

AGRICULTURE

DIVISION OF ADMINISTRATION

Government Records; Confidentiality of Records

Proposed New Rules: N.J.A.C. 2:1-5 and 6

Authorized By: State Board of Agriculture and Charles M. Kuperus, Secretary, Department of Agriculture

Authority: N.J.S.A. 4:1-11, 52:14B-3(1) and (2); 52:14B-4(b) and 47:1A-1, and Executive Order 9.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2002-

Submit written comments by _____ to:

John J. Gallagher, Director
Division of Administration
N.J. Department of Agriculture
PO Box 330
Trenton, NJ 08625-0330
Tel. (609) 292-6931
Fax (609) 292-9549

The agency proposal follows:

Summary

On January 8, 2002, the Legislature passed and the Acting Governor approved P.L. 2001, c. 404, known as the Open Public Records Act, which enacted changes in the law concerning public access to government records. The law will be effective July 7, 2002. This law expands the public's right of access to government records and facilitates the way in which that access is provided by the custodian of those records. Section 18 of the law authorizes public agencies to take anticipatory administrative action in advance as may be necessary for the smooth and efficient implementation of the act. The Department of Agriculture proposes rules establishing the process by which members of the public may seek access to government records in the possession or control of the Department or agencies within the Department under the revised law. The act requires the custodian of government records of a public agency to adopt a form for providing public access to government records. The proposed rules in Subchapter 5 establish a process to be followed by members of the public who seek access to government records held or controlled by agencies within the Department.

The act provides that all government records shall be subject to public access unless exempt from such access by: P.L. 1963, c.73 as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Rules of Court; any Federal law, Federal regulation or Federal order. The Secretary, pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), proposes to classify as exempt from public access certain records held or controlled by the Department or agencies within the Department. The act also provides that a public agency should be mindful of the need to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy. The rules proposed in Subchapters 5 and 6 are designed to serve both these legislative policies by facilitating public access to government records while at the same time balancing citizens' reasonable expectations of privacy and the integrity and effectiveness of governmental operations.

Subchapter 5 Government Records

Proposed new N.J.A.C. 5.1 states the scope and applicability of the rules contained in the subchapter. These new rules apply to agencies under the supervision of the Secretary and those not under the supervision of the Secretary, commonly known as in-but-not-of agencies.

Proposed new N.J.A.C. 5.2 provides that the Secretary will designate a person to be records custodian of the Department and a person to be records custodian of the State Agriculture Development Committee (hereinafter referred to as "Committee"). The addresses of both custodians of record are set out in this rule and will be made available to the public by posting on the Department web site.

Proposed new N.J.A.C. 5.3 provides that all requests for access to government records under the public access to government records law must be on a form approved by the Department. The requestor will be asked to provide certain information on the form, including a name, address and telephone number; a brief description of the records requested, type of access (examination, inspection or copying) and medium requested; and the requestor's signature and date submitted to the proper custodian. The form will also provide space for specific directions and procedures for requesting a government record; which records will be made available; when the record will be available; the fee to be charged; the amount of pre-payment of fees that is required; a statement of the requestor's right to challenge a denial and the procedures for challenging a denial; whether the requestor has agreed to grant an extension of time; the toll free number of the Government Records Council; the custodian to sign and date; and reasons if access is denied. Copies of the form will be available at Department and Committee offices and on the Department web site.

Proposed new N.J.A.C. 5.4 establishes the procedure for submitting requests for access to government records. Forms may be hand-delivered during normal business hours, mailed or e-mailed to the appropriate custodian. All requests must be delivered to the appropriate custodian of records in order to trigger the requirements of the public access to government records law. Upon receipt of the form, the custodian will review it for clarity and completeness and will advise the requestor of any deficiencies or request additional information, provided the requestor has included contact information. Requests for records will be assigned a number which will be used to track the request and respond to inquiries. The custodian will estimate the fee, including the cost of any special form of mailing requested. A request shall not be deemed complete until any required pre-payment is received by the appropriate custodian. A requestor will also be required to pre-pay any special mailing or delivery costs such as UPS or express mail. A requestor will not be charged for ordinary mailing costs. There is no charge for merely inspecting records.

Proposed new N.J.A.C. 5.5 provides that the balance of any fee over and above the estimated pre-paid fee is due on delivery of the record.

Proposed new N.J.A.C. 5.6 specifies the records for which a citizen is ordinarily entitled to immediate access. These documents include budgets, bills, vouchers, contracts and public employee salary and overtime information.

Proposed new N.J.A.C. 5.7 provides that, except as otherwise provided by law, if the custodian fails to grant access to a government record within seven business days after the custodian receives the completed request or such other time as may be required under the law or may be agreed upon, the failure will be deemed a denial of the request for access. As provided in the statute, a custodian need not respond to an anonymous request until the requestor reappears before the custodian.

Proposed new N.J.A.C. 5.8 provides that if requested records are stored in an offsite facility outside of the regular business office of the agency, the custodian will advise the requestor of the date the records will be available and the estimated cost within seven business days of receipt of the request form. This section codifies the requirements of the statute.

Proposed new N.J.A.C. 5.9 codifies the requirements of the statute concerning delivery of records in the medium requested. The custodian will deliver the record in the medium requested unless the agency does not maintain the record in that medium and cannot reasonably convert it. In such a case, the custodian will advise the requestor of the cost of providing the record in the medium requested. Such charge may include labor.

Proposed new N.J.A.C. 5.10 deals with the computation of time. Consistent with statutes, court rules and case law, it provides that in computing the time period for granting access, the day the request is received is not included in the computation, but the last day of the period so computed is to be included. This section also clarifies that a request is not complete until all necessary information is provided by the requestor and all applicable fees are paid.

Subchapter 6. Confidentiality of Records

Proposed new subchapter 6 contains a list of records deemed by the Secretary to be confidential and not subject to public access under the provisions of N.J.S.A. 47:1A-1 et seq. as amended and supplemented. This subchapter is proposed under the authority of N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963).

Under authority of the statute, that Executive Order authorized the head or principal executive of each principal department of State government to adopt and promulgate regulations setting forth which records of the department shall not be deemed public records. The regulations apply to all divisions within the department as well as those assigned or allocated to the department, commonly known as in-but-not-of agencies. Proposed new N.J.A.C. 6.1 describes the scope and applicability of the subchapter.

Proposed new N.J.A.C. 6.2 sets forth those records of the Department and the Committee that are not deemed government records for the purposes of N.J.S.A. 47:1A-1 et seq. as amended and supplemented and establishes the responsibility for access to records of the department held by the Office of Information Technology (OIT), the State Records Center of the Division of Archives and Records Management of the Department of State, or in an offsite storage facility outside of the regular business office of the agency, and furthermore, institutes legal custody of, and responsibility for access to, records of the Department transferred to the State Archives. The following is a list of the records of the Department that are not deemed government records for the purposes of N.J.S.A. 47:1A-1 et seq., and an explanation of why it is in the public interest for that record to be confidential.

- 1) Emergency management information or procedures which, if disclosed, would jeopardize emergency operations security or response, including, but not limited to, inventories of emergency resources and any policies or plans compiled or kept by the Department for responding to emergencies.

The Department has emergency management and emergency response plans which will be implemented in the event of an emergency affecting agricultural resources, such as an outbreak of foot-and-mouth disease. Disclosure of certain aspects of these plans could impair the security of the Department's response to the emergency.

- 2) Compilations of information which could be used to further bioterrorist activity, including, but not limited to, locations of individual farms and agribusinesses; infrastructures; types of production; food distribution warehouses and sites and terminal markets; food distribution methods and routes.

Compilations or lists of this nature, which reveal the location of a large number of agricultural resources, food supply or farm locations, pose a particular potential that they will be used to assist bioterrorists.

- 3) Information concerning individual farms and agribusinesses which is required to be exempt from public information under a memorandum of understanding or other agreement with the United States Department of Agriculture or other federal entity.

The United States Department of Agriculture provides a number of grants and other resources to the Department of Agriculture, which uses them to carry out its functions. The proposed exclusion would apply to information which is compiled or received by the Department pursuant to an agreement with the United States Department of Agriculture, which the United States Department of Agriculture requires to be kept confidential. Disclosure of this information would impair the ability of the Department to take advantage of programs provided by the United States Department of Agriculture.

The following is a list of the records of the State Agriculture Development Committee that are not deemed government records for the purposes of N.J.S.A. 47:1A-1 et seq., and an explanation of why it is in the public interest for that record to be confidential.

1. All applications, correspondence, appraisals, agreements, and internal memoranda for, and relating to, the acquisition of farmland in fee simple prior to the Committee's certification of the fee simple value of the farmland or prior to the execution of a written binding contract between the Committee and the owner of the land, whichever occurs later; however any information regarding the value of deed-restricted farmland ("after-value") shall be confidential until a written binding contract has been entered into between the Committee and a purchaser of the farmland for the resale of the land.

The Committee accepts applications from landowners interested in selling their land in fee simple to the Committee for farmland preservation purposes. If disclosed, the application, as well as the Committee's correspondence, appraisals, agreements, and internal memoranda related to the land acquisition, could give other parties interested in acquiring the same land a competitive advantage over the Committee. Disclosure of appraisal information and internal memorandums could also adversely affect the ability of the Committee to engage in effective negotiations with sellers.

After the Committee approves an application and negotiates a purchase price with a landowner, it enters into a written contract with the landowner. The purchase price in the contract is subject to the Committee certifying the fee simple value of the land at an amount equal to or greater than the purchase price. If the Committee certifies the fee simple value of the land at a value equal to or greater than the purchase price, the contract becomes binding. At that point, all of the documents mentioned in this exemption can be made public.

After the Committee purchases a farm, it re-sells it at auction with deed restrictions to preserve the land as agricultural land. The Committee establishes a minimum bid based upon the appraised value of the deed-restricted land ("after-value"). Information related to the after-value needs to be kept confidential to protect the Committee's ability to auction the farm. Once the Committee has entered into a written binding contract with a purchaser, such information can become public.

2. All applications, correspondence, appraisals, agreements, and internal memoranda for, and relating to, the Committee's acquisition of development easements on farmland prior to the Committee's certification of the value of the development easement or prior to the execution of a written binding contract between the Committee and the owner of the land from which the development easement is being conveyed, whichever occurs later.

The reason for this exemption is the same as the reason for excluding information relating to the Committee's acquisition of farmland in fee simple. The exemption pertains to the Committee's acquisition of development easements on farms. The Committee uses the same process for these acquisitions as it does for acquisitions of land in fee simple.

3 & 4. Appraisals given to the Committee by County Agriculture Development Boards in connection with the Boards' applications to the Committee for grants for the acquisition of development easements on farmland, prior to the Committee's opening of confidential offers submitted by landowners pursuant to N.J.A.C. 2:76-6.9.

Values of development easements certified by the Committee pursuant to N.J.A.C. 2:76-6.8 prior to the Committee's opening of confidential offers submitted by landowners pursuant to N.J.A.C. 2:76-6.9.

The Committee provides grants to counties for the purchase of development easements. The counties commission appraisals for each easement application and submit the appraisals to the Committee. The Committee then certifies a value for each easement pursuant to its regulations. After the Committee certifies a value, each landowner receives the certified value for his/her farm, and submits a confidential offer. Landowners may submit an offer to receive less than the certified value for their development easement ("discount"). This confidential bidding process is competitive, as the more the landowner discounts his offer, the greater his chance of having his easement purchased by the county. The appraisals and certified values need to be kept confidential until the Committee opens the confidential offers, as the applicants are competing against each other for limited funding. Knowledge of the values of other applicants could provide a competitive advantage in the confidential offer process.

5. Maps and documents identifying specific properties which the Committee intends to preserve pursuant to its fee simple or direct easement acquisition programs.

If the public knows the farms that the Committee intends to preserve, other parties, including developers or

real estate speculators, could make competing offers to landowners and impair the Committee's ability to preserve those farms.

6. All material and information disclosed during mediation pursuant to N.J.A.C. 2:76-18-1 et seq., including statements made during the mediation process, and records, reports, notes or other documents reviewed, received, or prepared by the mediator during the course of the mediation process.

The Committee received a grant from the United States Department of Agriculture (USDA) to establish and administer a mediation program in which the Committee will provide mediators to facilitate the resolution of conflicts between farmers and persons aggrieved by the farmer's agricultural operation. As a condition of the grant and the written grant agreement with the USDA, the Committee is required to ensure that the information listed in the exemption be kept confidential. Presumably, this is to protect the rights and positions of the parties involved in the conflict if the conflict is not successfully mediated and is later litigated in court. Regardless of whether a mediation is covered by USDA agreement, it is common practice to keep mediation materials private, and participants in general have an expectation that information revealed during mediation will not be publicly disclosed.

Because a 60-day comment period has been provided on this notice of proposal, this notice is excepted from the rulemaking calendar requirement of N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules implement the requirements of N.J.S.A. 47:1A-1 et seq. as amended and supplemented by P.L. 2001, c.404. The proposed new rules will have a positive social impact by establishing a procedure for public access to government records held or controlled by the Department of Agriculture. The law requires that government records be readily accessible for inspection, copying or examination by citizens of this State unless exempt by law or regulation, but also calls upon a public agency to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure would violate the citizen's reasonable expectation of privacy. These proposed new rules attempt to balance the competing policies in the statute and to exclude records where it would not be in the public interest to permit indiscriminate disclosure or copying of certain records. The proposed new rules also provide safeguards to protect the Department's preparations to support the safety of agricultural crops and livestock from bioterrorist activity and to protect certain individual rights and processes associated with the preservation of farmland in the state.

Economic Impact

The proposed new rules will not have an economic impact on the public in excess of that provided by the statute. Persons requesting copies of government records will be required to pay the fees authorized by the statute for copies of records. The proposed rules do not impose any additional costs. The cost incurred will depend on the type and volume of records requested and the medium of delivery.

The Department, however, will incur costs in processing requests for access to government records in the time set by the Act.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal standards. The Federal Freedom of Information Act, 5 U.S.C. 550a et seq., does not apply to records of State government and does not constitute a Federal standard.

Jobs Impact

The proposed new rules will not have an impact on the number of jobs generated or lost in the private sector in New Jersey. It may, however, require public agencies in this State to increase the number of employees designated to respond to requests for public access.

Agriculture Industry Impact

The proposed new rules will not have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules do not impose reporting or recordkeeping requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose compliance requirements on all persons seeking access to government records pursuant to N.J.S.A. 47:1A-1 et seq. as amended and supplemented. All persons, including small businesses, will be required to submit requests for access to government records on a form approved by the Department. The statute requires the custodian of records to adopt a form for access to records. The statute authorizes fees for copies of government records. There is no exception for small businesses. The cost depends on the number of copies requested. The proposed new rules provide that the fee will be the maximum set forth in the statute or a fee authorized by the statute that does not exceed the actual cost of providing the record. The cost to the department of providing the record does not depend on whether the requestor is a small business.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

SUBCHAPTER 5 GOVERNMENT RECORDS

5.1 Scope and applicability

The rules in this subchapter apply to the Department of Agriculture and all divisions and agencies in the Department, including those agencies allocated to the Department to satisfy the requirements of Article V, Section 4, Paragraph 1 of the New Jersey Constitution, commonly known as “in but not of” agencies.

5.2 Custodian of records

- (a) Pursuant to P.L. 2001, c. 404, the Secretary shall designate a custodian of records for the Department of Agriculture and for the State Agriculture Development Committee (hereinafter referred to as “Committee”) who shall be responsible for requests for access to government records of the Department and the Committee, respectively.

(b) The address and other contact information for each records custodian shall be posted on the Department of Agriculture’s web site and otherwise made available to the public. The contact information for the Department is:

Attention: Director of Administration
 New Jersey Department of Agriculture
 Market and New Warren Streets
 P.O. Box 330
 Trenton, New Jersey 08625-0330.

The email address for the Department is NJDACustodian@ag.state.nj.us.

The contact information for the Committee is:

Records Custodian
 State Agriculture Development Committee
 Market and New Warren Streets
 P.O. Box 330
 Trenton, New Jersey 08625-0330

The email address for the Committee is SADCCustodian@ag.state.nj.us.

5.3 Requests for government records

(a) All requests for access to government records pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented, held or controlled by the Department of Agriculture or a Division or agency thereof, shall be in writing on a form approved by the Department. For the purposes of this chapter, access means inspection, examination or copying.

(b) The requestor shall be requested to provide the following information on the form:

1. The name, address, and telephone number of the requestor;
2. A description of the government record sought, method of access and if copies are sought, the medium requested and mode of delivery; and
3. The date submitted to the division or agency custodian.

(c) The request form shall also include an identified space for:

1. The custodian to indicate whether the request is granted or denied;
2. Specific directions and procedures for requesting a record;
3. A statement that pre-payment of fees is required and the fees to be charged;
4. The time period within which the public agency is required to make the record available;
5. The custodian to sign and date the form;
6. A statement of the requestor's right to challenge a decision by the custodian to deny access;

7. The reasons for a denial of a request, in whole or in part;
8. The procedures for challenging a denial of access;
9. The custodian to indicate whether the requestor has agreed to grant an extension of time;
10. The toll free number of the Government Records Council.

(d) Copies of the request form shall be available at the office of the Department custodian, all division and agency offices, on the department web site, and division or agency website, if any.



State of New Jersey
Department of Agriculture



GOVERNMENT RECORDS REQUEST FORM

Important Notice

The reverse side of this form contains important information related to your rights concerning government records. Please read it carefully. In addition, please note that you may complete and submit requests electronically on the Internet at www.nj.gov/opra.

Requestor Information – Please Print

First Name _____ MI _____ Last Name _____
 Company _____
 Mailing Address _____
 City _____ State _____ Zip _____ Email _____
 Business Hours Telephone: Area Code _____ Number _____ Extension _____
 Preferred Delivery: Pick Up _____ US Mail _____ On Site Inspect _____
Circle One: Under penalty of N.J.S.A. 2C:28-3, I certify that I **HAVE / HAVE NOT** been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.
 Signature _____ Date _____

Payment Information

Maximum Authorization
 Cost \$ _____
 Select Payment Method
 Cash ___ Check ___ Money Order ___
 Fees: Pages 1-10 @ \$0.75
 Pages 11-20 @ \$0.50
 Pages 21 - @ \$0.25
 Delivery : Delivery / postage fees additional depending upon delivery type.
 Extras: Extraordinary service fees dependent upon request.

Record Request Information: To expedite the request, be as specific as possible in describing the records being requested. Also, please include the type of access requested (copying or inspection), and if data, the medium requested.

STATE USE ONLY

Est. Document Cost _____
 Est. Delivery Cost _____
 Est. Extras Cost _____
 Total Est. Cost _____
 Deposit Amount _____
 Estimated Balance _____
 Deposit Date _____

STATE USE ONLY

Disposition Notes
 Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.
 In Progress - Open _____
 Denied - Closed _____
 Filled - Closed _____
 Partial - Closed _____

STATE USE ONLY

Tracking Information		Final Cost	
Tracking #	_____	Total	_____
Rec'd Date	_____	Deposit	_____
Ready Date	_____	Balance Due	_____
Total Pages	_____	Balance Paid	_____
Records Provided			
Custodian Signature _____		Date _____	

1. In order to request access to government records under OPRA, you must complete all the required portions of and date this request form and deliver it in person during regular business hours or by mail, fax or electronically to the appropriate custodian of the record requested. Your request is not considered filed until the appropriate custodian of the record requested has received a completed request form. If you submit the request form to any other officer or employee of the *Department of Agriculture*, that officer or employee does not have the authority to accept your request form on behalf of the *Department of Agriculture* and you will be directed to the appropriate division custodian. Descriptions of the divisions and agencies of the *Department of Agriculture* can be found at www.state.nj.us/agriculture.
2. If you submit a request for access to government records to someone other than the appropriate custodian, do not complete the *Department of Agriculture* request form, or attempt to make a request for access by telephone or fax; the Open Public Records Act and its deadlines, restrictions and remedies will not apply to your request.
3. The fees for duplication of a government record in printed form are listed on the front of this form. We will notify you of any special charges, special service charges or other additional charges authorized by State law or regulation before processing your request. *Payment shall be made by cash, check or money order* payable to the *State of New Jersey*.
4. If it is necessary for the records custodian to contact you concerning your request, providing identifying information, such as your name, address and telephone number or an e-mail address is required. Where contact is not necessary, anonymous requests are permitted; except that anonymous requests for personal information are not honored.
5. *A 50% deposit must accompany requests with estimated fees exceeding \$25*. Anonymous requests, when permitted, require a deposit of 100% of estimated fees. You agree to pay the balance due upon delivery of the records.
6. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, and who is seeking government records containing personal information pertaining to the person's victim or the victim's family.
7. By law, the *Department of Agriculture* must notify you that it grants or denies a request for access to government records within seven business days after the custodian of the record requested receives the request, provided that the record is currently available and not in storage. If the record requested is not currently available or is in storage, the custodian will advise you within seven business days when the record can be made available and the estimated cost. You may agree with the custodian to extend the time for making records available, or granting or denying your request.
8. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
9. If the *Department of Agriculture* is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form and send you a signed and dated copy.
10. Except as otherwise provided by law or by agreement with the requester, if the custodian of the record requested fails to respond to you within seven business days of receiving a request form, the failure to respond will be considered a denial of your request.
11. If your request for access to a government record has been denied or unfilled within the time permitted by law, you have a right to challenge the decision by the *Department of Agriculture* to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint in writing with the Government Records Council (GRC). You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The Council can also answer other questions about the law.
12. Information provided on this form may be subject to disclosure under the Open Public Records Act.
13. The following table includes the mailing address for the Records Custodian(s) of the *Department of Agriculture*.

	Mail Address	Street Address	Floor	City	Zip	Telephone
NJDA	PO Box 330	Market & New Warren Sts.	1	Trenton	08625	609-292-6931
State Agriculture Development Committee	PO Box 330	Market & New Warren Sts.	2	Trenton	08625	609-984-2504

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 State of New Jersey
 State Agriculture Development Committee
Public Records Request Form

REQUESTOR INFORMATION (See Note Below)

SADC Use Only

Name: _____ Company: _____ Mailing Address: _____ City: _____ State: _____ Zip: _____ Telephone with Area Code: _____ Preferred Delivery: Pick-up___ US MAIL___ Overnight delivery___ 2 nd Day delivery___ OnSite Inspection___ Signature: _____ Date: _____	Tracking # _____ Division Code _____ Request Rec'd _____ Ready Date _____ # Total Pages _____ Requestor has agreed to extension of time _____ Revised Ready Date _____
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Record Request Information

SADC USE ONLY

Requestor: Provide request information here being as specific as possible	Documents Provided _____ _____ _____ _____
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Payment Information

SADC USE ONLY:

Payment Type: Check _____ Money Order _____ Fees: Pages 1-10 \$0.75@ Pages 11-20 \$0.50@ Pages 21 - \$0.25@ Delivery: Delivery/postage fees additional depending upon delivery type Extras: Extraordinary service fees dependent upon request	Estimated Cost _____ Deposit Amount _____ Est. Balance Due _____ Finalized Cost Total: _____ Deposit: _____ Balance: _____
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Disposition of Request – SADC USE ONLY

Custodian: If any part of the request is denied or cannot be filled within 7 days, detail reasons here.	Disposition Detail <input type="checkbox"/> Filled <input type="checkbox"/> Partially Filled <input type="checkbox"/> Denied <input type="checkbox"/> Partially Denied Custodian _____ Date _____
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Important Legal Information

1. State Law requires that for access to government records you must complete this form and deliver it in person, by mail, or electronically (fax not acceptable) to the records custodian of the SADC. You must complete all boxes in the form, except those labeled "For SADC Use Only;" however, you have the right to make an anonymous request (leaving first block blank). To pick up your anonymous request, you must have your assigned tracking number.
2. Anonymous requests must be accompanied by a deposit fee of 100% of the estimated fees when the custodian's estimate of cost exceeds \$15.
3. All other requests with estimated fees exceeding \$25 require a 50% deposit. You agree to pay the balance due upon delivery of the records. Notwithstanding the deposit requirements, deposits for requests made on behalf of a company may be waived subject to receipt of a company purchase order or statement on company letterhead assuring full payment within 30 days of document delivery.
4. By law, we must fulfill, deny or reply to your request within 7 days. You may agree with the custodian to extend the time for granting or denying your request. If the record request exceeds 100 pages or if the records are archived, we will advise you within 7 business days when the record can be made available and the estimated cost.
5. Information provided herein may be subject to public disclosure under the NJ Public Access to Government Records Act of 2000.
6. If a request has been denied or unfilled within the time permitted by law, you have a right to challenge the decision by the SADC to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint in writing with the Government Records Council (GRC) located in the Department of Community Affairs, PO Box 819, Trenton, NJ 08625; grc@dcs.state.nj.us; www.nj.gov/grc.

5.4 Procedures for requests

(a) Request forms shall be hand-delivered during normal business hours of the public agency, mailed, or e-mailed by the requestor to the appropriate custodian of records.

(b) Any officer or employee of the Department who receives a request for access to a government record shall direct the requestor to the Department's custodian of records or the Committee's custodian of records.

(c) Upon receipt of the request form, the custodian shall review the request form for clarity and completeness. If the request form is unclear as to the government record requested, the custodian shall advise the requestor of the deficiency, provided contact information is included on the form. The custodian may require the requestor to provide additional information to identify the record or to ascertain the requestor's identity and status to determine whether access is authorized. The custodian shall deny a request for access if the request is unclear or incomplete after attempting to reach a reasonable resolution with the requestor. A request shall not be deemed complete until the pre-payment required under this section is received by the custodian.

(d) All inquiries and processes involving the request shall include a tracking number.

(e) Upon receipt of a request form, the custodian shall estimate the cost of providing the records and shall require the pre-payment of the estimated sum, and of any special mailing or delivery costs. Payment shall be made by check or money order payable to the State of New Jersey. Except as provided otherwise by law or regulation, costs shall be those set forth in N.J.S.A. 47:1A-1 et seq., as amended and supplemented.

(f) The custodian shall sign and date the request form, enter the estimated fee and, if applicable, tracking number, and provide the requestor with a copy.

(g) No fee shall be charged for inspecting or examining government records.

(h) Upon request, a custodian may allow requestors to use their own photocopying equipment to copy public records, provided that it will not disrupt the business operations of the custodian and will not endanger the public records. No special fee shall be charged to a requestor who utilizes its own equipment.

5.5. Delivery of records

The custodian shall notify the requestor when the records are available and shall collect any additional fees and charges due prior to delivery of copies.

5.6 Immediate access to certain records

Immediate access ordinarily shall be granted for requests to inspect, examine or copy budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.

5.7 Failure to respond

Except as provided in N.J.A.C. 2.7, a custodian shall grant or deny access within seven business days after receiving a request completed in accordance with N.J.A.C. 2.4 or such additional time as may be allowed by law or these rules or as may be agreed to by the requestor. The failure to grant access shall be deemed a denial of the request, unless the requestor has elected not to provide a name, address, telephone number or other means of contact. If the requestor has elected not to provide contact information, the custodian shall not be required to respond until seven business days after the requestor reappears before the custodian seeking a response to the original request.

5.8 Records stored offsite

If the requested record is in storage offsite at a facility outside of the regular business office of the agency, the custodian shall so advise the requestor within seven business days after the custodian receives the request. The custodian shall advise the requestor of the date when the record will be made available. If the record is not made available by the identified date, the request shall be deemed denied.

5.9 Requests for copies of a government record in a specified medium

(a) Unless otherwise specifically requested, copies of records shall be provided in printed form on ordinary business size paper. The requestor may request that the agency provide a copy of a record in a specific medium. If the agency maintains the government record in the medium requested, the custodian shall provide the record in the medium sought.

(b) If the agency does not maintain the government record in the medium requested, the custodian shall convert the record to the medium requested if reasonable or provide a copy in some other meaningful medium. If a requestor asks for copies of a record in a medium not routinely used by the agency, not routinely developed or maintained by the agency, or requiring a substantial amount of manipulation or programming of information technology, the custodian may charge, in addition to the actual cost of duplication, a special charge which shall be reasonable and shall be based upon the cost of any extensive use of information technology or for the labor cost of providing the service actually incurred. The requestor shall be given the opportunity to review and object to the charge prior to its being incurred. If the requestor objects to the charge and refuses to withdraw the request, the custodian may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requestor and the agency.

(c) Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined or copied is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the division or agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies. The requestor shall have the opportunity to review and object to the charge prior to its being incurred. If the requestor objects to the charge and refuses to withdraw the request, the custodian may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requestor and the agency.

5.10 Computation of time

- (a) In computing any period of time under P.L.2001, c. 404 or these rules, the business day a completed request for access is received is not to be included. The last business day of the period so computed is to be included.
- (b) For purposes of P.L. 2001, c. 404 and these rules, a request for access is deemed to be complete when the requestor provides the information required by these rules and pre-pays the fees required by P.L. 2001, c. 404 and these rules.

SUBCHAPTER 6 CONFIDENTIALITY OF RECORDS

6.1 Scope and applicability

The rules in this subchapter apply to the Department of Agriculture and all divisions and agencies in the Department, including those agencies allocated to the Department to satisfy the requirements of Article V, Section 4, Paragraph 1 of the New Jersey Constitution, commonly known as in-but-not-of agencies.

6.2 Records designated confidential

(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other law, regulation promulgated under the authority of

any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court, or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:

1. Department of Agriculture
 - i. Emergency management information or procedures which, if disclosed, would jeopardize emergency operations security or response, including, but not limited to, inventories of emergency resources and any policies or plans compiled or kept by the Department for responding to emergencies;
 - ii. Compilations of information which could be used to further bioterrorist activity, including, but not limited to, locations of individual farms and agribusinesses; infrastructures; types of production; food distribution warehouses and sites and terminal markets; food distribution methods and routes.
 - iii. Information concerning individual farms and agribusinesses, compiled or received pursuant to a memorandum of understanding or other agreement with the United State Department of Agriculture or other federal entity which is required by such agreement to be kept confidential.
2. State Agriculture Development Committee
 - i. All applications, correspondence, appraisals, agreements, and internal memoranda for, and relating to, the acquisition of farmland in fee simple prior to the Committee's certification of the fee simple value of the farmland or prior to the execution of a written binding contract between the Committee and the owner of the land, whichever occurs later; however any information regarding the value of deed-restricted farmland ("after-value") shall be confidential until a written binding contract has been entered into between the Committee and a purchaser of the farmland for the resale of the land;
 - ii. All applications, correspondence, appraisals, agreements, and internal memoranda for, and relating to, the Committee's acquisition of development easements on farmland prior to the Committee's certification of the value of the development easement or prior to the execution of a written binding contract between the Committee and the owner of the land from which the development easement is being conveyed, whichever occurs later;
 - iii. Appraisals given to the Committee by County Agriculture Development Boards in connection with the Boards' applications to the Committee for grants for the acquisition of development easements on farmland, prior to the Committee's opening of confidential offers submitted by landowners pursuant to N.J.A.C. 2:76-6.9;
 - iv. Values of development easements certified by the Committee pursuant to N.J.A.C. 2:76-6.8 prior to the Committee's opening of confidential offers submitted by landowners pursuant to N.J.A.C. 2:76-6.9;
 - v. Maps and documents identifying specific properties which the Committee intends to preserve pursuant to its fee simple or direct easement acquisition programs;
 - vi. All material and information disclosed during mediation pursuant to N.J.A.C. 2:76-18-1 et seq., including statements made during the mediation process, and records, reports, notes or other documents reviewed, received, or prepared by the mediator during the course of the mediation process.
3. Information concerning individuals as follows:

(i) information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation;

(ii) home addresses, home telephone numbers, personal e-mail addresses or other personal contact information;

(iii) Information in an income or other tax return; and

(iv) Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness, except as otherwise required by law to be disclosed;

4. Test questions, scoring keys and other examination data pertaining to the administration of an examination or an application for public employment or licensing;

5. Records of another department or agency allocated to that department in the possession of this department or any agency allocated to this department when those records are made confidential by a regulation of that department or agency allocated to that department adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure; and

6. Records of this department or any agency allocated to this department held by the Office of Information Technology or the Division of Archives and Record Management in the Department of State, or an offsite storage facility outside of the regular business office of the agency. Such records shall remain the legal property of this agency and be accessible for inspection or copying only through a request to the proper custodian of this department or agency allocated to this department. In the event that records of this department or any agency allocated to this department have been or shall be transferred to and accessioned by the State Archives in the Division of Archives and Records Management, all such records shall become the legal property of the State Archives, and requests for access to them shall be submitted directly to the State Archives.

Secretary of Agriculture

Date