

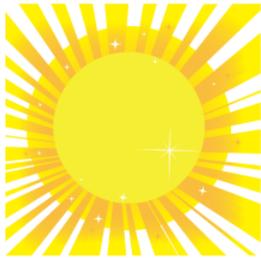


THE OPRA ALERT

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NEW CUSTODIAN'S TOOLKIT SHINES LIGHT ON PUBLIC ACCESS TO RECORDS



During the week of March 13-19, 2011, citizens across the United States celebrate Sunshine Week, a national initiative that promotes open and transparent government. This week is a time to reflect on New Jersey's progress in fostering an open government atmosphere. The Open Public Records Act (OPRA) provides members of the public a statutory right of access to records maintained by all New Jersey public agencies. The New Jersey Legislature created the Government Records Council (GRC) to provide oversight of OPRA and how records custodians adhere to it. OPRA contains several requirements to which custodians must adhere when responding to records requests, many of which have unfortunately become common violations of the law. Currently, the number one violation of OPRA is custodians' failure to properly respond to OPRA requests in writing within the statutorily mandated seven (7) business days.

Thus, in celebration of Sunshine Week and the furtherance of the GRC's duties under OPRA to provide guideline for custodians in complying with the law governing access to public records, the Executive Director of the GRC (Catherine Starghill, Esq.) debuted eight steps to ensuring easier access to government records in the March 2011 issue of New Jersey Municipalities, the New Jersey League of Municipalities' magazine. See <http://www.njslom.org/magazine/2011-03/TOC-0311.html>. As an expansion of this article, the GRC is proud to introduce the new Custodian's Toolkit.

This toolkit is designed to assist records custodians facilitate easier access to public records. Additionally, the toolkit aims to assist records custodians with staying organized, tracking deadlines and maintaining compliance with the law.

Part 1 of the Custodian's Toolkit contains an eight step guideline for custodians to follow when responding to OPRA requests. This guideline escorts custodians through the steps necessary to fulfill an OPRA request in full compliance with OPRA from the time the request is received through the final response to grant or deny access to the requested records.

Part 2 of the Custodian's Toolkit contains OPRA response templates for a variety of situations. These include: *(continued on page 2)*

1. Granting access to the requested records;
2. Denying access to the requested records;
3. Denying access to the request because the request is invalid;
4. Seeking clarification of the request;
5. Seeking an extension of time to respond to the request beyond the statutorily mandated seven (7) business days; and
6. Assessing a special service charge.

These templates are intended to be used as guidance. Custodians should tailor the templates to suit the specific circumstances of each request as necessary. Custodians are not required to use these templates when responding to requests, but they are now available for convenience purposes. The remainder of this edition of *The OPRA Alert* debuts the new Custodian's Toolkit, which is also available for download on the GRC's website at <http://www.nj.gov/grc/custodians/toolkit/>.

The Government Records Council (GRC) is committed to making the Open Public Records Act (OPRA) work for the citizens of New Jersey. Since the law's inception, the GRC has worked hard to make government records more easily accessible to the public. The GRC is committed to being the facilitator of open government in New Jersey.

Created under OPRA, the Government Records Council:

- Responds to inquiries and complaints about the law from the public and public agency records custodians;
- Issues public information about the law and services provided by the Council;
- Maintains a toll-free help-line and website to assist the public and records custodians;
- Issues advisory opinions on the accessibility of government records;
- Delivers training on the law;
- Provides mediation of disputes about access to government records; and
- Resolves disputes regarding access to government records.

Government Records Council members are:

Robin Berg Tabakin, Esq. (Chairwoman)

Owner of Technoforce, LLC and former State
President of the New Jersey Association of
Women Business Owners

Lori Grifa

Commissioner of the New Jersey
Department of Community Affairs

Chris Cerf

Acting Commissioner of the New Jersey
Department of Education

Government Records Council staff members are:

Catherine Starghill, Esq. (Executive Director)

Karyn Gordon, Esq. (In-House Counsel)

Dara Lownie (Communications Manager)

Frank Caruso (Senior Case Manager)

Harlynn A. Lack, Esq. (Case Manager/Staff Attorney)

Darryl C. Rhone (Case Manager)

John Stewart, Esq. (Mediator)

Brigitte Hairston (Secretary)

Government Records Council
101 S. Broad Street
P.O. Box 819
Trenton, New Jersey 08625-0819

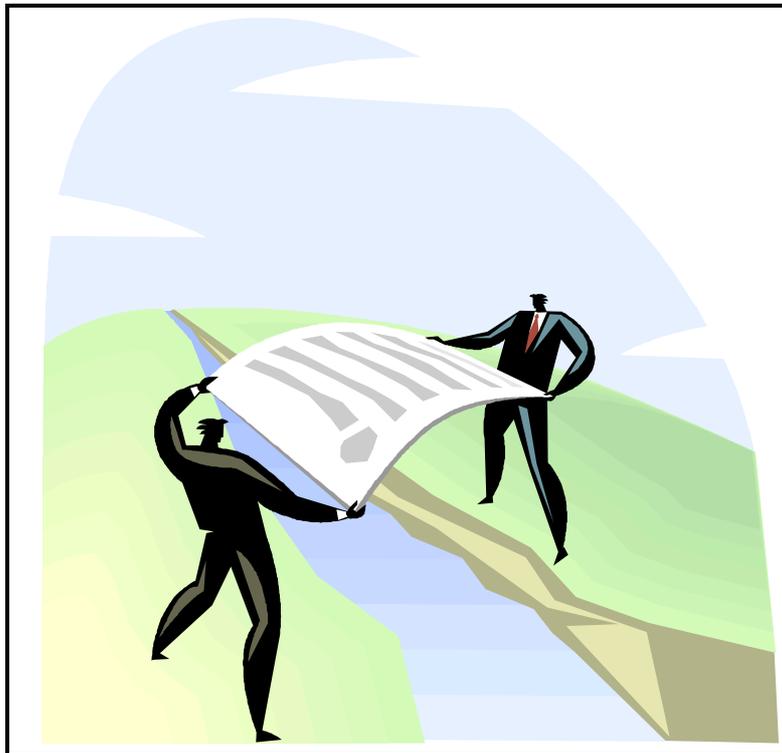
Phone: 609-292-6830
Toll Free: 1-866-850-0511
Fax: 609-633-6337
E-mail: grc@dca.state.nj.us

www.nj.gov/grc



Custodian's Toolkit

**A Resource to Facilitate Easier Access to Public
Records under the Open Public Records Act**



First Edition

March 2011

Custodian's Toolkit

First Edition – March 2011

Table of Contents

Use of this Toolkit	3
SECTION 1 – Eight Steps to Ensuring Easier Access to Government Records	4
Calculate Statutory Response Deadline	5
Determine If Request Is A Valid OPRA Request	6
Determine If There Is Enough Information To Fulfill Request	6
Determine If Request Requires Special Service Charge Or Will Substantially Disrupt Agency Operations	7
Obtain Records Responsive To Request	7
Determine If Records or Portions Thereof Fit Within Any of OPRA's Exemptions	8
Redact, Convert to Requested Medium, and Calculate Appropriate Fees	8
Provide Records By Requested Method of Delivery or Deny Access Providing The Legal Basis in Writing	8
SECTION 2 – OPRA Response Templates	10
Granting Access	11
Denying Access (in general)	12
Denying Access Because Request Is Invalid	19
Seeking Clarification	21
Requesting An Extension of Time	22
Assessing A Special Service Charge	24

Use of this Toolkit

The Government Records Council created the Custodian's Toolkit to help public agency records custodians fulfill their legal obligations under New Jersey's Open Public Records Act ([N.J.S.A. 47:1A-1 et seq.](#)).

This toolkit serves as a reference, but is not legal advice and is not a substitute for the same from public agency legal advisors. Records custodians should rely on agency legal advice on issues that could result in disputes, particularly those related to a denial of access to government records.

The response templates provided in this toolkit are meant to serve as guidance on how to respond to OPRA requests. Custodians may need to edit the templates as necessary to properly respond to individual OPRA requests. However, these templates provide custodians with a solid starting point on how to respond to various types of requests.

The Council's website at www.state.nj.us/grc contains useful information on the law, including summaries of exceptions to disclosure, copies of gubernatorial Executive Orders, lists of statutes containing exceptions, and a search engine of all prior GRC decisions. Custodians, their legal advisors, and the public are urged to check the website when questions arise and should also feel free to submit their questions to the Council via our toll-free information line (1-866-850-0511), e-mail (grc@dca.state.nj.us), or regular mail (101 South Broad Street, P.O. Box 819, Trenton, NJ 08625-0819).

In addition to this toolkit, the Council has other resource materials that may be useful in assisting custodians understand the requirements of OPRA. These materials include the following which can be accessed from the GRC's website.

Additional Resources:

- A Readable Version of OPRA
- OPRA PowerPoint presentation
- Exemptions in OPRA handout
- Special Service Charge handout
- Useful OPRA Cases by Subject handout
- E-mail Retention – DARM Circular
- Handbook for Records Custodians

SECTION 1:

**Eight Steps to Ensuring
Easier Access to Government
Records**



Facilitating Transparency in Government: Eight Steps to Ensuring Easier Access to Government Records

OPRA allows open access to records maintained by public agencies with some limitations. In an attempt to assist records custodians facilitate the transparency in government sought by the enactment of OPRA, the GRC has created an eight step guideline for custodians to follow when responding to OPRA requests. These steps will assist records custodians stay organized, track deadlines, and ensure government records are accessible to the public in compliance with the law.

1. Calculate Statutory Response Deadline

OPRA mandates that custodians grant or deny access as soon as possible, but not later than seven business days after receiving the request. N.J.S.A. 47:1A-5.i. Failure to adhere to the statutorily mandated response time is by far the most common violation of OPRA, yet the easiest to avoid. Upon receiving an OPRA request, a custodian should immediately calculate the seven business day response deadline so that he/she is fully aware of the last possible date upon which a *written* response to the request must be provided.

Day one of the calculation begins the day *after* the custodian receives the OPRA request. This calculation applies to the agency's actual business days. If the agency is closed for a holiday, this date does not count towards the seven business day deadline.

Additionally, custodians should designate someone who can respond to OPRA requests in the custodian's absence. A custodian's vacation or sick leave does not absolve the public agency from its responsibility to fulfill OPRA requests in a timely manner.

Although OPRA states that a custodian must grant or deny access within the prescribed time period, the GRC has expanded a custodian's response options to include requests for clarification of an unclear request and requests for an extension of time beyond the seven business days.

There are specific records that follow a different response deadline requirement. OPRA mandates that immediate access be granted to budgets, bills, vouchers, contracts and government employee salary information. N.J.S.A. 47:1A-5.e. Immediate access means "on the spot," unless the records are in storage, in use, or require medium conversion that cannot be performed immediately by the public agency. In these instances, immediate access records must be provided as immediately as possible after the custodian notifies the requestor in writing that an extension of the immediate access requirement is needed and for what reason.

2. Determine If Request Is A Valid OPRA Request

A valid OPRA request seeks specific, identifiable government records. Valid OPRA requests do not ask questions, do not seek information, and do not require a custodian to conduct any research or create a new record. The GRC has routinely upheld a custodian's denial of a request on the basis that it is invalid because it asks questions, seeks information, and requires the custodian to conduct research or create a new record. Upon receiving an OPRA request, custodians should determine if the request fits into any of these categories and respond in writing accordingly.

3. Determine If There Is Enough Information To Fulfill Request

A custodian may be unsure of which specific records are being requested. OPRA allows a custodian to seek clarification from the requestor when this is the case. A custodian's request

for clarification must be in writing within the seven business day response time. The custodian's response time stops until the requestor provides clarification.

4. Determine If Request Requires Special Service Charge Or Will Substantially Disrupt Agency Operations

OPRA allows custodians to a charge special service charge only when fulfilling a request requires an extraordinary amount of time and effort. Special service charges cannot be set in advance by ordinance because they are determined on a case-by-case basis. The GRC has a resource online with 14 questions a custodian should answer to assist in determining if a special service charge is warranted (<http://www.nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>).

OPRA's substantial disruption provision allows a custodian to deny access to a request that would substantially disrupt the operations of the agency, but only after attempting to reach a reasonable solution that accommodates the interests of both the requestor and the agency. These are subjective determinations based on an agency's resources available to fulfill a request and are usually applied to extreme requests for thousands of records. The GRC has only upheld a custodian's denial of access based on substantial disruption of an agency's operations in a handful of times since 2002.

5. Obtain Records Responsive To Request

It is reasonable that a custodian will not have physical custody of every record maintained by the agency. As such, a custodian should document attempts to gain access to records maintained elsewhere and ensure that the requestor receives the requested records. A custodian cannot be held responsible if another employee obstructs access, as long as the custodian can prove attempts made to gain access to the records. The GRC will hold the officer,

official or employee who obstructs access accountable, not the custodian who diligently attempted to obtain the records responsive.

6. Determine If Records or Portions Thereof Fit Within Any of OPRA's Exemptions

All government records are subject to public access unless they fit within one of OPRA's 24 specific exemptions. A list of the 24 exemptions is located on the GRC's website at <http://www.nj.gov/grc/pdf/OPRAExemptions.pdf>.

7. Redact, Convert to Requested Medium, and Calculate Appropriate Fees

If there are portions of a record that are exempt from disclosure, a custodian must redact those portions prior to providing access. Instructions for properly redacting records can be found in the Custodian Handbook located on the GRC's website at <http://www.nj.gov/grc/custodians/handbook/>.

Requestors are permitted under OPRA to seek records in specific mediums, such as paper or electronic copies. A custodian must permit access in the medium requested. N.J.S.A. 47:1A-5.d. If a custodian does not maintain the record in the requested medium, he/she must either convert the record to the requested medium (charging any related costs for the conversion) or provide access in some other "meaningful medium" – meaningful to the requestor.

The OPRA copy fee schedule has recently changed to the following:

- \$0.05 per page for letter sized pages and smaller;
- \$0.07 per page for legal sized pages and larger;
- If the actual cost to produce paper copies exceeds the \$0.05 and \$0.07 rates, custodians may charge the actual cost of duplication;
- Electronic records are FREE OF CHARGE (i.e. records sent via e-mail and fax);
- Actual cost to provide records in another medium (i.e. computer disc, CD-ROM, DVD).

8. Provide Records By Requested Method of Delivery or Deny Access Providing

The Legal Basis in Writing

A custodian must grant access to a government record by the method of delivery requested (regular mail, e-mail, or fax). Custodians may charge associated costs for same (i.e. actual postage costs).

A custodian is obligated to provide the legal basis for each individual redaction or record denied. In the custodian's response, the custodian must reference the specific OPRA or other state or federal exemption that allows nondisclosure.

Additionally, custodians must respond to each item requested. If records responsive to a request are not being provided, custodians **must** provide the legal basis for denying access in writing. Simply stating the records are not public records amounts to an insufficient response.

This eight step guideline will assist records custodians fulfill their obligation to provide open access to New Jersey's government records, and achieve the goals of OPRA. As always, if a custodian has questions about an OPRA request or the law, they are encouraged to contact the GRC for guidance (1-866-850-0511).

SECTION 2:
OPRA Response Templates



[Insert Date]

[Insert Requestor's Name]
[Insert Requestor's Address]
[Insert City, State, Zip]

Dear [insert name of requestor],

The [insert name of agency] received your Open Public Records Act (OPRA) request on [insert date agency received request]. The official Records Custodian, [insert name of custodian], received your OPRA request on [insert date custodian received request]. As such, the seven (7) business day deadline to respond to your request is [insert deadline date]. This response to your request is being provided to you on the [Xth] business day after the custodian's receipt of said request.

The following records are being provided in their entirety and are responsive to your request.

1. [Insert name of record, number of pages]
 2. [Insert name of record, number of pages]
 3. [Insert name of record, number of pages]
- Include more as necessary.*

These records are being transmitted to you via [insert requestor's preferred method of delivery], as per your request. Pursuant to N.J.S.A. 47:1A-5.b., the cost associated with this request is [insert amount]. [Include instructions on how requestor can remit payment].

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the [insert name of agency] to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,

[Insert name of Custodian]
[Insert name of agency]
[Insert Custodian's contact information]



[Insert Date]

[Insert Requestor's Name]
 [Insert Requestor's Address]
 [Insert City, State, Zip]

Dear [insert name of agency],

The [insert name of agency] received your Open Public Records Act (OPRA) request on [insert date agency received request]. The official Records Custodian, [insert name of custodian], received your OPRA request on [insert date custodian received request]. As such, the seven (7) business day deadline to respond to your request is [insert deadline date]. This response to your request is being provided to you on the [Xth] business day after the custodian's receipt of said request.

The table below identifies the records that being denied in whole or in part as well as the legal basis for each denial, as is required by N.J.S.A. 47:1A-6.

List of all records responsive to OPRA request (include the number of pages for each record).	List of all records provided, <u>with redactions</u> , or denied in their entirety.	If records are disclosed with redactions, give a general nature description of the redactions.	If records were denied in their entirety, give a general nature description of the record.	List the legal explanation and statutory citation for the denial of access to records in their <u>entirety</u> or <u>with redactions</u> .
Example: Closed session minutes for the May 15, 2006 Council Meeting	Closed session minutes provided with redactions	Redactions were made only to delete the discussion of the Council members regarding the personnel matter of Jane Doe.	N/A	<u>N.J.S.A. 47:1A-9.a.</u> (allows exemptions from disclosure contained in other state statutes to apply under OPRA) and <u>N.J.S.A. 10:4-12</u> (allows governing bodies to exclude the public from discussions of personnel matters).

* A list of OPRA's exemptions is attached to this response letter.

These records are being transmitted to you via [insert requestor's preferred method of delivery], as per your request. Pursuant to N.J.S.A. 47:1A-5.b., the cost associated with this request is [insert amount]. [Include instructions on how requestor can remit payment].

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the [insert name of agency] to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,

[Insert name of Custodian]

[Insert name of agency]

[Insert Custodian's contact information]

OPRA EXEMPTIONS
(Exceptions are noted in italics)

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

- 1) Inter-agency or intra-agency advisory, consultative or deliberative material (Note: generally refers to draft documents or documents used in a deliberative process).
- 2) Legislative records. Specifically:
 - a. information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, *unless it is information the constituent is required by law to transmit;*
 - b. any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, *except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members.*
- 3) Medical examiner records – photographs, negatives, print, videotapes taken at the scene of death or in the course of post mortem examination or autopsy, *except:*
 - a. *when used in a criminal action or proceeding in this State which relates to the death of that person,*
 - b. *for the use as a court of this State permits, by order after good cause has been shown and after written notification of the request for the court order has been served at least five days before the order is made upon the county prosecutor for the county in which the post mortem examination or autopsy occurred,*
 - c. *for use in the field of forensic pathology or for use in medical or scientific education or research, or*
 - d. *or use by any law enforcement agency in this State or any other state or federal law enforcement agency.*
- 4) Criminal investigatory records - records which are not required by law to be made, maintained or kept on file that are held by a law enforcement agency which pertain to any criminal investigation or related civil enforcement proceeding. (Note: N.J.S.A. 47:1A-3.b. lists specific criminal investigatory information which must be disclosed).
- 5) Victims' records - an individually-identifiable file or document held by a victims' rights agency which pertains directly to a victim of a crime except that a victim of a crime shall have access to the victim's own records. "Victims' rights agency" means a public agency, or part thereof, the primary responsibility of which is providing services, including but not limited to food, shelter, or clothing, medical, psychiatric, psychological or legal services or referrals, information and referral services, counseling and support services, or financial services to victims of crimes, including victims of sexual assault, domestic violence, violent crime, child endangerment, child abuse or child neglect, and the Victims of Crime Compensation Board.
- 6) Trade secrets and proprietary commercial or financial information obtained from any source. Includes data processing software obtained by a public agency under a licensing agreement which prohibits its disclosure.
- 7) Any record within the attorney-client privilege.

- 8) Administrative or technical information regarding computer hardware, software and networks which, if disclosed would jeopardize computer security.
- 9) 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.
- 10) Security measures and surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software.
- 11) Information which, if disclosed, would give an advantage to competitors or bidders.
- 12) Information generated by or on behalf of public employers or public employees in connection with:
 - a. Any sexual harassment complaint filed with a public employer;
 - b. Any grievance filed by or against an individual; or
 - c. Collective negotiations, including documents and statements of strategy or negotiating position.
- 13) Information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office.
- 14) Information which is to be kept confidential pursuant to court order.
- 15) Certificate of honorable discharge issued by the United States government (Form DD-214) filed with a public agency, *except that a veteran or the veteran's spouse or surviving spouse shall have access to the veteran's own records.*
- 16) Personal identifying information. Specifically:
 - a. Social security numbers, *except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor.*
 - b. Credit card numbers
 - c. Unlisted telephone numbers
 - d. Drivers' license numbers.

Except for:

 - a. Use by any government agency, including any court or law enforcement agency, in carrying out its functions,
 - b. or any private person or entity acting on behalf thereof,
 - c. or any private person or entity seeking to enforce payment of court-ordered child support; *except with respect to the disclosure of driver information by the Division of Motor Vehicles as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4);*
- 17) Certain records of higher education institutions:
 - a. Pedagogical, scholarly and/or academic research records and/or the specific details of any research project, *except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available.*

- b. Test questions, scoring keys and other examination data pertaining to the administration of an examination for employment or academic examination.
- c. Records of pursuit of charitable contributions or records containing the identity of a donor of a gift if the donor requires non-disclosure of the donor's identity as a condition of making the gift provided that the donor has not received any benefits of or from the institution of higher education in connection with such gift other than a request for memorialization or dedication.
- d. Valuable or rare collections of books and/or documents obtained by gift, grant, bequest or devise conditioned upon limited public access.
- e. Information contained on individual admission applications.
- f. Information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.

N.J.S.A. 47:1A-1.2

- 18) Biotechnology trade secrets.

N.J.S.A. 47:1A-2.2

- 19) Limitations to convicts - personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information. *Information may be released only if the information is necessary to assist in the defense of the requestor. A determination that the information is necessary to assist in the requestor's defense shall be made by the court upon motion by the requestor or his representative.*

N.J.S.A. 47:1A-3.a.

- 20) Ongoing investigations – any records pertaining to an investigation in progress by any public agency if disclosure of such record or records shall be detrimental to the public interest. *This provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced.*

N.J.S.A. 47:1A-5.k.

- 21) Public defender records that relate to the handling of any case, *unless authorized by law, court order, or the State Public Defender.*

N.J.S.A. 47:1A-9

- 22) Upholds exemptions contained in other State or federal statutes and regulations, Executive Orders of the Governor, Rules of Court, Constitution of this State, or judicial case law.

N.J.S.A. 47:1A-10

- 23) Personnel and pension records, *except specific information identified as follows:*
- a. *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,*
 - b. *When required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest.*

- c. *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-1 (Legislative Findings)

- 24) Privacy Interest - “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.”

Burnette 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)

- 1) 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.
- 2) Records exempted from disclosure by State agencies’ promulgated rules are exempt from disclosure by this Order.
- 3) Executive Orders No. 9 (Hughes), 11 (Byrne), 79 (Byrne) and 69 (Whitman) are hereby continued to the extent that they are not inconsistent with this Executive Order.

Executive Order No. 9 (Hughes) exemptions that are still active:

- a. Questions on examinations required to be conducted by any State or local governmental agency;
- b. Personnel and pension records (same as N.J.S.A. 47:1A-10);
- c. Records concerning morbidity, mortality and reportable diseases of named persons required to be made, maintained or kept by any State or local governmental agency;
- d. Records which are required to be made, maintained or kept by any State or local governmental agency which would disclose information concerning illegitimacy;
- e. Fingerprint cards, plates and photographs and other similar criminal investigation records which are required to be made, maintained or kept by any State or local governmental agency;
- f. Criminal records required to be made, maintained and kept pursuant to the provisions of R. S. 53:1-20.1 and R. S. 53:1- 20.2;
- g. Personal property tax returns required to be filed under the provisions of Chapter 4 of Title 54 of the Revised Statutes; and
- h. Records relating to petitions for executive clemency.

Executive Order No. 11 (Byrne) exemptions are the same as N.J.S.A. 47:1A-10.

Executive Order No. 79 (Byrne) exemptions are the similar to # 8, 9, 10 above under N.J.S.A. 47:1A-1.1.

Executive Order No. 69 (Whitman) exemptions that are still active: Fingerprint cards, plates and photographs and similar criminal investigation records that are required to be made, maintained or kept by any State or local governmental agency.

Executive Order No. 26 (McGreevey 2002)

- 1) Certain records maintained by the Office of the Governor:
 - a. Any record made, maintained, kept on file or received by the Office of the Governor in the course of its official business which is subject to an executive privilege or grant of confidentiality established or recognized by the Constitution of this State, statute, court rules or judicial case law.
 - b. All portions of records, including electronic communications, that contain advisory, consultative or deliberative information or other records protected by a recognized privilege.
 - c. All portions of records containing information provided by an identifiable natural person outside the Office of the Governor which contains information that the sender is not required by law to transmit and which would constitute a clearly unwarranted invasion of personal privacy if disclosed.
 - d. If any of the foregoing records shall contain information not exempted by the provision of the Open Public Records Act or the preceding subparagraphs (a), (b) or (c) hereof then, in such event, that portion of the record so exempt shall be deleted or excised and access to the remainder of the record shall be promptly permitted.
- 2) Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing. *The resumes of successful candidates shall be disclosed once the successful candidate is hired. The resumes of unsuccessful candidates may be disclosed after the search has been concluded and the position has been filled, but only where the unsuccessful candidate has consented to such disclosure.*
- 3) Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments.
- 4) Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.
- 5) Information in a personal income or other tax return
- 6) 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.
- 7) Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing.
- 8) Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by a regulation of that department or agency adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.
- 9) Records of a department or agency held by the Office of Information Technology (OIT) or the State Records Storage Center of the Division of Archives and Records Management (DARM) in the Department of State, or an offsite storage facility outside of the regular business office of the agency. Such records shall remain the legal property of the department or agency and be accessible for inspection or copying only through a request to the proper custodian of the department or agency. In the event that records of a department or agency have been or shall be transferred to and accessioned by the State Archives in the Division of Archives and Records Management, all such records shall become the legal property of the State Archives, and requests for access to them shall be submitted directly to the State Archives.



[Insert Date]

[Insert Requestor's Name]
[Insert Requestor's Address]
[Insert City, State, Zip]

Dear [insert name of requestor],

The [insert name of agency] received your Open Public Records Act (OPRA) request on [insert date agency received request]. The official Records Custodian, [insert name of custodian], received your OPRA request on [insert date custodian received request]. As such, the seven (7) business day deadline to respond to your request is [insert deadline date]. This response to your request is being provided to you on the [Xth] business day after the custodian's receipt of said request.

Your OPRA request sought access to the following:

[Copy from OPRA request].

This request seeks information or asks questions and does not identify specific government records. As such, your request is an invalid OPRA request and is denied. When a request is "complex" because it fails to specifically identify the documents sought, then that request is not "encompassed" by OPRA. See New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J.Super. 166, 180 (App. Div. 2007). A proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents. See Bent v. Stafford Police Department, 381 N.J.Super. 30, 37 (App. Div. 2005). Custodians are not required to conduct research or create new records in response to an OPRA request.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the [insert name of agency] to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,

[Insert name of Custodian]

[Insert name of agency]

[Insert Custodian's contact information]



[Insert Date]

[Insert Requestor's Name]
[Insert Requestor's Address]
[Insert City, State, Zip]

Dear [insert name of requestor],

The [insert name of agency] received your Open Public Records Act (OPRA) request on [insert date agency received request]. The official Records Custodian, [insert name of custodian], received your OPRA request on [insert date custodian received request]. As such, the seven (7) business day deadline to respond to your request is [insert deadline date]. This response to your request is being provided to you on the [Xth] business day after the custodian's receipt of said request.

Your OPRA request sought access to the following:

[Copy from OPRA request].

Currently, your request fails to identify with reasonable clarity the specific government records sought, as is required by Bent v. Stafford Police Department, 381 N.J.Super. 30, 37 (App. Div. 2005). At this time, we request clarification of your OPRA request. Please respond in writing and identify the specific government records sought so that we may process your request. Failure to provide written clarification of your request will result in the closure of this OPRA request.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the [insert name of agency] to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,

[Insert name of Custodian]
[Insert name of agency]
[Insert Custodian's contact information]



[Insert Date]

[Insert Requestor's Name]
[Insert Requestor's Address]
[Insert City, State, Zip]

Dear [insert name of requestor],

The [insert name of agency] received your Open Public Records Act (OPRA) request on [insert date agency received request]. The official Records Custodian, [insert name of custodian], received your OPRA request on [insert date custodian received request]. As such, the seven (7) business day deadline to respond to your request is [insert deadline date]. This response to your request is being provided to you on the [Xth] business day after the custodian's receipt of said request.

Your OPRA request sought access to the following:

[copy from OPRA request].

Your request requires additional time beyond the seven (7) business days to fulfill because [insert reasons why, such as request size, records are in storage, records require extensive medium conversion, etc.] OPRA allows custodians to seek extensions of time pursuant to N.J.S.A. 47:1A-5.i. Specifically, OPRA states that, "the requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied."

Your request requires an extension of time until [insert date custodian anticipates records can be provided].

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the [insert name of Agency] to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,

[Insert name of Custodian]

[Insert name of agency]

[Insert Custodian's contact information]



[Insert Date]

[Insert Requestor's Name]
[Insert Requestor's Address]
[Insert City, State, Zip]

Dear [insert name of requestor],

The [insert name of agency] received your Open Public Records Act (OPRA) request on [insert date agency received request]. The official Records Custodian, [insert name of custodian], received your OPRA request on [insert date custodian received request]. As such, the seven (7) business day deadline to respond to your request is [insert deadline date]. This response to your request is being provided to you on the [Xth] business day after the custodian's receipt of said request.

OPRA allows public agencies to impose special service charges whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or when fulfilling a request requires an extraordinary expenditure of time and effort. See N.J.S.A. 47:1A-5.c. Special service charges must be based upon the actual direct cost of providing the copy or copies.

OPRA mandates that the requestor shall have the opportunity to review and object to the charge prior to it being incurred. See N.J.S.A. 47:1A-5.c. As such, a detailed estimate is provided below:

[Identify lowest level employee capable of fulfilling the request, their direct hourly rate (minus fringe benefits), the number of hours anticipated to complete request and the total estimated special service charge].

Kindly respond in writing with your acceptance or rejection of this estimated charge. We will not begin to process this request until we receive your written acceptance.

If you reject the estimated charge and you wish to challenge the special service charge, you have a right to challenge the decision. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Sincerely,

[Insert name of Custodian]

[Insert name of Agency]

[Insert Custodian's contact information]