

## New Jersey's Open Public Records Act ("OPRA")

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Who Can Look at or Copy Public Records? Anyone for any reason.

Whose Records Are Subject to OPRA? All New Jersey state, county and local government agencies and any agency they create. (New Jersey courts are covered by Court Rule 1:38. Federal agencies are covered by the federal *Freedom of Information Act*.)

What Records are Subject to OPRA? All records held by the agency, including audio, video and computerized information. You can only request existing records. OPRA does not require the agency to answer your questions or do research for you. Thus, instead of asking, "How much money did XYZ Company charge your agency in 2004?" you should request "All bills and vouchers received from XYZ Company in 2004." ***For getting information about toxic chemicals or other safety and health hazards, other federal and other state laws often can be more effective.*** Contact WEC for information about these laws.

Is All Information Available? OPRA exempts certain types of confidential information. See the OPRA Act and/or a lawyer. If part of a record is exempt from disclosure, the agency is required to disclose the rest of the record.

Are There Any Costs? **Fees for copying printed records normally are five cents per letter size page or smaller and seven cents per legal size page or larger.** Also, fees for copying non-printed records are normally limited to the actual cost of copying and do not include the cost of labor. However, if the search, deletions or copying require an "extraordinary expenditure of time and effort," the agency can charge a special service fee.

How Do I Make a Records Request? 1. If you are unsure what records the agency has, talk to the agency's records custodian. 2. Make an oral request for the records. 3. If the oral request is refused or denied, make a written request by letter or use the agency's request form. Write on your letter or request form that you are seeking the records under the "*Open Public Records Act* and the common law right of access to public records." 4. Be as specific as possible in describing the records and ask for as few records as possible, in order to limit fees. You can make additional record requests later. You may want to look at the records before you decide which ones you want copied. 5. Send the request to the records custodian at the agency. The records custodian for a municipality is the municipal clerk. 6. If the agency denies access in whole or part, it must give you a specific reason.

How Long Should I Wait for a Response? For budgets, bills, contracts and salary records, access should be granted immediately. For all other records, the records custodian should “as soon as possible” grant access, deny access or tell you when the record will be available. If the records custodian does not do so within seven business days, or if your request is denied in whole or part, you can file a complaint either in New Jersey Superior Court or in the Government Records Council (“GRC”), not both.

How Long Do I Have to Sue? The deadline for filing a complaint in court is 45 days from the date the record request was denied. If the agency neither grants nor denies a record request, the request is considered denied seven business days after it receives the request. There is no deadline for filing a complaint with the GRC, but you should file promptly.

Should I Request a Penalty Against the Agency Official? OPRA permits a \$1,000, \$2,500 or \$5,000 fine against an agency official who “knowingly and willfully” violates OPRA. This means that the official knew that he or she was violating OPRA. This usually is impossible to prove.

What are the Advantages of Filing the Complaint in Court? 1. Speed. OPRA lawsuits are treated in an expedited manner. Moreover, in emergency situations, you can obtain an immediate decision. GRC cases take months or longer. 2. The court, but not the GRC, can enforce your right of access under both OPRA and the common law right of access to public records. 3. Although judges vary, a court is more likely to rule in a record requestor’s favor than is the GRC.

What are the Advantages of Filing the Complaint with the Government Records Council? 1. No filing fee. A court filing fee is \$230.00, although you may get it back if you win the lawsuit. 2. GRC does not expect you to have a lawyer. However, if you have a strong case, you probably can get a lawyer to represent you in court because OPRA requires the agency to pay your attorney’s fee if you win. 3. GRC will treat seriously a procedural violation that a judge might view as a waste of the judge’s time. 4. GRC offers mediation if both sides agree to it.

What Happens After the GRC or Court Decides the Case? Both sides have 45 days to appeal to the Appellate Division of the Superior Court.

Government Records Council Website. A useful website that includes the text of the OPRA law and regulations is: <http://www.nj.gov/grc/>

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