9.

Other Exemption(s) contained in a State statute, resolution of either or both House of the Legislature, regulation, Executive Order, Rules of Court, any federal law, federal regulation or federal order pursuant to N.J.S.A. 47:1A-9(a).

(Please provide detailed information regarding the exemption from disclosure for which you are relying to deny access to government records. If multiple records are requested, be specific as to which exemption(s) apply to each record.)

1. All "government records" as defined in N.J.S.A. 47:1A-1.1 are subject to public access under the Open Public Records Act ("OPRA"), unless specifically exempt.
2. A request for access to a government record under OPRA must be in writing, hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. N.J.S.A. 47:1A-5(g). In accordance with OPRA, custodians will generally have seven (7) business days to respond, unless:
 - The requestor seeks "immediate access" records as outlined in N.J.S.A. 47:1A-5(e); where the custodian must respond "immediately" disclosing responsive records not to exceed twenty-four (24) months old.
 - The requestor seeks information required to be disclosed by N.J.S.A. 47:1A-3(b), where the custodian must respond disclosing the information within twenty-four (24) hours or as soon as practical;
 - The requestor is seeking records for a "commercial purpose" as defined in N.J.S.A. 47:1A-1.1, where the response time frame is fourteen (14) business days, but the custodian shall notify the requestor of the additional time within seven (7) business days. N.J.S.A. 47:1A-5(i). However, the response time frame can be reduced to seven (7) business days upon payment of no more than two times the cost to produce the responsive records.
 - The requestor is seeking records requiring review for compliance with "Daniel's Law" (N.J.S.A. 47:1B-1, et seq.), where the response time frame is fourteen (14) business days, but the custodian shall notify the requestor of the additional time within seven (7) business days. N.J.S.A. 47:1A-5(i).
 - Fire district employing one or fewer full-time employees serving as custodians may add seven (7) business days to the seven (7) or fourteen (14) business day response time frames.

The applicable response time does not commence until the custodian receives the request form. N.J.S.A. 47:1A-5(h). If you submit the request form to any other officer or employee, the recipient must either forward the request to the appropriate custodian or direct you to the appropriate custodian. Id.
3. Requestors are not required to use this OPRA request form; however, a written equivalent not containing the form requirements of N.J.S.A. 47:1A-5(f) and N.J.S.A. 47:1A-5(g) may be denied by a custodian.
4. Requestors may submit requests anonymously. A request submitted anonymously shall not be considered incomplete. N.J.S.A. 47:1A-5(f). If you elect not to identify yourself accurately or provide an accurate address, e-mail address, or telephone number, the custodian is not required to respond until you reappear before the custodian seeking a response to the original request. Further, anonymous requestors are prohibited from filing a complaint with either the GRC or the Courts. N.J.S.A. 47:1A-6.
5. The fees for duplication of a "government record" in printed form are listed on page 1 of this form. The custodian will notify you of any special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by cash, check or money order payable to the responding agency.
6. You may be charged a prepayment or deposit when a request for copies exceeds \$5.00. The custodian will contact you and advise you of any deposit requirements. You agree to pay the balance due upon delivery of the records.
7. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, and who is seeking government records containing personal information pertaining to the person's victim or the victim's family. N.J.S.A. 47:1A-2.2. This includes anonymous requests for said information.
8. By law, the responding agency must notify you that it grants or denies a request for access to government records within applicable response time frame after the custodian receives the request. If the record requested is in storage, the custodian will advise you within seven (7) or fourteen (14) business days after receipt of the request when the record can be made available and the estimated cost for reproduction within no more than twenty-one (21) business days from date of notification. N.J.S.A. 47:1A-5(i).
9. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you. N.J.S.A. 47:1A-5(g).
10. If the custodian is unable to comply with your request for access to a government record, they will indicate the specific bases for denial on the request form or other written correspondence and send it to you.
11. Except as otherwise provided by law or by agreement with the requestor, if the custodian fails to respond to you in writing within seven (7) or fourteen (14) business days of receiving a request, the failure to respond is a deemed denial of your request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
12. If your request for access to a government record has been denied or unfilled within the seven (7) or fourteen (14) business days required by law, you have a right to challenge the decision by the responding agency to deny access. Within forty-five (45) calendar days after the denial, you may either: 1) institute a proceeding in the Superior Court of New Jersey; or 2) file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County. Questions regarding the GRC's Denial of Access Complaint process can be directed to the GRC toll-free telephone at 888-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at GovernmentRecords@dca.nj.gov, or at their web site at www.state.nj.us/grc. The Council can answer general inquiries about OPRA.
13. Information provided on this form may be subject to disclosure under the Open Public Records Act.