

The Future of OPRA

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The Most Important Number Today!

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WHAT IS OPRA?

- The New Jersey Open Public Records Act. N.J.S.A. 47:1A-1 et. seq. (“OPRA”).
- Effective July 2002, OPRA replaced the former Right to Know Law and broadly expanded the definition of a public record. Over 22 Years!!!
- OPRA created the Government Records Council (“GRC”). N.J.S.A. 47:1A-7.
- OPRA authorizes a complaint process via either the GRC or Superior Court. N.J.S.A. 47:1A-6.

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The Government Records Council

Among other duties, the GRC:

- Adjudicates denials of access.
- Administers a mediation program.
- Prepares informational materials.
- Provides OPRA training.
- Operates an OPRA hotline (1-866-850-0511).

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OPRA Did Not Become the Only Record Request Process in 2002

- OPRA applies to those requests where the requestor chooses to invoke the statute.
- A request *should be* on an official OPRA request form. However, use of the form is not mandatory. See Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009): “the form should be used but no request . . . should be rejected if such form is not used.”

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Are there other ways to request records?

- Common law requests.
- Discovery requests, which is not the same as OPRA. See Bart v. City of Passaic (Passaic), GRC 2007-162.
- Administrative/Informal requests (example: requestor comes to Clerk's counter and orally asks to review minutes book).
- Other court processes (*i.e.* subpoenas, court orders)
 - GRC has not adjudicatory authority

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Times They Are A-Changin

- P.L. 2024, c. 16
 - On June 5, 2024, Governor Murphy signed into law significant OPRA reform legislation.
 - Changes range from new exemptions to new processes for requestor and custodians.
- Effective Date: September 3, 2024

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Highlighted Changes For the GRC

- Council comprised of nine (9) members N.J.S.A. 47:1A-7:
 - DCA Commissioner or Designee will serve as Chair.
 - Four (4) members directly appointed by the Governor.
 - Two (2) members appointed from recommendations made by the Senate President.
 - Two (2) members appointed from recommendations made by the Assembly Speaker.
 - Initially three (3) years, then regular appointment process applies, and terms extend to five (5) years.
- Complaint Process N.J.S.A. 47:1A-5(f); N.J.S.A. 47:1A-6:
 - Statute of Limitation will decrease from 60 calendar days to 45 calendar days.
 - Court actions or GRC complaints may be dismissed without prejudice if agency discloses records sought, but attorney's fees may be awarded.
 - Anonymous requestors will not be permitted to file complaints either with the GRC or courts.
- Adjudications N.J.S.A. 47:1A-7(e):
 - Beginning eighteen (18) months after enactment – adjudication within 90 days of receipt (not including time in mediation).
 - Staff may request a 45-day extension for good cause.

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Highlighted Changes For the GRC

- OPRA Model Request Form N.J.S.A. 47:1A-5(f); N.J.S.A. 47:1A-7:
 - As noted, agencies will be required to adopt the GRC's model request form.
 - Updates to the form for new questions required by P.L. 2024, c.16.
 - Requirement to promulgate regulations to establish a uniform form that complies with the requirements of OPRA.
 - Make the form available to incarcerated individuals.
- Data Compilation N.J.S.A. 47:1A-7(h):
 - The Superior Court shall provide the GRC with a listing of all actions settled thereby.
 - The GRC is required to compile a database of that data.
 - The Administrative Office of the Courts is also required to submit to the GRC specific data regarding OPRA cases at the end of each court year.
- GRC Website N.J.S.A. 47:1A-7(b):
 - The GRC will be statutorily tasked with periodically reviewing its website for updates as needed.

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Who Can Request Records?

- Anyone!
- OPRA continues to allow for anonymous requests
- “Commercial purpose” – Still allowed.
- Out-of-State Requestors: See Scheeler v. Atl. Cnty. Mun. Joint Ins. Fund, 454 N.J. Super. 621 (App. Div. 2018)
- The identity of the requestor may affect their right of access in limited circumstances

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“Commercial Purpose”

- N.J.S.A. 47:1A-1.1
 - Outlines those uses which would be considered a “commercial purpose.”
 - **Exceptions**
 - News media, including parent companies, subsidiaries, affiliates;
 - Use for news, journalistic, educational, scientific, scholarly, or governmental organization.
 - Use by an election candidate, campaigns, and committees.
 - Labor organizations
 - Use by contract signatory to a collective bargaining agreement “material” to enforcement of State and federal employee/employer statutes and regulations.
 - Non-profits, as long as they do not “sell, resell, solicit, rent, or lease a record to an unaffiliated third party” expecting a fee.

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What is a “Public Agency” Under OPRA?

- Every municipality within the State of New Jersey is considered a “public agency.” N.J.S.A. 47:1A-1.1.
- Also includes State departments and commissions, school districts, fire districts, the Port Authority of New York/New Jersey, the League of Municipalities, and the Legislature (although most of their records are per say exempt).
- Additional “quasi-governmental” agencies could be considered a “public agency.” See Paff v. N.J. State Firemen's Ass'n, 431 N.J. Super. 278, 289-90 (App. Div. 2013)

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What is a “government record” under OPRA?

- The default answer will not change:
 - All records that are made, maintained, kept on file, or received in the course of official business. N.J.S.A. 47:1A-1.1.
- However, exemptions within OPRA, other statutes, regulations, executive orders, *etc.* may effectively exempt access to records in part of whole.

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Highlighted Exemption Changes

- New Exemptions/Exceptions in N.J.S.A. 47:1A-1.1:
 - Expansion of the “administrative or technical information” exemption to include peripheral device information operating on a network.
 - Security alarm activity, access reports, and footage, except where a limited incident request is submitted, and disclosure would not jeopardize the overall system.
 - Detailed itemized cost estimates prior to bid openings.
 - Expansion of personal information exemptions, including juvenile information, and on certain types of records.
 - Metadata except for “authorship, identity of editor, and time of change.”
 - Owner and maintenance manuals.
 - HIPAA data.
 - Indecent graphic images contained in photographs or video as defined by N.J.S.A. 47:1A-5.2.
 - Exemptions and exceptions to election records contained within a new section.

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Who is the official records custodian?

- Municipality - the municipal clerk. N.J.S.A. 47:1A-1.1
 - Municipalities may officially designate custodians in sub-departments “by formal action.” The GRC will recognize separate custodians by division/department when that custodian has been adequately publicized to the public. See Paff v. Twp. of Berkeley Heights (Union), GRC 2007-271.
- Non-municipal agencies designate their custodian “by formal action.”
- Best practices dictate that an agency should designate a substitute custodian to receive/fulfill requests in the custodian’s absence. See Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC 2014-325.

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OPRA Forms

- OPRA will **require** every public agency to adopt the OPRA request form “established by the [GRC].” N.J.S.A. 47:1A-5(f).
 - The GRC is required to promulgate regulations to establish form. N.J.S.A. 47:1A-7(b).
- Major Changes from the old Model Request Form:
 - Addition of question regarding commercial purpose. N.J.S.A. 47:1A-5(f).
 - Addition of question regarding whether the requested records are sought in connection with litigation (must identify proceeding). N.J.S.A. 47:1A-5(g).
 - Addition of new exemptions in the Exemptions Checklist section.

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OPRA Forms (cont'd)

- If the agency maintains an electronic request form, it is required to provide directions on how to submit requests to the agency.
- Note:
 - Acceptable for agencies to place their own logos over the placeholder logos at the top of the established OPRA request form (where able).
 - Agencies that have already adopted the old Model OPRA request form should consider readopting the established form to ensure full compliance.
 - Agencies operating with online platforms should update those platform forms to comply with new form elements in N.J.S.A. 47:1A-5(f), (g).

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How Does a Requestor Submit an OPRA Request?

- Hand delivery, mail, electronic transmission, or otherwise conveyed to the appropriate custodian. N.J.S.A. 47:1A-5(g).
 - Will now include submission through portals, online forms, and software utilized to submit OPRA requests.
- Agencies may likely still limit submission options based on technological capabilities. See Paff v. City of East Orange, 407 N.J. Super. 221 (App. Div. 2009).
- Written equivalents still allowed:
 - Must include all components required by N.J.S.A. 47:1A-5(f), (g).
 - May not include substantially more info than required by the form that “requires more than reasonable effort to clarify the information . . .”

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Limitations on Request Submissions

N.J.S.A. 47:1A-5(g):

- Requestors cannot utilize OPRA to seek records that are already the subject of a court order or pending discovery request. Requestors must certify!
 - Does not apply to labor unions.
- Requestors can only submit a request to a single custodian within one public agency.
 - Does this prohibit requestors from sending similar requests simultaneously to other agencies?
- Identical requests?

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Not the Custodian?

- If an employee other than the custodian receives an OPRA request, ensure they know their obligation under N.J.S.A. 47:1A-5(h).
 - It is important to ensure that agency officials and employees have the ability to identify an OPRA request to ensure the 5(h) obligation is met.
- The request will not be considered received until the custodian receives it.

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How must a custodian respond to an OPRA request?

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- A response must be IN WRITING! No oral responses. No telephonic responses.
- Within required response time.
 - Several changes to the response time frame.
- By addressing each item requested, either:
 - Granting access;
 - Denying access;
 - Seeking clarification; or
 - Requesting an extension of time.

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Response Time Frames

- N.J.S.A. 47:1A-5(i) “As soon as possible, but not later than seven business days after receiving the request.”
 - Exceptions include “immediate access” records, that information contained in N.J.S.A. 47:1A-3(b), commercial/Daniel’s Law requests, certain Elections records, and during a State of Emergency.
- Fire Districts with one or fewer full-time employees serving as custodians – add seven (7) business days.

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OPRA “Hours”

- Under N.J.S.A. 47:1A-5(a), agencies meeting the following criteria can set limited OPRA hours to 2 hours a day for 3 days a week, minimum, unless the agency’s regularly scheduled business hours are less:
 1. Municipalities with a population of 5,000 residents or less.
 2. Boards of Education with total enrollment of 500 or fewer.
 3. Public authorities with less than \$10 million in assets.

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Immediate Access

N.J.S.A. 47:1A-5(e): Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.

- Does not apply to records over 24 months old.
- See Renna v. Cnty. of Union, GRC 2008-110.
- The response itself must be immediate. Herron v. Twp. of Montclair, GRC 2006-178.
- Part of a larger request? Kohn v. Twp. of Livingston (Essex), GRC 2011-330.

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Information Concerning a Criminal Investigation

N.J.S.A. 47:1A-3(b): Certain information regarding a criminal investigation must be disclosed within 24 hours or as soon as practicable.

- 2 Categories
 - when crime is reported but no arrest yet made,
 - if an arrest has been made.
- Caveat: information may be withheld if determined to jeopardize: 1) the safety of any person; or 2) the investigation in progress

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Commercial Purpose/Daniel's Law Review

N.J.S.A. 47:1A-5(g):

- Requests for commercial purposes
 - Fourteen (14) business days, but the custodian shall notify the requestor of the additional time within seven (7) business days.
 - Response time frame can be reduced to seven (7) business days upon payment of no more than two times the cost to produce the responsive records. N.J.S.A. 47:1A-5(i)(1).
- Records requiring review for compliance with "Daniel's Law" (N.J.S.A. 47:1B-1, et seq.)
 - Fourteen (14) business days, but the custodian shall notify the requestor of the additional time within seven (7) business days.

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Elections Records

N.J.S.A. 47:1A-5.3(c): Certain records require “immediate access or transmission via e-mail **as soon as possible**, but not later than two business days” without charge.

- Exception: commercial purposes.

N.J.S.A. 47:1A-5.3(d): Certain records require “immediate access and transmission **as soon as possible** . . .” if request is made within sixteen (16) days of an election.

- If request is made by noon the day before an election, disclosure must occur by noon the day of the election.

- Applies to N.J. Div. of Elections, the N.J. Election Law Enforcement Comm’n, Cnty. Bd. of Elections, Cnty. Superintendents of Elections, Cnty. Clerks, Municipal Clerks, Fire Dist. Bd. Clerks, School Dist. Business Administrators, and School Dist. Bd. Secretaries

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Tips in Responding: Ask yourself...

1. When is my deadline to respond?
2. Is this a valid OPRA request under the current version of OPRA?
3. Do I have enough information to fulfill request?
4. Will the request require a special service charge?
5. Substantial disruption of agency operations?
6. Can I obtain records responsive to request?
7. Do the records or portions thereof fit into any of OPRA’s exemptions?
8. Must I redact, convert to requested medium, calculate appropriate fees?
9. Can I provide records via the requested method of delivery?
10. If I must deny, can I do so with legal basis in writing?

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Quiz Question

What date did OPRA officially replace the old RTKL?

1. May 13, 2002
2. June 5, 2002
3. July 7, 2002

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Response Types

- **Granting Access:**
 - Typically, in the medium and method requested.
 - New 14 business day deadline for requestors to retrieve hardcopy records from the agency.
 - Amended provisions may affect the medium discussion.
- **Lawful Basis for Denial:**
 - *At the time of denial* for each record or redaction.
- **Extensions of Time:**
 - To a date certain instead of a time frame. Papiez v. Cnty. of Mercer, GRC 2012-59.
 - New extension provisions.
- **Clarification:**
 - An option but not a requirement.

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Granting Access

- OPRA now expressly allows for custodians to direct requestors to an agency website. Rodriguez v. Kean Univ., GRC 2013-69.
 - N.J.S.A. 47:1A-5(e): Custodians can direct requestors to the agency's website to obtain "complete and unabridged" records.
 - If directions are required to access the record, the custodian must provide them.
 - Request "deemed fulfilled" if the requestor does not contact the agency within seven (7) business days.
 - If the requestor cannot locate the record and advises the custodian, they have seven (7) business days to "make a reasonable attempt to assist . . ."
 - If unsuccessful and the requestor seeks a physical copy, custodians may charge up to two (2) times the duplication cost and disclose same within seven (7) business days after request.

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Lawful Basis for Denial

- Custodians must provide a lawful basis for denial *at the time of denial*.
- This includes outright denials and redactions. You cannot merely say, "it's exempt, so go away!"
- Examples: Dear requestor:
 - With respect to request No. 3, Jane Smith's social security number is redacted because social security numbers are exempt from public access pursuant to N.J.S.A. 47:1A-1.1.
 - The letter from John Smith, Esq., to Mary Jones, dated January 4, 2010, is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 as attorney-client privileged material that could divulge strategy.

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Extensions of Time to Respond

N.J.S.A. 47:1A-5(i)(1) now expressly allows for extensions in two (2) situations:

1. Records in storage – No more than 21 business days from the date the custodian advises the requestor of extension.
 - Custodian must inform the requestor of the extension within the applicable time frame.
 2. Unforeseen or reasonable circumstances – custodians are entitled to a reasonable extension
 - Extension notification within seven (7) business days.
 - See Ciccarone v. N.J. Dep't of Treasury, GRC 2013-280.
- Failure to grant/deny access by any extended deadline date remains a “deemed” denial. N.J.S.A. 47:1A-5(i).

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Seeking Clarification

- Clarification must be in writing. See Leibel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC 2004-51.
- Response time stops until requestor responds. Time begins anew. Moore v. Twp. of Old Bridge, GRC 2005-80.

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A proper response to an OPRA request:

- Is in writing within seven (7) business days!!!
- (Exception for immediate access and 3(b))!!!!
- Grants access, denies access, seeks clarification, or requests an extension of time (including an anticipated deadline date) w/in the appropriate response time.
- Addresses each record requested. Stand by!
- Addresses requestor's preferred method of delivery.
- Provides an account of the actual cost of duplicating the records, if any.
- If special service charge applies, provides estimate and gives requestor opportunity to accept or reject.
- Includes index that identifies the specific legal basis for a denial of access (including redactions).

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Overly Broad and Invalid Requests

- An OPRA request is invalid when it "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).
- The validity of an OPRA request will still likely fall into three (3) categories:
 - "Any and all" requests seeking "records" generically, *etc.* and requiring a custodian to conduct research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007).
 - Requests seeking information or asking questions. See e.g. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012).
 - Requests that are either not on an official OPRA request form or does not invoke OPRA. See e.g. Naples v. N.J. Motor Vehicle Comm'n, GRC Complaint No. 2008-97 (December 2008).

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Correspondence and the Old/New Standard

- Proper request for e-mails/correspondence: previous reliance on Elcavage v. West Milford Twp., GRC 2009-07, *et seq.*; Burke v. Brandes, 429 N.J. Super. 169, 175 (App. Div. 2012); *etc.*
- New Standard (N.J.S.A. 47:1A-5(g)):
 - Specific job titles and/or accounts;
 - Specific subject matter;
 - **Reasonable** time period.
- Standard also applies to text messages, social media posts, and other types of messages

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Possession Question Renewed

- It is reasonable that a custodian might not have physical custody of all records maintained within their individual agency.
 - In this instance, a custodian is required to contact the appropriate employees or officials to obtain potentially responsive records.
 - Includes third-parties. Burnett, 415 N.J. Super. 506.
- N.J.S.A. 47:1A-5(i)(1):
 - “A public agency shall not be considered to be in possession of a public record that is created, maintained, or received by another public agency and made available to the public agency either by remote access to a computer network or by distribution as a courtesy copy, unless the agency that created, maintained, or received the record resides within the judicial branch . . .”
 - “A records custodian . . . that receives a request for a record created, maintained, or received by another public agency shall not be obligated to provide the record to the requestor. In the event the custodian does not provide the record, the custodian shall direct the requestor within seven business days to the public agency that, to the best of their knowledge, created, maintains, or received the requested record, at which time the request shall be considered completed.”

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OPRA Copying Fees

- N.J.S.A. 47:1A-5(b) provides:
 - Flat fee of \$0.05 per page for letter sized pages and smaller;
 - Flat fee of \$0.07 per page for legal sized pages and larger.
 - Any public agency whose actual costs to produce paper copies exceed the \$0.05 and \$0.07 rates may charge the actual cost of duplication.
 - Records provided electronically, including through the agency's website, are FREE OF CHARGE (*i.e.*, records sent via e-mail and fax).
 - Must charge the actual cost to provide records in another medium (*i.e.* computer disc, CD-ROM, DVD).

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Cost Fee Exceptions They Will Still Exist!

- OPRA allows an agency to charge fees "prescribed by law or regulation" N.J.S.A. 47:1A-5(b).
- Example: Fees for Auto Accident Reports
 - N.J.S.A. 39:4-131 "If copies of reports are requested other than in person, an additional fee of up to \$5.00 may be added to cover the administrative costs of the report"

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Special Service Charge

- Special service charges come in two (2) types:
 1. Those charges associated with duplicating a record that cannot be reproduced on “ordinary document copying equipment” N.J.S.A. 47:1A-5(c); N.J.S.A. 47:1A-5(d).
 - Records requiring duplication by a third-party vendor. N.J.S.A. 47:1A-5(c).
 - O’Shea v. Pine Hill Bd. of Educ. (Camden), GRC No. 2007-192
 - Medium conversion requiring “extensive use of information technology, or for labor cost of personnel . . . actually incurred . . . for the programming, clerical, and supervisory assistance required, or both.” N.J.S.A. 47:1A-5(d).

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2. The agency must engage in an “extraordinary expenditure of time and effort to accommodate the request . . .” N.J.S.A. 47:1A-5(c).

- Under the amended provision:
 - The charge is still calculated and provided in advance of incurring the cost; **HOWEVER**, the custodian must include in their response an explanation for an itemized list of fees/charges.
 - GRC’s “14 Point Analysis” could prove useful in this response.
 - The charge should likely still be calculated based on hourly rate(s) of the lowest paid employee(s) capable of performing the required task(s).
- In objecting to a special service charge, the burden to prove it is unreasonable shifts to the requestor.

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- Important – the requestor must agree to pay that fee
- Case-by-case determination.
- Flat-Rates? Still no (Carluccio v. N.J. Dep't of Env'tl. Prot., GRC 2008-10).
- Requirement to pass ordinances to justify fees exceeding those established by law removed from OPRA.

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Substantially Disrupted? The OPRA Exemption Remains.

- If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record(s) only *after* attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency. N.J.S.A. 47:1A-5(g).
- This is a subjective determination based on the circumstances and an agency's resources available to fulfill a request.

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- Caggiano v. N.J. Div. of Consumer Affairs, GRC 2007-69: The Council ruled that the agency acted reasonably in trying to accommodate the requestor and properly met its burden of proving a substantial disruption of operations.
- **Conversely** Caldwell v. Vineland Bd. Of Educ. (Cumberland), GRC 2009-278: The Council held that the custodian violated OPRA by denying access under the exemption without trying to reach a reasonable accommodation.

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Redaction is a Visual Experience

A redaction should be made using a “visually obvious method.” White out is problematic. See Scheeler v. City of Cape May, GRC 2015-91.

- Electronic redaction may be available; however, be sure to delete the material being redacted. Techniques such as “hiding” text or changing its color so it is invisible should not be used as sophisticated users can detect the changes.

**** Custodians must identify the legal basis for each redaction!!**

Custodians should manually “black out” the information prior to providing the copy to the requestor. Ensure that your redactions cannot be undone or seen through.

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Do I Really Have to Redact This Whole Page?

- Custodians can use a full sheet of paper in the packet of responsive documents to indicate that the entire page was redacted and that the page should cite to the statutory exemption.

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Mediums and Conversion

- A custodian must permit access to government records in the medium/format requested if maintained in that medium/format. N.J.S.A. 47:1A-5(d).
- If custodian does not maintain record in medium requested, they shall:
 - **Convert** the record to the medium requested if it does not require substantial work or a third-party vendor, or
 - **Disclose** the record in electronic format maintained, at a minimum if conversion require substantial work or a third-party vendor.
- “Meaningful medium” removed.
- Note the prior discussed potential service charges associated with conversion are discussed in Slide Nos. 43/44.

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To Privacy, And Beyond!

- OPRA's legislative findings state "a public agency has a responsibility and an obligation to N.J.S.A. 47:1A-1, which still exists, continues to maintain that a public agency has an obligation to safeguard from public access a citizen's personal information . . . when disclosure thereof would violate the citizen's reasonable expectation of privacy." See Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009)
- OPRA will now include some additional brightline exemptions on privacy in addition to those already in existence.
- Case-by-case decisions deploying a balancing test may still be necessary. Burnett, 198 N.J. 408. The colorable claim threshold could also apply. Brennan v. Bergen Cnty. Prosecutor's Office, 233 N.J. 330 (2018); Rodriguez v. Kean Univ., GRC 2019-109.

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Privacy, Beyond (cont'd)

- New and Changing Privacy Exemptions in N.J.S.A. 47:1A-1.1:
 - Debit card number, bank account information.
 - Month and day of birth.
 - Personal telephone numbers.
 - Personal e-mail addresses "required . . . for government applications, services, or programs . . ."
 - Personal information of juveniles under 18, with exceptions (MVC and Elections).
 - Portion of documents containing personal information provided to an agency for the sole purpose of receiving official notifications.
 - Personal identifying information on domestic animal permits, licenses, and registrations (overturning Bozzi v. City of Jersey City, 248 N.J. 274 (2021)).
 - HIPAA data and indecent graphic images (already listed in Slide No. 15).

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The Harassment Zone: A New Hope

- N.J.S.A. 47:1A-5.1:
 - Courts may issue protective orders limiting individuals found to have submitted OPRA requests “with the intent to substantially interrupt the performance of government function.”
 - Several options available to the court up to and including changing response time frames and eliminating an agency’s requirement to respond to the individual’s OPRA requests.
 - An extremely high bar!
 - Does not apply to labor unions seeking records “material” to enforcement of State and federal statutes/regulations on topics such as wage and hour protections, workplace safety, and public procurement or bidding.

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Knowing and Willful

- A public official, officer, employee or custodian who knowingly and willfully violates OPRA and unreasonably denies access under the totality of the circumstances is assessed a monetary penalty.
 - \$1,000 for initial violation.
 - \$2,500 for second violation within 10 years of initial violation.
 - \$5,000 for third violation within 10 years of initial violation.
- N.J.S.A. 47:1A-11 now provides that the civil penalty is payable by the agency, and not personally by individual.
- Knowing and willful = standard remains unchanged.
- The Courts can also impose a fine. N. Jersey Media Grp. v. State Office of the Governor, 451 N.J. Super. 282 (App. Div. 2017).

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Prevailing Party Fees

- N.J.S.A. 47:1A-6 provides that a fee award is no longer mandatory if a complainant who is represented by an attorney prevails.
- Notwithstanding, fee awards will be mandatory if the agency:
 - Unreasonable denies access.
 - Acts in bad faith; and/or
 - Knowingly and willfully violates OPRA.
- Attorney's fees may also be awarded even if a complaint is dismissed (without prejudice) due to a disclosure occurring within seven (7) business days after a complaint filing.

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Prevailing Party Fees (cont'd)

- Boggia v. Borough of Oakland, GRC 2005-36.
- The Council denied prevailing party fees to the complainant, who was an attorney representing himself. The Council reasoned that "the courts of this state have determined that . . . fee shifting statutes are intended to compensate an attorney hired to represent a plaintiff, not an attorney . . . representing himself." See also Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (App. Div. 2019).

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