

CHAPTER 105**COMPLAINT ADJUDICATION AND
OPEN PUBLIC RECORDS ACT (OPRA)
INFORMATION INQUIRY PROCEDURES****Authority**

N.J.S.A. 47:1A-7 and 52:14B-3.

Source and Effective Date

R.2008 d.115, effective May 5, 2008.
See: 39 N.J.R. 1557(a), 40 N.J.R. 2237(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 105, Complaint Adjudication and Open Public Records Act (OPRA) Information Inquiry Procedures, expires on May 5, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 105, Complaint Adjudication and Open Public Records Act (OPRA) Information Inquiry Procedures, was adopted as new rules by R.2008 d.115, effective May 5, 2008. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**5:105-1.1 Purpose and scope**

(a) The rules in this chapter are for the purpose of establishing procedures for the consideration of complaints

filed pursuant to the Act, and for the benefit of any person seeking to utilize the Council as an information resource for understanding the Act and/or the functions of the Council.

(b) Any aspect of the adjudicatory process for denial of access complaints not covered by this chapter shall be governed by the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. To the extent that these rules are inconsistent with the Administrative Procedures Act and Uniform Administrative Procedure Rules, the rules in this chapter shall apply.

5:105-1.2 Construction of the rules

The rules in this chapter shall be liberally construed to permit the Council to discharge its statutory function.

5:105-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" or "OPRA" means the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

"Administrative Complaint Disposition" means a decision of the Council as to whether to accept or reject the Executive Director's recommendation of dismissal based on jurisdictional, procedural or other defects of the complaint.

"Advisory opinion" means an opinion issued by the Council regarding the accessibility of a particular record as a government record pursuant to N.J.S.A. 47:1A-7.b.

"Chairperson" means the presiding officer of the Government Records Council.

"Complaint" or "OPRA Complaint" means a denial of access complaint submitted to the Council on a form authorized by the Council in which a requestor claims that a custodian has unlawfully denied the requestor access to a government record.

"Complainant" means a person who made an OPRA request of a public agency and filed a denial of access complaint with the Council.

"Custodian of a Government Record" or "Custodian" means in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be.

"Effective date" means the date upon which the Council renders a decision related to a matter awaiting adjudication, or such other date upon which the Council desires to make a decision effective.

"Fair preponderance of the credible evidence" means superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

"Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof pursuant to N.J.S.A. 47:1A-1.1.

"Government Records Council" or "Council" means the public agency established by the Act to adjudicate denial of access complaints and provide information regarding the Act and the Council to requestors of government records, custodians and the general public pursuant to N.J.S.A. 47:1A-7.a.

"Hearing Officer" means a Council member, or the Executive Director, who receives testimony and documentary evidence regarding a denial of access complaint, inspects records or receives testimony *in camera*, and assembles a record of those proceedings for later review and adjudication by the Council.

"*In camera*" or "*in camera* inspection" means a proceeding in which the Council or hearing officer inspects a government record and receives testimony, if any is necessary for the Council to determine whether the record requested by the complainant should be publicly accessible under the Act over the custodian's objection or claim that the record is exempt from disclosure by virtue of a provision in the Act, or other applicable law.

"Inquiry" means a request from the public or a custodian, submitted to the Council in writing or from the toll-free helpline, for information regarding or assistance with the Act, the Council, and issues and matters regarding access to government records.

"Interim order" means an order issued by the Council requiring the records custodian or the complainant to perform some act in accordance with OPRA the compliance of which must be reported back to the Council.

"Letter of Representation" means a letter submitted to the Council by a person representing a party in a proceeding before the Council.

"Mediation" means an informal, non-adversarial process led by a mediator and having the objective of helping the parties to a denial of access complaint reach a mutually

acceptable, voluntary agreement pursuant to N.J.S.A. 47:1A-7.b., 47:1A-7.d. and 47:1A-7.e.

"Mediation Settlement Agreement" means a written agreement between the complainant and the custodian reached during the mediation process memorializing a resolution of some or all of the issues presented during the mediation process.

"Mediator" means a neutral person who is trained in dispute resolution techniques and who was selected by the Council to intervene between parties to a denial of access complaint in an effort to help them resolve their differences pursuant to N.J.S.A. 47:1A-7.b.

"Party" means a complainant or custodian.

"Penalty" means the civil penalty which may be imposed upon an official, officer, employee or custodian who knowingly and willfully violates the Act, and is found to have unreasonably denied access to the requested government record under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.

"Person" means natural person, partnership, corporation, limited liability company, association or society.

"*Prima facie* evidence" means evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.

"Public agency" or "agency" means any of the principal departments in the executive branch of State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the legislature of the State and any office, board, bureau or commission within or created by the legislative branch; and any independent State authority, commission, instrumentality or agency pursuant to N.J.S.A. 47:1A-1.1. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

"Representative" means a person who has the authority from the Council or the State of New Jersey to represent a party in a proceeding before the Council.

"Requestor" means a person who delivers to a public agency an OPRA request to copy, examine or inspect a government record pursuant to the Act.

"Secretary" means Secretary of the Council.

"Staff" or "Council staff" means the professional and clerical staff that the Council may employ as it deems necessary pursuant to N.J.S.A. 47:1A-7.a.