

How can I submit an OPRA request?

- Via OPRA portal: <https://essex.oprarequest.com>
- Via email: oprarequests@counsel.essexcountynj.org
- Via Fax: 973-621-2599
- Via Mail or Drop Off: Hall of Records, 465 Dr. MLK Blvd, Room 535, Newark, NJ 07102

Who is the Essex County OPRA Custodian or Records?

The current Custodian of Records can be contacted via phone at 973-621-5241 or via email at oprarequests@counsel.essexcountynj.org

The Essex County OPRA Custodian of Records is NOT the County Clerk.

What does a valid OPRA request look like?

- Has to be in writing
- Clearly states that the request is made under the Open Public Records Act

Can I request birth certificates?

No. The County of Essex does not keep birth certificates, death certificates, marriage certificates, etc. Those records can be obtained by contacting the Office of Vital Records of the municipality where the event took place.

How can I avoid submitting a broad and vague request?

- Indicate specific records
- Provide time frame of records
- Provide as much information to reference as possible

A broad and/or unclear request fails to name specific government records or requires the custodian to conduct research.

Example of an overly broad request: "Any and all records related to the construction of the new high school."

The term "records" does not reasonably identify a specific government record.

Example of a valid request: "E-mails between Jane Doe and John Smith regarding the construction of the new high school from January 1, 2009 to February 28, 2009."

This request identifies a specific type of record, parties to the correspondence, dates and subject matter.

Example of a request that requires research: "all meeting minutes from 2011 in which the Council discussed Jane Doe, Human Resource Manager."

This request is invalid because it requires the custodian to research/read through all the 2011 minutes to determine when the Council discussed Jane Doe, Human Resource Manager.

Example of a valid request: "all meeting minutes from 2011."

The requestor would then have to conduct his own research to determine which minutes contain the subjects in which he is interested.

A custodian may either deny an overly broad/unclear request or seek clarification of the request. The custodian's request for clarification must be in writing, within seven (7) business days of receipt of the request. If a custodian seeks clarification of an OPRA request, the response time clock stops until the requestor provides a response to the custodian.

Who may file an OPRA request?

Anyone! Although OPRA specifically references "citizens of this State," the Attorney General's Office advises that OPRA does not prohibit access to residents of other states.

Also, requestors may file OPRA requests anonymously without providing any personal contact information, even though space for that information appears on the form; thus, anonymous requests are permitted. However, OPRA specifically prohibits anonymous requests for victims' records. If a permissible anonymous request involves making copies and the estimated cost exceeds \$5.00, the custodian may request a deposit.

What is a "public agency" under OPRA?

Only "public agencies" are subject to the provisions of OPRA. OPRA defines a "public agency" as:

- The executive branch of state government and all independent state agencies and authorities. This includes all state colleges and universities;
- The Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch;
- All counties, municipalities, school districts, fire districts, planning and zoning boards and other county and local boards or agencies, and all independent county or local agencies and authorities established by municipal or county governments. N.J.S.A. 47:1A-1.1.

The Judicial branch of state government (including the Supreme Court of New Jersey, the Superior Court of New Jersey, the municipal courts, the Administrative Office of the Courts, and the agencies, offices, and boards under their authority) are not considered public agencies under OPRA. The Courts have adopted their own records disclosure policies and procedures.

Private businesses are not public agencies under OPRA.

What if I don't know the name of the records I want to access?

Requestors may not know the names of certain records. The spirit of OPRA implies that custodians should assist requestors with identifying the records they are seeking, although a custodian's failure to do so is not a violation of OPRA.

Records Management Services, within the New Jersey Department of Treasury, maintains listings of records which must be maintained by public agencies. These listings may aid requestors in identifying the names of the records sought. Click on the link below to access Records Management Services' website:

<https://www.nj.gov/treasury/revenue/rms/index.shtml>

Do I have to include payment with my request?

No. If there are any fees associated with a request, the records custodian will contact the requestor regarding the specific cost and instructions on how to remit payment. Requestors are not required to send payment with the request.

Can I request records in a specific medium?

Yes. OPRA provides that a custodian must permit access to a government record and provide a copy of the record(s) in the medium requested if the public agency maintains the record in that medium. If the custodian does not maintain the record in the medium requested, he/she must:

- Convert the record to the medium requested; or
- Provide the record in some other meaningful medium (meaningful to the requestor).

If the agency maintains the record in the medium requested, the custodian can only charge the actual cost of copying (such as the cost of the floppy disk or CD-ROM). However, a custodian may impose a special service charge related to conversion for:

- Extensive use of technology; and
- Labor for programming, clerical and supervisory assistance that may be required.

The special service charge must be based on the cost of the technology and labor actually incurred. This may include charges incurred by an outside vendor.

Before undertaking any conversion to another medium or taking other major actions that would result in the imposition of a special charge, the custodian must first inform the requestor that a special charge will be incurred and give the requestor the opportunity to accept or reject the extra fee. If the requestor objects to the special charge and refuses to pay it, the custodian may deny the request for access to the record. However, if the requestor is willing to pay for it, the agency has the responsibility to provide access to the government record in the requested format.

What happens if an employee other than the custodian receives my OPRA request?

OPRA permits a public agency to adopt one of two processes for when non-custodian officers or employees receive records requests. Any officer or employee of a public agency who receives a request for access to a government record may either:

- Forward the request to the agency's records custodian; or
- Direct the requestor to the agency's records custodian.

In other words, a public agency may decide to permit any employee to accept a records request to be forwarded to the appropriate custodian, or the employee may refuse to accept the request and direct the requestor to the appropriate custodian.

When should I expect a response to my OPRA request?

Custodians should respond in writing to your OPRA request as soon as possible but not later than seven (7) business days after the request is received, provided that the record is currently available and not in storage or archived. Day One (1) is the day following the custodian's receipt of the request. The Custodian's response must grant access to the records you seek, deny access to the records you seek, ask for clarification of your request or ask for an extension of time to fulfill your request.

Can the custodian take more than seven (7) business days to respond to my OPRA request?

Yes. Custodians may seek extensions of time beyond the seven (7) business day deadline for legitimate reasons (such as the record is in use or in storage). Custodians must notify the requestor in writing, within the statutorily mandated seven (7) business days and provide an anticipated deadline date upon which the records will be provided. The length of the extension must be reasonable under the circumstances. The Custodian's failure to grant or deny access to the requested records by the extended deadline date results in a deemed denial of the request.

How should I receive a response to my request?

In writing...always! It is the GRC's position that a custodian's written response, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA. The Custodian's written response must either grant access, deny access, seek clarification or request an extension of time to fulfill the request.

How much can the custodian charge me for my OPRA request?

Custodians may charge the fee prescribed by law or regulation, if another law sets a specific fee for specific record. What does this mean? This sentence means that custodians are to charge OPRA requestors any copy fees that are established by other New Jersey laws or regulations, if said fees exist.

For example, N.J.S.A. 22A:4-1a sets forth specific fees for certain records filed with the New Jersey Department of Treasury (and requested from the Department of Treasury). Specifically, said statute provides that "[i]f a roll of microfilm images is requested, the State Treasurer shall collect a fee of \$1.00 for each image on the microfilm roll." Thus, if a requestor seeks access to a microfilm roll from the Department of Treasury, the Department's custodian must charge the fees established in N.J.S.A. 22A:4-1a. The same applies for any other records that have specific fees established in other New Jersey laws or regulations.

Municipal ordinances do not qualify under OPRA as being another law or regulation.

If there is no other fee established by law or regulation, the standard copying fee is \$0.05 per page for letter sized printed pages and \$0.07 per page for legal sized printed pages. This is the most common copying fee under OPRA. For example, a custodian providing access to 3 pages of printed meeting minutes on letter size pages would charge a requestor \$0.15 (\$0.05 per page for 3 pages = \$0.15).

If a public agency can prove that its actual costs to produce printed pages are more than \$0.05/\$0.07, the agency may charge its actual costs.

Electronic records sent via e-mail or are free of charge, unless physical copies had to be made to redact or convert the records in the medium requested.

Custodians must charge the actual cost for all other materials such as CD, DVD, cassette, etc. The actual cost is the cost of the material only and cannot include any labor fees. For example, if the GRC purchased a package of 100 CD-ROMs for \$100 and provided records to a requestor on 1 CD-ROM, the actual cost of said CD-ROM is \$1.00 ($\$100 \div 100 = \1.00).

Do I have to submit a deposit?

OPRA permits the custodian to require a deposit against costs for reproducing records sought from anonymous requestors whenever the custodian anticipates that reproduction cost for the records requested will exceed \$5.00.

Additionally, custodians may require a 50% deposit when requests exceed \$25.00.

What is a special service charge?

A special service charge is essentially a labor fee that may be charged when a request is voluminous, requiring extensive time and effort, or when the request required extensive use of technology. Special services charges must be reasonable and based on actual direct cost of fulfilling the request. Actual direct cost means the hourly rate of the lowest level employee capable of fulfilling the request (no fringe benefits).

The imposition of a special service charge is extremely subjective, and the determination is made on a case-by-case basis. No special service charges can be established in advance by ordinance.

The custodian must notify the requestor in advance of the special service charge. The requestor has the right to disagree with the special service charge. If the custodian and requestor cannot reach an agreement regarding the special service charge, the request is considered denied. Complainants may challenge a custodian's special service charge by filing a Denial of Access Complaint with the Government Records Council or filing an action in the Superior Court of New Jersey.

The following is an example of a special service charge for a voluminous request:

Request: Meeting minutes from 2005 to present. There are 1,000 pages of responsive records which will take the custodian 2 ½ hours to copy. The Custodian may charge her direct hourly rate for the 2 ½ hours required to fulfill request. Custodian must estimate cost and notify requestor before fulfilling the request.

Is there a fee to convert records to a specific medium?

Maybe. Actual costs apply.

Example 1: A requestor wants a record sent via e-mail. The Custodian must scan a paper document to convert it to electronic format. The request takes the Custodian 5 minutes to complete. No charges apply.

Example 2: A requestor wants an audio recording of a meeting on CD-ROM. The Custodian copies the recording in house onto a CD-ROM the agency purchased for \$0.50. The request takes the Custodian 20 minutes to complete. The charge is \$0.50.

Example 3: A requestor wants large tax maps on CD-ROM. The Custodian does not have the capability to scan large maps and must use a third-party vendor. The vendor charges the agency \$5.00 for the service. The \$5.00 fee is passed onto requestor.

Special Note: Vendor fees are special service charges and must be approved by requestor prior to being incurred.

What can I do if a custodian denies me access to government records?

OPRA provides that a person who is denied access to a government record can choose:

- to file suit in Superior Court; or
- to file a complaint with the Government Records Council. N.J.S.A. 47:1A-6.

A requestor cannot do both.

In Superior Court, a complaint must be filed within 45 days of the denial of access. There is no statute of limitations for filing a Denial of Access Complaint with the GRC.

Additional information regarding OPRA can be found on the Government Records Council website: <https://www.state.nj.us/grc/>