

(j) After inspecting the documents, the Council shall announce its decision at an open public meeting and provide written notice of its decision to all parties to the complaint.

(k) During public session, anyone involved in the *in camera* inspection shall forego all mention of the specific contents of the documents. Reference shall only be made to the assigned reference number or to the general descriptions of the documents listed in the *in camera* inspection index.

(l) Upon completion of the *in camera* inspection, the Council will seal the documents and return them to the custodian.

5:105-2.9 Decisions of the Council

(a) The Council shall issue the following types of decisions:

1. Interim orders;
2. Final decisions;
3. Supplemental decisions;
4. Revised final decisions; and
5. Administrative complaint dispositions.

(b) Unless the Council directs otherwise, the Executive Director shall stipulate the effective date of the Council's decisions for purposes of calculating all deadlines set forth in a decision and calculating when motions for reconsideration and appeals must be filed.

(c) Enforcement. The Council shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.

5:105-2.10 Relief from Council decisions – reconsideration

(a) The Council, at its own discretion, may reconsider any decision it renders.

(b) Requests for reconsideration must be filed within 10 business days following receipt of a Council decision.

(c) Requests must be in writing, delivered to the Council and served on all parties.

(d) Parties must file any objection to the request for reconsideration within 10 business days following receipt of the request.

(e) The Council will provide all parties with written notification of its determination regarding the request for reconsideration.

Petition for Rulemaking.
See: 48 N.J.R. 599(a), 1319(c).
Petition for Rulemaking.
See: 49 N.J.R. 210(a).

5:105-2.11 Relief from Council decisions – appeals

(a) A final decision of the Council may be appealed to the Appellate Division of the Superior Court within 45 days from the date the decision is issued to the parties in accordance with New Jersey Rules Governing the Courts. (See N.J.S.A. 47:1A-7.e.).

(b) Prior to filing an appeal, the appealing party shall request a stay of the Council's final decision which orders disclosure of government records.

(c) A request for a stay is not required when a prevailing party complainant appeals a final decision only with regard to the amount of attorney's fees awarded.

5:105-2.12 Stays of Council's interim orders and final decisions

(a) Requests for a stay of a final decision must be in writing, delivered to the Council and simultaneously served upon all parties.

(b) Parties must file any objection to the request for a stay from a final decision within 10 business days following receipt of the request.

(c) The Executive Director may grant a stay from a final decision based on consideration of the request and any objection to the request submitted to the Council.

(d) Requests for a stay of the effective date of a Council's interim orders must be made prior to the last day by which action was to have been taken in accordance with the Council's decision. Appeals of interim orders may be made to the Appellate Division of New Jersey Superior Court in accordance with N.J. Court Rule 2:5-6.

1. Requests must be in writing, delivered to the Council and simultaneously served upon all parties.

2. Parties must file any objection to the request for a stay from an interim order within 10 business days following receipt of the request.

(e) The Executive Director may grant a stay of an interim order for the period of time requested, but in no event for a period of time longer than the date of the next regularly scheduled meeting of the Council.

(f) A request for a stay of interim orders or final decisions must be in writing and include a detailed analysis of the issue(s), which includes an analysis of the following factors that the Council will include in its decision-making process:

1. The clear likelihood of success on the merits of the claim;

2. The danger of irreparable harm in the absence of a stay;

3. The harm to others if a stay is not granted; and
4. The public interest.

5:105-2.13 Prevailing party attorney's fees

(a) Reasonable attorney's fees shall be awarded when the requestor is successful (or partially successful) in obtaining access to government records after a denial of access complaint filed with the Council, access was improperly denied and the requested records are disclosed pursuant to a determination of the Council or voluntary settlement agreement between the parties.

(b) The complainant, or his or her attorney, shall submit an application to the Council for an award of attorney's fees within 20 business days following the effective date of a decision by the Council or a voluntary settlement agreement. The application must include a certification from the attorney(s) representing the complainant that includes:

1. The Council's complaint reference name and number;
2. Law firm affiliation;
3. A statement of client representation;
4. The hourly rates of all attorneys and support staff involved in the complaint;
5. Copies of weekly time sheets for each professional involved in the complaint, which includes detailed descriptions of all activities attributable to the project in 0.1 hour (six-minute) increments;
6. Evidence that the rates charged are in accordance with prevailing market rates in the relevant community. Such evidence shall include:
 - i. Years of related or similar experience;
 - ii. Skill level; and
 - iii. Reputation; and
7. A detailed listing of any expense reimbursements with supporting documentation for such costs.

(c) The complainant, or his or her attorney, must serve all parties with the application for attorney's fees and all attachments thereto.

(d) The custodian shall have 10 business days from the date of service to object to the attorney's fees requested.

(e) All objections to applications for attorney's fees must be in writing to the Council and served upon all the parties.

(f) The Council shall:

1. Consider all submissions of the parties concerning the attorney's fees application;

2. Determine the amount of reasonable attorney's fees to be awarded to complainant's attorney; and

3. Predicate the attorney's fees award upon the number of hours and rate based on:

- i. Applicable law;
- ii. Submissions of the parties; and
- iii. The Council's own discretion.

5:105-2.14 Knowing and willful violations of the Act; penalties

(a) Public officials, officers, employees or custodians who knowingly and willfully violate the Act and are found to have unreasonably denied access under the totality of the circumstances shall be subject to a civil penalty pursuant to N.J.S.A. 47:1A-11.

(b) Penalty amounts are as follows:

1. \$1,000 for initial violation;
2. \$2,500 for a second violation that occurs within ten (10) years of an initial violation; and
3. \$5,000 for a third violation that occurs within ten (10) years of an initial violation.

(c) The Council shall not impose a penalty unless it has undertaken, or caused the Office of Administrative Law to have undertaken, an expedited or summary hearing to determine whether a public official, officer, employee or custodian knowingly and willfully violated the Act and unreasonably denied access under the totality of the circumstances.

(d) Penalties shall be collected and enforced in proceedings in accordance with the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq., and the rules of court governing actions for the collection of civil penalties.

(e) The New Jersey Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the penalty imposed by the Council.

(f) Appropriate disciplinary proceedings may be initiated by a public agency against a public official, officer, employee or custodian against whom a penalty has been imposed.

SUBCHAPTER 3. INQUIRIES

5:105-3.1 Inquiries

(a) Any person may telephone or write the Council with a request for information regarding the Act and Council procedures. All written communications to the Council shall be dated, state the name of the sender, the street and/or P.O. Box address of the sender, and the facsimile number or e-mail address to which replies shall be sent.