

- I. Is it a public record?
- A. Definition: A "government record" or "record" means any record in any form or medium, that has been made, maintained or kept on file in the course of his/hers or its official business by any State, local or regionally funded agency, including school boards. N.J.S.A. 47:1A-1.1.
- B. Items that are exempt from public records definition
1. Inter-agency or intra-agency advisory, consultative, or deliberative material (ACD). This would include documents concerning a subject where there has yet to be official agency action. ACD must contain opinions, recommendations or advice.
 - DCA offers the following examples of ACD exceptions, including:
Recommendations, draft documents, proposals, suggestions, and other subjective documents that reflect the personal opinions of the writer rather than the adopted policy of the public agency. The ACD exception does not include purely factual material. If factual materials are contained in a document that also contains advisory, consultative or deliberative materials, then, to the extent that the factual materials can be separated from the deliberative materials, the factual materials should be supplied. N.J.S.A. 47:1A-1.1
 2. Items that are considered government records under the law but are exempt from disclosure.
 - Trade secrets and proprietary commercial or financial information obtained from any source. Trade secrets shall include data processing software obtained by a public body under a licensing agreement that prohibits its disclosure. N.J.S.A. 47:1A-1.1.
 - Any record within the attorney-client privilege. This does not include attorney- billing records where such bills or invoices have been redacted to remove any information protected by the attorney-client privilege. N.J.S.A. 47:1A-1.1
 - Administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security. N.J.S.A. 47:1A-1.1.
 - Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein, including security measures and surveillance techniques which, if disclosed, would create a risk

to the safety of persons, property, electronic data or software. N.J.S.A. 47:1A-1.1.

- Information which, if disclosed, would give an advantage to competitors or bidders. N.J.S.A. 47:1A-1.1.
- Information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position. N.J.S.A. 47:1A-1.1.
- Communications between a public agency and its insurance carrier, administrative service organization or risk management office. N.J.S.A. 47:1A-1.1.
- Information which is to be kept confidential pursuant to court order. N.J.S.A. 47:1A-1.1 .
- That portion of any document which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the Division of Motor Vehicles as permitted by law; and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited. N.J.S.A. 47:1A-1.1.
- A citizen's personal information with which an agency has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy. N.J.S.A. 47:1A-1.
- Other personnel and pension records information including but not limited to: records relating to any grievance filed by or against an individual, and any detailed medical or psychological information. N.J.S.A. 47:1A-10
- Any other exemption according to statute resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor;

Executive Order of the Governor; Rules of Court or judicial case law; any federal law; federal regulation; or federal order. N.J.S.A. 47:1A-1.1.

II. Timelines for access to public records

A. Immediate Access

- Must be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information. N.J.S.A. 47:1A-5e.

B. Seven Days

- All other types of records access must be given or give a date to the requestor by which the record will be produced, if it is currently unavailable because it is archived or in storage. N.J.S.A. 47:1A-5i.

C. Longer than Seven days (Extremely rare circumstance)

- If the requestor has elected not to provide a name, address, or telephone number, or other means of contacting the requestor. If a means of contacting the requestor has not been provided, then the custodian need not respond until the requestor reappears seeking a response to the request. N.J.S.A. 47:1A-5i.

III. What fees can be charged

A. Printed Material

1. Statutory fee

Pages 1 through 10 \$.75/page

Pages 11 through 20 \$.50/page

All pages after 20 \$.25/page

2. If the actual cost, defined as materials and supplies, exceeds statutory rate, then actual cost may be charged

3. For overly-burdensome printed material requests, special service fee may be charged on top of actual costs.

- Examples: Where the nature, format, manner of collection or volume of records to be inspected or copied is such that:

- The record cannot be reproduced using ordinary equipment, in ordinary business size (e.g. a map or plat)

- Complying with the request involves an extraordinary expenditure of time and effort.

B. Non-printed materials

1. For a record embodied in a form other than printed matter, an agency may only charge the “actual” cost of duplicating the record. This cost includes only the cost of materials and supplies used to make the copy. An agency cannot charge for labor or the other overhead expenses of making the copy.
2. EXCEPTION--A special reasonable charge, based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both. Only to be used for those records that are:
 - In a medium not routinely used by the agency;
 - Not routinely developed or maintained by an agency; or,
 - Requiring a substantial amount of manipulation or programming of information technology.

C. Special Service Fee Rules

1. Custodian must first inform the requestor that a special charge will be incurred
2. Give the requester the opportunity to accept or reject the special charge. If the requester objects to the special charge and refuses to pay it, the custodian may deny the request for access to the record. However, if the requester is willing to pay for it, the agency has the responsibility to provide access to the government record in the unsupported format.

D. Deposit of Fees

1. Only permitted when requestor wishes to remain anonymous
2. Deposit of \$5.00 may be required when cost estimated to exceed that amount
3. Law does not clearly address deposits in other circumstances