

NEW JERSEY'S OPEN PUBLIC RECORDS ACT

New Jersey's Open Public Records Act (OPRA) requires that government records, with certain exceptions, be readily accessible to the public for inspection and copying. It requires officials and judges to place a high value on the public's right of access but also requires public agencies not to disclose an individual's personal information when public access would violate the person's reasonable expectation of privacy.

The full text of the law and other helpful information may be found on the website of the New Jersey Government Records Council, (www.nj.gov/grc), a state agency created to help records requesters use the law and to resolve disputes about access to records.

The main points of the Open Public Records Act (PL 2001, c. 404) are:

- **AGENCIES COVERED:** The law applies to 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 legislature and its agencies, except that most constituent correspondence and materials specifically prepared for individual legislators are not covered. The law does not cover federal agencies or the state's judicial branch and municipal courts, which have their own rules.
- **DEFINITION OF RECORDS:** A government record is a physical record held by a public agency that has been made, maintained, kept on file, or received in the course of official business. This 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, including email created or received by public employees in the course of official business.
- **ACCESS TO RECORDS:** Generally, all government records are accessible to the public for inspection or copying except those that fall under the exceptions set forth in OPRA.
- **COPYING FEES:** There is normally no charge to inspect records. For paper copies, agencies may charge 75 cents a page for the first 10 pages, 50 cents each for pages 11-20 and 25 cents a page for

anything above that. Costs may be higher for materials that can't be easily copied. Records may be requested in electronic form, but an agency may charge a reasonable rate for copying a record to a CD-ROM or other such media.

- **CUSTODIAN:** Every agency must have a designated custodian of records. At the municipal level, that person is the municipal clerk. At other public agencies, that person will be an official designated by the agency.
- **TIME LIMITS:** The custodian must provide immediate access to budgets, bills, vouchers and contracts that are readily available to the custodian at the time of the request. These include collective bargaining agreements and individual employment contracts. For other records, the custodian must respond to a request "as soon as possible," but no later than seven business days after the request is received. If the record is in storage, the custodian must advise the requester of that fact within seven business days and tell the requester when the record will be available.
- **REQUESTS:** Records may be requested informally, but any formal request must be on a form provided by the agency or available online from the GRC and must be hand-delivered, mailed, faxed or "otherwise conveyed to the appropriate custodian." Requests cannot be made by telephone. Agencies may accept requests by e-mail or over the internet, but are not required to do so. The request does not have to be on a form provided by the agency, but should include an accurate description of each specific record sought. Anonymous requests are generally permitted, but the custodian may require a 100% advance payment for any copies. Requesters need not be citizens or residents of New Jersey.
- **EXEMPTIONS:** OPRA exempts certain records from disclosure out of concern for individual privacy; public safety and unfettered debate and discussion inside public agencies. Some specific exceptions to disclosure include:
 - "Advisory, consultative, or deliberative materials," including inter-agency or intra-agency communications such as recommendations, draft documents, proposals, suggestions or other subjective documents reflecting the personal opinions of the writer;. However, purely factual information contained in such material is not exempt.

- Information that, if disclosed, would give an advantage to competitors or bidders. Also, trade secrets or proprietary commercial or financial information;
 - Emergency or security information regarding any building or facility that, if disclosed, would compromise security as well as security or surveillance information which, if disclosed, could risk the general safety of the public. Also, administrative or technical information about computers which, if disclosed, would jeopardize their security.
 - Information about sexual harassment complaints or grievances, information exchanged between an agency and an insurer and records subject to attorney-client privilege.
 - Juvenile case records, records of cases involving domestic violence, files maintained by the public defender in any case considered confidential, autopsy photographs, medical examiner information and any information kept confidential under court order.
 - Personal information such as Social Security, driver's license, credit card and unlisted telephone numbers must be blanked out of records before release, but entire records may not be withheld just because they contain such information.
- **DENIALS:** A custodian who denies a request for records must do so within the seven-day period and must cite a specific reason for denial under OPRA. A custodian who "willfully and knowingly" denies access can, under certain circumstances, be fined up to \$5,000.
 - **APPEALS:** If a request is denied, there are two ways to appeal:
 - File a suit in **Superior Court**. Such an action must follow established court rules, normally involves hiring an attorney and requires a \$200 filing fee.

- File a written complaint with the **Government Records Council**. The complaint must explain the circumstances of the request, specify the records asked for, and include the denial of access by the records custodian. Filing a complaint with the council is free and does not require legal representation, although a lawyer can be used.
- If the denial is found to be contrary to OPRA, either the court or the council can reverse the decision and the requester may recover reasonable legal fees.

ADVICE & MEDIATION: 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. The council also offers the option of formal mediation.

GOVERNMENT RECORDS COUNCIL
(www.nj.gov/grc)

The council can be reached toll free at **866-850-0511**; by e-mail at grc@dca.state.nj.us; or by mail at: Government Records Council, PO Box 819, Trenton, NJ 08625-0819.

FOR MORE INFORMATION

Society of Professional Journalists - New Jersey Chapter
www.njspj.org

New Jersey Foundation for Open Government
www.njfog.org

New Jersey Press Association
www.njpa.org

This summary is provided as a handy reference for journalists, public officials and the public by the Society of Professional Journalists, New Jersey Chapter. (Sept. 2007)