

OPRA Now For Law Enforcement Agencies

New Jersey Government Records Council



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The Most Important Number Today!

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WHAT IS OPRA?

- The New Jersey Open Public Records Act. N.J.S.A. 47:1A-1 et. seq. (“OPRA”).
- Effective July 2002, OPRA replaced the former Right to Know Law and broadly expanded the definition of a public record. Over 22 Years!!!
- OPRA created the Government Records Council (“GRC”). N.J.S.A. 47:1A-7.
- OPRA authorizes a complaint process via either the GRC or Superior Court. N.J.S.A. 47:1A-6.

The Government Records Council

Among other duties, the GRC:

- Adjudicates denials of access.
- Administers a mediation program.
- Prepares informational materials.
- Provides OPRA training.
- Operates an OPRA hotline (**1-866-850-0511**).

OPRA Did Not Become the Only Record Request Process in 2002

- OPRA applies to those requests where the requestor chooses to invoke the statute.
- A request *should be* on an official OPRA request form. However, use of the form is not mandatory. See Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009): “the form should be used but no request . . . should be rejected if such form is not used.”

Are there other ways to request records?

- Common law requests.
- Discovery requests, which is not the same as OPRA. See Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (April 2008).
- Administrative/Informal requests (example: requestor comes to Clerk's counter and orally asks to review minutes book).
- Other court processes (*i.e.* subpoenas, court orders)
 - See *e.g.* N.J.S.A. 2C:25-23.1(a)-(c)

*****The GRC has not adjudicatory authority*****

Times They Are A-Changin

- P.L. 2024, c.16
 - On June 5, 2024, Governor Murphy signed into law significant OPRA reform legislation.
 - Changes range from new exemptions to new processes for requestor and custodians.
- Effective Date: September 3, 2024

Highlighted Changes For the GRC

- Council comprised of nine (9) members N.J.S.A. 47:1A-7:
 - DCA Commissioner Designee will serve as Chair.
 - Four (4) members directly appointed by the Governor.
 - Two (2) members appointed from recommendations made by the Senate President.
 - Two (2) members appointed from recommendations made by the Assembly Speaker.
 - Initially three (3) years and then five (5) year terms thereafter.
- Complaint Process N.J.S.A. 47:1A-5(f); N.J.S.A. 47:1A-6:
 - Statute of Limitation decreases from 60 calendar days to 45 calendar days.
 - Court actions or GRC complaints may now be dismissed without prejudice if agency discloses records sought, but attorney's fees may be awarded.
 - Anonymous requestors not be permitted to file complaints either with the GRC or courts.
- Adjudications N.J.S.A. 47:1A-7(e):
 - Beginning eighteen (18) months after enactment – adjudication within 90 days of receipt (not including time in mediation).
 - Staff may request a 45-day extension for good cause.

Highlighted Changes For the GRC

- Established OPRA Request Form N.J.S.A. 47:1A-5(f); N.J.S.A. 47:1A-7:
 - Agencies required to adopt the GRC's (formerly model) request form.
 - GRC required to promulgate regulations to establish a uniform form and process that complies with OPRA.
 - Make the form available to incarcerated individuals.
- Data Compilation N.J.S.A. 47:1A-7(h):
 - The Superior Court shall provide the GRC with a listing of all actions settled thereby.
 - The GRC is required to compile a database of that data.
 - The Administrative Office of the Courts is also required to submit to the GRC specific data regarding OPRA cases at the end of each court year.
- GRC Website N.J.S.A. 47:1A-7(b):
 - The GRC will be statutorily tasked with periodically reviewing its website for updates as needed.

OPRA Forms

- OPRA **requires** every public agency to adopt the OPRA request form “established by the [GRC].” N.J.S.A. 47:1A-5(f).
- Major Changes from the old Model Request Form:
 - Addition of question regarding commercial purpose. N.J.S.A. 47:1A-5(f).
 - Addition of question regarding whether the requested records are sought in connection with litigation (must identify proceeding). N.J.S.A. 47:1A-5(g).
 - Addition of new exemptions in the Exemptions Checklist section.
 - Extensive changes to the information page.

OPRA Forms (cont'd)

- If the agency maintains an electronic request form, it is required to provide directions on how to submit requests to the agency.
- Note:
 - Acceptable for agencies to place their own logos over the placeholder logos at the top of the established OPRA request form (where able).
 - Agencies that have already adopted the old Model OPRA request form should consider readopting the established form to ensure full compliance.
 - Agencies operating with online platforms should update those platform forms to comply with new form elements in N.J.S.A. 47:1A-5(f), (g).

Highlighted Changes For Requestors

- Correspondence request N.J.S.A. 47:1A-5(g):
 - Codified a version of the factors set forth in Elcavage v. West Milford Twp. (Passaic), GRC 2009-07 (April 2010) as follows:
 - Sender/recipient → “[J]ob title or accounts”.
 - Date or range of dates → “[R]easonable time period”.
 - Subject/Content → “[A] specific subject matter”.
- OPRA Request “Limits” N.J.S.A. 47:1A-5(g):
 - Requestors cannot utilize OPRA to seek records that are already the subject of a court order or pending discovery request. Requestors must certify!
 - Requestors can only submit a request to a single custodian within one public agency.
 - Does this prohibit requestors from sending similar requests simultaneously to other agencies?
 - Identical requests?
- Prevailing Party Award Changes N.J.S.A. 47:1A-6:
 - PPAF awards now permissive but will be mandatory where an agency commits 1) an unreasonable denial of access; 2) an act of bad faith; and/or 3) a knowing and willful violation.

Who Can Request Records?

- Anyone!
 - OPRA still allows for anonymous requests
 - Commercial Requestors
 - Out-of-State Requestors: See Scheeler v. Atl. Cnty. Mun. Joint Ins. Fund, 454 N.J. Super. 621 (App. Div. 2018)
 - The identity of the requestor may affect their right of access in limited circumstances

“Commercial Purpose”

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

- Outlines those uses which would be considered a “commercial purpose.”

- **Exceptions**

- News media, including parent companies, subsidiaries, affiliates.
 - Use for news, journalistic, educational, scientific, scholarly, or governmental organization.
 - Use by an election candidate, campaigns, and committees.
 - Labor organizations.
 - Use by contract signatory to a collective bargaining agreement “material” to enforcement of State and federal employee/employer statutes and regulations.
 - Non-profits, if they do not “sell, resell, solicit, rent, or lease a record to an unaffiliated third party” expecting a fee.

Highlighted Changes For Custodians

- Response Time Frames and Extensions N.J.S.A. 47:1A-5(g); 5(i):
 - Generally, still the same as previously described, except:
 - Commercial purpose requests: 14 business days unless requestor decreases time frame to 7 business days by paying no more than 2 times the duplication cost.
 - Records requiring Daniel’s Law review: 14 business days.
 - Immediate access: only applies to records from the last 24 months.
 - Extension for records in storage capped at 21 business days from date of notification to the requestor.
 - Extensions on reasonable basis allowed and uncapped.
- Statutory Support for Disclosure Through Internet N.J.S.A. 47:1A-5(e):
 - Codified version of the procedure for directing individuals to the place on the internet where a record that is unabridged and complete is stored set forth in Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014).
 - Request considered fulfilled if requestor does not object within seven (7) business days.
 - If the requestor cannot locate the record and so advises, the custodian is required to assist the requestor within seven (7) business days. If still unsuccessful, the requestor may ask for a physical copy, which the custodian will be required to provide within seven (7) business days thereafter.

OPRA “Hours”

- Under N.J.S.A. 47:1A-5(a), agencies meeting the following criteria can set limited OPRA hours to 2 hours a day for 3 days a week, minimum, unless the agency’s regularly scheduled business hours are less:
 1. Municipalities with a population of 5,000 residents or less.
 2. Boards of Education with total enrollment of 500 or fewer.
 3. Public authorities with less than \$10 million in assets.

Substitutions and Alternate Designations

- Best practices dictate that an agency should designate a substitute custodian to receive/fulfill requests in the custodian's absence. See Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-325 (Final Decision dated October 27, 2015).
- Agencies may also choose to designate departmental custodians. See Paff v. Twp. of Berkeley Heights (Union), GRC Complaint No. 2007-271 (November 2008).

Highlighted Changes For Custodians

- Special Service Charge N.J.S.A. 47:1A-5(c):
 - An SSC can be charged that is reasonable and absent an enabling ordinance.
 - The charge must still be provided in advance of it being occurred; however, the custodian will also be required to include “an explanation for and itemized list of the fees or charges.” The burden of challenging the reasonableness of the fee will shift to the requestor.
- Medium/Format conversions N.J.S.A. 47:1A-5(d):
 - Recognizes format (electronic file type) as a conversion term.
 - If custodian does not maintain record in medium requested, they shall:
 - **Convert** the record to the medium requested if it does not require substantial work or a third-party vendor; or
 - **Disclose** the record in electronic format maintained at a minimum, if conversion requires substantial work or a third-party vendor.
- Harassment N.J.S.A. 47:1A-5.1:
 - Courts may issue protective orders limiting individuals found to have submitted OPRA requests “with the intent to substantially interrupt the performance of government function.”
 - An extremely high bar!

Highlighted Changes For Custodians

- Privacy N.J.S.A. 47:1A-1; 1.1:
 - OPRA’s legislative findings at N.J.S.A. 47:1A-1 still exist and continues to maintain that a public agency has an obligation to safeguard a citizen’s personal information. See Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009).
 - New and Changing Privacy Exemptions in N.J.S.A. 47:1A-1.1:
 - Debit card number, bank account information; month and day of birth; personal telephone numbers; and personal e-mail addresses “required . . . for government applications, services, or programs . . .”
 - Personal information of juveniles under 18, with exceptions (MVC and Elections).
 - Portion of documents containing personal identifying information provided to an agency for the sole purpose of receiving official notifications.
 - Personal identifying information on domestic animal permits, licenses, and registrations (overturning Bozzi v. City of Jersey City, 248 N.J. 274 (2021)).
- **Case-by-case decisions deploying a balancing test may still be necessary. Burnett, 198 N.J. 408. The colorable claim threshold could also apply. Brennan v. Bergen Cnty. Prosecutor’s Office, 233 N.J. 330 (2018); Rodriguez v. Kean Univ., GRC 2019-109.**

Highlighted Exemption Changes

- Additional New & Changing Exemptions/Exceptions in N.J.S.A. 47:1A-1.1:
 - Expansion of the “administrative or technical information” exemption to include peripheral device information operating on a network.
 - Security alarm activity, access reports, and footage, except where a limited incident request is submitted, and disclosure would not jeopardize the overall system.
 - Detailed itemized cost estimates prior to bid openings.
 - Expansion of personal information exemptions, including juvenile information, and on certain types of records.
 - Metadata except for “authorship, identity of editor, and time of change.”
 - Owner and maintenance manuals.
 - HIPAA data.
 - Indecent graphic images contained in photographs or video as defined by N.J.S.A. 47:1A-5.2.
 - Exemptions and exceptions to election records.

Possession Question Renewed

- It is reasonable that a custodian might not have physical custody of all records maintained within their individual agency.
 - In this instance, a custodian is required to contact the appropriate employees or officials to obtain potentially responsive records.
 - Includes third-parties. Burnett, 415 N.J. Super. 506.
- N.J.S.A. 47:1A-5(i)(1):
 - “A public agency shall not be considered to be in possession of a public record that is created, maintained, or received by another public agency and made available to the public agency either by remote access to a computer network or by distribution as a courtesy copy, unless the agency that created, maintained, or received the record resides within the judicial branch . . .”
 - “A records custodian . . . that receives a request for a record created, maintained, or received by another public agency shall not be obligated to provide the record to the requestor. In the event the custodian does not provide the record, the custodian shall direct the requestor within seven business days to the public agency that, to the best of their knowledge, created, maintains, or received the requested record, at which time the request shall be considered completed.”

Highlighted Changes For Custodians

- Election Records N.J.S.A. 47:1A-5.3(c)-(d):
 - Certain records require “immediate access or transmission via e-mail as soon as possible, but not later than two business days” without charge.
 - Exception: commercial purposes.
 - Certain records require “immediate access and transmission as soon as possible . . .” if request is made within sixteen (16) days of an election.
 - If request is made by noon the day before an election, disclosure must occur by noon the day of the election.
- Applies to N.J. Div. of Elections, the N.J. Election Law Enforcement Comm’n, Cnty. Bd. of Elections, Cnty. Superintendents of Elections, Cnty. Clerks, Municipal Clerks, Fire Dist. Bd. Clerks, School Dist. Business Administrators, and School Dist. Bd. Secretaries.
- Knowing & Willful Penalty N.J.S.A. 47:1A-11(a):
 - The knowing and willful penalty is now paid by the agency and not personally by the custodian.
 - Agencies may initiate disciplinary actions against the individuals on whom the penalty has been imposed.

Relevant Statutes,
Regulations,
&
Decisions

N. Jersey Media Grp., Inc.: A Pathway to Addressing OPRA Requests

- N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017):
 - Criminal investigatory exemption: a two-prong test. N.J.S.A. 47:1A-1.1.
 - “Investigation in progress” exemption. N.J.S.A. 47:1A-3(a).
 - Information required to be disclosed under N.J.S.A. 47:1A-3(b).

Criminal Investigatory Records

- Exempt under N.J.S.A. 47:1A-1.1.
- Definition - 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. Solloway v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-39 (January 2013).
- Janeczko v. N.J. Dep't of Law & Public Safety, Div. of Criminal Justice, GRC Complaint No. 2002-79 and 2002-80 (June 2004).

On-going Investigations; Release Inimical to the Public Interest

- Access to records may be denied during an investigation in progress where disclosure is “inimical,” or harmful, to the public interest. There is an exception for records subject to access prior to becoming part of the investigation.
- **See Rosario v. Port Authority of New York & New Jersey, 2021 N.J. Super. Unpub. LEXIS 1497 (App. Div. 2021):**
 - The Appellate Division affirmed the trial court’s decision that upon applying the on-going investigation test performed in N. Jersey Media Group, Inc., 229 N.J. at 573-74, the Port Authority failed to prove that disclosure would be inimical to the public interest and that the plaintiff was a prevailing party.

3(b) Information

“The following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable, of a request for such information . . .” See the list at N.J.S.A. 47:1A-3(b)

- **Scheeler v. N.J. State Police, GRC Complaint 2015-80 (April 2016):**
 - The Council held that the term “residence” was defined as arrestee’s entire address.

Auto Accident Reports

- Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007):
 - The Council held that “no redactions to the requested auto accident reports are warranted pursuant to N.J.S.A. 39:4-131.” The New Jersey statute cited specifically states that “information contained [in the report] shall not be privileged or held confidential.” The Council’s holding in Truland, has been applied to another complaint in which accident reports were at issue. See also Selby v. Hazlet Twp. Police Dep’t (Monmouth), GRC Complaint No. 2011-154 (Interim Order dated June 26, 2012).

Stark contrast with the personal information exemptions present in OPRA. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1.

Does Daniel’s Law or P.L. 2024, c. 16 change the above?

- Currently unclear.
- But see N. Jersey Media Grp., Inc. v. Twp. of Nutley, 2016 N.J. Super. Unpub. LEXIS 2166 (App. Div. 2016). However, the Council is unsure of how this decision could impact other attempts to redact accident reports.

Body Worn Cameras (“BWC”)

- N.J.S.A. 40A:14-118.5:

- Provides a basic roadmap for disclosure of BWC footage tied directly to retention and added factors.

- N.J.S.A. 40A:14-118.5(l)(1); retention → BWC recordings not subject to the minimum 3-year retention requirements pursuant to N.J.S.A. 40A:14-118.5(j).

- N.J.S.A. 40A:14-118.5(l)(2)-(4), tied to request to not make public the footage and other factors:

1. BWC subject to the minimum 3-year retention per N.J.S.A. 40A:14-118.5(j)(1) showing an encounter about which a complaint has been registered: the subject making the complaint requests the recording to be withheld from the public.
2. BWC subject to the minimum 3-year retention per N.J.S.A. 40A:14-118.5(j)(2)(a)-(d) where the footage is asserted as evidentiary or exculpatory value, or for training.
3. BWC subject to the minimum 3-year retention per N.J.S.A. 40A:14-118.5(j)(2)(e)-(g); the subject member, parent or legal gaurdian, or next of kin/designee requests the recording to be withheld from the public.

Body Worn Cameras (“BWC”) cont’d

- Dericks (O.B.O. TAPintoSparta.net) v. Sparta Twp. (Sussex), GRC Complaint No. 2016-227 (September 2017):
 - The Council held that generally, BWC footage could not be considered “criminal investigatory” because Attorney General Law Enforcement Directives required them to be maintained. N. Jersey Media Grp., Inc., 229 N.J. 541; O’Shea, 410 N.J. Super. 371. See also Richard Rivera, LLC v. Twp. of Bloomfield, 2020 N.J. Super. Unpub. LEXIS 55 (App. Div. 2020).
 - Notwithstanding, the Council held that the footage at issue there was nonetheless exempt under N.J.S.A. 2A:4A-60.

Daniel's Law & Notification Lists

- N.J.S.A. 47:1A-1.1:
 - Daniel's Law Exemption
 - Primary or secondary home address of "covered person" and their immediate family members.
 - **Must be registered with the Office of Information Privacy to be considered a "covered person."**
 - Official Notification Exemption
 - Personal identifying information of any person if they provided same for the sole purpose of receiving official notifications.
 - NIXLE?
 - Special Needs Assistance List Exemption
 - The list of individuals identifying themselves as needing special assistance during an emergency maintained by municipal and county government.

Complaints & Summonses

- **Simmons v. Mercado, 247 N.J. 24 (2021):**
 - The Supreme Court of New Jersey overturned the Appellate Division’s decision holding that MPD had no obligation to obtain records maintained by the Judiciary through eCDR.
 - The Court reasoned that the summonses were created by MPD officers, and they could access them through the eCDR system. Thus, the Court required disclosure in accordance with the trial court’s order.

See also AADARI v. Medina, 2022 N.J. Super. Unpub. LEXIS 73 (App. Div. 2022); AADARI v. Plaza & Town of West New York, 2022 N.J. Super. Unpub. LEXIS 600 (App. Div. 2022).

Security & Surveillance Information

- N.J.S.A. 47:1A-1.1 exempts:
 - Administrative or technical information regarding computer hardware, peripherals, software and networks, including logs, 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.
- N.J.S.A. 2A:156A-19 exempts orders authorizing interception of a wire, electronic or oral communication or the contents of, or information concerning, an intercepted wire, electronic or oral communication or evidence derived therefrom.

Surveillance Cameras

- Previously:

- Howard v. N.J. Transit, GRC Complaint No. 2018-43 (November 2019):

- The Council held that the custodian lawfully denied access to surveillance camera footage from a public transit center under N.J.S.A. 47:1A-1.1. See also Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016).

- Currently:

- Exemption for “Security alarm system activity and access reports, including video footage, for any public building, facility, or grounds” includes a caveat:

- “[U]nless the request identifies a specific incident that occurred, or a specific date and limited time period at a particular public building, facility, or grounds, and is deemed not to compromise the integrity of the security system by revealing capabilities and vulnerabilities of the system.” N.J.S.A. 47:1A-1.1.

Juvenile Records

- N.J.S.A. 47:1A-1.1 exempts access to personal identifying information of juveniles with minor exceptions.
- N.J.S.A. 2A:4A-60:
 - Social, medical, psychological, legal and other records of the court and probation division, and records of law enforcement agencies, pertaining to juveniles charged as a delinquent or found to be part of a juvenile-family crisis, shall be strictly safeguarded from public inspection.
 - There are multiple exceptions, including the parents or guardian and to the attorney of the juvenile.

Identity of Requestor Irrelevant

- In general, the identity of a requestor is not a consideration when deciding whether an exemption applies to a government record requested pursuant to OPRA except for those instances set forth at N.J.S.A. 47:1A-2.2 (victims' records) and N.J.S.A. 47:1A-10 (an individual can access his/her own personnel records).
- See White v. William Patterson Univ., GRC Complaint No. 2008-216 (August 2009); Cicero v. NJ Dep't of Children & Family Serv., Div. of Child Behavioral Health Serv., GRC Complaint No. 2009-201 (August 2010).

Victims' Records

- Exempt under N.J.S.A. 47:1A-1.1.
- Definition - 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. Includes immediate family if victim is deceased or incapacitated.
- "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.

Victims' Records (cont'd)

- N.J.S.A. 47:1A-1.1 exempts access to any written request by a crime victim or alleged victim which seeks access to records relating to that person's victimization or alleged victimization, including, but not limited to any law enforcement agency report, domestic violence offense report, or temporary or permanent restraining order.
 - **The GRC has interpreted the above to allow victims to obtain records regarding their victimization. See Xiao v. N.J. State Police, GRC Complaint No. 2021-324 (May 2024).**
- N.J.S.A. 47:1A-5(b) prohibits a crime victim, or alleged victim, from being charged any fee that otherwise would be charged to obtain a government record relating to that person's victimization or alleged victimization.

Domestic Violence Records

- N.J.S.A. 2C:25-33 (“Prevention of Domestic Violence Act of 1991”) states that:
 - All records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.
 - See *VanBree v. Bridgewater Twp. Police Dep’t (Somerset)*, GRC 2014-122 (October 2014).

Limits to Convicts

- N.J.S.A. 47:1A-2.2 exempts 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.
- Denying a request that clearly seeks records which would not contain any personal information pertaining to any individual because a requestor failed to indicate whether or not they had been convicted of an indictable offense is **not** a lawful basis for a denial. Bart v. City of Paterson Hous. Auth. (Passaic), GRC Complaint No. 2007-133 (October 2007).

Glomar Response

- Harmon v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2017-38 (February 2019):

- The Council held that the custodian lawfully denied access to an OPRA request on the basis that he could “neither confirm nor deny” the exist of responsive records, also known as a “Glomar response.”
- The Council relied on the test derived from N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Office, 447 N.J. Super. 182 (App. Div. 2016):

[T]he agency [must] (1) rel[y] upon the exemption authorized by OPRA that would itself preclude the agency from acknowledging the existence of such documents and (2) present[] a sufficient basis for the court to determine that the claimed exemption applies.

[Id. at 188.]

Medical Examiner Records

- N.J.S.A. 47:1A-1.1 exempts photographs, negatives, prints, and videotapes taken at the scene of death or in the course of post-mortem examination or autopsy.
- Exceptions (changed under P.L. 2024, c. 16):
 - for use by a legal next of kin, a legal representative, or an attending physician of the deceased person.
 - for the use as a court of this State permits, or for use by any law enforcement agency in this State or any other state or federal law enforcement agency.

Arrest Reports

- N.J.S.A. 47:1A-3(b) grants access to arrestee's name, age, residence, occupation, marital status, time and place of arrest, text of the charges, arresting agency, identity of arresting personnel, amount of bail and whether it was posted.
- Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2009):
 - The Council held that the most comprehensive government record that contains the information in N.J.S.A. 47:1A-3(b) is an arrest report.

Gun Permits

- N.J.S.A. 47:1A-1.1 exempts:
 - personal firearms records, except for use by any person authorized by law to have access to these records or for use by any government agency, including any court or law enforcement agency, for purposes of the administration of justice.
 - personal identifying information (as defined in N.J.S.A. 47:1A-1.1) received by the Division of Fish and Wildlife in the Department of Environmental Protection in connection with the issuance of any license authorizing hunting with a firearm.
- Galligan v. Twp. of West Deptford (Gloucester), GRC Complaint No. 2013-163 (March 2014): The Council noted that although the complainant's request preceded the amendment to OPRA for personal firearms records, it was important to acknowledge that this exemption now exists within OPRA.
- See also N.J.A.C. 13:54-1.15

Police Blotter/Call Sheet

- Perino v. Borough of Haddon Heights, GRC Complaint No. 2004-128 (November 2004):
 - The requestor sought access to a police call sheet regarding specific incident. Custodian disclosed the record but redacted the name, address, and phone number of the citizen who brought the complaint to the Borough's attention.
 - The Council conducted balancing test and held that the name, address, and phone number of the citizen who brought the complaint to the Borough's attention should remain redacted due to the potential harm of unsolicited contact and confrontation between the citizen and the requestor.

9-1-1 Tapes

- Fact specific determination!
- Serrano v. South Brunswick Twp., 358 N.J. Super. 352 (March 2003): requested 9-1-1 call placed by defendant in murder trial a few hours before homicide. Court held that “although 911 recordings are government records pursuant to OPRA, they are subject to disclosure only to the extent that the privacy considerations set forth at N.J.S.A. 47:1A-1 are protected.”
- Asbury Park Press v. Ocean Cnty., 374 N.J. Super. 312 (Law Div. 2002): requested 9-1-1 call from shooting victim. Judge described listening to the tape as “a chilling, wrenching, lingering experience.” Court concluded that OPRA’s privacy provision in N.J.S.A. 47:1A-1 exempted tape from public access.

Criminal History Backgrounds

- Custis v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2018-76 (January 2020):

- The Council held that criminal history backgrounds, colloquially known as “rap” sheets, were exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); Executive Order No. 9 (Gov. Hughes, 1963).

- See also Lewis v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018).

Mug Shots & Fingerprint Cards

- Executive Order No. 69 (Whitman 1997) (continued by EO 21 (McGreevey 2002)) exempts:
 - 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.
 - See Melton v. City of Camden, GRC Complaint No. 2011-233 (January 2013).

Child Abuse/Assault Records

- N.J.S.A. 2A:82-46(b) states:
 - Any report, statement, photograph, court document, indictment, complaint or any other public record (in prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of children under, or in any action alleging an abused or neglected child under) which states the name, address and identity of a victim shall be confidential and unavailable to the public.

EMS Reports

- **Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (April 2008):**
 - The Council held that EMS Division Incident Report is exempt from disclosure as a medical record pursuant to Executive Order No. 26 (McGreevey 2002).

Moving Violations

- Merino v. Borough of Ho-Ho-Kus, GRC
Complaint No. 2003-110 (July 2004):
 - The Council ordered the custodian to release copies of moving violation summonses but held that the home addresses should be redacted after conducting a common law balancing test.
 - “[T]he majority of the Council finds it likely that release of the home addresses will result in unsolicited contact between the complainant and the individuals who previously received similar summonses.”

Use of Force Reports (“UFR”)

- O’Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009):
 - UFRs did not generically qualify under the criminal investigatory records exception of OPRA.
 - See Rivera v. Office of the Bergen County Prosecutor et al, 2012 N.J. Super. Unpub. LEXIS 1921 (App. Div. 2012) and Digital First Media, d/b/a/ The Trentonian v. Ewing Twp., 462 N.J. Super. 389 (App. Div. 2020) for guidance on the ability to redact certain UFRs.

Arrest Warrants

- Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013):
 - The Council held that **arrest warrants** are not exempt as criminal investigatory records because they are required to be made pursuant to N.J. Court Rules, R. 3:2-3(a).
 - See also Bell v. Hudson Cnty. Prosecutor's Office, GRC Complaint No. 2017-86 (Interim Order dated May 21, 2019).

Continuation & Incident Reports

- Morgano, GRC 2007-156: Police department continuation reports and incident reports respectively are criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1 and are therefore exempt from disclosure – if the reports relate to the investigation of criminal activity.
- See also De La Cruz v. City of Union City (Hudson), GRC Complaint No. 2015-14 (May 2017).

Mobile Video Recording (“MVR”)

- Gorman v. Gloucester City Police Dep’t, GRC Complaint No. 2004-108 (October 2008):
 - Council reviewed the MVR *in camera* and conducted a common law balancing test.
 - “Upon applying the common law balancing test established by the New Jersey Supreme Court in Doe v. Poritz, 142 N.J. 1 (1995) and by the GRC in Merino v. Ho-Ho-Kus, GRC Complaint No. 2003-110 (February 2004), and balancing the Complainant’s need for the police mobile video recorded tape versus the potential for harm should the tape be disclosed, it is clear the potential for harm outweighs the Complainant’s need for access. Accordingly, the Complainant was lawfully denied access to the requested mobile video recorded tape.”

*****Determination of MVR disclosure is FACT SPECIFIC*****

See e.g. Semaan v. City of Clifton (Passaic), GRC Complaint No. 2021-113 (Interim Order dated January 30, 2024).

Mobile Video Recording Cont'd

- However, trial courts have ruled differently than the Council on the disclosure of MVR recordings.
 - The Law Division in Burlington County ordered disclosure of an MVR involving a drunk driving arrest. The Court held that the tape is not a criminal investigatory record and the subject of the tape, an elected official, did not have a reasonable expectation of privacy.
 - The Law Division in Atlantic County ordered disclosure of an MVR of a traffic stop of an elected official, provided that personal information, such as the social security number and driver's license number, must be redacted from the video. The Court held that driving while intoxicated is considered a motor vehicle traffic violation, not a crime, under state statute, which means the tape cannot be considered a criminal investigatory record. The decision also stated that the public's right to be informed about what transpired during the stop outweighs the public official's right to privacy.

DWI Records

- Blue v. Wall Twp. Police Dep't, GRC Complaint No. 2002-47 (August 2003):
 - The Council held that a Title 39 motor vehicle offense such as DWI was not a "crime" and that, therefore, police investigation of such offenses was accessible under OPRA and not a "criminal investigatory record" exempt from access pursuant to N.J.S.A. 47:1A-1.1.
 - However, the Council also stated that in the few cases where the Legislature has indicated a Title 39 violation is punishable as a crime records related to such charge would fall within the criminal investigatory records exemption. A similar result would apply where the Title 39 charge relates to a criminal investigation or prosecution, such as a fatal motor vehicle accident.

Personnel Records

- N.J.S.A. 47:1A-10 exempts personnel records, with the exception of:
 - 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.
- Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010):
 - Disciplinary history for Trenton PD Detective is exempt from public access as a personnel record pursuant to N.J.S.A. 47:1A-10.

Personnel Records (cont'd)

- Owoh, Esq. (O.B.O. AADARI) v. Voorhees Twp. Police Dep't (Camden), GRC Complaint No. 2022-12 (March 2024):
 - Because requested personnel information contained within an electronic database was disclosed in a spreadsheet, the disclosure was proper.
- But see Owoh, Esq. (O.B.O. AADARI) v. East Brunswick Police Dep't (Middlesex), GRC Complaint No. 2022-106 (December 2024):
 - The custodian's action of amassing personnel information from various physical records (and not a database) resulted in an unlawful denial.

Internal Affairs & Disciplinary Records

- Gannett Satellite Info. Network, LLC v. Twp. of Neptune, 467 N.J. Super. 385 (App. Div. 2021):
 - The Appellate Division affirmed the trial court’s decision that internal affairs (IA) files were exempt from disclosure under OPRA through the Attorney General’s Internal Affairs Policies and Procedures (IAPP).
 - The Appellate Division also affirmed the trial court’s decision to disclose the records under common law but reversed the part holding that plaintiff’s were a prevailing party.
 - Certification has been granted by the Supreme Court, but only to address the prevailing party fee issue.
- See also Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124 (2022).

- **In Re: Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6, 465 N.J. Super. 111 (App. Div. 2020):**
 - In response to state and national demands for accountability and reform of law enforcement following the death of George Floyd, AG issued two Law Enforcement Directives amending the IAPP.
 - The Appellate Division upheld the directives despite challenge by various law enforcement groups on various theories, including violating OPRA. The release of internal affairs disciplinary investigations does not contravene OPRA because the AG is authorized by law to regulate police affairs. OPRA does not control where other law supersedes.

Separation Agreements

- Libertarians For Transparent Gov't v. Cumberland Cnty., 250 N.J. 46 (2022):
 - The Supreme Court reversed the Appellate Division's decision and held that a separation agreement between an employee and the County was not a personnel record exempt from disclosure under N.J.S.A. 47:1A-10.
 - The Court held that because “reason for separation” was part of a disclosable personnel record, the County was required to disclose the agreement with redactions for all other non-disclosable information.
- But see Shurin v. Bd. of Educ. Schs. of Tech, 2022 N.J. Super. Unpub. LEXIS 1771 (App. Div. 2022) holding that settlement agreements not resulting in separation were not disclosable.

Ongoing Requests

- **Blau v. Union Cnty. Clerk, GRC Complaint No. 2003-75 (November 2003):**

- Requests for copies on an ongoing or continuing basis are not valid under OPRA. Example: OPRA request submitted on September 1, 2010 for “all auto accident reports from date of request until end of calendar year.”

***Requestors must submit new OPRA request for each new batch of records sought.