

Useful OPRA Cases by Subject

Note: This is NOT an exhaustive list of cases or subject areas.

911 Tapes:

Serrano v. South Brunswick Township, 358 N.J. Super. 352; 817 A.2d 1004, (March 19, 2003). The complainant requested an audiotape of a 911 call in which a defendant allegedly killed his father three hours after he placed the call. The Court affirmed the GRC's decision to release the tape.

1. 911 calls are required by law to be recorded by a government agency and these tapes must be retained for "no less than 31 days." (See N.J.S.A. 52:17C-1 and N.J.A.C. 17:24-2.4)
2. 911 tapes come within the definition of a government record for the purposes of OPRA
3. Judge Alley noted:
 - a. This case does not provide the opportunity for a definitive ruling on the question of whether 911 tapes are public records under OPRA.
 - b. The 911 caller himself made the existence of the call part of the public record in the pretrial proceedings of his criminal case and had expressly taken the position in these proceedings that he did not object to the release of the 911 tape. The court is not concluding that all 911 tapes are open to the public under OPRA. They decided that only under the circumstances of this case the prosecutor was not entitled to withhold this 911 tape from the public.

Auto Accident Reports:

Donato v. Jersey City Police Department, GRC Complaint No. 2005-251 (April 2007). Custodian charged \$5.00 per accident report. Council ruled that N.J.S.A. 39:4-131 states that auto accident reports are not privileged or confidential and that if the request is not made in person, the custodian may charge up to \$5.00 for each of the first three pages and \$1.00 per page thereafter in addition to the OPRA copy rates.

Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007). The Custodian charged \$5.00 for each of the seven (7) reports plus OPRA's per page copy fee. The Council held that the Custodian has lawfully charged the Complainant \$40.25 for the requested accident reports pursuant to N.J.S.A. 39:4-131. Further, the Council held that no redactions are warranted on said reports.

Broad and/or Unclear Requests:

MAG Entertainment, LLC v. Division of Alcohol Beverage Control, 375 N.J. Super. 534 (App.Div. 2005). The court held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'* N.J.S.A. 47:1A-1." (Emphasis added.) The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In

short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004). Request was broad and unclear ("any and all"). The Council ruled that the information sought did not amount to an identifiable government record. The Council's decision was affirmed on appeal in the published court decision Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).

New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). Because the requestor did not specifically identify the records sought, as required by N.J.S.A. 47:1A-5.f., OPRA did not require the custodian to produce the records within seven (7) business days pursuant to N.J.S.A. 47:1A-5.i. Requestor submitted a 5 page document listing 38 separate requests all of which include a request for "any and all documents and data used or considered ... supporting, demonstrating, justifying or verifying" various determinations relevant to COAH's determinations about fair-share housing obligations.

Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Council held that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005)."

Clarification:

Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 2005). Complainant did not respond to custodian's request for clarification of request which the Custodian believed to be broad and unclear. The Council concluded that the Custodian did not unlawfully deny access because the Custodian did seek clarification of the request which was in fact broad and unclear.

Commercial Use of Government Records:

Spaulding v. County of Passaic, GRC Complaint No. 2004-199 (September 2006). The Council held that "there is no restriction against commercial use under OPRA and it is not the province of the GRC to rule on this public policy aspect."

Copy Cost:

Libertarian Party of Central New Jersey v. Murphy, 384 N.J. Super. 136 (App. Div. 2006). Custodian charged \$55.00 for a computer diskette. The court held that charge for medium conversion must be actual cost.

Windish v. Mt. Arlington BOE, (Unpublished/App. Div. 2007). The court held that small municipalities may charge the enumerated copy rates contained in OPRA at N.J.S.A. 47:1A-5.b.

Getts v. Mercer County Clerk's Office – Docket No. MER-L 696-07 Law Division Mercer County (May 2009). Court determined that custodians must charge actual cost for paper copies. Decision noteworthy, but not yet universally acceptable.

Criminal Investigatory Records:

Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80. Council ruled that the records were exempt under the criminal investigatory exemption from disclosure and that this exemption does not permit access to the records even after the investigation is closed. The Council's decision was appealed and affirmed in an unpublished opinion of the Appellate Division of Superior Court in May 2004.

Deemed Denial:

Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007). A custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i.

Discovery vs. OPRA:

Mid-Atlantic Recycling Technologies, Inc., v. City of Vineland, 222 F.R.D. 81, (April 27, 2004). The corporation filed a complaint against defendants, alleging that defendants engaged in arbitrary and irrational conduct in an effort to deprive it of its business through selective enforcement of certain environmental compliance policies. Defendants asserted that the city received numerous requests for documents under OPRA for documents related to issues in the case. Defendants requested that the court enter a protective order precluding the corporation from conducting discovery outside the limitations imposed by the Federal Rules of Civil Procedure. The court found that the Federal Rules of Civil Procedure did not act as an automatic bar of a litigant's rights to obtain or seek documents under a public record access statute, such as OPRA. The court further found that defendants did not show good cause for a protection order by demonstrating a particular need for protection. Defendants' broad allegations of harm were not substantiated. The court rejected defendants' arguments that Fed. R. Civ. P. 26 limited or restricted a party's right to request documents under OPRA.

John Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (April 2008). The Council held that the Custodian's denial of the Complainant's OPRA request, on the grounds that the Complainant could only obtain the requested records through discovery, is not a lawful basis for a denial of access.

Draft Meeting Minutes:

Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006). The GRC ruled that **draft, unapproved meeting minutes** are exempt from disclosure as ACD. Inter-agency or intra-agency advisory, consultative, or deliberative material is not included within the definition of a government record. N.J.S.A. 47: 1A-1.1.

GRC's Authority:

Kawanzaa v. NJ Department of Corrections, GRC Complaint No. 2004-167 (March 2005). Council does not have authority over content of records pursuant to N.J.S.A. 47:1A-7.b.

Toscano v. NJ Dept of Labor, Division of Vocational Rehabilitation Services, GRC Complaint No. 2007-296 (March 2008). Council does not have authority over records retention pursuant to N.J.S.A. 47:1A-7.b.

Immediate Access:

Renna v. County of Union, GRC Complaint No. 2008-110 (March 2009). The Council held that because a completed version of the requested record did not exist in the medium requested at the time of the Complainant's OPRA request and required medium conversion pursuant to N.J.S.A. 47:1A-5.d., and because the Custodian provided the Complainant access to the requested record in the medium requested immediately after the medium conversion was completed, the Custodian did not violate N.J.S.A. 47:1A-5.e.

Informing of Record Location Instead of Providing Access:

Windish v. Mount Arlington Public Schools, GRC Complaint No. 2005-216 (August 2006). The Council held that the Custodian should have given the Complainant a copy of the Board of Education's OPRA request form instead of just informing him where he could find that information (on its website). Based on the above, the Custodian is in violation of N.J.S.A. 47:1A-1.

Langford v. City of Perth Amboy, GRC Complaint No. 2005-181 (May 2007). The Council held that the Custodian should have provided the Complainant with the requested rules instead of informing the Complainant where the requested rules are located (the Director of Human Services office). As such, the Custodian violated N.J.S.A. 47:1A-1.

Lawful Basis Required:

Schwarz v. New Jersey Department of Human Services, GRC Complaint No. 2004-60 (February 2005). Custodian did not provide specific citations to OPRA and HIPAA. Council ruled that the custodian bears the burden of proving that a denial of access is lawful pursuant to N.J.S.A. 47:1A-6. This means that specific citations to the law (OPRA or other law) that allows a denial of access are required **at the time of the denial** and must be included in the Statement of Information.

Location of Government Record Not Relevant:

Meyers v. Borough of Fair Lawn, GRC Complaint No. 2005-127 (August 2006). Requested records: E-mails from Mayor's personal e-mail account. Custodian claimed that the e-mails were not government records because they were not maintained in the custodian's files. The Council concluded that the Mayor conducted government business through a personal e-mail account, thus making those e-mails government records according to the definition of a government record in OPRA. N.J.S.A. 47:1A-1.1.

Method of Record Delivery:

O'Shea v. Township of Fredon (Sussex), GRC Complaint No. 2007-251 (April 2008). The Council held that "although the Custodian responded in writing granting access to Items No. 1 and No. 3 in a timely manner pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response is insufficient because she failed to specifically address the Complainant's preference for receipt of records. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g."

Method of Request Submission:

Paff v. City of East Orange, (App.Div. 2009). The court stated that the Custodian's refusal to accept OPRA requests via fax is reasonable but that a custodian may not exercise his/her authority under OPRA in a manner that would impose an unreasonable obstacle to the transmission of a request for a government record. The court also stated that OPRA's requirement that custodians adopt a request form authorizes custodians to direct how government records requests can be transmitted as specified in the form, which need not include every method of transmission mentioned in N.J.S.A. 47:1A-5.g.

Prevailing Party Attorney's Fees:

Teeters v. DYFS, 387 N.J. Super. 423 (App.Div. 2006). A complainant is a "prevailing party" if he/she achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. Attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed.

Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). A complainant is a "prevailing party" if he/she can demonstrate (1) 'a factual causal nexus between plaintiff's litigation and the relief ultimately achieved'; and (2) 'that the relief ultimately secured by plaintiffs had a basis in law.

Privacy Concerns:

Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Complainant sought access to "Copies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle." After conducting a balancing test, the Council found that the home addresses should be redacted from the records provided to the Complainant.

Perino v. Borough of Haddon Heights, GRC Complaint No. 2004-128 (November 2004). The Complainant requested the name, address and phone number of a citizen who filed a noise complaint with the Police Department. After conducting a balancing test, the Council held that "The Complainant's stated need for access does not outweigh the citizen's expectation of privacy. In arriving at this conclusion, the potential harm of unsolicited contact and confrontation between the citizen and the OPRA complainant and/or its agents or representatives was considered. Therefore, the name, address and phone number of the citizen who brought the complaint to the Borough's attention should remain redacted from the requested documentation."

Avin v. Borough of Oradell, GRC Complaint No. 2004-176 (March 2005). Note: This is one complaint out of seven filed by this requestor to several municipalities regarding the same or similar records. The Complainant in this case sought access to a “list of all homeowners who applied for a fire alarm or burglar alarm permit in the last 3 years.” The Council balanced the severity of the security concerns of the residents of the town against the public’s right of access under OPRA and held that the Custodian should not disclose the homeowners’ names and addresses.

Bernstein v. Borough of Allendale, GRC Complaint No. 2004-195 (July 2005). Note: This is one of six complaints filed by this requestor to several municipalities regarding the same or similar records. The Complainant in this case sought access to the names and addresses of dog license owners. The Council conducted a balancing test and held that “pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 the records should not be disclosed because of the unsolicited contact, intrusion or potential harm that may result.”

Paff v. Warren County Office of the Prosecutor, GRC Complaint No. 2007-167 (February 2008). The Complainant requested various records pertaining to State v. Philip Gentile, Indictment/Accusation No. 07-02-00060-A. After conducting a balancing test, the Council held that the redacted portions of the requested records (name and address of victim) were properly redacted due to privacy concerns pursuant to N.J.S.A. 47:1A-1.

Faulkner v. Rutgers University, GRC Complaint No. 2007-149 (May 2008). The Complainant requested names and addresses for Rutgers University football and basketball season ticket holders for 2006. After conducting a balancing test, the Council held that “the Custodian did not unlawfully deny the Complainant access to the requested season ticket holders’ lists pursuant to N.J.S.A. 47:1A-1, which states that 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.”

Burnette v. County of Bergen, 198 N.J. 408 (2009). Without ambiguity, the court held that the privacy provision “is neither a preface nor a preamble.” Rather, “the very language expressed in the privacy clause reveals its substantive nature; it does not offer reasons why OPRA was adopted, as preambles typically do; instead, it focuses on the law’s implementation.” “Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests.”

Records Previously Provided:

Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008). The Appellate Division held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. The Appellate Division noted that requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry.

Search vs. Research:

Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). The Council held that the Custodian is obligated to *search* her files to *find* the identifiable government records listed in the Complainant's OPRA request (auto accident reports for a certain period of time). The Council further held, however, that the Custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad and unclear OPRA request in accordance with the decision of MAG, supra, and NJ Builders Association, supra.

Special Service Charge:

Fisher v. Department of Law and Public Safety, Division of Law, GRC Complaint No. 2004-55 (August 2006). The Council held that a special service charge is allowed under OPRA. N.J.S.A. 47:1A-5.c. Council established a 14 factor criteria for evaluating (1) whether a special service charge is warranted and (2) whether the amount is reasonable.

Courier Post v. Lenape Regional High School, 360 N.J. Super. 191 (Law Div. 2002). The court found that the request for six and one-half years of attorneys' monthly itemized bills required an extraordinary expenditure of time and effort to accommodate the request. Therefore, a special service charge was allowed for the custodian's time.

Substantial Disruption:

Caggiano v. NJ Dept of Law & Public Safety, Div of Consumer Affairs, GRC Complaint No. 2007-69 (September 2007). The Custodian certified that an extended review of records as contemplated by the Complainant (for approximately a week) would substantially disrupt agency operations by requiring the extended attendance of a Division of Consumer Affairs employee and a NJ State Police Officer at the Complainant's inspection of the requested records. The Council stated that:

“[t]he Custodian has reasonably offered to provide the Complainant with copies of all the records responsive upon payment of the statutory copying rates, which the Complainant has declined. The Custodian has also reasonably offered the Complainant two (2) hours to inspect the seven hundred forty-five (745) pages responsive to the Complainant's request, of which the Custodian states a substantial portion are records which the Complainant himself submitted to the Division. Additionally, the Custodian has reasonably offered to accommodate the Complainant's request by charging a special service charge for the hourly rate of a Division of Consumer Affairs employee to monitor the Complainant's inspection of the requested records in the event that said inspection exceeds two (2) hours. Further, the Custodian has reasonably offered to copy the remaining records at the OPRA copying costs in the event the Complainant exceeds a reasonable amount of time for the record inspection, which the Custodian states is one (1) business day. However, the Complainant objects to paying any inspection fees, as well as a two (2) hour inspection time limit.”

The Council held that “because the Custodian has made numerous attempts to reasonably accommodate the Complainant's request but has been rejected by the Complainant, the

Custodian has not unlawfully denied access to the requested record under N.J.S.A. 47:1A-5.c. and N.J.S.A. 47:1A-5.g.

Timeliness – Lawful Basis to Extend:

John Paff v. Township of Springfield (Union), GRC Complaint No. 2008-77 (August 2009). The Council held that “although both the Custodian and the Custodian’s Counsel provided written responses to the Complainant’s OPRA request dated February 1, 2008 requesting an extension of time within the statutorily mandated seven (7) business days, said responses are inadequate pursuant to N.J.S.A. 47:1A-5.i. and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008) because they fail to provide an anticipated deadline date upon which the requested records will be provided.”

Valid OPRA Requests:

Renna v. County of Union, 2009 WL 1405572 (N.J.Super.A.D.). The court held that “the form should be used, but no request for information should be rejected if such form is not used.”