

How to get government records under OPRA

April 2015

New Jersey's Open Public Records Act (OPRA), effective in July 2002, is one of the best tools the public has to obtain information about what government is doing.

OPRA requests must be in writing. While many governmental entities have a specific form for this purpose, you are not required to use it. In fact, legally you can send an email request in most cases, with the description of the records you are seeking in the body of the email itself. Importantly, the email must clearly state "OPRA request" in the email. Also, you should include your name, address, phone number and email address so the records custodian may contact you. (However, there is no legal requirement to identify yourself when making an OPRA request – the OPRA law allows you to submit a request anonymously.)

Specify how you want to receive your records – fax, hard copy, or electronic file sent via email or on CD. CD and paper materials can be mailed or picked up. Also, if you request an electronic file, you can specify a particular file format, such as PDF or Excel. Governmental offices must supply you the record in the file format requested if it's readily available. For example, for a document typically created in Excel, like a budget, you should be able to get the Excel worksheet.

A 2010 amendment to the OPRA law reduced fees for paper copies to just 5 cents per page for letter size and 7 cents for legal, except for requests that require a substantial amount of time and effort to fill. The fees apply only to paper copies. There may also be a charge for a CD and a charge for postage if you request that materials be mailed. There is no charge for email delivery of electronic documents, thus you can save money – also time, trees, and gasoline – by requesting email delivery of the records if an office has this capability. There is also no charge to have materials faxed.

In general, the delivery method is *your* choice, not that of the person handling your request. It would not be appropriate, therefore, for an office to mail you documents along with a bill if you requested email delivery and they *could have complied* with your request.

You should mention the maximum amount you are willing to pay when you submit the request. If the records custodian wants to charge you a fee above the amount you authorized, he or she must state the fee both in advance and in writing. For someone who typically requests paper copies, this protocol is important for two reasons. One, it will help you avoid an unexpected bill. Two, it will give you an opportunity to clarify or streamline what you're looking for to bring down the cost.

You can submit your OPRA request in person at the appropriate office, mail it, fax it, or email it. If you email your OPRA request, it's a good idea to request a read receipt for your records.

New Jersey state offices have an online portal for submissions that you can link to here: https://www16.state.nj.us/NJ_OPRA/department.jsp. Choose the state department; next choose the division. When the form comes up, fill it in and hit submit. It's been my experience that OPRA requests submitted via the online portal don't always make it to the right person and consequently may not be filled timely. If you know the right person or office, it's a good idea to follow-up with that person or office directly to make sure the request was received.

An office has 7 business days to respond to your request, but may ask for additional time to do so before the 7 days have elapsed. Day 1 is the first business day following the business day when your request is received. If you send an email request on Saturday, for example, Tuesday is day 1 assuming Monday is a work day and not a holiday. Responses must be in writing.

Some common pitfalls that may result in an OPRA request being denied are:

- *asking for "any and all"* – The request must be for specific documents.
- *asking for information* – In general, requests must be for documents, not information.
- *asking a question* – The request must be for a document.

Government offices vary in how they respond to these pitfalls. Use of the words "any and all" doesn't automatically make a request improper – it depends on the scope of the request – but you would be wise to avoid the phrase because some offices will issue a rubber stamp denial.

If you feel your request has been improperly denied, you can do one of two things, but not both. Within 45 days after the denial, you can file a lawsuit in NJ superior court. You pay a \$250 filing fee, mailing & copying costs, and other applicable court fees. Alternatively, you can file a written "denial of access" complaint with the NJ Government Records Council (GRC) for free. There is no statute of limitations or fee for filing with the GRC.

If the matter is decided in your favor, the entity that denied your OPRA request is generally required to reimburse your filing expenses, including your legal fees if you hired a lawyer. Lawsuits are typically decided in a few months, while a decision from the GRC could take a year or two given the backlog of claims under review and the complexity of your claim. Filers with the GRC have the option to request mediation in lieu of a formal decision. There is a significantly shorter wait for mediation, which usually includes the filer and his or her attorney, the mediator, and representatives for the governmental entity, such as municipal attorney and municipal clerk. To enter mediation, both sides must consent to it.

Note that the GRC only has jurisdiction over OPRA, not common law, the Open Public Meetings Act, or any other law. Complaints with respect to your rights under these other laws are not heard by the GRC.

The GRC put together a slide show presentation that provides a good summary of your rights, responsibilities, and recourses under the OPRA law. You can find it here: www.nj.gov/grc/meetings/present/opra_presentation.ppt

Here is a PDF document from the GRC containing the same information:

<http://www.nj.gov/grc/public/docs/Citizen%27s%20Guide%20to%20OPRA%20%28July%202011%29.pdf>

Good luck with your research.