

OPRA and Recent Legislative Amendments (s2930)



Pinelands Commission
CMP Policy and Implementation
Committee Meeting
May 31, 2024

OPRA Basics


What is OPRA?

1. The New Jersey Open Public Records Act, N.J.A.C. 47:1A-1 *et seq.* (P.L.2001, c.404)
2. OPRA went into effect in July 2002
 - a. It replaced the former Right to Know Law
 - b. Expanded the definition of a "public record"



OPRA Basics

What does OPRA Do?

- Provides process by which requestors may gain access to government records maintained by public agencies in NJ.
 - Makes government records accessible for inspection, copying or examination by the public, unless record is exempt under OPRA or any other law
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OPRA Basics

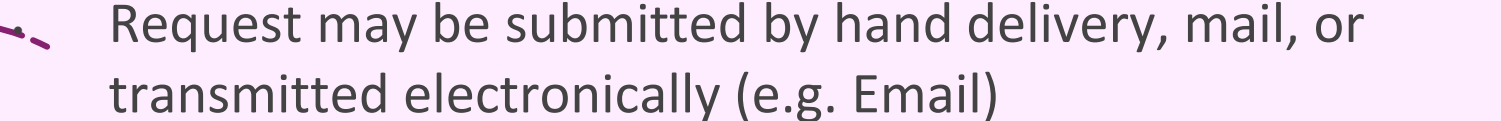
What is a Government Record?

- Any record that has been made, maintained, or kept on file, or has been received in the course of official business
- Not limited to paper records.
 - e.g. tape recordings, microfilm, electronically stored records, emails, text messages, data sets stored in a database, books, maps, photographs, etc.



OPRA Basics

How does OPRA work?

- Requestor submits an OPRA request to the records custodian of the agency.
 - OPRA required agency to have an OPRA request form, but requestor is not required to use it, but request must be in writing.
- Request may be submitted by hand delivery, mail, or transmitted electronically (e.g. Email)
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Records Custodian

- Reviews OPRA request
- Determines scope of Request
- Works with Requester to Narrow Broad Requests
- Locates Responsive Records
- Reviews Records for exemptions



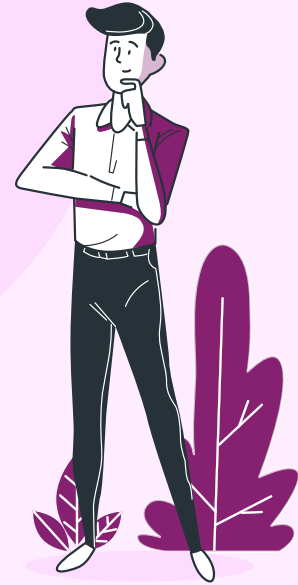


Records Custodian

- Responds to Request within no more than 7 business days
 - Must permit access to a government record and provide a copy of the record in the medium requested if the agency maintains the record in that medium
 - If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record or provide a copy in some other meaningful medium
 - May deny request if does not identify records with sufficient specificity
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Recent OPRA Amendments

§ 2930



S 2930

- Introduced - March 4, 2024
- Reported out of Senate Budget & Appropriations Committee, with Amendments – March 11, 2024
- Recommitted – April 8, 2024
- Reported from Committee – May 9, 2024
- Passed by Senate – May 13, 2024
- Received in Assembly, Substituted for A 4054, Passed by Senate – May 13, 2024

Definitions

“Commercial Purpose” – direct or indirect use of any part of a government record for sale, resale, rent, or lease of a service, or any use by which a user expects a profit either through commission, salary, or fee, not including use of a government record for any purpose by:

1. News media
2. News, journalistic, educational, scholarly, or governmental organization
3. Person authorized to act on behalf of candidate, political, political party or legislative leadership committee
4. Labor Organizations
5. Non-profit entity that does not sell, resell, solicit, rent or lease a government record to an unaffiliated third-party for a fee




Definitions

“Personal identifying information” – information that may be used, alone or in conjunction with any other information, to identify a specific individual.




Personal identifying information shall include:

name, social security number, credit card number, debit card number, bank account information, month and day of birth, personal email address, personal telephone number, street address of person’s primary or secondary home, or drivers license number





Public Access

- Government records are to be made available to the public on a publicly available website to the extent feasible
 - No fee if request is fulfilled by pointing requestor to documents on website
 - Custodian must provide address along with the location on the website of a search bar, menu button, tab, link and landing page which contains the requested record.
 - Establishes a process if requestor can not find the record on the website.
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Public Access

- If the public agency does not maintain the requested government record in the medium requested, the custodian must convert the record to the medium or format requested, if the medium or format is available to the public agency and does not require a substantial amount of manipulation or programming of information technology, or the services of a third-party vendor
- If the public agency does not maintain the record in the medium or format requested, and such medium/format is not available without a substantial amount of manipulation or programming, there is no obligation to convert the record, but must supply record in the electronic format maintained



Public Access

- Agency may charge a reasonable special service fee, in addition to the actual costs of duplication, based on cost of use of information technology and labor cost of personnel for programming, clerical and supervisory assistance required.
 - Requestor shall be provided with an explanation for and itemized list of the fees or charges and has opportunity to review and object to any fee before being charged
 - Rebuttable presumption that fees or charges are reasonable
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Public Access

- Public agency must adopt the OPRA request form established by the Government Records Council

Form shall include space for requestor's name, address, email address and telephone number, a brief description of the government record sought and a space for the requestor to certify whether record will be used for commercial purpose

Requestor may use the adopted form, a letter or an email as long as it includes all the information required by the adopted form

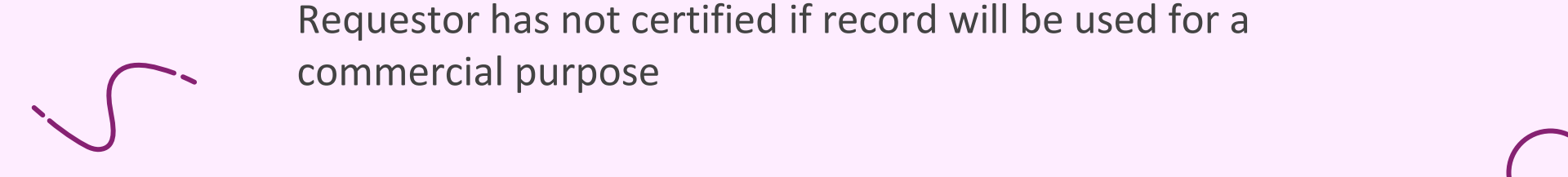


Public Access

Custodian may deny a letter or email request if:

It contains substantially more information than required on the form and requires more than reasonable effort to clarify the information

It is incomplete, except an anonymous request shall not be considered incomplete



Requestor has not certified if record will be used for a commercial purpose



Public Access

Public agency who has adopted electronic government request forms shall provide directions on how to submit government records requests, including any forms, on its website

Clarifies electronic response permitted to electronic records requests if government records are available electronically

Public agency may make available on its website an online form, portal or software for transmitting requests



GRC form may be submitted electronically or by fax







Public Access

Each submission of form or email record request shall be made to the custodian of not more than one public agency

Submission of repeated requests to multiple custodians in the same agency for the same record in the same public agency, while an identical or substantively similar request is pending, permits denial of the request



If a request will substantially disrupt agency operation, the request may be denied after the requestor is informed and attempts to reach a reasonable solution with the requestor are ineffective



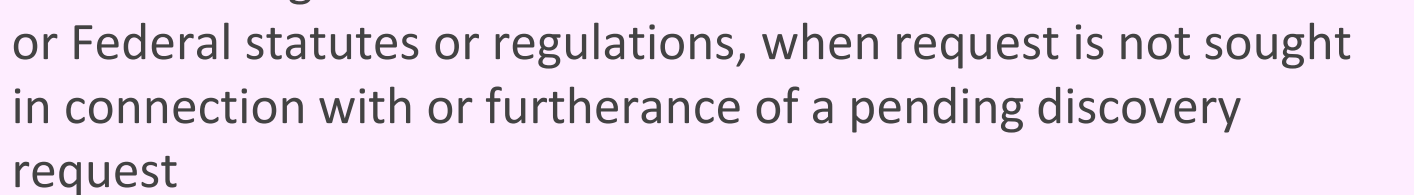


Public Access

Requests by parties to a legal proceeding, including attorneys and agents:

May not request a record if that record is the subject of a court order, including a pending discovery request

Must certify whether the record is being sought in connection with a legal proceeding and identify the proceeding



Not applicable to a labor organization or contractor signatory of a CBA seeking information material to enforcement of a State or Federal statutes or regulations, when request is not sought in connection with or furtherance of a pending discovery request

Public Access

A custodian is not required to complete a request for mail, email, text messages, text message, correspondence, or social media postings and messages, if the request does not identify:

- a specific job title or accounts to be searched
- a specific subject matter
- and is not confined to a reasonable time period
- or the request would require research and the collection of information from the contents of records or the creation of new records setting forth that research and information





Public Access

Response Times:

No more than 7 business days after custodian receives request or 14 business days for a request for commercial purposes

For a commercial requestor, who would like to receive a record within 7 business days, the custodian shall provide the record and may charge a special service fee not exceeding two times the cost of production






Public Access

Custodian is entitled to a reasonable extension of any response deadline for unforeseen circumstances that necessitate additional time to fulfill request

Custodian must notify requestor of the time extension within seven business days

If a record is in storage or archived, the requestor must be so advised within 7-14 business days and also when the record will be made available, which shall be no more than 21 business days from the date the requestor is advised





Public Access

The custodian is not required to:

Provide a record created, maintained or received by another public agency, but must direct requestor to that agency with seven business days

Complete an identical request for a record from the same requestor if the information hasn't changed



A requestor has fourteen business days to retrieve records following notice that the records are available



Attorney Fees

Sets 45-day deadline for filing of action by a requestor, who did not submit an anonymous request, for denial of records request

Reasonable attorney fees may be awarded to requestor who prevails in challenge to records request denial


Court or GRC may award attorney's fees to a prevailing party in any proceeding. An award of reasonable attorney's fees is required if the public agency unreasonably denied access, acted in bad faith or knowingly or willfully violated the law



Penalties

If a public official, officer, employee or custodian is found to have knowingly and willfully violated OPRA and to have unreasonably denied access under the totality of the circumstance, the public agency shall be subject to civil penalties

A requestor who is found to have intentionally failed to certify that a records request is for a commercial purpose shall be subject to civil penalties







Penalties

Court protective order may be issued, following filing of verified complaint, if Court finds by clear and convincing evidence that a requestor has sought records with the intent to substantially interrupt the performance of government function

Protective order may limit the number and scope of requests the requestor may make or order such other relief including, referral of the matter to mediation or waiver of the required response time



The complaint shall be accompanied by a declaration of facts by the public agency demonstrating that it has complied with the law and made a good faith effort to reach an informal resolution






Miscellaneous

The bill encourages and allocates funds to assist public agencies with moving documents online, with the goal of making such records searchable via an online database

The bill appropriates \$4 million to NJDCA to provide grants to public agencies to assist in accomplishing the above objective






Miscellaneous

Act takes effect 90 days following the date of enactment

Bill is awaiting Governor's action

Bill is very controversial, especially the changes to the Attorney's Fee provisions





Questions?

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