

UNDERSTANDING OPRA: THE NEW JERSEY OPEN PUBLIC RECORDS ACT



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Presented by the Government Records Council

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What is OPRA?

- ◆ Open Public Records Act - N.J.S.A. 47:1A-1 et seq. (7/8/02)
- ◆ Replaced the “Right to Know Law” – same cite.
- ◆ Increases public’s accessibility to government records
- ◆ Provides compliance process
- ◆ Defines a government record
- ◆ Provides for penalties



What Public Agencies are covered under OPRA?

- ◆ Executive Branch
- ◆ State Authorities
- ◆ State Commissions
- ◆ State Colleges and Universities
- ◆ County Government
- ◆ Municipalities
- ◆ Fire Districts
- ◆ School Boards
- ◆ Planning and Zoning Boards
- ◆ Other county and local boards, agencies and authorities

Are all government records accessible to the public?

Yes, but...

- ◆ **Government records shall be readily accessible with certain exceptions**
- ◆ **Limitations shall be construed in favor of the public's right of access**
- ◆ **Governments must safeguard a citizen's personal information**
- ◆ **Nothing limits common law**



Why are some records not disclosed?

◆ Exceptions

- Citizen's reasonable expectation of privacy
- OPRA exceptions
- Other statutory exceptions
- Executive order exceptions
- Regulatory exceptions
- Common law decision



Government Records are Obtained from Public Agencies

- ◆ Submission of a written request to the appointed Records Custodian
- ◆ Custodians must adopt a Records Request Form
- ◆ Submit a form by mail, fax, or in person
- ◆ Choose to copy or inspect
- ◆ Indicate fee threshold

How long does the Custodian have to respond?

- ◆ “As soon as possible”
- ◆ No later than 7 business days after the request is received
- ◆ Access to budgets, bills, vouchers and contracts is immediate – means NOW
- ◆ If more than 7 days because record is in storage or archived, state when it will be available
 - If challenged, could be treated as denial

What about fees?

- ◆ Basic copy fees:
 - \$0.75 per page for the first 10 pages
 - \$0.50 per page for pages 11-20
 - \$0.25 per page for each page over 20
- ◆ Non-routine copies: cost of copy
- ◆ “Extraordinary” requests: direct cost of fulfilling the request
- ◆ Media/technology conversion: cost of conversion
- ◆ E-mail records: no charge

Can requests be denied?

- ◆ Yes..
 - If there is an exception
 - If requester fails to properly fill out request form
- ◆ That's about it.



What happens if a request is denied?

- ◆ Two avenues of redress
 - File complaint in Superior Court; or
 - File complaint with the Government Records Council

How are penalties assessed?

- ◆ If decision is in favor of the requester
- ◆ Custodian “willfully and knowingly” unreasonably denied access
- ◆ Records custodian fined
- ◆ Requester may be entitled to a reasonable attorney’s fee
- ◆ GRC decision may be appealed to the Appellate Division of Superior Court

What about attorney fees?

- ◆ If a requester is represented by an attorney and prevails before the Council, the attorney is entitled to reasonable fees
- ◆ No cases decided yet
- ◆ Staff is reviewing issues and options on how to handle these decisions.



Is the GRC the only recourse?

- ◆ Option of seeking relief from Superior Court
- ◆ Filing Fee

OPRA Exceptions

Executive Order #26

Information Exceptions

- ◆ Records of discrimination, harassment or hostile environments
- ◆ Medical or psychiatric history, tax return information, and personal finances
- ◆ Examination data.
- ◆ Records in the possession of another department; including OIT or State Archives
- ◆ Resume of an unsuccessful candidate for employment if the candidate consents

Employee Information

- ◆ Disclosure is limited under NJSA 47:1A-10
- ◆ Government record is
 - Name, title, position
 - Payroll record, length of service, amount of pension
 - Date of separation and reason
 - Records of qualification for position
- ◆ Time sheets are disclosable
- ◆ No garnishments or payroll deduction information
- ◆ No personal addresses and phone numbers

OPRA Exceptions – 1

- ◆ “ACD” or “Deliberative Material”
 - Inter-agency or intra-agency advisory, consultative or deliberative material.”
- ◆ Records not yet in existence
 - A prospective or standing order for “records as they become available” is not enforceable
- ◆ A request to:
 - Create a record in order to respond to a request for access; or
 - To answer questions asking for “information”.

OPRA Exceptions – 2

- ◆ Trade secrets and proprietary commercial or financial information
- ◆ Any record within the attorney-client privilege, excluding redacted vouchers/invoices
- ◆ Information which would jeopardize security:
 - Computer hardware, software and networks
 - Emergency or security information or procedures for any buildings or facility
 - Security measures and surveillance techniques that create risk to people, property, or computer systems

OPRA Exceptions – 3

- ◆ Information, which, if disclosed, would give an advantage to competitors or bidders
- ◆ 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.

OPRA Exceptions – 4

- ◆ Information generated by or on behalf of public employers or public employees in connection:
 - With any sexual harassment complaint filed with a public employer; or,
 - With any grievance filed by or against an employee; or,
 - In connection with collective negotiations, including documents and statements of strategy or negotiating position.

OPRA Exceptions – 5

- ◆ Law Enforcement material:
 - Medical examiner photos
 - Criminal investigatory records
 - Victim records
 - Bona fide ongoing criminal investigation records
 - Public Defender investigations

OPRA Exceptions – 6

- ◆ Personal Privacy: portion of any document which discloses a persons:
 - Social security number,
 - Credit card number,
 - Unlisted telephone number or
 - Driver license number
- ◆ “Not Official Business” is not a government record:
 - Material not made, maintained or kept on file by a public agency in the course of official business
 - Material not received by a public agency in the course of official business

OPRA Exceptions – 7

- ◆ Those created by any current or previous
 - State or federal law,
 - State or federal rules or regulations,
 - Governor's executive orders, or
 - Court rule: common law.