

New Jersey Government Records Council Denial of Access Complaint

Please read these instructions before completing this form:

- This form is to be used only for claims of denial of access to government records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002 under "OPRA," the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).
- Please print or type your responses, and provide ALL information requested. Incomplete forms will delay processing. This form is available in downloadable format from the GRC web site at www.nj.gov/grc.
- Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- *The GRC recommends that you keep a copy of this complaint for your own files.*
- **MAIL, FAX, OR E-MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENTATION TO:**

Government Records Council
 PO Box 819
 Trenton, NJ 08625-0819

Fax: (609) 633-6337
 E-mail: grc@dca.state.nj.us

1. About the Requester of the Records:

Full Name: _____

Mailing Address: _____

City: _____ State: _____ ZIP _____

Please provide a phone number at which GRC staff can contact you between 8 A.M.-5 P.M., Monday-Friday: _____

Fax Number: _____

E-Mail Address: _____

If you are represented by an attorney in this matter, please provide:

Name: _____ Phone Number: _____

Address: _____ Fax Number: _____

E-mail Address: _____

If you are an attorney who requested records and are filing this complaint **on behalf of a client**, please state the client's name:

2. About the Custodian of Records:

Name of the public agency from which records were requested: _____

Name of custodian on whom records request was submitted: _____

Telephone Number: _____ E-Mail address (if used): _____

Name of custodian who denied records request (if different from above): _____

Telephone Number: _____ E-Mail address (if used): _____

Fax Number: _____

3. About the Record Request:

Date your records request was provided to the custodian: _____

Did you receive a reply to your request? Yes No

If so, state the date your request was denied: _____

Have you previously filed a complaint with the GRC concerning the record request that is subject of this complaint?

Yes No

If yes, provide the GRC complaint number and a copy of the GRC decision in the matter.

Date: _____ Complaint No.: _____

Have you spoken with or written to the GRC about the record request that is subject of this complaint?

Yes Date: _____ No

Have you filed an action in the N.J. Superior Court concerning the record request that is subject of this complaint?

No Yes If Yes, Docket Number: _____

4. Offer of Mediation (please refer to the attached documents for details):

Are you interested in participating in mediation? Yes No

5. Documents to submit with this Form:

- Complete** the attached **Records Denied List** to describe the records to which you were denied access.
- Attach** a copy of the OPRA Records Request form you filed with the public agency and any correspondence between you and the record custodian(s) or custodial agency staff that concern the portion of your OPRA request that was denied. Be sure to include any e-mail, memoranda, phone messages, or any other documents such as affidavits, or certifications related to the request and the denial.
- Summarize** the facts of this complaint by writing the content, time and date of any interaction you had with the custodian regarding the OPRA records request that is the subject of this complaint. Use the attached **Detail Summary** for this purpose.
- Provide** any legal arguments, allegations or other information you would like the GRC to consider in deciding this complaint. Use the attached **Detail Summary** for this purpose.
- Sign** the Agreement to Mediate if you wish to participate in the mediation process.

6. Verification of Complaint:

By signing this complaint, I affirm that:

- I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- The information I have provided is true to the best of my knowledge and belief;
- The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim;
- I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me, which is an indictable offense under the laws of the State of New Jersey, or any other State, or pertaining to the family of that victim; and
- I am simultaneously providing a copy of this complaint to the Custodian of Records.

Signature (required)

Date

**New Jersey Government Records Council
 Agreement to Mediate
 GRC Complaint No. 20XX-XX**

By participating in mediation, I/we agree:

1. To engage in a good faith effort to resolve the above referenced complaint filed with the Government Records Council (“GRC”) concerning access to records or related matters described in the Complaint;
2. That I will abide by any procedural rules set forth by the mediator. Such rules may include the establishment of a timetable for completion of mediation and/or phases of the mediation, a requirement that the parties periodically reduce settled issues to writing, a requirement that the parties personally meet with the mediator at a mutually convenient time and place and such other reasonable procedural rules deemed by the mediator to facilitate the mediation process.
3. That all discussions and documents arising during mediation are confidential unless otherwise legally obtainable. Documents provided in mediation cannot be used in a GRC hearing or appeal from a GRC determination unless those documents are public records or the party with control over the documents consents to their use in such a proceeding. Conversations with the mediator or with the other party during mediation will not constitute statements that can be used in a later GRC hearing or appeal from a GRC determination;
4. That I will not subpoena the mediator to testify or to produce any mediation materials whatsoever following the mediation. I acknowledge that the mediator will not testify on behalf of any party in any pending or future administrative or judicial proceeding, or disclose any information obtained during mediation unless the parties expressly consent to such disclosure, or unless law or court order requires disclosure. I further agree that the mediator will be held harmless for any claim arising from the mediation process;
5. That the mediation session will not be recorded (either video or audio) and that no transcript of the session will be produced;
6. That the mediator will not decide who is right or wrong, and that I shall not ask the mediator to act as my advocate. I acknowledge that the mediator will try to help the parties reach their own resolution of this dispute by encouraging discussion; however, if the mediator determines that the mediation process is no longer productive the mediator may unilaterally terminate said mediation and refer the matter back to the GRC for further processing;
7. That when a settlement is reached, it shall be put in writing and signed, and shall be binding upon all parties to the agreement. A copy shall be provided to the GRC. If the complaint is not resolved during mediation, the complaint will be transferred to the GRC for further processing.

The parties to this agreement, whose names and signatures appear below, are the only persons authorized to participate in the mediation process. The principal’s representative, if any, affirms that he/she is authorized to act by, and on behalf of, the principal.

<input type="checkbox"/> YES, I want to participate in mediation.	<input type="checkbox"/> NO, I do not want to participate in mediation.
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Name of Principal (Please Print)	Signature	Date
<input type="checkbox"/> I am the Complainant <input type="checkbox"/> I am the Custodian		

Name of Legal Representative (Please Print)	Signature	Date
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Name of Representative (Please Print)	Signature	Date
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Paff v. Bergen County Prosecutor's Office
Statement of Complaint

Statement of Facts:

1. Attached as Exhibits are: a) the page on the Bergen County Prosecutor Office's (BCPO) Internet site that instructs the public on how to file an Open Public Records Act (OPRA) request and b) the BCPO's OPRA request form. Both the instructions and the form were downloaded from the BCPO's Internet site on December 29, 2014.
2. Today, while working on my laptop while away on a trip, I read Plaintiff's Statement of Material Facts in the case of *Vargas v. Meehan, et al, Case No. 2:11-cv-02833*. After noting that the Plaintiff, Henry V. Vargas, stated in Paragraphs 22 and 23 that he "surreptitiously recorded many officers of the Garfield Police Department who had acknowledged that fabricated charges had been filed against him" and that his attorney "brought his recordings of the Garfield police officers to the attention of the Bergen County Prosecutor's Office, which failed to present the exculpatory evidence to the Grand Jury and failed to investigate the conduct of the Garfield police," I decided to submit an OPRA request to the BCPO seeking copies of Vargas' alleged recordings.
3. When I went to the BCPO's website to determine its custodian's e-mail address or fax number so that I could submit my request by either fax or e-mail (I am able to send either a fax or an e-mail through the Internet), I was dismayed to learn that no fax number or e-mail address was provided. Instead, I was directed to the BCPO's OPRA request form and told that I had to print it out and submit it by mail or personally deliver it.
4. In my present location, I do not have access to a computer printer. Accordingly, my plan to submit my records request is delayed until I can gain access to a printer from which I can print out the BCPO's OPRA request form.

Legal Argument:

I have two separate complaints against the BCPO: 1) that it insists that its specific agency form must be used for an OPRA request and 2) that it contains limiting language that the GRC has already found deters citizens from making requests.

Beyond my own frustration with having to delay making my request until I can gain access to a printer, I imagine that a substantial number of potential requestors have navigated to the BCPO's website to get OPRA information and have been dissuaded from filing an OPRA request because of the two matters of which I complain.

I have worked for many years trying to expand open government on the public's behalf. While I am familiar with the nuances of OPRA and have the knowledge and ability to overcome the impermissible hurdles that some custodians place before records requestors, these hurdles may very well dissuade others, who are less familiar, from exercising their statutory rights to access the BCPO's records. I file this complaint on their behalf as well as my own.

Use of the form

The BCPO's request form states that "A request for Public Records **must be** submitted on this form which has been adopted by the Prosecutor of Bergen County as the Custodian of Records." (Emphasis supplied.) The BCPO's Internet page similarly states that "Members of the public who are requesting copies of records **must** complete the Request for Public Records form which can be obtained in the reception area of this office and on this page." (Emphasis supplied.)

Clearly, an agency cannot require citizens to use its specific form for a request. *Tina Renna v. County of Union*, 407 N.J. Super. 230 (App. Div. 2009). For the BCPO to be still insisting that citizens use its specific OPRA request form, now that five years have elapsed since the Appellate Division's holding, is very likely dissuading people, especially those who are accustomed to doing their work on-line, from requesting its records.

Limiting Language

The BCPO's OPRA form states:

Be advised that the following are not government records and are therefore exempt from disclosure: criminal investigatory records; victim's records; administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security; emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein; security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software; information which, if disclosed, would give an advantage to competitors or bidders; interagency or intraagency advisory, consultative or deliberative material; **pension and personnel records**; and information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents of strategy or negotiating position. (Emphasis supplied.)

The second page of the BCPO's form lists "Pension and personnel records" as an "exempt category."

The BCPO's form is flawed in the same way as the one at issue in *Martin O'Shea v. Township of West Milford (Passaic)*, 2007-237. In O'Shea, the Council found that an OPRA form that categorically advises requestors that personnel records are exempt from disclosure while not also advising them that N.J.S.A. 47:1A-10 carves out exceptions to the personnel record exemption is "misinformation" that may deter requestors from making requests. The Council held that this by providing this misinformation, the custodian was "in essence, denying the requestor access to the records."

Request for Relief:

The BCPO is deterring records requestors by requiring them to use its specific OPRA form and by including misleading language in its form. I ask that the Council order the BCPO to use its Model Request Form or take other appropriate action that will protect the public's rights under OPRA.

Notice of Service.

I have faxed a copy of this complaint and all attachments to the BCPO's published fax number of 201-646-3794.



[Home](#)
[YOUTH OUTREACH](#)
[Open Public Records Act](#)
[Internal Affairs](#)
[Directions and Map](#)

[Victim Advocacy](#)
[Past Press Releases](#)
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TO: MEMBERS OF THE PUBLIC

FROM: PROSECUTOR JOHN L. MOLINELLI

RE: PUBLIC ACCESS TO GOVERNMENT RECORDS



Members of the public are hereby advised that the provisions of the New Jersey Public Records Act, N.J.S.A. 47:1A-1, et seq., allow for public access to government records, but contain various exceptions listed below.

Members of the public who are requesting copies of records must complete the [Request for Public Records form](#) which can be obtained in the reception area of this office and on this page. The form must be delivered in person or by mail to:

OPRA Records
 Bergen County Prosecutor's Office
 Justice Center
 10 Main Street
 Hackensack, NJ 07601-7000

The statute provides for a right to appeal any denial or failure to provide access to a government record. A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

- institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records; or
- in lieu of filing an action in Superior Court, file a complaint with the Government Records Council established pursuant to section 8 of P.L.2001, c.404 (C.47:1A-7).

The right to institute any proceeding under this section shall be solely that of the requestor. Any such proceeding shall proceed in a summary or expedited manner. The public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

EXCEPTIONS TO PUBLIC ACCESS TO GOVERNMENT RECORDS

Privileged or Protected Category

Autopsy Reports
 Child abuse or sex assault victim name or address
 Court records sealed

Authority

N.J.S.A. 47:1A-1.1, et seq.
 N.J.S.A. 2A:82-46b
 Executive Order 69

Computer security information	N.J.S.A. 47:1A-1.1, et seq.
Criminal investigatory records	N.J.S.A. 47:1A-1.1, et seq.
Credit Card Numbers	N.J.S.A. 47:1A-1.1, et seq.
Grand Jury testimony, information	Court Rule 3:6-7
Grievance information with public employer	N.J.S.A. 47:1A-1.1, et seq.
Domestic Violence data	N.J.S.A. 2C:25-33
Driver`s license numbers	N.J.S.A. 47:1A-1.1, et seq.
DYFS information	N.J.S.A. 9:6-8.10
Electronic Surveillance Materials	N.J.S.A. 2A:156A-19
Emergency or security information or procedures	N.J.S.A. 47:1A-1.1, et seq.
Employee sexual harassment complaints	N.J.S.A. 47:1A-1.1, et seq.
Fingerprint cards	Executive Order 69
Inter-agency or intra-agency advisory communications	N.J.S.A. 47:1A-1.1, eq seq.
Juvenile records	N.J.S.A. 2A:4A-60
Labor Negotiation information, strategy or positions	N.J.S.A. 47:1A-1.1, et seq.
Medical Examiner Photographs	N.J.S.A. 47:1A-1.1, et seq.
Otherwise inappropriate material	Executive Order 69
Pension and personnel records	N.J.S.A. 47:1A-1.1, et seq
Photographs pertaining to a criminal investigation	N.J.S.A. 47:1A-1.1 et seq.; Exec. Order 69
Pre-Sentance Investigations	State v. DeGeorge, 113 NJ Super.542 (App. Div. 1971)
Public Agency insurance communications	N.J.S.A. 47:1A-1.1, et seq.
Safety of persons or public	N.J.S.A. 47:1A-1.1, et seq.;Exec. Order 69
Security measures and surveillance techniques	N.J.S.A. 47:1A-1.1, et seq.
Social Security Numbers	N.J.S.A. 47:1A-1.1, et seq.
Unlisted Telephone Numbers	N.J.S.A. 47:1A-1.1, et seq.
Victim locations (Domestic Violence)	N.J.S.A. 2C:25-26c.
Victim records	N.J.S.A. 47:1A-1.1, et seq.
Record has been destroyed/not retained pursuant to:	Records Retention and Disposition Schedule (NJ Dept. of State, Div. of Archives Mgmt.)

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Bergen County Prosecutor's Office

REQUEST FOR PUBLIC RECORDS

(N.J.S.A. 47:1A-1, et seq.)

A request for Public Records must be submitted on this form which has been adopted by the Prosecutor of Bergen County as the Custodian of Records. Unless a shorter time is otherwise provided by statute, regulation or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven *business* days after receiving the request, provided that the record is currently available and not in storage or archived. Within seven business days of receiving your request, the custodian will send you a writing indicating that: 1) the record is available and the cost for its production, which must be paid in advance; 2) the record is not a government record and therefore exempt from disclosure; or 3) the custodian cannot provide the record within seven business days, the reason(s) for the delay and an estimate of when the record will be available. Fees for copying public records are: \$0.05 per letter size page and \$0.07 per legal size page. Pursuant to N.J.S.A. 47:1A-5c., this office may impose a reasonable special service charge if the nature, format, manner of collation, or volume of a government record is such that it cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate your request. To obtain a copy of or access to a government record, complete this form and send it to: **ATTN: OPRA Custodian, Bergen County Prosecutor's Office, Justice Center, 10 Main Street, Hackensack, NJ 07601.**

Be advised that the following are not *government records* and are therefore exempt from disclosure: criminal investigatory records; victim's records; administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security; emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein; security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software; information which, if disclosed, would give an advantage to competitors or bidders; interagency or intra-agency advisory, consultative or deliberative material; pension and personnel records; and information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents of strategy or negotiating position.

You have a right to appeal the decision that the document or documents are not public records. You may take your appeal to the Government Records Council or to the New Jersey Superior Court as provided by N.J.S.A. 47:1A-6 and -7. For information about the Government Records Council and its appeal process, go to <http://www.state.nj.us/grc/>.

Print Clearly

Name: _____

Address: _____

Telephone: _____

Government Record Requested: _____

Signature of Requestor

Date



Bergen County Prosecutor's Office

RESPONSE TO REQUEST FOR PUBLIC RECORDS

(To Be Completed by Prosecutor's Office Custodian of Records or Designee)

To: _____
 (Name of Requestor)

The government records you requested are:

- available and consist of _____ pages for a total cost of \$ _____;
- not available for reasons described in the attached writing; or
- are not government records and are exempt from disclosure as described below.

Exempt Category

- Autopsy reports
- Child abuse or sexual assault victim name or address
- Court records (sealed)
- Computer security information
- Credit card numbers
- Grand jury testimony, information
- Grievance information with public employer
- Domestic violence data
- Driver's license numbers
- DYFS information
- Electronic surveillance materials
- Emergency or security information or procedures
- Employee sexual harassment complaints
- Fingerprint cards
- Interagency or intra-agency advisory communications
- Juvenile records
- Labor negotiation information, strategy or positions
- Medical Examiner photographs
- Otherwise inappropriate material
- Pension and personnel records
- Photographs
- Presentence investigations
- Public agency insurance communications
- Safety of persons or public
- Security measures and surveillance techniques
- Social security numbers
- Unlisted telephone numbers
- Victim locations (domestic violence)
- Victim records
- Record has been destroyed pursuant to normal record retention schedules
- Other, see attached writing

Authority

- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 2A:82-46b*
- Executive Order 69
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 47:1A-1.1, et seq.*
- Court Rule *R. 3:6-7*
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 2C:25-33*
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 9:6-8.10*
- N.J.S.A. 2A:156A-19*
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 47:1A-1.1, et seq.*
- Executive Order 69
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 2A:4A-60*
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 47:1A-1.1, et seq.*
- Executive Order 69
- N.J.S.A. 47:1A-10*
- N.J.S.A. 47:1A-1.1, et seq.; Executive Order 69*
- State v. DeGeorge, 113 NJ Super. 542 (App.Div. 1971)*
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 47:1A-1.1, et seq.; Executive Order 69*
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 47:1A-1.1, et seq.*
- N.J.S.A. 2C:25-26c*
- N.J.S.A. 47:1A-1.1, et seq.*

 Bergen County Prosecutor's Office Custodian of Records or Designee

 Date