



**Your right to access
government records
is protected.**

A large, stylized graphic of a document or record, rendered in shades of blue and white. The graphic is composed of many thin, horizontal lines, creating a textured, layered effect. A small, dark silhouette of a person is visible on the left side of the graphic, standing on what appears to be the edge of the document. The overall composition is set against a light blue background.

OPEN PUBLIC RECORDS ACT

A GUIDE TO THE NEW JERSEY OPEN PUBLIC RECORDS ACT (OPRA)

The Open Public Records Act (OPRA) is a New Jersey law that governs public access to government records maintained by public agencies in New Jersey.

What is a government record?

A “government record” is any record that has been **made**, **maintained**, or **kept on file** in the course of official public business, or that has been received in the course of official public business. Government records can include paper records, electronic files, audio recordings and other formats.

Who may file an OPRA request?

Anyone can file an OPRA request. Requestors are not required to give a reason for the request, and OPRA requests may even be filed anonymously.

How many requests may I submit to a public agency?

The statute does not limit the number of OPRA requests a person can submit to a particular agency.

Are there any government records that I cannot obtain?

There are some records that are exempt from the law. An agency can withhold documents (or portions of documents) from requestors based on a number of exemptions, but the agency must indicate why the requested information is exempt. Some of the exemptions include:

- Inter-agency or intra-agency advisory, consultative or deliberative material
- Legislative records, including constituent-related records
- Attorney-client privilege
- Medical examiner records
- Criminal investigatory records
- Victims’ records
- Records regarding ongoing investigations
- Public defender records
- Trade secrets and proprietary commercial or financial information
- Biotechnology trade secrets
- Computer-related information which, if released would jeopardize computer security

- Emergency or security information or procedures for any buildings which, if disclosed, would jeopardize the security of the building or facility or its occupants
- Security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software
- Communications between a public agency and its insurance carrier, administrative service organization or risk management office
- Information which, if disclosed, would give an advantage to competitors or bidders
- Information related to sexual harassment complaints
- Confidential information shielded by a court order
- Personal identifying information, including social security numbers, credit card numbers, unlisted telephone numbers, and drivers' license numbers
- Certificate of honorable discharge issued by the United States government
- Certain records of higher education institutions including research, test questions, charitable contributions or gifts, admission applications and other student records.

What information may I obtain regarding public employees?

You may obtain a public employee's name, title, position, salary, payroll record, length of service, date of any separation and the reason for such separation, and the amount and type of any pension received. If there are specific qualifications for a public employee's position or pension, you may also obtain general information regarding the public employee's qualifications.

How do I make a request?

Many agencies have a specific OPRA form for requestors to fill out. You do not have to use a form, but the request must be in writing and specifically mention OPRA. The request can be hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate records custodian. Each public agency determines the specific way to submit an OPRA request to its offices.

What should my request say?

You must specifically identify the government records sought. If a request does not identify records or is overly broad, a custodian may deny the request. When in doubt, ask the custodian what you should say to obtain the records you seek.

Who is the “custodian of a government record”?

OPRA states that the custodian of government records in a municipality is the municipal clerk, and any other public agency must officially designate a records custodian. Counties or larger state agencies may have more than one custodian of records.

What happens if I submit my request to the wrong person?

OPRA requires that any officer or employee of a public agency who receives an OPRA request must either forward the request to the appropriate records custodian, or direct you to the appropriate records custodian.

When will I receive the records that I requested?

You may obtain budgets, bills, vouchers, contracts, and public employee salary and overtime information immediately. For all other records, you should receive a response within seven business days after a request is received. Sometimes agencies may contact you within that time period advising you of when to expect your records. Although records should be provided to you as soon as possible, there are often delays if the requested records are unavailable or are in storage.

When does the response time clock begin?

The clock does not begin until the appropriate records custodian has received the request.

How can I receive the requested records?

You can request a preferred method of delivery (regular mail, fax, or email).

Do I have to purchase copies of government records?

No. You may inspect government records at any public agency for free. However, if your request is voluminous, a custodian may charge a special service fee under certain circumstances including the time spent collecting the materials for your review.

Can I get the information in a different format?

Yes. If the agency keeps its records in another format, you can request that format. For example, if you want meeting minutes in an electronic format, you can request them on a CD. You can also ask the custodian to convert the records into a format you prefer; however, the custodian may impose a special service charge to convert the records into the format requested.

What are special service fees?

A public agency may charge a special service fee in addition to the actual cost of duplicating records when:

- The requested records cannot be reproduced using ordinary equipment, in ordinary business size; or
- Complying with the request involves an extraordinary expenditure of time and effort.

Special service charges may also apply if the custodian must convert the requested records into a different format. The custodian must provide you with advance notice to review any special service charges before imposing them. These charges are reserved for the extensive use of technology or labor required to respond to your records request. All special service charges must be reasonable and based on actual direct cost. Actual direct cost means the hourly rate of the lowest level employee capable of fulfilling the request.


How much do the records cost?

Records cost 5 cents for letter sized pages, 7 cents per page for legal sized pages.

Electronic records must be provided free of charge. If you request copies of a tape, computer disc or other similar medium, you will be charged only the actual cost of providing the records in that medium.

Can a public agency refuse to fulfill my request?

Generally, no. However, if a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record only after attempting to reach a reasonable solution with you.



Carole Chiaffarano sued the State of New Jersey for records for a salt barn.

How should the public agency respond to my request?

A proper response to an OPRA request:

- Is in *writing* within seven (7) business days
- Grants access, denies access, seeks clarification, or requests an extension of time
- Addresses each record requested
- Addresses requestor's preferred method of delivery
- Includes a record index that identifies each record requested and the specific legal basis for a denial of access (including redactions) for each record denied or redacted.

If a special service charge is assessed, the agency must provide an estimate and give the requestor an opportunity to accept or reject charge.

What happens if my request is denied?

If the custodian denies a request for access, the custodian must provide you with a specific legal basis for denying access. You may also have additional rights to public records under the common law right of access. To obtain public records under common law, your stated interest in the requested records must outweigh the public agency's interest in keeping the records confidential. You may appeal a denial of access under common law by filing a complaint in Superior Court.

My request was denied, now what?

You may appeal the denial of access by filing:

- A complaint in Superior Court; or
- A complaint with the New Jersey Government Records Council (GRC).

Please note that, if you plan to file in Superior Court, a complaint must be filed within 45 days after you are denied the records. There is no time limit on filing a Denial of Access Complaint with the GRC. You may want to consult with an attorney prior to filing a complaint.

Can the public agency be penalized for denying my request?

OPRA states that a public official, officer, employee, or custodian who knowingly and willfully violates the Act and is found to have unreasonably denied access under the totality of the circumstances shall be subject to a civil penalty of \$1,000 for an initial violation, \$2,500 for a second violation, and \$5,000 for a third violation that occurs within 10 years of an initial violation. If you are seeking such penalties, they must be sought when appealing a denial of access in Superior Court or the GRC. ■

ACLU-NJ RESOURCES

The ACLU-NJ provides the following publications and materials to the public free of charge. If you would like to receive these materials, please email us at info@aclu-nj.org or visit www.aclu-nj.org/publications

- Students' Rights Handbook
- Know Your Rights cards in English, Spanish, Arabic and other languages
- Bust cards in English, Spanish, Portuguese and other languages
- Confidential Informant Report: An Exploratory Study of the Use of Confidential Informants in New Jersey
- The Rights of Immigrants in New Jersey

The ACLU-NJ speaker's bureau offers speakers who can provide a program about current events, including recent ACLU cases, legislative battles, policy initiatives and the history of our organization. To request a speaker, fill out a request form at www.aclu-nj.org/speaker. We have speakers who can speak about the following topics:

- Civil Liberties & National Security
- Free Speech & Expression
- Gay & Lesbian Rights
- Immigration
- Open Government
- Police Practices
- Privacy Rights
- Racial Justice
- Religious Freedom
- Student & Youth rights
- Voting Rights

For more information about the ACLU-NJ, follow us on Twitter or be our fan on Facebook.



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www.twitter.com/aclunj

SUPPORT THE ACLU-NJ



I want to become an ACLU member

Yes! I want to join the ACLU as a proud defender of civil liberties!

- New Membership
- Renewal
- \$35 \$75
- \$50 \$125
- Other \$ _____

Donate to the ACLU-NJ Foundation

I want to make a tax deductible donation to the ACLU of New Jersey.

Please select an amount:

- \$50 \$250
- \$100 \$500
- Other \$ _____

First & Last Name: _____

Joint First & Last Name: _____

(joint memberships are \$35 or more)

Company: _____

Street: _____

City/State/ZIP: _____

Home Phone: _____ **Work Phone:** _____

Email: _____

By providing your email address you consent to receive email from the ACLU-NJ about its events and programs.

- Check enclosed**
- Please charge my credit card**

Name on Card: _____

Signature: _____

Card Number: _____ **Exp:** _____

- Yes! Sign me up to join the Email Activist Network.**
- Yes, you may share my name and mailing address with other charities.**

Allowing the ACLU to exchange your name helps us to grow our membership and better protect civil liberties. Find out more about sharing contact information at: www.aclu-nj.org/sharing

Please mail completed form to:
American Civil Liberties Union of New Jersey
PO Box 32159, Newark, NJ 07102



For more information about the ACLU-NJ's
Open Governance Project, visit:
www.aclu-nj.org/theissues/opengovernment/



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