

ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

Records Designated Confidential

Proposed New Rule: N.J.A.C. 1:31-1.4

Authorized By: Barry E. Moscovitz, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 47:1A-1 and 52:14F-5; and Executive Order No. 9 (1963).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2025-077.

Submit written comments by September 5, 2025, to:

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The agency proposal follows:

Summary

On January 8, 2002, the Legislature passed, and the Acting Governor approved, P.L. 2001, c. 404, which enacted changes in the law concerning public access to government records. The law became effective July 7, 2002. This law expanded the public's right of access to government records and facilitates the way in which that access is provided by the custodian of those records. The act provides that all government records shall be subject to public access

unless exempt from such access pursuant to: P.L. 1963, c. 73, as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated pursuant to the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; or any Federal law, Federal regulation, or Federal order. The law also provides that personnel records of any individual in the possession of a public agency shall not be considered a government record and shall not be made available for public access, except under certain circumstances. The law exempts from public access any emergency or security information or procedures for any facility that would, if disclosed, jeopardize security of the facility or persons therein.

The Office of Administrative Law (OAL) Acting Director, pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and the Administrative Procedures Act (APA), N.J.S.A. 52:14F-5, and Executive Order No. 9 (1963), proposes to classify as exempt from public access certain records, documents, and materials of the OAL. Proposed new N.J.A.C. 1:31-1.4 is designed to serve the legislative policies of OPRA and the statutes governing the OAL by facilitating public access to government records, while balancing the integrity, independence, and effectiveness of the OAL's quasi-judicial operations.

The proposed new rule would exempt standard operating procedures, manuals, and training materials approved by the Director/Chief Administrative Law Judge for use by an administrative law judge in the course of performing official duties. Administrative law judges are responsible for presiding over all aspects of contested cases and for issuing initial and/or final decisions, as appropriate, pursuant to N.J.S.A. 52:14B-9 and 10 and N.J.A.C. 1:31. The Director/Chief Administrative Law Judge of the OAL is responsible for developing and maintaining continuing education programs for administrative law judges pursuant to N.J.S.A.

52:14F-5.r. By ensuring that these internal records remain confidential, this rule would allow for effective supervision and training, while preserving the integrity and independence of the decision-making process. This rulemaking is consistent with New Jersey Court Rule 1:38-3 and 5.

The proposed new rule also would exempt communications between an administrative law judge and another administrative law judge or any OAL employee related to a contested case or the decision-making process. The rule would ensure that administrative law judges fully consider matters independently and to the best of their ability without concern that any communications connected to the decision-making process may be subject to public access. This aspect of the rule is consistent with OPRA's existing privilege for intra-agency advisory, consultative, and deliberative materials. N.J.S.A. 47:1A-1.1 and New Jersey Court Rule 1:38-3.

Additionally, the proposed new rule would ensure that materials related to OAL's judicial evaluations, referenced at N.J.S.A. 52:14F-5.s, remain confidential and exempt from OPRA's disclosure requirements.

The proposed new rule also would memorialize OPRA's exemption for personnel records as applied to the OAL by explaining that records relating to, or that form the basis of, an employee's discipline, discharge, promotion, transfer, employee performance, employee evaluation, or other related activities, whether open, closed, or inactive, are not government records. The rule would incorporate OPRA's requirement that certain personnel information remains available to the public pursuant to N.J.S.A. 47:1A-10.

The proposed new rule also would exempt from the definition of government record the portion of any inventory of State resources compiled and any policies or plans compiled by the OAL pertaining to emergency response purposes, including employee emergency contact

information, which, if disclosed, would substantially interfere with the State's ability to protect the employees of the OAL. The OAL is recommending this change in furtherance of OPRA's existing exemption for security information, and in light of heightened concerns regarding judicial safety given recent events. In 2021, Daniel's Law, N.J.S.A. 47:1B-1 et seq., was enacted to allow active and retired judicial officers, including administrative law judges, to submit a request for the redaction or nondisclosure of their, or a family member's, home address. The proposed new rule furthers the purpose of Daniel's Law and OPRA by keeping personal information of administrative law judges and their family members confidential.

Finally, the proposed new rule would exempt records pertaining to the collective negotiations process or the filing of a grievance from public access. This rulemaking is consistent with OPRA's exemption for "information generated by or on behalf of public employers or public employees in connection with ... any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position." N.J.S.A. 47:1A-1.1.

A summary of the proposed new rule follows:

Proposed new N.J.A.C. 1:31-1.4 sets forth a list of records deemed by the OAL to be confidential and not subject to public access pursuant to the provisions at N.J.S.A. 47:1A-1 et seq. The proposed new section sets forth the records of the OAL that shall not be considered government records for the purposes of N.J.S.A. 47:1A-1 et seq. Paragraph (a)1 exempts from the definition of government record, all standard operating procedures, manuals, and training materials that are approved by the Director/Chief Administrative Law Judge by or for the use of an administrative law judge in the course of performing their official duties or by OAL staff in

assisting an administrative law judge in performing their official duties. Paragraph (a)2 exempts communications between an administrative law judge and another administrative law judge or any other OAL employee related to a contested case or the decision-making process. Paragraph (a)3 exempts documents related to judicial evaluations as described at N.J.S.A 52:14F-5.s, including litigant feedback forms and other documents used for the evaluation of administrative law judges. Paragraph (a)4 exempts personnel records in connection with discipline, discharge, employee performance, evaluation, or other related activities, whether open, closed, or inactive. Paragraph (a)5 exempts any inventory of State office emergency resources compiled by the State and any plans or policies compiled by the OAL for emergency response purposes, including employee contact information, which if disclosed, would substantially interfere with the State's ability to protect the employees of the OAL. Paragraph (a)6 exempts records pertaining to the collective negotiations process, as well as the filing of grievances by or against an OAL employee.

As a 60-day comment period has been provided on this notice of proposal, this notice is excepted from the rulemaking calendar requirement at N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rule implements the requirements at N.J.S.A. 47:1A-1 et seq., as amended and supplemented. The proposed new rule will have a positive social impact by balancing the competing policies in the statute and to exempt records where it would not be in the public interest to permit unqualified access to certain records. The proposed new rule provides safeguards to protect the continuing training and education of OAL administrative law

judges and staff, along with the free exchange of case-related information at trainings to protect the integrity of the decision-making process.

Economic Impact

The proposed new rule will have no economic impact on the public more than that provided by the statute. The proposed new rule does not impose any costs.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rule is not subject to any Federal standards. The Federal Freedom of Information Act, 5 U.S.C. § 552 does not apply to records of State government and does not constitute a Federal standard.

Jobs Impact

The proposed new rule will have no impact on the number of jobs generated or lost in New Jersey.

Agriculture Industry Impact

The proposed new rule will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose reporting, recordkeeping, or compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule provides for the confidentiality of certain government records.

Housing Affordability Impact Analysis

The proposed new rule will have no impact on the affordability of housing in New Jersey, and there is an extreme unlikelihood that the rule would evoke a change in the average costs associated with housing, because the proposed new rule concerns access to government records.

Smart Growth Development Impact Analysis

The proposed new rule will have an insignificant impact on smart growth, and there is an extreme unlikelihood that the proposed new rule would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the proposed new rule concerns access to government records.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed new rule will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the proposed new rule follows:

SUBCHAPTER 1. OPERATION AND PROCEDURES OF THE OFFICE OF ADMINISTRATIVE LAW

1:31-1.4 Records designated confidential

(a) In addition to records designated as confidential pursuant to the provisions at N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated pursuant to the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court, or any Federal law, Federal regulation, or Federal order, the following records of the Office of Administrative Law (OAL) shall not be considered government records subject to public access:

1. Standard operating procedures, manuals, and training materials, maintained in any form, that are approved by the Director/Chief Administrative Law Judge by or for the use of an

administrative law judge in the course of performing their official duties or by OAL staff in assisting an administrative law judge in performing their official duties;

2. Intra-agency communications between an administrative law judge and another administrative law judge or any other OAL employee, related to a contested case or the decision-making process, including communications that are advisory, consultative, or deliberative;

3. Records concerning judicial evaluations for reappointment to the OAL, including litigant feedback forms and other documents used in forming the basis for any such evaluations, whether open, closed, or inactive;

4. Records specific to an individual employee or employees (other than those records enumerated at N.J.S.A. 47:1A-10 as records available for public access) relating to or that form the basis of discipline, discharge, promotion, transfer, employee performance, employee evaluation, or other related activities, whether open, closed, or inactive;

5. That portion of any inventory of State resources compiled by the State and any policies or plans compiled by the OAL pertaining to emergency response purposes, including employee emergency contact information, which, if disclosed, would substantially interfere with the State's ability to protect the employees of the OAL; and

6. Records pertaining to the collective negotiations process or the filing, contesting, processing, settling, or resolving of a grievance filed by or against an OAL employee, whether open, closed, or inactive.