

A Citizen's Guide to the Open Public Records Act (N.J.S.A. 47A:1A-1 et seq.)

This information is intended to provide the public with an overview of the New Jersey Open Public Records Act. It is intended not to serve as a legal reference, but to familiarize those who want access to public records of their rights and of responsibilities of public agencies that hold records. Additional information can be obtained from the Government Records Council.

Why is there an Open Public Records Act?

The law is intended to:

- Expand the public's right of access to government records;
- Set up an administrative process if access is denied;
- Define what records are and are not "government records" and determine whether they should be accessible to the public.

The policy behind it

The policy behind the Open Public Records Act (OPRA) is that government records, with certain exceptions, should be readily accessible to the public for inspection, examination, and copying. While limitations on the public's right of access should be decided in the public's favor, a public agency is required to keep a citizen's personal information from public access when that access would violate the citizen's reasonable expectation of privacy.

What are government records?

In plain language, a government record is a physical record that has a government purpose and that is held by a public agency.

Under OPRA, the "physical record" includes any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data-processed or image-processed document, and information stored or maintained electronically or by sound recording.

Public agencies include: All departments and agencies of state government, including state colleges and universities; All counties, municipalities, school districts, fire districts, county and municipal boards, commissions, agencies, and independent authorities; and The state's legislature and its agencies, except that most constituent correspondence and special materials prepared for individual legislators are not covered. OPRA does not cover the state's judicial branch and municipal courts, which have their own rules.

A record held by a public agency has a "government purpose" when it has been "made, maintained, kept on file, or received in the course of official business."

What records are accessible to the public?

Generally, all government records are accessible to the public except those that fall under the exceptions to public access set forth in OPRA. Examples of public records that are accessible to the public include minutes of regular public meetings, budgets, bills, vouchers, and contracts, including

collective bargaining agreements, individual employment contracts, and public employee salary and overtime information.

Why are some records exempt from disclosure?

Under OPRA, certain records are exceptions to the public accessibility standards because of the legal principle that citizens have a reasonable expectation of privacy regarding records in possession of a public agency; because of public safety concerns; and because of the need to insure unfettered debate, discussion, and consideration of issues inside public agencies.

What are some records that cannot be disclosed?

Some exceptions to disclosure include:

- Inter- or intra-agency “advisory, consultative, or deliberative material”;
- Trade secrets or proprietary commercial or financial information;
- Any record within the attorney-client privilege;
- Administrative or technical information about computers which, if disclosed, would jeopardize their security; Emergency or security information regarding any building or facility which, if disclosed, would compromise security;
- Security or surveillance information which, if disclosed, could risk the general safety of the public;
- Information which, if disclosed, would give an advantage to competitors or bidders;
- Information about sexual harassment complaints or grievances, and information between an agency and an insurer,
- Files maintained by the public defender in any case considered confidential;
- Personal information such as social security, drivers license, credit card, and unlisted phone numbers (additional protections are granted to victims of crimes), and
- Information kept confidential under court order.

For more specific information about exceptions, contact the “records custodian” in the public agency that has the records you want to access, or contact the Government Records Council.

Special Circumstances

Under OPRA, criminal investigative records in general are not available to the public. Further, if the person making the request has been convicted of an indictable offense in New Jersey or elsewhere, he or she may not have access to personal information about his or her victim or the victim’s family. To comply with this provision, some agencies have developed records request forms that require the requester to certify that he or she has not been convicted of an indictable offense. (A government record containing such information may only be released subsequently if it is needed in the defense of the requester.)

What entities doesn’t OPRA cover?

Generally, OPRA does not cover private businesses, not-for-profit organizations, or the judicial branch of the government.

Whom do I contact to obtain records from public agencies?

Under OPRA, citizens who want to obtain public records should contact the “custodian of records” of the public agency that holds the records they want. At the municipal level, that person will be the municipal clerk; at other public agencies, that person will be an official designated by the particular agency or governmental unit.

What do I need to do to request records?

You need to know what records you want and what government agency has them. The records request should include an accurate description of each specific record sought. The more you know about the record you wish to see, the easier it will be for the custodian to retrieve it.

When you have that information, file a records request with the records custodian. Under OPRA, a records request must be in writing and must be hand-delivered, mailed, faxed, or “otherwise conveyed to the appropriate custodian.” The request cannot be made by telephone. Use of the Internet as a way to submit requests may be possible for an agency equipped to process such requests and is an option left open to the agency.

The requester is allowed to ask for a record to be copied in a particular format. It may not be possible to honor that request, but if it is feasible, an additional charge may be levied for that service if it is a format not normally used by the agency. This is most often applied to making copies or obtaining data from computer databases.

Is there a form I have to use?

Yes. Each agency has a records request form to be used to request records under OPRA. The records request form includes the name, address, and phone number of the requester and space for a brief description of the record sought. A written request provides a paper trail; in the event of a denial, this written record can be very important when making an appeal to the Government Records Council or Superior Court. While anonymous requests may be permitted, the custodian will require a 100% advance payment for any copies that are requested anonymously.

In addition, agencies may release some routinely requested records “informally” by phone, fax, or in person. Such an informal request would not bind the public agency to the time frames provided by OPRA and would not extend certain other rights to the requester, such as the right of appeal to the Government Records Council.

Do I have to pay for copies in advance of receiving them?

When a request form is submitted, the custodian will determine if prepayment is required.

How soon can I get the records requested?

Under OPRA, the custodian of government records must comply with the request “as soon as possible,” but no later than seven business days after the request is received. If the record is in storage or archived (and thus may take longer to retrieve), the custodian will advise the requester of that fact within seven business days and tell the requester when the record will be available. The request form, signed and

dated by the custodian, will serve as evidence of the transaction in case the request is denied and the requester decides to appeal that decision.

What happens if my request is denied?

If a request for a record is denied, there are two avenues of redress. The requester may file a suit in Superior Court or apply to the Government Records Council for relief. For appeals to the Government Records Council, the complaint must be in writing, and it should set forth the facts regarding the circumstances of the request, the specific records asked for, and the denial of access by the records custodian. Appeals in the Superior Court require a \$200 filing fee and must follow established court rules. If the denial is found to be unreasonable, either the court or the council can reverse the decision.

However, prior to taking formal action the requester may want to contact the Government Records Council for advice. Depending on the circumstances, the Council's staff may be able to intervene and resolve the matter without a formal complaint being filed.

What are reasons for denial?

Reasons for denial reside for the most part in the exceptions to disclosure defined in OPRA. Others could be a failure to fill out the records request properly or failure to provide proper identification or failure to meet established deadlines to provide access.

Can I ask for a record in a specific format?

If the requester is willing to pay for it, the agency must, if possible, provide the record in a medium not usually used by the agency. In these cases the agency may charge, in addition to the actual cost of duplication, a special charge that is reasonable, based on the cost for any extensive use of information technology and/or for the labor cost of personnel providing the service.

Can I get immediate access to certain records?

Under OPRA, a requester must be given immediate access to budgets, bills, vouchers, and contracts (including collective bargaining agreements and individual employment contracts) that are readily available to the custodian at the time of the request. "Immediate access" means that the custodian must make every effort to provide access as soon as it is requested.

How is personal information protected?

Because of the policy to protect the privacy of individual information on some public records, it may be necessary for the custodian to redact (i.e., edit) certain information from the record. To ensure that the requester does not see information such as social security, credit card, drivers license, or unlisted telephone numbers, the record shown to the requester must not include that information. For this reason, the requester may receive copies on which information has been blacked out or whited out or copies that use special computer displays or printouts.

Does redaction apply to viewing or inspecting records?

Even if the requester wishes only to view a record, possibly for the purpose of copying down information, the custodian will still redact the record before access is allowed. If a requester wants to look at records without receiving copies and personal information must be redacted, there is no charge for the transaction.

What is the cost of paper copies of records?

The fee for copies of printed government records shall not exceed:

- Letter-sized pages or smaller: \$0.05 per page
- Legal-sized pages or larger: \$0.07 per page
- Audiocassettes: \$1.25
- Videocassettes or DVD: \$0.35
- Information on diskette or CD: \$0.35
- Computer-generated picture (b/w or color): \$0.05 per page for letter-sized or smaller and \$0.07 per page for legal-sized or larger
- Film developing: Actual cost of developing the film shall be charged
- Duplicate photographs: Actual cost of developing the photographs shall be charged
- Any item that cannot be photocopied on a Township copy machine or not otherwise provided for in this schedule, the actual cost incurred in making the copy shall be charged.

What is the Government Records Council?

The passage of OPRA established the Government Records Council (GRC). Part of the State of New Jersey's Department of Community Affairs, the GRC is composed of the Commissioners of Community Affairs and Education (or their designees) and three members of the public who are appointed by the Governor with the advice and consent of the Senate. An executive director and professional and clerical staff administer the work of the Council.

What can the GRC do for me if access to records is denied?

Prior to filing a complaint, you may want to contact the GRC to ask for their assistance or inquire about the denial. You can contact the Council on their toll free help line, (to be provided later), by e-mail (grc@dca.state.nj.us), or from their Web site at www.nj.gov/grc. If you want to file an official complaint with the Council and make use of the formal mediation process, the first step for you (the requester) is to submit a written complaint, alleging that a custodian of a government record has improperly denied you access to a specified record. The complaint form can be obtained from the toll-free number or the Web site.

What is mediation?

After the GRC receives the written complaint, the parties will be offered an opportunity to resolve the dispute through mediation conducted by an impartial mediator. Mediation is an informal, non-adversarial process, which aims to help the parties reach an acceptable, voluntary agreement. If mediation fails to resolve the matter to the mutual satisfaction of the parties, the Council will launch an investigation concerning the issues brought up in the complaint.

How will the GRC conduct the investigation?

The GRC will first ensure that the complaint is a valid one. If it is, the Council will direct the public agency to produce the relevant documents and the reasoning behind the denial. In both mediation and a formal investigation, the GRC will try to handle the complaint as expeditiously as possible and, to that end, will use teleconferencing, faxing of documents, and e-mail. If in-person meetings are necessary, the Council will send representatives to meet the parties at mutually convenient locations.

If the Council cannot make a decision based on the written submissions of the parties, both parties will be notified and a formal hearing will be held. Following that hearing, the Council will reach a determination by a majority vote on whether the record should be made available to the requester. If the Council decides in favor of the requester, and it finds that the custodian "willfully and knowingly" denied access unreasonably under the full circumstances, the custodian can be fined \$1,000 for a first offense, \$2,500 for a second, and \$5,000 for a third if it occurs within 10 years of the first. If the requester wins, he or she may be entitled to a reasonable attorney's fee.

The Council's decision may be appealed to the Appellate Division of the Superior Court.

Going to Superior Court

If a requester is denied access to public records, he or she has the option of seeking relief from the Superior Court in the appropriate jurisdiction. Information on this process can be obtained by contacting the Superior Court in the county where the denial took place. If the court determines that access was improperly denied, the court shall order that access be allowed. If the requester wins, he or she may be entitled to a reasonable attorney's fee.

How can I get more information about the law?

To get more information contact the Government Records Council:

Mail: Government Records Council
PO Box 819, Trenton, NJ 08625-0819
Phone: 866-850-0511
Email: grc@dca.state.nj.us
Website: www.nj.gov/grc

Definitions from the law:

"*Government record*" or "*record*" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data-processed or image-processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency, or authority of the state or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the state or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

"*Public agency*" or "*agency*" means any of the principal departments in the executive branch of state government, and any division, board, bureau, office, commission, or other instrumentality within or created by such department; the Legislature of the state and any office, board, bureau, or commission within or created by the legislative branch; and "any independent state authority, commission, instrumentality, or agency. The term also means any political subdivision of the state or combination of political subdivisions, and any division, board, bureau, office, commission, or other instrumentality within or created by a political subdivision of the state or combination of political subdivisions, and any independent authority, commission, instrumentality, or agency created by a political subdivision or combination of political subdivisions.