

GRC Functions & Processes



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3

WHAT IS OPRA?

- The New Jersey Open Public Records Act. N.J.S.A. 47:1A-1 et. seq. ("OPRA").
- Effective July 2002, OPRA replaced the former Right to Know Law and broadly expanded the definition of a public record. Over 23 ½ Years!!!
- OPRA created the Government Records Council ("GRC"). N.J.S.A. 47:1A-7.
- OPRA authorizes a complaint process via either the GRC or Superior Court. N.J.S.A. 47:1A-6.

4

OPRA Did Not Become the Only Record Request Process in 2002

- OPRA applies to those requests where the requestor chooses to invoke the statute.
- Presently, a request *should be* on an official OPRA request form. However, use of the form is still not mandatory. N.J.S.A. 47:1A-5(f).

Are there other ways to request records?

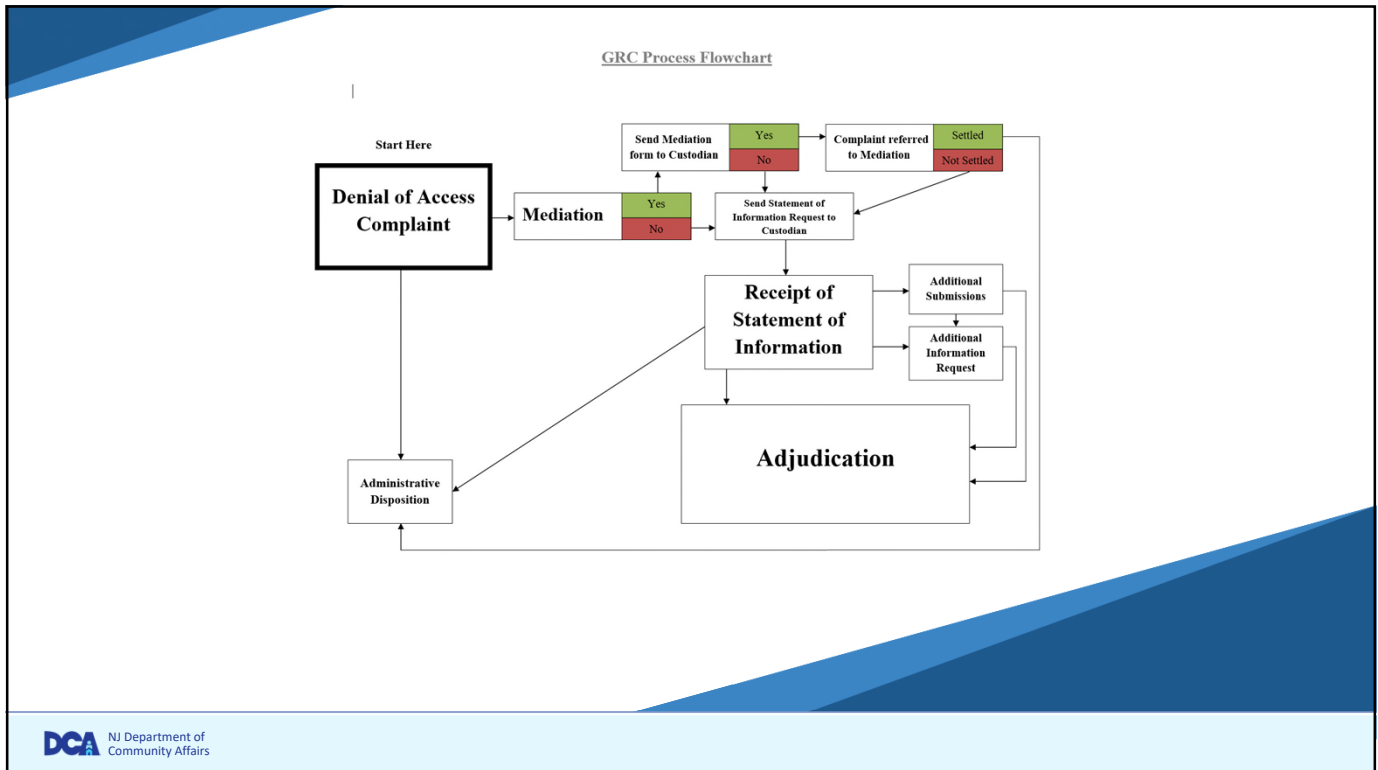
- Administrative/Informal requests (example: requestor comes to Clerk's counter and orally asks to review minutes book).
- Common law requests.
- Discovery requests, which is not the same as OPRA. Bart v. City of Passaic (Passaic), GRC 2007-162.
- Other court processes (i.e. subpoenas, court orders)
 - ❖ GRC has not adjudicatory authority

The Government Records Council

Among other duties, the GRC:

- **Adjudicates denials of access**
 - Administers a voluntary, informal mediation program
- **Operates an OPRA Hotline and General Inbox for inquiries**
- **Operates a website inclusive of extensive informational materials, manuals, FAQs, and all past Council decisions.**
- **Provides OPRA training.**

The Denial of Access Complaint Process



9

What's the Scenario

- **N.J.S.A. 47:1A-6**: A requestor alleging an unlawful denial of access has two (2) options within 45 calendar days:
 - File an action in Superior Court; or
 - File a Denial of Access Complaint (“DOAC”) with the GRC
- If the requestor chooses to file with the GRC, they must complete the Denial of Access Complaint form, attach supporting documentation, and send it to the GRC. **N.J.A.C. 5:105-2.3(a)**.
- Anonymous requestors not be permitted to file complaints either with the GRC or courts. **N.J.S.A. 47:1A-5(f)**; **N.J.S.A. 47:1A-6**.

10

The Adjudication Process

- The GRC checks to ensure the complaint is properly filed and confirms receipt in writing.
 - DOACs (and actions in Court) may now be dismissed without prejudice if the agency discloses the records sought, but attorney's fees may be awarded. N.J.S.A. 47:1A-6.

Adjudication Submissions

- Mediation – Informal, voluntary, and only when both parties agree. N.J.S.A. 47:1A-7(d); N.J.A.C. 5:105-2.5.
- Statement of Information (“SOI”) – Agency’s response to the DOAC. N.J.A.C. 5:105-2.4.
- SOI Reply – Voluntary; Complainant submits within five (5) business days after SOI receipt. N.J.A.C. 5:105-2.4(n).
- Custodian Sur-reply – Voluntary; Custodian/Counsel submits within three (3) business days after SOI reply receipt. Id.

The Adjudication Process

- The complaint goes into queue and awaits adjudication at a monthly Council meeting.
- Staff Attorney prepares a draft Administrative Disposition (“AD”); Administrative Order (“AO”); or Findings & Recommendations (“FR”).
- Executive Director conducts review and approval for tentative scheduling at a monthly Council meeting.

***Note: the GRC will not communicate with legal representation or update the service list unless same has submitted a formal letter of representation.**

N.J.A.C. 5:105-2.3(f); 2.4(f).*

The Council

13

The Council

- **Council comprised of nine (9) members N.J.S.A. 47:1A-7:**
 - **DCA Commissioner or their designee serves as Chair.**
 - **Four (4) members directly appointed by the Governor.**
 - **Two (2) members appointed from recommendations made by the Senate President.**
 - **Two (2) members appointed from recommendations made by the Assembly Speaker.**
 - **Initially three (3) years, then regular appointment process applies, and terms extend to five (5) years.**
- **Presently, the Council is composed of four (4) members.**
 - **Two (2) additional members were recently appointed from recommendations by the Assembly Speaker.**
 - **One (1) additional member was recently appointed from recommendations by the Senate President.**
- **Thus, the Council will shortly comprise seven (7) of nine (9) members.**

14

Council Decisions

- **Once a complaint has been tentatively scheduled for a monthly meeting:**
 - **The assigned Staff Attorney notifies the parties in writing of the scheduling seven (7) calendar days prior.**
 - **Parties are not required to attend the meeting, as no verbal testimony is generally permitted.**
 - **The Council is given the opportunity to review the proposed decisions and underlying case files.**
- **On meeting day:**
 - **The Council is briefed on the proposed conclusions of each decision.**
 - **Council votes to accept the conclusions, sometimes with edits/amendments, or table the complaint for additional review.**
 - **If approved, decisions are sent simultaneously to the parties after the meeting.**

Additional Functions of the GRC

To Ask or Not to Ask?

- **Inquiries**
 - The GRC can attempt to provide guidance on basic OPRA issues.
 - ❖ Toll-free: (866) 850-0511
 - ❖ Fax: (609) 633-6337
 - ❖ E-mail: Government.Records@dca.nj.gov
 - Not Legal Advice
 - Not a Decision of the Council
- Please allow 24 to 48 hours for a response.

The GRC and P.L. 2024, c. 16

- OPRA Model Request Form N.J.S.A. 47:1A-5(f); N.J.S.A. 47:1A-7:
 - Update the old model request form for new questions required by P.L. 2024, c.16.
 - All public agencies subject to OPRA required to adopt the uniform form.
 - Promulgate regulations to establish a uniform form and process that complies with OPRA.
 - Make the form available to incarcerated individuals.
- Data Compilation N.J.S.A. 47:1A-7(h):
 - The Superior Court is required to provide the GRC with a listing of all actions settled thereby.
 - The GRC is required to compile a database of that data.
 - The Administrative Office of the Courts is also required to submit to the GRC specific data regarding OPRA cases at the end of each court year.
 - <https://www.nj.gov/grc/about/court-statistics/>.
- GRC Website N.J.S.A. 47:1A-7(b):
 - The GRC is statutorily tasked with periodically reviewing its website for updates as needed.

Catch Us on the World Wide Web

<https://www.nj.gov/grc/index.shtml>

Final Thought: Elections Impact



Elections Records

N.J.S.A. 47:1A-5.3(b): Certain records require disclosure without redaction except for voter signatures, social security numbers, driver license/non-driver numbers:

- Voter Registration Forms and Change Forms.
- Party Affiliation Forms and Change Forms.
- Vote-By-Mail Applications, except as provided for in sections 3 and 13 of N.J.S.A. 19:63-1, et seq.
- Forms & Reports Submitted to the ELEC.
- Nominating Petitions “that includes voter signatures on such petitions.”
- Recall Petitions “that includes voter signatures on such petitions.”
- Public Question/Referendum Petitions “that includes voter signatures on such petitions.”
- Submissions, Responses, Objections, or Challenges pertaining to the above.
- Addendums, Amendments, Corrections, Withdrawals, or Accompanying Forms or Submissions pertaining to the above.

Elections Records

N.J.S.A. 47:1A-5.3(c): Certain records require “immediate access or transmission via e-mail as soon as possible, but not later than two business days” without charge.

- Exception: commercial purposes.

N.J.S.A. 47:1A-5.3(d): Certain records require “immediate access and transmission as soon as possible . . .” if request is made within sixteen (16) days of an election.

- If request is made by noon the day before an election, disclosure must occur by noon the day of the election.

N.J.S.A. 47:1A-5.3(e): Certain records exempt from disclosure:

- Ballots marked by vote tabulations, or election results prior to poll closing except where required to be disclosed by other law, rule, or regulation.
- Extensive election equipment records and information, except where required to be disclosed by other law, rule, regulation, or subpoena/court order.