

Annotated Guide to the Open Public Records Act

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Annotated Guide to the Open Public Records Act

N.J.S.A. 47:1A-1 Legislative findings, declarations

- The legislature finds and declares that:
 - Government records shall be accessible by citizens of THIS STATE for:¹
 - ◆ Inspection
 - ◆ Copying
 - ◆ Examination
 - With **EXCEPTIONS**
 - ◆ For the protection of the public interest
 - ◆ Right of access construed in favor of the public's right of access
 - All government records **SHALL** be subject to public access unless and other:
 - o Statute;
 - o Resolution of either or both houses of the Legislature;
 - o Regulation promulgated under the authority of any statute or Executive Order of the Governor;
 - o Executive Order of the Governor;
 - o Court Rules;
 - o Federal law, regulation, or order.
- **A public agency has responsibility & obligation to safeguard, from public, personal information which it has been entrusted, when disclosure thereof would violate the citizen's reasonable expectation of privacy.**^{i ii}
 - Nothing shall be construed as affecting Common Law right to access any record, including but not limited to a criminal investigator records of a law enforcement agency.

N.J.S.A. 47:1A-1.1 Definitions as amended and supplemented

- **"Biotechnology"** refers to any technique that:
 - o uses living organisms, or parts, to make/modify products, to improve plants or animals, or to develop micro-organisms for specific uses
 - ◆ Including the industrial use of recombinant DNA, cell fusion, and novel bioprocessing techniques.
- **"Custodian of government record" or "Custodian"**
 - o For a municipality = municipal clerk.

¹ Note the issue of whether out of state requestors cannot access OPRA has not been tested. The Attorney General guidelines advise to provide information to out of state requestors.

- o Any other public agency = officer designated by formal action of the agency's director or governing body.
- **“Government Record” or “Record”ⁱⁱⁱ** means any:
 - o Book, document, drawing, map, plan, photo, microfilm, data or image processed document, information stored or maintained electronically by sound recording or similar device that has been:
 - ◆ Made, (or), Maintained (or), Kept on file in the course of his or its official business;
 - ◆ by an officer (or), commission, agency^{iv}, or authority
 - ◆ of the State or any political subdivision of including subordinate boards,
 - ◆ **OR** that has been received in the course of his or its official business
 - ◆ by an officer, commission, agency, or authority
 - ◆ of the State or any political subdivision of including subordinate boards,
 - **(exception)** definition does not include **inter-agency** or **intra-agency ADVISORY, CONSULTATIVE, OR DELIBERATIVE** material. Referred to as “ACD material.”^v
- o Government record **SHALL NOT** include the following which is **DEEMED CONFIDENTIAL**:
 - ◆ **(exception) LEGISLATURE:**
 - Information received by the LEGISLATURE from a constituent or held by LEGISLATURE about a constituent; (including e.g. written, e-mail, computer data base, or telephone record- whatsoever)
 - **(ex to ex)²**- unless info constituent is required by law to transmit
 - Memo, correspondence, notes, report or other communication prepared by, or for use by member of leg. for official duties;
 - **(ex to ex)**- exception shall NOT apply to publicly-accessible report which is required by law to be submitted to the Legislature.
 - ◆ **(exception) Autopsy:**
 - Anything (or copy of) [including photos, videos];
 - of body (or parts thereof);
 - of a deceased person;
 - taken for or by ME;
 - at scene or autopsy;
 - Caused to be, or made by ME
 - **(ex to ex)**-when used in criminal proceeding relating to death of the person, in court with notice to Prosecutor

² Abbreviation for exception to exception.

- (ex to ex)-research
- use by law enforcement in this State or federal law enforcement

♦ (exception) - **CRIMINAL INVESTIGATORY RECORDS:**³

♦ (exception)- **VICTIMS' RECORDS:**

- (ex to ex) Victim of crime SHALL have access to their own records.

♦ (exception)—**TRADE SECRETS & PROPRIETARY:**

- Trade secrets; or
- Proprietary commercial or financial info;
- From any source.

For this exception, trade secrets SHALL include data processing software obtained by a public body (agency) under a licensing agreement which prohibits disclosure.

♦ (exception)—**ATTORNEY-CLIENT PRIVILEGE:**

- (ex to ex) bills and invoices, which may be redacted.

♦ (exception)—**COMPUTER SECURITY:**

- Info regarding computer system (hardware software) which could jeopardize computer security.

♦ (exception)—**BUILDING SECURITY:**^{vi}

- Emergency/security info and/or procedures for a building/facility which if disclosed, would jeopardize security of building/facility/people in same.

♦ (exception)—**SECURITY/SURVEILLANCE**

- Measures and techniques of security and surveillance— if disclosed would create a risk to the safety of persons, property, electronic data or software.

♦ (exception)—**COMPETITORS OR BIDDERS**

- Info which would give and advantage to competitors and/or bidders

³"...[a] record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding. N.J.S.A.47:1A-1.1

- ◆ **(exception)—Public Employees/Employers**
 - Info generated by or on behalf of public employers and/or employees re:
 - Sexual harassment complaint filed with a public employer; OR
 - Any grievance filed by/against an individual; OR
 - In connection with collective negotiations, including documents and statements of strategy or negotiating position.
- ◆ **(exception)—Communication**
 - Info/communication b/w public agency and:
 - insurance carrier;
 - administrative service organization;
 - or risk management office.
- ◆ **(exception)—Court Order**
 - Info which is to be kept confidential because of Court Order.
- ◆ **(exception) MILITARY DISCHARGE DOCUMENTS:**
 - Military discharge documents which evidence an honorable discharge from the Armed Forces of the US or organized militia of the state and have been filed with a public agency including (originals and copies) of:
 - DD-214; or
 - Certificate of honorable discharge, or
 - Similar form
 - Service from in an
 - ◆ **(ex to ex):** Except
 - A veteran;
 - Veteran's spouse;
 - Or veteran's surviving spouse.
- ◆ **(exception) The Numbers:**
 - Portion of any document which includes:
 - Social security numbers;
 - Credit card numbers;
 - Unlisted telephone numbers;^{vii}
 - Driver license number
 - ◆ **(ex to ex):** EXCEPT:
 - ◆ For use by a government or law enforcement agency in carrying out its functions

- ◆ or any private person/entity acting on behalf thereof
- ◆ or private person entity seeking to enforce child support order;
- ◆ **(exception to exception)** Except with respect to the disclosure of driver information of the NJ Motor Vehicle Commission as permitted (39:2-3.4); and except that the social security number contained in a record required by law to be made, maintained or kept on file by a public agency SHALL be disclosed when access to the document or disclosure of that info is not otherwise prohibited by State or Federal Law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of a Governor (not just the current governor.)
- ◆ **(exception) Public Institution of Higher Ed**
 - Government record shall NOT include the following which is deemed privileged and confidential:
 - Pedagogical
 - Scholarly and/or academic research records and/or the specific details of research project conducted at a public higher education institution,^{viii} including but not limited to
 - ◆ Development info;
 - ◆ Testing procedures;
 - ◆ Info re test participants relating to drugs (legal) or delivery of same;
 - (ex to ex) custodian must give record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when final project summary of any research will be available.
- ◆ **(exception): EXAMINATION DATA**
 - Test questions;
 - Scoring keys;
 - Other exam data re: administration of an exam for employment or academic examination.
- ◆ **(exception): Charitable Contributions**
 - Records in pursuit of donations;
 - Records containing identity of a donor of a gift if the donor requires confidentiality of his/her identity as a condition of making the gift provided that the donor has not received a benefit of or from the institution other than a request for memorialization or dedication;

♦ **(exception): Collections Granted**

- Valuable or rare collections of books and/or documents obtained by gift, grant, bequest or devise conditioned upon limited public access;

♦ **(exception): Admissions Applications**

- Information contained on individual admission applications;

♦ **(exception): Student Records**

- Information concerning student records/grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.

➤ “Public Agency” “Agency”

- o principal depts. in the **Exec. Branch** of state gov.⁴ & any:
 - ♦ Division;
 - ♦ Board,
 - ♦ Bureau,
 - ♦ Office or
 - ♦ Other instrumentality

within or created by such department;

Legislature of state gov. and any:

- ♦ Division;
- ♦ Board,
- ♦ Bureau,
- ♦ Commission, or

within or created by such the Legislative Branch; and

- o Any independent State:
 - ♦ Authority,
 - ♦ Commission,
 - ♦ Instrumentality, or
 - ♦ Agency
- o Any political subdivision of the State, or combinations of subdivisions, and any
 - ♦ Division;
 - ♦ Board,
 - ♦ Bureau,

⁴ OPRA does not cover Federal gov.

- ◆ Office or
- ◆ Or Other instrumentality

Which is within/created by a political subdivision or combination of subdivisions,

Any independent authority, commission, instrumentality or agency created by a political subdivision or combination of subdivisions.

- “Law Enforcement Agency”
 - Public agency determined by AG to have law enforcement responsibilities.
- “Constituent”
 - State resident or other person communicating with member of the Legislature.
- “Member of the Legislature”
 - Any person elected/selected to serve in the NJ Senate or General Assembly.
- “Criminal Investigatory Record”^{ix}
 - Record which is NOT required by law to be made, maintained or kept on file this is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.
- “Victim’s record”
 - means any individually-identifiable file or document held b a victim’s rights agency which pertains directly to a victim of a crime except the victim, or if said person is deceased or incapacitated, a member of that person’s immediate family.
- “Victim of a Crime”
 - Means a person who is injured or dies
 - ◆ or suffers a loss to property as a result of a crime
 - ◆ OR if said person is deceased or incapacitated, a member of that person’s immediate family.
- “Victim’s Rights Agency”
 - Public agency, or part of, the primary responsibility of which is providing services, including but not limited to:
 - ◆ Food;
 - ◆ Shelter;
 - ◆ Clothing;
 - ◆ Medical (physical, psychological or psychiatric)
 - ◆ Legal services;
 - ◆ Referrals
 - ◆ Information

- ◆ Counseling
- ◆ And support or financial services to—
- o Victims of Crimes, including but not limited to:
 - ◆ Victims of sexual assault;
 - ◆ DV;
 - ◆ Violent crime;
 - ◆ Child endangerment;
 - ◆ Child abuse or neglect;

And the Victims Compensation Board.

N.J.S.A. § 47: 1A-1.2 Access to biotechnology trade secrets by state and legal agencies available as allowed by federal law:

- Where Federal law/reg. requires submission of biotech trade secrets and related confidential information, a public agency SHALL NOT have access to this information, except as allowed by federal law.
- A public agency shall not make any biotech trade secrets/related confidential information (to which it has access under this act) available to any other public agency, or to the general public, except as allowed pursuant to federal law.

N.J.S.A. § 47: 1A-1.3 Handgun and firearms purchasers; scope of data available:

- Notwithstanding law to contrary, government record SHALL include:
 - Aggregate info regarding total number of permits to purchase handgun;
 - o **and** number of firearms purchaser identification cards,
 - o that have been issued by State Police or Chief of Police of municipal department.
 - WITHOUT ANY PERSONAL IDENTIFYING INFORMATION.

N.J.S.A. § 47: 1A-2 Repealed

N.J.S.A. § 47: 1A-2.1 Repealed

N.J.S.A. § 47: 1A-2.2 Access to public records, by inmates; victim's personal identifying information

- a. A person:
 - convicted of any indictable offense, and
 - is seeking government records containing,

- personal information pertaining to victim or their family
 - ◆ Victim's home address,
 - ◆ Social security number,
 - ◆ Medical history
 - ◆ Or any other personal identifying number
- **SHALL** be denied.
- b. Record protected under (a) may be released **ONLY** if:
 - The information is needed in the defense of the requestor, and
 - Shall be made by the court upon motion. (ie discovery).
- c. Custodian shall not comply with an anonymous request for a record which is protected by this section.

N.J.S.A. § 47: 1A-3 Records of investigations in progress

- Where records pertain to investigation
 - *in progress*
 - by a public agency
 - MAY be denied if disclosure SHALL be inimical to public's interest;
- But, cannot limit access to a record that was open for public inspection prior to the investigation commencing.
- The following info re: criminal investigation SHALL be made public within 24 hours of the request:
 - where a crime was reported, NO arrest was made-
 - ◆ type of crime;
 - ◆ time;
 - ◆ location; and
 - ◆ type of weapon
 - if an arrest was made-
 - ◆ name;
 - ◆ address;
 - ◆ age of victim,

(provided time for notification of next of kin if there was injury or death)

Information not released if inconsistent with Court Rule or existing law.

- ◆ Must factor in safety of victim and family
- if an arrest was made-
 - ◆ defendant's name,
 - ◆ age,
 - ◆ residence,

- ◆ occupation,
 - ◆ marital status, and
 - ◆ background information, and
 - ◆ identity of the complaining party;
 - ◆ UNLESS, release would be contrary to existing law or Court Rule.
 - Information as to the text of any charges, such as
 - ◆ Complaint,
 - ◆ Accusation, and
 - ◆ Indictment
 - ◆ UNLESS, sealed or release would be contrary to existing law or Court Rule.
 - Information as to the identity of the investigation and arresting personnel and agency and length of the investigation;
 - Information of the circumstances immediately surrounding arrest; including, but not limited to:
 - ◆ Time and place;
 - ◆ Resistance,
 - ◆ Pursuit,
 - ◆ Possession and nature of weapons and ammo
 - Used by police and suspect.
- NOTWITHSTANDING above, where it appears info will jeopardize the safety of any person, or an investigation in progress or may otherwise be inappropriate, such info may be withheld.
- Narrowly construed to prevent disclosure of info that would be harmful to law enforcement purpose or public safety. Law enforcement must issue a brief explanation why info was withheld.

N.J.S.A. § 47: 1A-4 Repealed

N.J.S.A. § 47: 1A-5 **Times during which records may be inspected, examined, copied; access; copy fees**

- A. Records must be available
- Regular business hours,
 - Exceptions for small municipalities, BOE, and public authorities
 - UNLESS exempt by any other law, reg. EO, etc.
- Prior to allowing access, custodian must redact:
 - o Social security number;
 - o Credit card numbers;

- o Unlisted phone numbers;
 - o Driver's license number
 - Unless:
 - o For use by a government agency (including court); or
 - o Private person seeking to collect on a Court-ordered child support;
 - EXCEPT
 - o with the DL allowed to be disclosed by (C.39-3.4);
 - o social security number in a record where such record is required to be made, maintained or kept on file by a public agency when access to that record is not otherwise prohibited by law or EO, rule, reg., resolution of both houses.
- b. Fees for copying
 - \$.05 per letter size (or smaller)
 - \$.07 for legal size or larger
 - Actual costs if it can be demonstrated that costs exceed statutory rate (actual costs is materials and supplies, not overhead or labor except as provided in section c.)
 - Electronic records free of charge, except may charge actual cost of supplies (DVD). **THUS IF RECORDS ARE E-MAILED, MAY NOT CHARGE.**
- c. Special Service Charge^x
 - for really large requests or those which cannot be copied with ordinary equipment. Again, actual cost.
 - Requestor shall have opportunity to review and object to charge
- d. Medium^{xi}
 - must provide documents in the medium requested; *e.g.* copies email etc.
 - if not maintained in the requested medium must convert or provide in some "meaningful" medium
 - special service charge may be assessed of conversion to requested medium
- e. Immediate Access Documents^{xii}-
 - budgets
 - bills
 - invoices
 - vouchers
 - contracts
 - collective negotiation agreements
 - individual employment contracts,
 - public employee salary, and
 - overtime information.
- f. Form^{xiii}

- Custodian must adopt a form with information set forth in said section. [NOTE: best to use form on GRC website.]
 - Form shall contain space for:
 - o Requestor's name, address and phone number;
 - o Description of records sought;
 - o Custodian to indicate what records will be disclosed;
 - o When record will be available and cost.
 - Form shall also contain:
 - o (1) directions for requesting record;
 - o (2) whether fees or deposit required;
 - o (3) time which agency is required to respond;
 - o (4) how to challenge denial of access, procedure for filing an appeal;
 - o (5) space to list reasons for denial of access;
 - o (6) space for requestor to sign and date form;
 - o (7) space for Custodian to sign and date form.
 - Custodian can request a deposit from an anonymous requestor if costs will exceed \$5.00.
- g. Writing
- Request must be in writing (although does not have to be on form, only has to reference OPRA or be clear that it is an OPRA request).
 - Response must be in writing; either providing access, or deny with a specific reason and return the form to the requestor.^{xiv}
 - Custodian can redact document if some information is confidential.
 - If temporarily unavailable, must advise and make immediate arrangements to secure document.^{xv}
- h. Forwarding of Request
- If a non-custodian employee receives request, must promptly give it to Custodian or direct the requestor to the Custodian.^{xvi}
- i. Time for response:^{xvii}
- Unless there is a shorter time by statute (such as immediate access documents):
 - o Seven (7) business days after receiving request;^{xviii}
 - o Failure to do so is a "deemed a denial."
 - o However, custodian may respond by contacting the requestor and setting forth an extended time frame.^{xix} Although consent of the requestor is not needed (and asking for consent only produces problems) the notice of extension must:
 - ◆ Be in writing
 - ◆ And provide a date certain for response. If record is not provided by the time frame provided it is a "deemed denial."

- ◆ No requirement if the requestor has not provided ANY way of being contacted, then the custodian shall not be required to respond until the requestor reappears.
- j. Posting
 - Requirements for what Custodian must post regarding OPRA and the requestor's right to appeal.
- h. Public Defender Files
 - Not subject to disclosure unless authorized by law, court order or the State PD.^{xx}

N.J.S.A. § 47:1A-6 Proceeding to Challenge Denial of Access to Record

- Requester denied access (at his/her option):^{xxi}
 - File an action in Superior Court^{xxii}
[Note: Usually heard by the assignment Judge. Judge has jurisdiction of OPRA and common law requests, as well as OPMA issues.]
 - File a complaint with GRC.
- Only the Requestor has the right to proceed if access is denied.
 - Public Agency has the burden of proving denial was access was lawful.^{xxiii, xxiv}
 - If the Court/GRC finds access was improperly denied:
 - Turnover SHALL be ordered; and
 - A requestor who prevails SHALL be entitled to attorney's fees.

N.J.S.A. § 47:1A-7 Government Records Council (GRC)

- a. Establishment of GRC
- b. GRC shall:^{xxv}
 - establish a Mediation Program⁵
 - Adjudicate complaints
 - Issue Advisory opinions (where appropriate)
 - Provide information for custodians
 - Provide information to public as to their right of access
 - Prepare lists for use by custodians of the types of records that are public records
 - Provide training
 - Website and hot-line for questions [1-866-850-0511]

c. At the request of the Council, shall produce documents and witnesses with respect to review/adjudication of Complaint or for a hearing.⁶

⁵ The mediation agreement form was updated—July 1, 2015. The current mediation forms, which note the date updated, can be found on the GRC website: Requestor' form <http://www.state.nj.us/grc/mediation/requestor/> ; Custodian's form <http://www.state.nj.us/grc/mediation/custodian/>.

⁶ Cases are generally referred to the Office of Administrative Law (OAL) for hearing to resolve contested facts.

d. Upon the filing of a complaint, GRC shall offer the parties mediation, with a neutral mediator.

xxvi

e. Considerations of knowing and willful actions of custodian. xxvii

f. Council shall not have jurisdiction over the Judicial or Legislative Branches of Government.

N.J.S.A. § 47:1A-8 Construction of Act

Nothing in OPRA **SHALL** be constructed as limiting the common law right of access to gov., including criminal investigatory records of a law enforcement agency.

N.J.S.A. § 47:1A-9 Other Laws, regulations, privileges unaffected

- (a) OPRA **SHALL** not abrogate any exemption of public record or gov. record from public access that any other:
 - Statute;
 - Resolution of both houses of Legislature;
 - Regulation promulgated under statute or EO;
 - Rules of Court;
 - Federal law, regulation or order.
- (b) OPRA **SHALL** not abrogate:
 - Any executive or legislative privilege or grant of confidentiality established/recognized by;
 - o State constitution;
 - o Court rule or judicial case lawWhich privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or law.

N.J.S.A. § 47:1A-10 Personal, pension records not considered public information

- Personnel or pension records of any individual, including but not limited to:
 - Records regarding a grievance filed by or against an individual; shall NOT be released;

(exception): The following SHALL BE A GOVERNMENT RECORD: an individual's

 - ◆ name;
 - ◆ title;
 - ◆ position;
 - ◆ salary;

- ◆ payroll;
- ◆ date of separation and the reason therefor;
- ◆ the amount and type of pension received.
- Personal/pension records SHALL be disclosable when required by another law, when disclosure essential to the official duties of a person authorized by government, OR when authorized by and individual in interest.
- Government Record includes: data contained in information which disclose conformity with specific experiential, educational or medical qualifications for government employment, or for receipt of a public pension, (i.e. employee has met requirements for job)
 - ◆ BUT not including and detailed medical or psychological information

N.J.S.A. § 47:1A-11 Violations, penalties, disciplinary proceedings

- Note: Extremely high standard!
- Standard
 - Public official, officer, employee or custodian
 - Who **KNOWINGLY AND WILLFULLY**
 - Violates OPRA
 - Is found to have unreasonably denied access under the *totality of the circumstances*
 - o Penalty: \$1,000 first; \$2,500 second; \$5,000 third violation
 - o Employer cannot pay.

N.J.S.A. § 47:1A-12 Court Rules

- Can be adopted by Supreme Court as needed.

N.J.S.A. § 47:1A-13 Funding

- DCA funded.

End Notes:

ⁱ Serrano v. S. Brunswick Twp., 358 N.J. Super. 352, 368 (App. Div. 2003). Illustrative for 911 calls in particular. Court affirmed GRC's decision to release a 911 tape.

ⁱⁱ The seven factor privacy balancing test:

- (1) The type of record.
- (2) Information contained in the record.
- (3) Potential for harm in subsequent nonconsensual disclosure.
- (4) Injury from disclosure to the relationship in which the record was generated.
- (5) Adequacy of safeguards to prevent unauthorized disclosure.
- (6) Degree of need for access.
- (7) Whether there is an express statutory mandate, articulated public policy, or other recognized interest militating toward access.

See also Burnett v. Cnty of Bergen, 198 N.J. 408 (2009) (redaction of SSNs).

ⁱⁱⁱ Public Record: Gannett N.J. Partners, LP v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005)

^{iv} Public Agency:

See: The Times of Trenton Publishing Corporation v. Lafayette Yard Community Development Corporation, 368 N.J. Super. 425 (App. Div. 2004), the Appellate Division found that Lafayette Yard, a private, non-profit corporation created for the express purpose of redeveloping property donated to it by the City of Trenton, was in fact a "public agency" as defined by OPRA (also OPMA). Affirmed in The Times of Trenton Publishing Corporation v. Lafayette Yard Community Development Corporation, 183 N.J. 519 (2005).

See: Fair Share Hous. Ctr., Inc. v. New Jersey State League of Municipalities, 207 N.J. 489. The Court held that a creation test, as opposed to a governmental function test, controlled in determining whether an entity was a public agency for purposes of OPRA.

^v Advisory, consultative, deliberative material: O'Shea v. West Milford Bd. Of Ed., 391 N.J. Super. 534, 538 (App. Div. 2007); Sage v. Freehold Reg'l High School District (Monmouth), GRC Complaint No. 2010-108 (Final Decision November 29, 2011).

See also: Educ. Law Ctr. V NJ Dep't of Educ., 198 N.J. 274 (2009) [Court held that record containing/involving factual components is entitled to "deliberative process protection" when used in decision-making process and its disclosure would reveal deliberations that occurred during that process.]

See also: Ciesla v. NJ Dep't of Health & Senior Serv., et als., 429 N.J. Super 127 (App. Div. 2012) [Court affirmed a GRC decision (Complaint No. 2010-38) that responsive staff recommendation report constituted ACD material because it was a draft document]

^{vi} Cordero v. N.J. Department of Corrections, GRC Complaint No. 2012-209 (June 2013) (information relating to prison security was exempt from disclosure).

Fischer v. N.J. Dept. of Corrections, GRC Complaint No. 2012-209 (June 2013).

Courts defer to DOC when making decisions about safety and security. Jenkins v. Fauver, 108 N.J. 239, 252 (1987); Russo v NJ Dept. of Corrections, 324 N.J. Super. 576, 584 (App. Div 1999).

vii Unlisted vs. Listed Phone numbers: OPRA did not compel disclosure of county administrator's phone billing records. Court found voluminous request undoubtedly contained unlisted numbers, and there was no indication that there was any reasonably practical method of culling out unlisted numbers. Gannett N.J. Partners, LP v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005).

viii Does not include research conducted by staff in Lower Education (Fenichel v. Ocean City Bd. Of Education, GRC Complaint No. 2002-82 (January 2003)).

ix Janeczko v. NJ Department of Law and Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004) ("Criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed.")

Police reports are criminal investigatory records. Nance v. Sctoch Plains Police Dep't. GRC Complaint No. 2003-125 (January 2005); Rivera v. Passaic Cnty. Sheriff's Office, GRC Complaint No. 2010-152 (May 2011); Connelly v. Twp. Of Montville (Morris), GRC Complaint No. 2013-59 (September 2013).

O'Shea v. Twp. Of West Milford, 410 N.J. Super. 371 (App. Div. 2009): record must meet statutory two prong test to be considered "criminal investigatory record" exempt under OPRA.

- 1) Record is not required by law to be made
- 2) AND record must pertain to any criminal investigation or related civil enforcement proceeding.
- 3) ADDITIONALLY: GRC cannot accept an assertion that a record is criminal investigatory in nature in the absence of a factual showing that [the records] pertained to an actual criminal investigation or to an existing related civil enforcement proceeding. Id. At 385.

x Special Service Charge

See The Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002).

Court found that the assessment of special service charge for the Custodian's time was reasonable and consistent with N.J.S.A. 47:1A-5(c), after consideration six factors:

- (1) the volume of government records involved;
- (2) the period of time over which the records were received by the governmental unit;
- (3) whether some or all of the records sought are achieved;
- (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying;
- (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and
- (6) the amount of time required to return the documents to their original storage place. Id. at 199.

Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012) (finding extraordinary amount of time and effort to produce responsive records given the size of the agency).

Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (custodian must prove that he same was based upon the lowest paid, qualified employee's hourly rate to perform the work required to respond to the subject OPRA request).

xi GRC has ruled Custodian must provide record in the medium requested. But see Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014), holding that a Custodian shall direct a requestor, with reasonable clarity, to the specific location on the Internet where the responsive records reside. E.g. giving directions for accessing the responsive document, that are comprehensible to a reasonable person, including but not limited to providing a link to the exact location of the requested document. BUT a custodian's ability to direct a requestor to the specific location of a record on the Internet is contingent upon on the requestor's ability to electronically access the records. Thus, a custodian is not absolved from providing the record in hardcopy if the requestor is unable to obtain the information from the Internet and makes it known to the custodian within seven (7) business days after receipt of the custodian's response, in which case the custodian will have seven (7) business days from the date of such notice to disclose the record(s) in hardcopy

xii Herron v. Twp. Of Montclair, GRC Complaint No. 2006-178 (February 2007).

xiii Renna V. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009) (Custodian shall not withhold records if written request, although not on official form, contains the requisite information contained in N.J.S.A. 47:1A-5(f).)

xiv American Civil Liberties Union of NJ v. NJ Div. of Criminal Justice, 435 N.J. Super. 533 (App. Div. 2014) ;

Paff v. Borough Layallette (Ocean), GRC Complaint No. 2007-209 (December 2008) .

xv Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).

xvi Search vs. Research

Donato v. Twp. of Union, GRC Complaint No. 2005-182 (Feb. 2007). Custodian is obligated to SEARCH her files to FIND the identifiable government record listed in the Complainant's OPRA request. However, Custodian is not required to research her files to figure out which records if any, might be responsive to a broad or unclear OPRA request in accordance with the decision of MAG and NJ Builders.

xvii Tucker Kelly v. Township of Rockaway GRC Complaint No. 2007-11 (Interim order October 31. 2007) -- Deemed Denial

- Held that where Custodian failed to respond (by EITHER granting access, denying access, seeking clarification, OR requesting an extension within statutorily mandated time), Custodian unlawfully denied access
 - o Results in a "deemed denial" of the request.
 - o Further: IF REQUESTING AN EXTENSION, Custodian MUST provide a certain date when records will be made available
 - Failure to provide records on specified date also results in a deemed denial

xviii Note: Custodian not obligated to create records. See Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123.

^{xxix} Kohn v. Livingston Library, GRC Complaint No. 2007-124 (March 2008).

^{xx} Herman Gaines v. New Jersey Office of the Public Defender GRC No. 2014-313 (N.J.S.A. 47: 1A-5(k) exempts access to all OPD records and contains no exceptions for persons attempting to obtain their own files).

^{xxi} John Paff v. New Jersey Department of Labor, Board of Review, 379 N.J. Super. 346, 353 (App. Div. 2005) (A person denied access to government record has the option to file an action in Superior Court or a complaint with the GRC.)

^{xxii} Need case that must be filed within forty-five days for Superior Court. Time frame does not apply to GRC.

^{xxiii} Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005) [holding: no unlawful denial of access where custodian certified that no responsive records existed, and there was no evidence in the record to refute her certification.]

^{xxiv} Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013); Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012).

^{xxv} Paff v. N. J. Dept of Labor, Board of Review, 379 N.J. Super. 346, 352-353 (App. Div. 2005) (The GRC has the responsibility to mediate, investigate and adjudicate complaints filed by persons who are denied access to government records. N.J.S.A. 47:1A-7b-f.)

^{xxvi} John Paff v. New Jersey Department of Labor, Board of Review, 379 N.J. Super. 346, 353 (App. Div. 2005) (GRC must start with offering mediation.)

^{xxvii} Knowing and willful standard: Custodian's actions must have been more than negligent conduct. (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fieder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed knowledge, and that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95) (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).
