

No. 03-28

Ordinance
of the
Borough of Carteret, N. J.

Councilman _____ Presents the following Ordinance Seconded by Councilman _____

**AN ORDINANCE AMENDING & SUPPLEMENTING ARTICLE VI
"PUBLIC RECORDS" OF CHAPTER 4 ENTITLED
"ADMINISTRATION OF GOVERNMENT" OF THE CODE OF
THE BOROUGH OF CARTERET**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of Carteret, a municipal corporation of the State of New Jersey, located in Middlesex County, thereof, as follows:

Section 1. Article VI, "Public Records", of Chapter 4 of the Carteret Code entitled "Administration of Government ", is hereby deleted in its entirety and replaced with the following:

Public Records

§4-38. Purpose.

A. It is hereby declared to be the public policy of the Borough of Carteret to recognize the public's general right to know pursuant to the Open Public Records Act. All records kept in the course of official duties by any Borough of Carteret officer or employee shall be deemed to be government records, as that term is defined by N.J.S.A. 47:A-1.1, and such records shall be subject to inspection by the public unless exempt under federal or state statutes, laws, or other regulations, common law practice, executive order of the Governor, Rules of Court or judicial decision; this article was established to comply with the mandate of N.J.S.A. 47:A-1 et seq., known as the Open Public Records Act, including that portion of the law permitting the establishment of charges/fees, not otherwise provided for, to be imposed and associated with the reproduction of said records.

B. The Borough recognizes the fact that the daily operation of the various departments regularly involves the distribution of public records, as the term is defined by state law, to the public, and that it would be inefficient to require that all requests be submitted to the Borough Clerk. In an effort to make records available within the time frames specified by the law, the Borough will continue this policy in addition to the procedure provided by this article.

§4-39. Definitions

As used in this section, the following terms shall have the meanings indicated:

GOVERNMENT RECORDS(S) or RECORD(S)—Any information subject to public inspection which is maintained by the Borough of Carteret in written, audio, video, electronic or other form and as defined by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

SPECIAL SERVICE CHARGE—A charge, in addition to the actual cost of duplicating the government record(s), which shall reflect the expense associated with extensive use of the Borough's information technology or resources or the extensive clerical or supervisory assistance by Borough of Carteret personnel which is necessary to accommodate a request for government records and as defined by the Open Public Records Act, N.J.S.A. 47:1A-5c and 47:1A-5d.

§4-40 Appointment.

There are hereby appointed the following Government Custodians of Public Records of the Borough of Carteret, who shall be charged with the responsibility of maintaining government records as defined by the laws of the State of New Jersey.

A. The Municipal Clerk shall be the Custodian of Government Records for all records of the municipality. The Municipal Clerk may designate Deputy Custodian(s) of Government Records as may be appropriate with regard to the type of government record and/or the local government agency that generates or maintains the same.

B. The Chief of Police of the Borough of Carteret shall be designated as Deputy Custodian of the Government Records for documents pertaining to Police Department matters within the jurisdiction of the Carteret Police Department.

C. The Custodian and the Deputy Custodian(s) of Government Records shall familiarize themselves with the provisions of the applicable law pertaining to records access and the exceptions contained therein. They shall also monitor amendments to law pertaining to public records access, and shall be guided accordingly in making determinations with respect to disclosure of government records.

§4-41. Inspection and copying of public records.

A. Any person seeking to inspect, examine or copy a public record of this municipality shall make application in writing to the Municipal Clerk, or other custodian identified by this article, during regular business hours, on the form provided. All requests for public records shall be as specific as possible, including the type of record and date created, if known.

B. The Municipal Clerk or other custodian shall promptly comply with a request to inspect, examine, copy or provide a copy of a government record. If the custodian is unable to comply with a request for access, he or she shall indicate on the request form the specific basis for such inability to comply and shall promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof.

C. In those instances where the nature of the request to the record itself leads the custodian to doubt whether or not the record is a government record as defined by law or is a record exempt from disclosure, the Clerk shall request an opinion form the Borough Attorney. A copy of the request form shall be forwarded to the attorney who, after review and investigation, shall issue an opinion and note such opinion on the request form and promptly return it to the custodian.

D. If any part of a particular record is exempt from public access pursuant to N.J.S.A. 47:1A-1 et seq., the custodian shall delete, redact or excise from a copy of the record that portion which is exempt from access and shall promptly permit access to the remainder of the record.

E. If the record requested is temporarily unavailable because it is in use or storage, the custodian shall so advise the requestor and shall make arrangements to make a copy of the record available.

F. If a request for access to a government record would substantially disrupt municipal operations, the Clerk may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the municipality.

G. As required by N.J.S.A. 47:1A-5e, immediate access shall be granted for access to budgets, bills, vouchers, contracts (including collective negotiations agreements and individual employment contracts), and public salary and overtime information.

§4-42. Time limits for compliance.

Unless a shorter time period is otherwise provided by statute, regulation or executive order, the Clerk shall grant access to a government record or deny a request for access to a record as soon as possible but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived. In the event that the Clerk fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request, unless the requestor has elected not to provide a name, address or telephone number, or other means of contacting the requestor. If the requestor has elected not to provide an address, or telephone number, or other means of contacting the requestor, the custodian shall not be required to respond until the requestor reappears before the custodian seeking a response to the

original request. If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives the request. The requestor shall be advised by the custodian when the record can be made available. If record is not made available by that time, access shall be deemed denied.

§4-43. Posting of appeals procedures.

The Clerk shall post prominently in public view, in or adjacent to the Clerk's office, a statement that sets forth in clear, concise and specific terms the right to appeal a denial or failure to provide access to government record and the procedure by which an appeal may be filed.

§4-44. Viewing of government records; removal prohibited.

A. Upon the approval of a request to view, inspect, examine or copy a record, the record and the requestor shall remain in the presence of the custodian at all times. Under no circumstances shall any government record be removed from the office where it is normally kept unless accompanied by the custodian or his or her authorized representative.

B. In the event that the nature of the request to view records requires that the custodian or other municipal employee observe or monitor such viewing for a period of time exceeding one hour, the requestor shall be responsible for reimbursing the municipality for time spent by the custodian or other employee.

§4-45. Copies to be made available; fee.

A. Except as may be otherwise provided by law or by other specific ordinance, copies of government records as set forth in N.J.S.A. 47:1A-2 which are made, maintained or kept on file by the Borough of Carteret or any of its officers or employees shall be made available and supplied by the custodian thereof to any person requesting the same in accordance with the following fees:

1. First page to 10th page: \$0.75 per page
2. Eleventh page to 20th page: \$0.50 per page
3. All pages over 20: \$0.25 per page
4. Police accident reports: five dollars (\$5.00) for the first three (3) pages and one dollar (\$1.00) for each page thereafter when a report is ordered by mail; fifty cents (\$.050) if purchased in person during business hours.

- B. Whenever the nature, format, manner of collation or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1. et seq., is such that the record cannot be reproduced by ordinary document-copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, including, but not limited to the retrieval of documents from storage or which have been archived, the custodian of records, as defined by OPRA, shall advise the requester of the estimate of charges for obtaining a copy of said record(s), which shall include the actual cost of duplicating the record(s) and a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies. In the event the requester objects to the charge after having reviewed the same, the custodian of records shall not incur said charges until an agreement is reached between the requester and the custodian of records.
- C. In the event that an OPRA request involves the reproduction and/or conversion of a government record from the medium in which the document requested currently exists into a medium not routinely used by the municipality, not routinely developed or maintained by the municipality or requires a substantial amount of manipulation or programming of information technology, the custodian of records shall either convert the document into the medium requested or provide a copy of the same in some other meaningful medium as provided by OPRA. In the event that the requester refuses to accept a copy in some other meaningful medium into which the municipality is able to convert the document, the custodian of records shall advise the requester of the actual cost of duplication. In addition to the actual cost of duplication, the custodian of records may assess a special service charge that shall be reasonable and shall be based on the cost for any extensive use of information technology or for the labor cost of personnel providing the service that is actually incurred by the municipality or attributable to the municipality for the programming, clerical and/or supervisory assistance required or both. This section shall also apply to requests for documents which the municipality is unable to reproduce in-house due to the document's existing unusual size or medium, including but not limited to blueprints, plans, film, slides, CD-ROMS and the like.
- D. The custodian of records is authorized to solicit and receive estimates in accordance with the Local Public Contracts Law from third-party documents service providers to effectuate OPRA requests which fall within the scope of this article, and any estimates from said third-party service providers shall be transmitted to the requester for his or her consideration and review.

- E. Where copies of a document are requested to be mailed, other than police reports, fees for which are set by statute, there will be a minimum mailing charge of \$0.50 in addition to any copying charges. Additional mailing charges will be assessed where the size or weight of the requested document(s) so requires. In the event that a tape of a public meeting is to be mailed, there shall be a postage and handling fee of \$2 per tape.
- F. A deposit shall be paid prior to fulfilling a request where it is estimated that the records requested will cost in excess of \$5 to reproduce. The amount of the deposit shall equal the total estimated cost of fulfilling the request.
- G. Unless otherwise provided for by law or the specific provisions of this ordinance, the fees charged for government documents shall be the actual costs of reproduction of said document and shall be adopted by resolution of the Borough Council, and are subject to change. The resolution specifying the costs for these items will be posted next to the appeal notice described above or in some other conspicuous place.
- H. In the event that the requester of documents objects to any charges permitted by this article and no resolution of the objection can be reasonably accomplished, the custodian of records shall not incur any charges on behalf of the municipality to fulfill the OPRA request.

Section 2. All Ordinances and/or provisions thereof inconsistent with the provision of this Ordinance shall be and are hereby repealed as to the extent of any such inconsistencies.

Section 3. If any section, subsection, part, clause or phrase of this Ordinance shall be declared invalid by judgment of any Court of competent jurisdiction, the section, subsection, part, clause or phrase shall be deemed to be severable from the remainder of this Ordinance.

Section 4. This Ordinance shall take effect upon passage and publication according to applicable law.

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE

COUNCILMAN	YES	NO	NV	A.B.	COUNCILMAN	YES	NO	NV	A.B.
KRUM	X				RIOS	X			
NAPLES	X				SITARZ	X			
PARISI	X				SOSNOWSKI				X

X - Indicate Vote AB - Absent NV - Not Voting XOR - Indicates Vote to Overrule Veto

cp

Adopted on first reading of the Council of the Borough of Carteret, N.J., on August 14, 2003

Adopted on second reading after hearing on September 4, 2003

APPROVED BY

ON 9-8-03

MAYOR

MUNICIPAL CLERK