

The Open Public Records Act

**New Jersey Government Records Council
Video 3**



**Government
Records Council**

The background features a decorative graphic consisting of three overlapping squares with rounded corners. The squares are rendered in a light orange and a light brown color, creating a layered effect. A large, semi-transparent brown star is positioned in the upper right quadrant, overlapping the squares.

**When is a response to
an OPRA request due?**

- Generally:
 - As soon as possible.
 - But no later than seven (7) business days after custodian's receipt of the request.
 - There should be another employee designated to receive/fulfill requests in the custodian's extended absence.
 - Day 1 of the response time is the day after the custodian receives the request.
 - All responses must be in writing.



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**Are there exceptions
to the standard seven
day response time?**

- Yes!

- Immediate access shall ordinarily be granted to:
 - Budgets
 - Bills
 - Vouchers
 - Contracts
 - Government employee salary/overtime information.

- Immediate access means “on the spot.”



- The following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable:
 - when crime 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 ...the safety of the victim and the victim's family, and the integrity of any ongoing investigation shall be considered in disclosing this information;

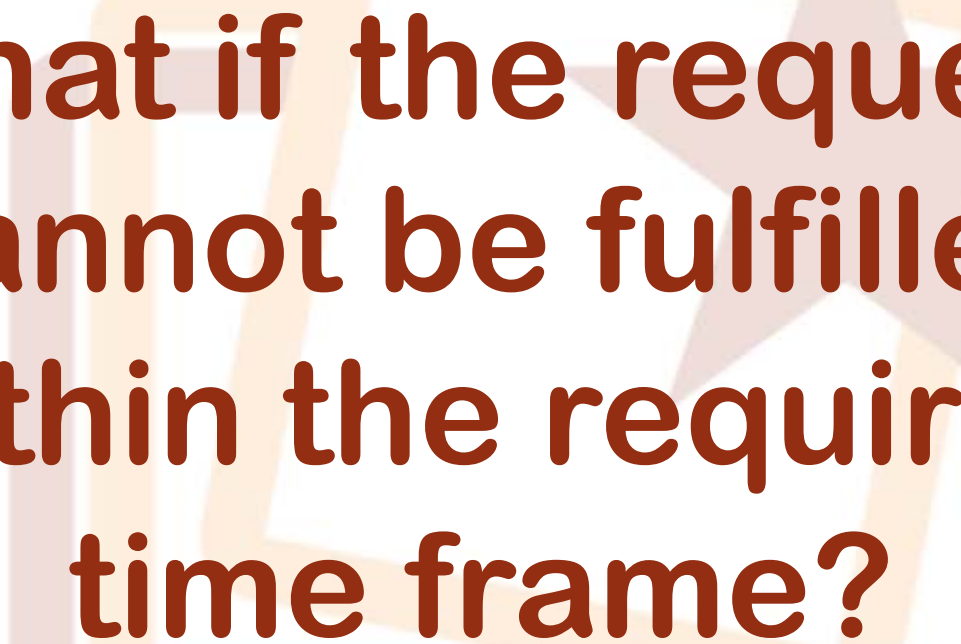


- If an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or Court Rule;
- Information as to the text 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.



The background features a large, faint, light-colored star shape centered behind a square outline with rounded corners. The star and square are rendered in a light beige or tan color, creating a subtle watermark effect.

**What if the request
cannot be fulfilled
within the required
time frame?**

- Custodians may obtain extension of time for legitimate reasons (examples: records in storage, medium conversion, voluminous request).
- Extension “request” must be in writing, within required response time (either standard or immediate) and include an anticipated date on which records will be provided.
- Requestor does not need to approve “request.”
- Failure to grant/deny access by extended deadline date results in deemed denial.

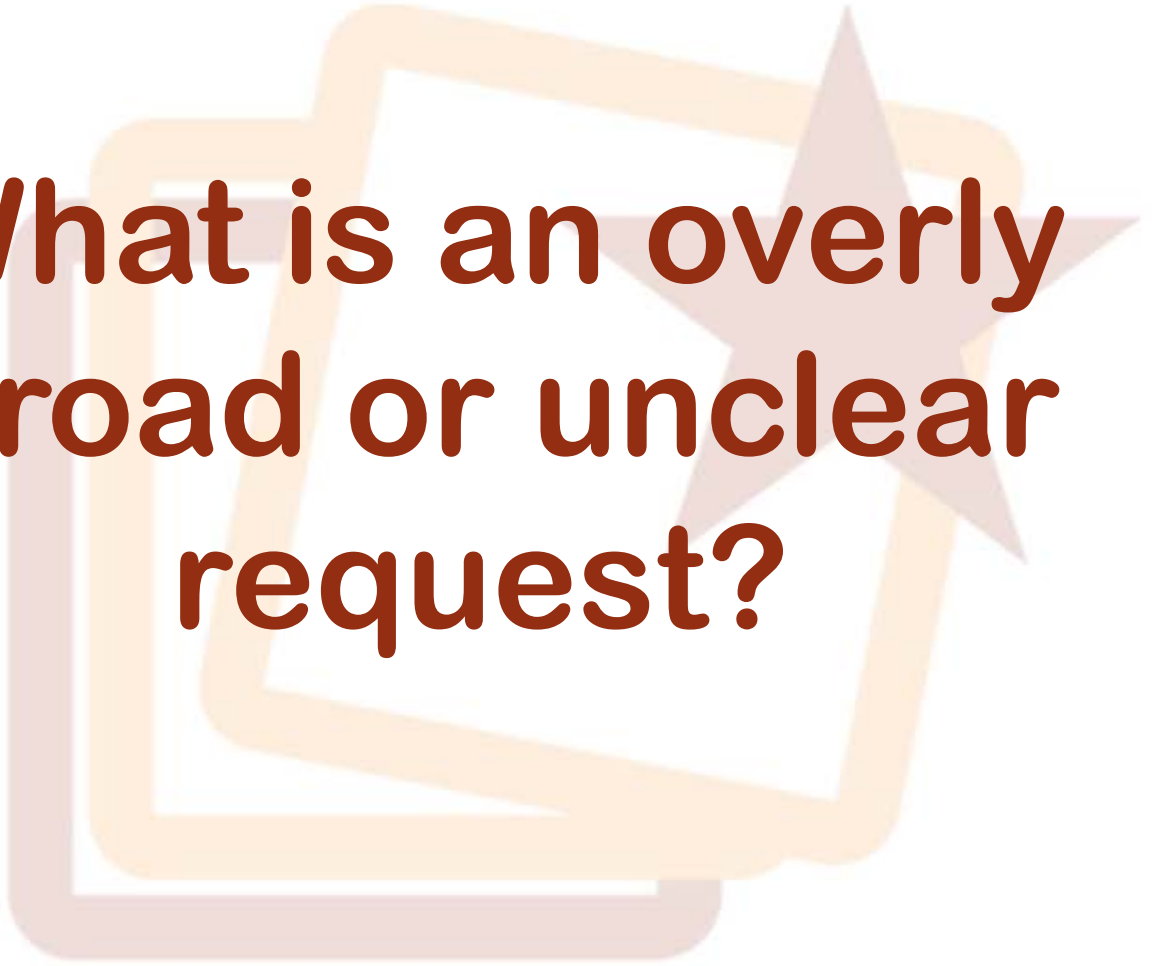


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**What if there is not
enough information to
fulfill the request?**

- A valid OPRA request must identify with reasonable clarity the specific government records sought.
- Custodians may seek clarification of an overly broad or unclear request, or deny access to request.
- Clarification request must be in writing within required response time.
- Response time stops until requestor responds. Time begins anew.



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**What is an overly
broad or unclear
request?**

- A request that fails to identify with reasonable clarity the specific government records sought.
 - **Example:** “any and all records related to the construction of the new high school.” “Records” is not a specifically identifiable government record.
 - **Valid version:** “any and all e-mails between Jane Doe and John Smith regarding the construction of the new high school between January 1, 2012 and present.”



- A request that requires the custodian to conduct research.
 - **Example:** “all meeting minutes from 2011 in which the Council discussed ABC Towing Company.” Request requires custodian to read all 2011 minutes.
 - **Valid version:** “all meeting minutes from 2011.” The requestor then must read the minutes himself to locate his desired subject matter.



A decorative background featuring a light purple star with a white outline, centered behind a light orange square frame with rounded corners and a white outline. The text is overlaid on this graphic.

“Outlier” Court Case Regarding Overly Broad Requests

- Burnett v. County of Gloucester (App. Div. 2010)
 - Request for “any and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.”
- Court held that not specifying the matters to which the settlements pertained did not render the request invalid. It is the documents themselves that have been requested and their retrieval requires a search, not research.



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What if the requested records are not in the custodian's possession?

- Custodian must obtain records responsive from appropriate departments/personnel. This includes third parties.
 - **Example:** Custodian is required to obtain requested attorney's bills which are maintained by special counsel's office, and not the municipality.
- Custodians should document attempts made to access records from other departments/personnel.
- Other employees impeding access to government records can be found in violation of OPRA.



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**How must a custodian
respond to an OPRA
request?**

- **In writing! Verbal responses are not valid.**
- **Within required response time.**
- **By addressing each item requested, either:**
 - **Granting access;**
 - **Denying access**
 - **Seeking clarification**
 - **Requesting an extension of time.**



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**What is the cost to
obtain records under
OPRA?**

- Fee prescribed by law or regulation (if another law sets specific fee for specific record).
 - Municipal ordinances do not count!
- If no other fee established by law or regulation exists:
 - \$0.05 per page for letter sized printed pages
 - \$0.07 per page for legal sized printed pages



- Actual cost of printed pages, if agency can prove costs exceed \$0.05/\$0.07. Actual cost calculation contained in November 2010 *OPRA Alert* on GRC's website.
- Electronic records (sent via e-mail or fax) are free of charge.
- CD, DVD, cassette, etc. – actual cost of material.



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**What is a special
service charge?**

- Labor fee for extraordinary/voluminous requests.
- Charges must be reasonable and based on actual direct cost (hourly rate of lowest level employee capable of fulfilling request, no fringe benefits).
- Cannot be established in advance by ordinance. Case by case determination.
- GRC's 14 point analysis helps determine if fees are warranted.
- Estimated in advance prior to being incurred. Requestor must agree to pay.

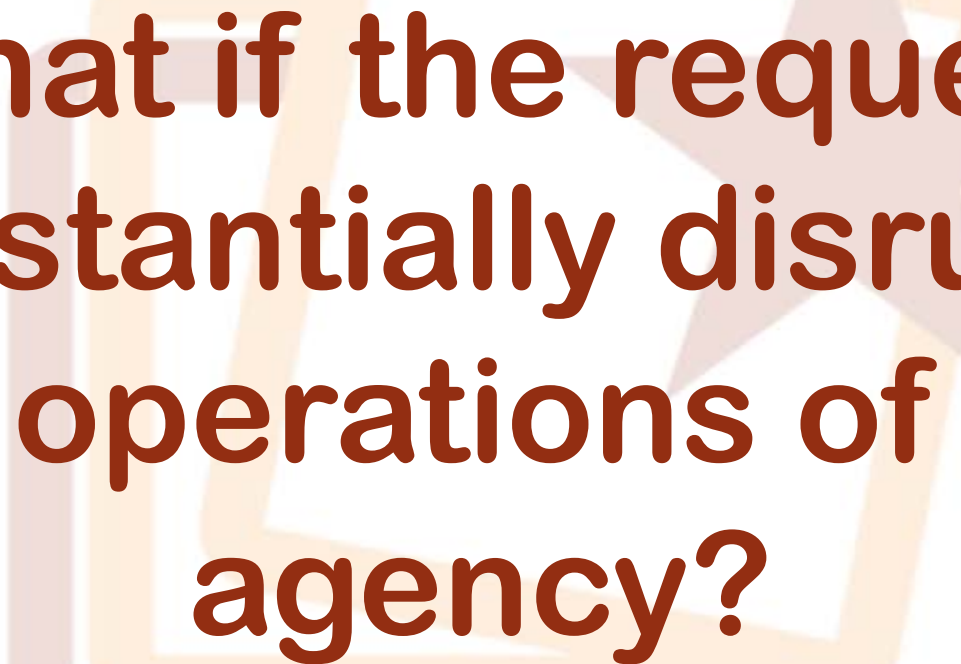


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Special Service Charge Example

- Request: Meeting minutes from 2005 to present.
- 1,000 pages of responsive records will take custodian 2 ½ hours to copy.
- Custodian may likely charge her direct hourly rate for the 2 ½ hours required to fulfill request.
- Custodian must estimate cost and notify requestor before fulfilling the request.





**What if the request
substantially disrupts
the operations of the
agency?**

- Custodian may deny access only after attempting to reach a reasonable solution with requestor that accommodates the interests of both requestor and the agency.
- Accommodation varies based on circumstances of request.
- Subjective determination based on the resources of the agency.
- Applies in extreme scenarios only.



- **Example 1:** Caggiano v. Borough of Stanhope, GRC Complaint No. 2006-220 – Requestor submitted a 7 page, 59 item request spanning over 12 years of records.
- **Example 2:** Vessio v. NJ Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-188 – Requestor submitted 13 item request, which included all fire safety violations issued from 1986-2006 and all complaints filed since 1997.



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**What if only portions
of a record are exempt
from public access?**

- Custodians must redact, or “black out” any portion of a record that is exempt from public access.
- Redactions are denials of access and custodians must provide requestors with the specific legal basis for each redaction.



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**What if an entire page
of a document needs
to be redacted?**

- Custodians should give the requestor a visible indication, such as a blank sheet bearing the words “page redacted” or a written list of specific page numbers being withheld.



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How are electronic records redacted?

- Custodians should delete material to be redacted, but make visually obvious what has been deleted.
- Techniques such as “hiding” text or changing its color so it is invisible should not be used as sophisticated users can detect the changes.



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**Can a requestor ask
for records in a
specific medium?**

- Yes!
- A custodian must permit access to government records in the medium requested.
- If custodian does not maintain the record in the medium requested, he/she must:
 - Convert the record to the requested medium; or
 - Provide a copy in some other “meaningful” medium (meaningful to the requestor).



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**Is there a fee to
convert records to a
specific medium?**

- Maybe. Actual costs apply.
- **Example 1:** Requestor wants a record sent via e-mail. Custodian must scan paper document to convert to electronic format. Request takes the Custodian 5 minutes to complete. No charges apply.
- **Example 2:** Requestor wants audio recording of a meeting on CD-ROM. Custodian copies recording in house onto CD-ROM agency purchased for \$0.50. Request takes Custodian 20 minutes to complete. Charge is \$0.50.



- **Example 3:** Requestor wants large tax maps on CD-ROM. Custodian does not have capability to scan large maps and must use third party vendor. Vendor charges the agency \$5.00 for service. \$5.00 fee is passed onto requestor.
- **Special Note:** Vendor fees are special service charges and must be approved by requestor prior to being incurred.



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**How must a custodian
send records to a
requestor?**

- A custodian must grant access to a government record by the specific method of delivery identified by the requestor.
 - Example: Requestor wants records sent via fax, custodian must send records via fax.
- Remember – all limitations on access shall be construed in favor of the public.



A decorative graphic consisting of three overlapping squares with rounded corners, each in a different shade of orange and brown. A large, light brown five-pointed star is positioned to the right of the squares, partially overlapping them.

Let's Review

- When is a response to an OPRA request for contracts due?
- What should a custodian do if she cannot fulfill an OPRA request within the required time frame?
- A custodian calls a requestor to say that the requested records are ready for pickup. Is this a valid response to the request?
- What is the cost to provide records on DVD?

