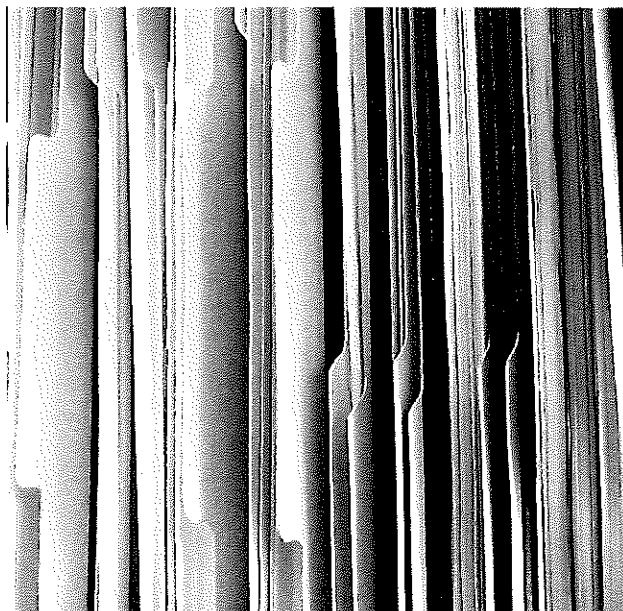




The New Jersey Open Public Records Act Handbook for Records Custodians



New Jersey Government Records Council

101 S. Broad Street
P.O. Box 819
Trenton, NJ 08625-0819

Office: (609) 292-6830
Fax: (609) 633-6337
Toll-free Information Line: (866) 850-0511

E-Mail: Government.Records@dca.nj.gov
Website: www.state.nj.us/grc/

Police Officer to supervise the complainant's inspection of the requested records. The Council stated that:

The Custodian has reasonably offered to provide the Complainant with copies of all the records responsive upon payment of the statutory copying rates, which the Complainant has declined. The Custodian has also reasonably offered the Complainant two (2) hours to inspect the seven hundred forty-five (745) pages responsive to the Complainant's request, of which the Custodian states a substantial portion are records which the Complainant himself submitted to the Division. Additionally, the Custodian has reasonably offered to accommodate the Complainant's request by charging a special service charge for the hourly rate of a Division of Consumer Affairs employee to monitor the Complainant's inspection of the requested records in the event that said inspection exceeds two (2) hours. Further, the Custodian has reasonably offered to copy the remaining records at the OPRA copying costs in the event the Complainant exceeds a reasonable amount of time for the record inspection, which the Custodian states is one (1) business day. However, the Complainant objects to paying any inspection fees, as well as a two (2) hour inspection time limit.

The Council held that "because the Custodian has made numerous attempts to reasonably accommodate the Complainant's request but has been rejected by the Complainant, the Custodian has not unlawfully denied access to the requested record under N.J.S.A. 47:1A-5(c) and N.J.S.A. 47:1A-5(g)."

What if the request is overly broad or unclear?

Under P.L. 2024, c.16, OPRA now provides that a custodian is not required to fulfill an OPRA request if they determine ". . . that the request would require research and the collection of information from the contents of government records and the creation of new government records setting forth that research and information." N.J.S.A. 47:1A-5(g).

This language reflects the longstanding ability of custodians to deny access to requests considered invalid. The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad ("any and all," requests seeking "records" generically, *etc.*) and requires a custodian to conduct research. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking non-electronically stored information or asking questions. See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is submitted on a form invoking some other process or a non-form request not invoking OPRA. See *e.g.* Naples v. N.J. Motor Vehicle Comm'n, GRC Complaint No. 2008-97 (December 2008).

Additionally, P.L. 2024, c.16 sets forth criteria for a valid OPRA request seeking communications, including e-mails, text messages, other forms of correspondence, and social media communications. N.J.S.A. 47:1A-5(g). The criteria, which mirrors those originally devised in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), are comprised of:

- “[S]pecific job title or accounts” (including “specific individuals by . . . job title and position”)
- “[A] specific subject matter”
- “[A] reasonable time period”

Custodians are permitted to deny access to an OPRA request that does not conform to the above criteria.

Example of an overly broad request: “Any and all records related to the construction of the new high school.”

The term “records” does not reasonably identify a specific government record.

Example of a valid request: “Any and all e-mails from John Smith’s e-mail account regarding the construction of the new high school from January 1, 2009 to February 28, 2009.”

This request follows the new statutory standard for communications and would be considered valid.

A custodian is obligated to *search* files to *find* the identifiable government records listed in the Complainant’s OPRA request. A custodian is not required to *research* files to figure out which records, if any, might be responsive to a broad and unclear OPRA request.

A custodian may, but is not required to, seek clarification of a broad or unclear request. The custodian’s request for clarification must be in writing, within seven (7) business days of receipt of the request. If a custodian seeks clarification of an OPRA request, the response time clock stops until the requestor provides a response to the custodian. Upon receipt of the requestor’s clarification, the applicable statutory response time begins anew.

How much can I charge to provide records?

N.J.S.A. 47:1A-5(b) provides that:

- (1) A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation.

Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger.

Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs.

No fee shall be charged if the request is completed by directing the requestor to the requested government record that is available on the public agency’s website or the website of another public agency.