



CITY OF ELIZABETH, NEW JERSEY  
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August 13, 2019

VIA E-MAIL ([opra+request-6592-18cde876@requests.opramachine.com](mailto:opra+request-6592-18cde876@requests.opramachine.com))

Anonymous

**RE: OPRA REQUEST - Spirito's Inspection Reports**

Dear Sir or Madam:

This office is in receipt of your e-mail dated August 8, 2019, wherein you request an "internal review of Elizabeth City's handling of my OPRA request." Specifically, you note that "[t]here is no charge for records when they are emailed." This letter is made in response to said request.

As part of your request, I have reviewed: (1) your initial request pursuant to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1, et seq. ("OPRA") dated July 28, 2019; (2) the custodian's response to that request dated August 7, 2019; (3) the records responsive to the request; and (4) relevant provisions of OPRA.

On Sunday, July 28, 2019, 7:47 PM, you e-mailed an OPRA request to Yolanda Roberts, City Clerk, requesting the following records:

- Copies of all complaints received about Spirito's, 714 3<sup>rd</sup> Ave, Elizabeth[,] NJ[,] during the time period 04/01/2019 – 07/28/2019[; and]
- Copies of all Board of Health inspection reports for Spirito's, 714 3<sup>rd</sup> Ave, Elizabeth[,] NJ[,] during the time period 04/01/2019 - 07/28/2019[.]

Said request was received by the City Clerk's office on or about July 30, 2019.

On or about August 7, 2019, the City Clerk's office sent you an invoice of \$1.35 for the records responsive to your request. The invoice amount reflects a count of 27 pages at a rate of \$0.05 per page. Specifically, the records responsive to the request were as follows:

- A complaint form dated February 7, 2019. (2 letter-sized pages)
- A signed memorandum from Mark S. Colicchio, Health Officer, dated July 30, 2019, enclosing five (5) signed and partially redacted Retail Food Inspection Reports. (25 letter-sized pages.)

On or about August 8, 2019, this office received a copy your request for a review. Your request specifically contends that "[t]here is no charge for records when they are e-mailed."

At the outset, it is important to note that in adopting OPRA, the Legislature made clear that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded [under OPRA] as amended and supplemented, shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1. On the issue of copying costs, OPRA provides, in pertinent part:

[. . . T]he 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.

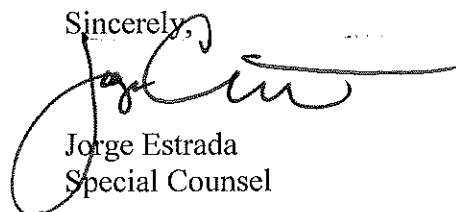
N.J.S.A. 47:1A-5(b)(1)(emphasis added). Thus, where the record is embodied in the form of printed matter, a charge is warranted under the statute.

Here, all records that were provided to the City Clerk's office to disseminate (and, subsequently, to this office for review) arrived in a paper format. Furthermore, there can be no doubt that the memorandum and Retail Food Inspection Reports are indeed "embodied in the form of printed matter" as they are clearly photocopies of paper records which have redactions and signatures affixed to them. It is unclear, however, whether the complaint form is maintained in a printed or electronic format as there are no redactions, signatures, or other markings indicating that the document is a photocopy of a document maintained in a printed form.

Accordingly, I find that the Clerk's Office properly issued an invoice for the records pursuant to OPRA. However, it is unclear whether the amount of the invoice is proper or should be reduced by \$0.10 because two pages of records may be electronic records for which no charge should apply under OPRA.

In light of the above and because of the public policy underpinning OPRA, I have asked the City Clerk to waive the entire fee for this OPRA request. Enclosed are all documents responsive to your request. Should you have any further questions or concerns regarding this matter, please do not hesitate to contact me at (908) 820-4009.

Sincerely,

A handwritten signature in black ink, appearing to read "Jorge Estrada", with a stylized flourish extending from the end.

Jorge Estrada  
Special Counsel

Encl.

cc: Joanna Ramirez (via e-mail)