

**2015 GOVERNMENT
RECORDS COUNCIL
OPRA SEMINAR AGENDA**

1. OPRA Request and Response

- a. OPRA Request Requirements:
 - a. Must be In Writing;
 - b. To a Government Agency;
 - c. Requesting a Government Document.
 - i. Definition of a government record.
 - ii. Specific government record.
 - d. Identity of Requestor Irrelevant.
 - i. Out of state.
 - ii. Convicts.
- b. Four General Responses:
 - i. Disclose Documents;
 - ii. Deny Disclosure;
 - iii. Take of an extension; or
 - iv. Seek clarification.
[Note: Clock stops running anytime the ball is put back in the requestor's court.]
- c. Valid Response:
 - a. Must be in writing;
 - b. Documents must be provided in the form requested. (But, can direct the requestor to a website.)
 - c. Timing:
 - i. Seven days;
 - ii. Immediate access: budgets, bills, contracts, vouchers.
 - d. Extensions of time:
 - i. Advise requestor of extension.
 - ii. In writing
 - iii. Must give a *date certain* for response.
 - iv. If additional time is needed must extend time, in writing, before expiration of prior extension.
 - e. Insufficient response-
 - i. Does not address each requested item separately;
 - ii. Custodian conducted an insufficient search;

- iii. Redaction log is not provided.
- f. Costs-
 - i. \$.05 letter size.
 - ii. \$.07 legal size.

2. Transparency

- a. Reason for request *does not* factor into OPRA.
- b. Start with the mindset that document is subject to disclosure.
- c. No expectation of privacy with a work device.
- d. Calls, texts etc. on a personal device are government records.

The Government Records Council

3. Complaint:

- a. Note: requestor has the option of filing in either state court or the GRC,
- b. not in both forums.

4. Mediation.

5. Statement of Information (SOI).

6. Decisions:

- a. Findings and Recommendations:
 - i. Final decision or Interim order;
 - ii. GRC may find that there was no unlawful disclosure;
 - iii. May require disclosure of certain documents;
 - iv. Conduct and *In camera* review;
 - v. Or a combination of the above.
- b. OAL if there are factual disputes.

7. Denial of disclosure: [Invalid Request or falls within an exemption.]

- a. No records exist.
- b. Request Invalid:
 - i. Overbroad/unclear;
 - ii. Seeks information;
 - iii. Requires Custodian to do research.
 - iv. Requires a Custodian to create records.
(However, Custodian does have to query a data base.)
 - v. Ongoing.
 - vi. Substantially Disrupts Agency Operations N.J.S.A. 47:1A-5(g) (EO 21 McGreevey)

8. Exemptions- N.J.S.A. 47:1A-1.1

- a. Attorney Client Privilege.
- b. ACD—Inter-agency or intra-agency advisory, consultative or deliberative material.

- i. Draft documents;
 - ii. Draft minutes.
- c. Personnel records exempt: N.J.S.A. 47:1A-10/ E0 26 McGreevey
- i. Including: grievance, sexual harassment, collective bargaining
 - ii. **Exceptions:** *individual's name, title, position, salary, payroll record, length of service, date of separation and reason, the amount and any type of pension received.*
 - iii. *Information/data which proves conformity with requirements for a government position (or pension)—Education, experience, and continued training/education to maintain the position.*
 - iv. *Resumes of successful candidates once hired.*
- d. Security-
- i. Information regarding computer networks;
 - ii. Emergency/security procedures of building;
 - iii. Security measures/surveillance techniques.
- e. Communication between public agency, insurance carrier, risk management office.
- f. Privacy Interest:
- i. Legislative Findings: “[A] public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy.” N.J.S.A. 47:1A-1.
 - ii. Personal identifiers:
 - a) social security numbers;
 - b) credit card numbers;
 - c) telephone numbers (unlisted/listed);
 - d) Driver’s license numbers.
 - iii. Balancing Test:
 - (1) the type of record requested;
 - (2) the information it does or might contain;
 - (3) the potential for harm in any subsequent nonconsensual disclosure;
 - (4) the injury from disclosure to the relationship in which the record was generated;
 - (5) the adequacy of safeguards to prevent unauthorized disclosure;
 - (6) the degree of need for access; and
 - (7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest influencing toward access.

- g. Ongoing Investigations: N.J.S.A. 47:1A-1-3.a
 - i. Records which pertain to an investigation in progress
 - ii. Can be limited if disclosure would be adverse to public interest
 - iii. But, cannot limit access to a record that was open for public inspection prior to the investigation commencing.
- h. Child Abuse/Assault Records: N.J.S.A. 2A:82-46b.

9. Other Exemptions-

- a. Trade secrets.
- b. Information which would give an advantage to competitive bidders.
- c. Information which is to be kept confidential pursuant to a court order.
- d. Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.
- e. Juvenile Records: N.J.S.A. 2A:4A-60.
 - i. Multiple exceptions, including parents and guardians.
- f. Domestic Violence: N.J.S.A. 2C:25-33.
- g. Any other law or statute or case law Federal or State trumps OPRA.

10. Special Service Charge-

- a. The volume of government records involved;
- b. the period of time over which the records were received by the governmental unit;
- c. the whether some or all of the records sought are achieved;
- d. the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying;
- e. the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and
- f. the amount of time required to return the documents to their original storage place.

11. Attorney's Fees-

- a. A requestor who prevails SHALL be entitled to attorney's fees.
- b. If the Complainant does not have an attorney, no fees will be awarded.