

OPRA GOVERNMENT RECORD & RIGHT TO ACCESS EXCEPTIONS/EXEMPTIONS

The following records/information are considered exempt from disclosure pursuant to the referenced Statute, Regulation, Rule, Executive Order of the Governor, or other law. The New Jersey Department of Environmental Protection will refer to these exemptions by Statute or other law in its responses to submitted Open Public Records Act record requests.

The Department has correlated the citations below with the General Records Council's (GRC) list of over 37 Exemptions from Disclosure. See www.nj.gov/grc/public/exempt.

OPEN PUBLIC RECORDS ACT (N.J.S.A. 47-1A1 et seq.)

N.J.S.A. 47:1A-1 - Legislative, findings, declarations

Expectation of Privacy – GRC Exemption No. 1.

- 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

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

Deliberative – GRC Exemption No. 2.

- A Government Record shall not include inter-agency or intra-agency advisory, consultative, or deliberative material. Refers generally to draft documents or documents used in a deliberative process.

Legislative Records – GRC Exemption No. 3.

- 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 database, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit
- Any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature during 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

Medical Examiner Records – GRC Exemption No. 4.

- Any copy, reproduction or facsimile of any photograph, negative or print, including instant photographs and videotapes of the body, or any portion of the body, of a deceased person, taken by or for the medical examiner at the scene of death or while a postmortem examination or autopsy made by or caused to be made by the medical examiner except:

- for use by a legal next of kin, a legal representative, or 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 of federal law enforcement agency;

Criminal investigation – *GRC Exemption No. 5.*

- 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).

Victim's records – *GRC Exemption No. 6.*

- Victims' records, except that a victim of a crime shall have access to the victim's own records

Personal firearms records – *GRC Exemption No. 7.*

- Personal firearms records, includes Personal identifying information received by the NJDEP's Fish and Wildlife in connection with the issuance of any license authorizing hunting with a firearm.

Trade Secrets & Proprietary info – *GRC Exemption No. 8.*

- Trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this paragraph, trade secrets shall include software, applications, and code obtained by a public body under a licensing agreement which prohibits its disclosure.

Attorney Client Privilege – *GRC Exemption No. 9.*

- Any record within the attorney-client privilege. This paragraph shall not be construed as exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege

** This does not allow for a denial of attorney invoices in their totality; however, redactions may apply for information contained in the invoices that are protected under the privilege.*

Computer Security – *GRC Exemption No. 10.*

- Administrative or technical information regarding computer hardware, tablets, telephones, electronic computing devices, software applications, and networks or devices which operate on or as a part of a computer network or related technologies within the same, which shall include system logs, event logs, transaction logs, tracing logs, or any logs which are reasonably construed to be similar to the same and generated by the devices or servers covered within this paragraph, which, if disclosed, could jeopardize computer security, or related technologies.

Building Security – GRC Exemption No. 11.

- 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 &
Techniques – GRC Exemption No. 12.**

- Security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software.

**Security Alarms &
Access – GRC Exemption No. 13.**

- Security alarm system activity and access reports, including video footage, for any public building, facility, or grounds unless 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.

Advantage to Bidders – GRC Exemption No. 14.

- Information which, if disclosed, would give an advantage to competitors or bidders, including detailed or itemized cost estimates prior to bid opening.

** Note, once bids are opened & contractor selected, records are public since there is no longer any competitive disadvantage to any of the potential awardees as bidding is over. However, if bidding is open, bid not awarded, or bids are rejected, then the records are exempt until a bid has been awarded even if another bidding cycle commences.*

Public Employee Related – GRC Exemption No. 15.

- 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.

Risk Management – GRC Exemption No. 16.

- Information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office

Court Orders – GRC Exemption No. 17.

- Information which is to be kept confidential pursuant to court order

**Honorable Discharge
Certificates – GRC Exemption No. 18.**

- Any copy of form DD-214, or that form, issued by the United States Government, or any other certificate of honorable discharge, or copy thereof, from active service or the reserves of a branch of the Armed Forces of the United States, or from service in the organized Militia of the State, that has been filed by an individual 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.

**Oath of Allegiance
or Office – GRC Exemption No. 19.**

- Any copy of an oath of allegiance, oath of office, or any affirmation for incoming, current, and former officers and employees in State, County, or municipal government, and including members all members of the Legislative, Executive, and Judicial branches of government, *except that full name, title, and oath date are not confidential.*

**Personal Identifying – GRC Exemption No. 20.
Information**

- 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. In accordance with section 2 of N.J.S.A. 47:1B-2, commonly known as “Daniel’s Law”, that portion of any document which discloses the home address, whether a primary or secondary residence, of any active, formerly active, or retired judicial officer, law enforcement officer, child protective investigator in the Division of Child Protection and Permanency, or prosecutor, or, as defined in section 1 of N.J.S.A. 47:1B-1, any immediate family member thereof.
 - c. Credit card numbers.
 - d. Debit card numbers.
 - e. Bank account information
 - f. Month and day of birth
 - g. Personal e-mail address required by a public agency for government applications, services, or programs.
 - h. Personal telephone numbers.
 - i. Drivers’ license numbers.
 - j. Street address portion of any person’s primary or secondary home address

Except for:

- use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof,
- any private person or entity seeking to enforce payment of court-ordered child support
- with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L. 1997, c. 188 (C. 39:2-3.4);
- with respect to the disclosure of information included in records and documents maintained by the Department of the Treasury in connection with the State's business registry programs

NJDEP Clarification:

As the NJDEP is a land-oriented agency with regards to permitting, remediation, compliance, and enforcement activities, to maintain compliance with "Daniel's Law", the NJDEP will withhold/redact the Name of the individual registered under Daniels' Law and provide the home address information if their primary or secondary home is the location of such activity. For OPRA in general, the NJDEP will provide the primary or secondary home address if the location is where such activity has occurred. For non-land-oriented activity, such as individual permitting/licensing or requested lists of permitted/licensing individuals, the NJDEP will provide the individual's Name and withhold/redact their home address.

**Personal Information
for Official Notification – GRC Exemption No. 21.**

- That portion of any document that discloses the personal identifying information of any person provided to a public agency for the sole purpose of receiving official notifications.

Juvenile Information – GRC Exemption No. 23.

- That portion of any document that requires and would disclose personal identifying information of persons under the age of 18 years, except:
 - a. with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver information to any insurer or insurance support organization, or a self-insured entity, or its agents, employees, or contractors, for use in connection with claims investigation activities, antifraud activities, rating, or underwriting, and
 - b. with respect to the disclosure of voter information on voter and election records pursuant to section 8 of P.L.2024, c.16 (C.47:1A-5.3)

**Personal Information
on Domestic Animal
Permits – GRC Exemption No. 24.**

- Personal identifying information disclosed on domestic animal permits, licenses, and registration.

Metadata – *GRC Exemption No. 25.*

- Structured reference data that helps to sort and identify attributes of the information it describes, referred to as metadata, or any extrapolation or compilation thereof, which shall include the SMTP header properties of emails, except that portion that identifies authorship, identity of editor, and time of change.

Owner &

Maintenance Manuals – *GRC Exemption No. 26.*

- Owner and maintenance manuals.

HIPAA data – *GRC Exemption No. 28.*

- HIPAA data - data classified under the “Health Insurance Portability and Accountability Act of 1996,” Pub.L.104-191.

Indecent or Graphic Images – *GRC Exemption No. 29.*

- Any indecent or graphic images of a person’s intimate parts, as defined in section 10 of P.L.2024, c.16 (C.47:1A-5.2), that are captured in a photograph or video recording without the prior written consent of the subject of the photograph or video footage, as defined in section 10 of P.L.2024, c.16 (C.47:1A-5.2).

Higher Education Exceptions – *GRC Exemption No. 30.*

- 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 - Restricted access to biotechnology trade secrets

Biotechnology

Exemption - GRC Exemption No. 31

- A public agency shall not make any biotechnology trade secrets and related confidential information it has access to under this act available to any other public agency, or to the general public, except as allowed pursuant to federal law.

N.J.S.A. 47:1A-2.2 – Access to create information by convicted prohibited; exceptions

Limits to

Convicts – GRC Exemption No. 32

- a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or the provisions of any other law to the contrary, where it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing 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, the right of access provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented shall be denied.
- b. A government record containing personal identifying information which is protected under the provisions of this section 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.
- c. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, or any other law to the contrary, a custodian shall not comply with an anonymous request for a government record which is protected under the provisions of this section.

N.J.S.A. 47:1A-3(a) - Access to records of investigation in progress

Ongoing

Investigations – GRC Exemption No. 33

- a. Notwithstanding the provisions of P.L. 1963, c. 73 (C. 47:1A-1 et seq.) as amended and supplemented, where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in P.L. 1963, c. 73 (C. 47:1A-1 et seq.) as amended and supplemented may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that 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. Whenever a public agency, during the course of an investigation, obtains from another public agency a government record that was open for public inspection, examination or copying before the investigation commenced, the investigating agency shall provide the other agency with sufficient access to the record to allow the other agency to comply with requests made pursuant to P.L. 1963, c. 73 (C. 47:1A-1 et seq.).

- b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, 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:
- where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;
 - if an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notification of next of kin of any victims of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or Court Rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;
 - if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or Court Rule;
 - information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the release of such information is contrary to existing law or court rule;
 - information as to the identity of the investigating and arresting personnel and agency and the length of the investigation;
 - information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police; and
 - information as to circumstances surrounding bail, whether it was posted and the amount thereof.
- c. Notwithstanding any other provision of this subsection, where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release, such information may be withheld. This exception shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety. Whenever a law enforcement official determines that it is necessary to withhold information, the official shall issue a brief statement explaining the decision.

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

Public Defender

Records – GRC Exemption No. 34

- 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(a)-(b) Other laws, regulations, privileges unaffected

Continuation of

Existing Exemptions – *GRC Exemption No. 36*

- 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 – Personnel, pension records not considered public information; exceptions.

Personnel &

Pension Records – *GRC Exemption No. 37*

- 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) – *GRC Exemption No. 1.*

Privacy Interest

- 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."

Burnett 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."

Creating a Record

- A State Agency does not have to provide a record that does not exist or create a record in response to requests. This was recognized by the court in Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 537 (App Div March 2005).

Additionally, pursuant to Paff v. Galloway Township, __ N.J. Super. __ (App. Div. 2016)(slip op. at 13), "OPRA does not require the creation of a new government record that does not exist at the time of a request, even if the information is stored or maintained electronically in other government records".

In accordance with OPRA's "catch-all" exemption at N.J.S.A. 47:1A-9, the following executive orders also apply as exemptions under OPRA:

Executive Order No. 21 (McGreevey 2002)

Domestic Security – GRC Exemption No. 36

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
- i. 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.

Resumes

- 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.

Tax Returns

- 5) Information in a personal income or other tax return

Personal Finances

- 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.

Tests/Exams

- 7) Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing.

Another Agency's Records

- 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.

Miscellaneous

Private Well Testing Act

Water test results received by the NJDEP or any other State/local agency in compliance with or as authorized by this act shall be confidential, except that general compilations of water test results data arranged or identified by county & municipality, which do not include specific address or location info, may be made available. See the PWTA website at www.nj.gov/dep/watersupply/pw_pwta.html.

Radon

Pursuant to the Open Public Records Act, NJSA 47:1A-9(a) and Executive Order 21, the Department cannot disclose any records that are confidential pursuant to any other state or federal statute or executive order. The statute governing radon gas and radon progeny contamination, NJSA 26:2D-59 et seq., specifically, NJSA 26:2D-73, prohibits any person, including the Department, from disclosing the address or owner of a nonpublic building that has been tested or treated for the presence of radon gas and radon progeny, unless the owner of the building waives this right of confidentiality. Thus, the Department cannot disclose any records related to testing or treatment for radon gas and radon gas progeny.

Alternative Dispute Resolution records

The initial request for hearing, receipt acknowledgment of that request, and finalized agreement/settlement are public records. The Alternative Dispute Resolution records thereafter fall under "Mediation communication", which means a statement, whether verbal or nonverbal or in a record, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator. A mediation communication shall not be deemed to be a public record under P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented by P.L.2001, c.404 (C.47:1A-5 et seq.).

Personal Notes / Meeting Notes

Personal notes jotted down or taken at a meeting are not government records based on *Martin O'Shea v West Milford BOE*, 391 NJ Super 534 App Div 2007. They do not meet the definition of a government record as they are not made, maintained, or kept in the course of day-to-day business.

Note that if those personal notes are shared and act as meeting minutes, then they can become a public record.

NJDEP NON-GOVERNMENT RECORDS RULES (N.J.A.C. 7:1D-3 et seq.)

7:1D-3.1 Scope

The categories of records in N.J.A.C. 7:1D-3.2, Records not subject to disclosure, is in addition to protections that are contained in the Open Public Records Act (OPRA), N.J.S.A. 47:14A-1 et seq., any applicable statute, resolution of one or both houses of the Legislature, regulation, Executive Order of the Governor, court order, or subject area-specific protection in Title 7, Department of Environmental Protection, of the New Jersey Administrative Code.

7:1D-3.2 Records not subject to disclosure

- (a) The documents, files, data and other records of the Department that are listed below shall not be deemed to be government records subject to public access pursuant to OPRA. Such records shall not be available for inspection, examination or copying by members of the public or by any other individuals except authorized members and employees of the Department or except as provided by order of the Governor of the State, a court or tribunal of competent jurisdiction, or applicable law:

Mediation

1. Records relating to mediation proceedings conducted by or on behalf of the Department, except that any records that were open for public inspection, examination or copying prior to mediation shall continue to be available for public inspection, examination or copying during and after mediation. Final agreements resulting from mediation shall be available for public inspection, examination or copying;

Identity of a Complainant

2. Records that reveal the identity of a complainant. For purposes of this paragraph, "complainant" means a person who submits a report, complaint or an allegation to the Department either alleging violation of environmental law or reporting an environmental concern and who is not obligated by law or regulation to submit such a report, complaint or allegation; and

Endangered/Threatened Species

3. Portions of records containing the precise location of endangered an/or threatened animal species or endangered plant species or plant species of concern.
 - i. Notwithstanding paragraph (a)3 above:
 - (1) The Department shall disclose the precise location of endangered and/or threatened animal species, endangered plant species or plant species of concern to the owner of land upon which the animal or plant species has been located.
 - (2) If the Department denies or issues any permit or approval, where any of the aforementioned actions is the subject of a challenge in any administrative or judicial forum, the applicant, or any other person with a constitutional or statutory right to a hearing on that action by the Department, may request, and the Department shall provide, only those Department records containing the location(s) of endangered and/or threatened animal species, endangered plant species or plant species of concern relied upon by the Department to make any of the denials, approvals, or determinations.

- (3) Prior to providing the records containing the location(s) of endangered and/or threatened animal species, endangered plant species or plant species of concern under (1) or (2) above, the Department shall redact the name(s) of the person(s) who provided the information contained in the records provided under (1) or (2) above if the Department determines that the person(s) providing such information did not provide this information in the course of his or her employment with the State of New Jersey.
- ii. If the Department determines that disclosure under (a)3i above is likely to create a substantial risk of harm, theft or destruction to the species or habitats or the area or place where the species or habitats are located, the Department may require the recipient of the records to state in writing prior to access to the records that he or she shall keep the precise location of endangered and/or threatened animal species, endangered plant species or plant species of concern confidential.
- iii. A property owner who has obtained records in accordance with this paragraph may share the records or disclose the information contained therein to his or her agent (such as an attorney, environmental consultant or engineer) to the extent necessary to prepare and submit an application to the Department or any other governmental regulatory authority for a permit, approval, authorization, or other determination. If a property owner is required to execute a confidentiality agreement in accordance with ii above, the property owner shall not share the records or disclose the information contained therein to his or her agent unless the agent states in writing (on a form provided by the Department) prior to access to the records or information contained therein that he or she shall keep the precise location of endangered and/or threatened animal species, endangered plant species or plant species of concern confidential. The property owner shall submit each such writing to the Department at the address specified on the form.
- iv. For the purposes of this paragraph, the term "endangered and/or threatened animal species" shall have the meaning(s) of the terms "endangered" and/or "threatened" as these terms are defined at N.J.A.C. 7:25-4.1. The term "endangered plant species" shall have the meaning of "endangered species" as the term is defined at N.J.A.C. 7:SC-1.4. The term "plant species of concern" shall have the meaning as set forth at N.J.A.C. 7:SC-3.1.

**Wildlife Tracking
Location Information**

- 4. Portions of records that identify, track, or otherwise determine the location of any animal or bird which, in the opinion of the Division of Fish and Wildlife, is potentially capable of inflicting serious or fatal injuries or being a menace to public health including, but not limited to, bears, nondomestic dogs, nondomestic cats, venomous and constrictor snakes, and exotic species. This includes, but is not limited to, records containing information regarding sightings, dens, nests, or other habitation sites, locations of traps or other control techniques, and tracking or locational information generated by collars, tags, or transmitters affixed to such species by the Department including, but not limited to, radio frequency identification tags (RFID) and passive integrated transponder tags (PIT).

Domestic Security

- (b) The Department shall withhold any record if the Department determines that the inspection, examination or copying of that record 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. Such records include, but are not limited to:
1. Any inventory of enforcement resources, including standard operating procedures, compiled and any policies or plans compiled by the Department pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, including employee emergency contact information;
 2. Information related to a nuclear power plant, which, if disclosed, would jeopardize the public health, safety and welfare or the security of the plant;
 3. Listing of Low-Level Radioactive Waste generators including amounts of waste generated and shielding designs for sources of radiation;
 4. National defense related information from Lockheed Martin's Aegis Radar System facility;
 5. Environmental Emergency Procedures detailing plans such as emergency procedures for wastewater treatment facilities pursuant to New Jersey Pollutant Discharge Elimination rules, N.J.A.C. 7:14A-6.12(D);
 6. Inundation maps submitted as part of Emergency Action Plans pursuant to Dam Safety Standards, NJ.AC. 7:20-1.7(f) and I.I l(i);
 7. Discharge Prevention Containment and Countermeasures and Discharge Cleanup Removal Plans and related general site plans; and
 8. Radioactive Materials Licenses issued by the Nuclear Regulatory Commission and advisories issued by the Nuclear Regulatory Commission that address lessons learned, security or enforcement issues.

Green Acres / Blue Acres

- (c) Records related to Green Acres, Blue Acres, and Natural Lands Trust land acquisitions, program offerings and active projects, including appraisals, valuations and title investigations, shall be made available for public inspection, examination and copying no later than 48 hours before formal action is to be taken on any land transaction, program offering or active project unless the land transaction, program offering or active project is actively under negotiation, a binding contract has not been executed, or disclosure of the records would jeopardize the land transaction, program offering or active project. An active project is one that has been initiated within two years of the date of appraisal.