

New Jersey
Department of
Environmental Protection



Open Public Records Act



Consultant



Lawyer



Business



Citizen



Government



Watchdog



News
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Serving
New Jersey
Business and Citizens

2011 Annual Report

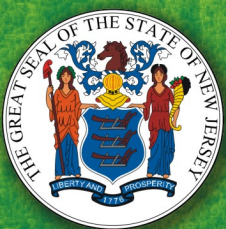


Table of Contents

Introduction	3
Statistics for NJDEP	4
State Agency Comparison	4
Requester Types	4
NJDEP vs Federal Departments & Other States	5
Requests Submittal Info.....	6
Location of Requesters	7
NJDEP Program Assignments.....	8
Total # of Assignments.....	8
DEP Program Area Percentages.....	9
Request Responses.....	11
Accessing NJDEP Records.....	12
OPRA Expenditures.....	13
Service Fees.....	14
Copying Services	16
OPRA Requests Denials.....	18
Appeals	19

NJDEP
Office of Record Access
Matthew J. Coefer, Chief Records Custodian
June 2012

Introduction

The Open Public Records Act (OPRA) took effect on July 7, 2002. This Act defined what is a government recordⁱ and established timeframes for providing access to state and local government documents. OPRA also identified 24 exceptionsⁱⁱ to the definition of a government record, thereby restricting access to certain types of public recordsⁱⁱⁱ.

The NJDEP fulfills requests within 7 business days as stipulated by the Act and its intent. However, if the nature of the request requires clarification or the volume of the responsive records require additional time for investigation or evaluation for any privilege records, the NJDEP will work with the Requester to establish an extension of time for response or access that will not disrupt NJDEP operations. Similarly, if a record is in storage or archived, the NJDEP informs the requestor and sets a date by which it will be made available.

Unlike many State Agencies, the NJDEP created a singular office to receive all submitted OPRA record requests, review them for administrative completeness, refer them to the appropriate Program Areas, coordinate Program responses and record access, and provide a single point contact for the Requester. The Office of Record Access (formerly the Office of the Records Custodian) employs a staff of 12 to coordinate OPRA activities with the eleven (11) Program Area's Assistant Commissioner Records Custodians (ACRCs) and (86) File Officers addressing 10 NJDEP building locations throughout the State.

Each Program Area designated ACRC refers record requests to the various File Offices within their Program and coordinates the Program's responses to record requests with the Office of Record Access. The various staff designated as Program Area's File Officers function either full time or part time in responding to record requests, coordinating the preparation of responsive records for file reviews, copy jobs and faxing.

To support the efficient handling of record requests, the NJDEP created an OPRA Tracking System that all Record Custodians and File Officers access, update their activities, and produces the Government Record Request Forms. To facilitate online access, the NJDEP's Record Access Program's website, www.nj.gov/dep/opra, provides easy online record request submission, OPRA information, and links to up-to-date NJDEP electronic environmental data.

The NJDEP has received over 105,000 requests since the Act took effect on July 7, 2002 to the end of Fiscal Year 2011 (i.e. June 30, 2011).

ⁱ The definition of a government record is 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 or has been received in the course of official business.

ⁱⁱ See: <http://www.state.nj.us/grc/laws/>

ⁱⁱⁱ See: <http://www.state.nj.us/grc/public/exempt/>

Statistics for NJDEP

The importance of the NJDEP's records to the economic growth and commerce of the State can clearly be identified in comparing the NJDEP to other State Agencies and analyzing the type of requesters that submit OPRA records requests to the NJDEP. The NJDEP's records are vital to development & redevelopment projects, property & business transactions, farm and open space preservation, and recreational purposes. Over 92% of the OPRA requests received by the NJDEP involve some type of commercial interest.

State Agencies Comparison		
State Agency	9 Years 7/7/02 to 7/12/11 *	Percentage
Environmental Protection	105,323**	61.92%
Health & Senior Services	9,798	5.76%
Law & Public Safety	9,480	5.57%
Corrections	7,598	4.47%
Treasury	6,559	3.86%
Transportation	6,023	3.54%
Banking & Insurance	5,326	3.13%
Community Affairs	3,619	2.13%
Labor	3,366	1.98%
Education	3,180	1.87%
Civil Service Commission	2,977	1.75%
Human Services	2,839	1.67%
State	1,165	.68%
Governor, Office of	742	.44%
Commissions & Agencies	599	.35%
Agriculture	549	.32%
Children & Families	426	.25%
Commerce Commission	303	.18%
Military & Veterans Affairs	218	.13%
Public Advocate	12	.01%
TOTAL:	170,102	100%

* Due to the State's OPRA Tracking System reporting limitations, the time period for the above chart ends on July 12, 2011 vs. June 30, 2011.

** NJDEP total for 7/2/02 to 6/30/11 is **105,064**

Categorizing NJDEP OPRA Requesters		
Requester Type	7/7/02 to 6/30/11	Percentage
Consultant	75,223	71.60%
Legal Firm	14,979	14.26%
Commercial/Industrial	5,285	5.03%
Individual Citizen	5,695	5.42%
Data Service Provider	1,181	1.12%
Watchdog Group	1,167	1.11%
Government Agency	924	.88%
Press Agency	460	.44%
Other	150	.14%
TOTAL:	105,064	100%

92.01% is for commercial use

Due to the voluminous amount of OPRA requests the NJDEP receives per fiscal year, it is better to compare the NJDEP to Federal Department's that receive requests under the Freedom of Information Act (FOIA) versus other States. It should be note that while the NJDEP is one agency, the Federal Departments consists of numerous large agencies that span the entire Nation as well as United States territories.

NJDEP versus Federal Departments (FY 2011)

United States Department OF	Number of Agencies	Total Dept. FOIA Requests	Processing Costs \$	Highest Agency within Department
Homeland Security	19	175,656	\$33,361,701.24	* USCIS (115,545) requests
Defense	32	74,117	\$89,602,701.00	* ARMY (38,712) requests
Veterans Affairs	25	27,655	\$16,332,657.90	* VHA (19,334) requests
Agriculture	20	23,065	\$12,920,285.93	* FSA (17,076) requests
Labor	24	18,012	\$13,074,203.58	* OSHA (8,251) requests
Treasury	12	16,776	\$17,106,586.06	* IRS (12,242) requests
State	2	14,298	\$15,653,418.00	* State (14,262) requests
NJDEP	1	12,043	\$3,366,713.64	
Transportation	12	12,064	\$10,328,842.00	* FAA (8,367) requests
EPA	11	10,123	\$17,352,297.59	* HQ (2,311) requests
Interior	11	5,809	\$12,201,691.90	* BIA (1,385) requests
Education	35	2,401	\$2,264,240.74	* FSA (287) requests
Energy	19	2,315	\$6,948,129.03	* HQ (1,012) requests
Commerce	13	2,202	\$3,685,519.44	* NOAA (709) requests

NJDEP vs Other States' Environmental Departments (FY 2011 *)

STATE	Total Requests
New Jersey	12,043
Arizona	7,351
Illinois	6,000
Florida	1,905
Pennsylvania	1,227
Idaho	864
Alabama	640
Delaware	442
Alaska	185

* Reflect the States the NJDEP was able to obtain numbers from and are for the agencies actual 2011 fiscal year period.

The NJDEP has continually experienced an increase in the number of submitted OPRA record requests from year to year until Fiscal Years 2009 through 2011. The 20% decrease in OPRA requests submitted to the NJDEP in the previous two fiscal years is attributed to the state of the economy, which affected property transactions and development causing an impact to environmental remediation and redevelopment projects. In general, the NJDEP receives approximately 1,000 requests per month. The submission of OPRA requests slightly decreases during Christmas and New Years as well as in the summer when families take vacations before children return to school.

Yearly Breakdown of OPRA Request Numbers

Month	Year 1 FY 2003	Year 2 FY 2004	Year 3 FY 2005	Year 4 FY 2006	Year 5 FY 2007	Year 6 FY 2008	Year 7 FY 2009	Year 8 FY 2010	Year 9 FY 2011
July	419	599	748	726	771	958	1,122	1,036	990
August	753	610	1,118	1,208	1,192	1,324	980	988	1,088
September	551	738	894	1,044	1,030	1,189	1,043	847	879
October	735	833	822	1,116	1,079	1,308	1,394	991	969
November	583	647	1,015	1,013	1,047	1,057	914	901	932
December	481	817	896	975	806	996	949	924	863
January	710	778	964	1,140	1,109	1,254	995	880	891
February	682	1,022	1,156	1,074	926	1,265	1,007	905	960
March	630	1,006	1,131	1,183	1,201	1,282	1,142	1,114	1,357
April	660	871	1,039	1,043	952	1,140	1,040	868	1,098
May	684	734	1,083	1,180	1,119	1,275	862	925	991
June	719	908	1,086	974	1,165	1,116	992	1,105	1,025
July	109	123	190	69	247	0	N/A	N/A	N/A
TOTAL:	7,716	9,686	12,142	12,745	12,644	14,164	12,440	11,484	12,043
Percentage Increase from prior year	N/A	26%	25%	5%	-8%	12%	- 12 %	- 8 %	4.9%

The NJDEP receives over 97% of OPRA requests though the NJDEP's online submittal process (web).

Method of Submitting OPRA Requests to NJDEP

Method	Year 1 FY 2003	Year 2 FY 2004	Year 3 FY 2005	Year 4 FY 2006	Year 5 FY 2007	Year 6 FY 2008	Year 7 FY 2009	Year 8 FY 2010	Year 9 FY 2011
Hardcopy	814	628	579	788	653	617	322	307	338
Web	6,902	9,058	11,563	11,957	11,991	13,547	12,118	11,177	11,705
Total	7,716	9,686	12,142	12,745	12,644	14,164	12,440	11,484	12,043
% Submitted via Web	88.2%	93.5%	95.2%	93.8%	94.8%	95.4%	97.4%	97.3%	97.2%

Location of Requesters

The NJDEP has received OPRA requests from requesters in every State in the USA. Over 78% of the OPRA record requests received are from requesters within New Jersey. The requesters residing outside of New Jersey (just over 21%) benefit from accessing the NJDEP's records but are not burdened with any of the taxes that are borne by the residents of New Jersey that pay for the monies incurred in administering the NJDEP's OPRA program. This tax burden total in excess of \$700,000 per fiscal year.

Period: July 7, 2002 to June 30, 2011

State & Countries	Total
New Jersey	82,384
Pennsylvania	9,908
New York	4,921
Connecticut	876
Massachusetts	874
Maryland	860
Texas	561
Illinois	548
Virginia	503
California	498
Delaware	322
Florida	316
Colorado	308
Ohio	276
Washington, DC	263
Georgia	206
Michigan	190
Tennessee	157
North Carolina	105
New Hampshire	101
Kentucky	94
Vermont	87
South Carolina	72
Rhode Island	62
Missouri	59
Washington	54
Maine	49
Wisconsin	43
Indiana	39
Arkansas	37

State & Countries	Total
Louisiana	34
Minnesota	32
Oregon	31
Alabama	22
Kansas	22
Oklahoma	17
Canada	14
West Virginia	13
Nevada	11
Utah	11
Idaho	10
Indonesia	6
Alaska	5
Iowa	4
Nebraska	4
Puerto Rico	4
Mississippi	3
New Mexico	3
Hawaii	2
North Dakota	2
South Dakota	2
England	2
Germany	2
Montana	1
Wyoming	1
Australia	1
France	1
Italy	1
Portugal	1
Trinidad & Tobago	1

Type of Request	Total	Percentage
In State	82,384	78.4%
Out of State	22,680	21.6%
Total Requests	105,064	

NJDEP Program Assignment of Requests

The NJDEP's Office of Record Access receives all submitted OPRA record requests, reviews them for administrative completeness, and assigns them to the appropriate NJDEP Program Area based on the records being sought. However, a single request may be assigned to multiple Program Areas. The below table provides a summary of OPRA request assignments to the various Program Areas within NJDEP.

Total Number of Assignments

	Year 1 FY 03	Year 2 FY 04	Year 3 FY 05	Year 4 FY 06	Year 5 FY 07	Year 6 FY 08	Year 7 FY 09	Year 8 FY 10	Year 9 FY 11	TOTAL Assignments
Site Remediation	6,378	8,463	10,308	10,509	10,485	11,521	9,844	9,311	9,413	86,232
Compliance & Enforcement	3,333	5,246	6,604	6,284	5,874	7,525	5,425	4,946	4,555	49,792
Environmental Management	2,561	4,419	5,938	6,270	5,618	6,849	5,340	5,055	4,522	46,572
Land Use Management	2,092	4,508	6,248	6,496	5,654	6,040	4,405	4,469	3,609	43,521
Water Resources Management	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	3,122	3,122
Natural & Historic Resources	149	316	347	320	247	281	389	320	399	2,768
Policy & Planning	28	62	75	81	74	46	73	84	N/A	523
Management & Budget	48	40	96	59	49	65	47	46	44	494
Commissioner's Office	18	29	48	23	34	39	45	50	37	323
Deputy Commissioner's Office	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	37	37
Council & Legal	17	16	25	20	17	36	31	15	21	198
Economic Growth & Green Energy	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	11	11
Communications & Legislative	7	8	9	11	8	6	13	2	2	66
Number of Assignments	14,631	23,107	29,698	30,073	28,060	32,408	25,612	24,298	25,772	233,659
Number of OPRA Requests	7,716	9,686	12,142	12,745	12,644	14,164	12,440	11,484	12,043	105,064

Program Assignment Percentages

The below table identifies the percentage of Program Area assignments based on the record requests received, reviewed and assigned to the various Program Areas within NJDEP. From the 105,064 requests submitted to the NJDEP, only 4,210 requests were not assigned to NJDEP Program Areas. A request is not assigned to Program Areas due to being an invalid OPRA request, duplicate request, being closed by the Requester, or being denied by the NJDEP after clarification sought. The Site Remediation Program's records are the most commonly sought records due to their importance in identifying if there were any discharges of hazardous substances at a property and the status of a remedial cleanup.

Historical Assignment Percentages

Difference between received OPRA requests & Assigned Requests

# of OPRA Requests Received 7/2/02 to 6/30/11	# of OPRA Requests Not Assigned	# of OPRA Requests Assigned
105,064	4,210	100,854

Program Area	# of OPRA Requests Assigned to Program 7/2/02 to 6/30/11	% of Requests Received by Program
Site Remediation	86,232	86%
Compliance & Enforcement	49,792	49%
Environmental Management	46,572	46%
Land Use Management	43,521	43%
Natural & Historic Resources	2,768	2.7%
Policy & Planning	523	0.5%
Management & Budget	494	0.5%
Commissioner's Office	323	0.3%
Council & Legal	198	0.2%
Communications & Legislative	66	0.1%

FY 2011 Assignment Percentages

# of OPRA Requests Received 7/2/02 to 6/30/11	# of OPRA Requests Not Assigned	# of OPRA Requests Assigned
12,043	373	11,670

Program Area	# of OPRA Requests Assigned to Program 7/1/10 to 6/30/11	% of Requests Received by Program
Site Remediation	9,413	81%
Compliance & Enforcement	4,555	39%
Environmental Management	4,522	39%
Land Use Management	3,609	31%
Water Resources Management	3,122	27%
Natural & Historic Resources	399	3.4%
Management & Budget	44	0.4%
Commissioner's Office	37	0.3%
Deputy Commissioner's Office (e.g. Office of Science)	37	0.3%
Council & Legal	21	0.2%
Economic Growth & Green Energy	11	0.1%
Communications & Legislative	2	0.02%

Request Responses

The below table identifies the different types of OPRA request responses issued for Fiscal Year 2011. Please note that the actual response is more elaborate providing detail information to the requester concerning the denial aspect or accessing the records.

Fiscal Year 2011 – Response Types

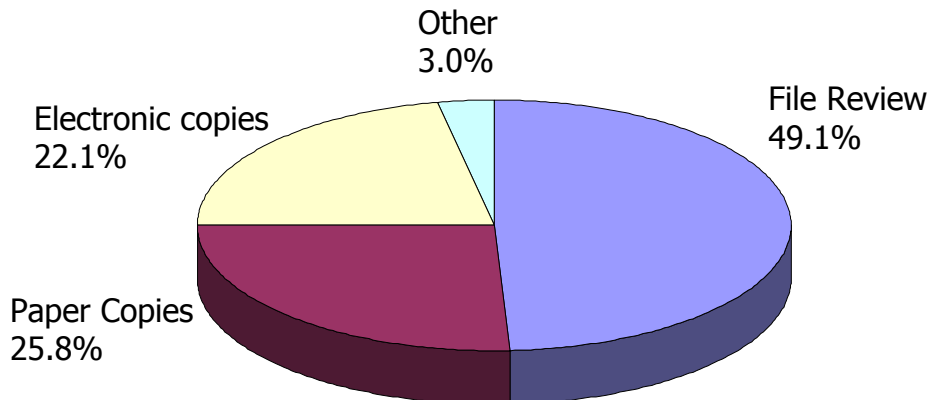
Response Type	#	%	Description
Records Available Category			
Records Available	5,736	47.6%	Responsive records located.
Records Available & EOT	1,465	12.2%	Responsive records located and extraordinary time service fee incurred.
Faxed Records	1,301	10.8%	Responsive records located and faxed.
Email Sent Records	144	1.2%	Responsive records located and emailed.
CD Created Records	60	0.5%	Responsive records located and provided on CD/DVD.
Partial Denial	46	0.4%	Responsive records located with some records privileged (Partial Denial).
Partial Denial & EOT	37	0.3%	Responsive records located with some records privileged (Partial Denial) and extraordinary time service fee incurred.
Multiple Site Request	22	0.2%	Request is for more than one unique Site/Property or matter. Requester makes decision which concern addressed under the request and submits additional requests for other concerns.
Web Access Records	17	0.1%	Responsive records located and on web.
Total	8,828	73.3%	
No Record Available Category			
No Records	2,688	22.3%	No responsive records located.
Total	2,688	22.3%	
Request Closed Category			
Duplicate Request	178	1.5%	Request is exact duplicate of another request by requester within same 7-day period.
Request Closed	122	1%	Requester closed request.
Combining Requests	34	0.3%	Responsive records are the same for another request submitted and the processing will be tracked under the other request.
Total	334	2.8%	
Denial Category			
Denial	161	1.3%	Request denied.
Administratively Deficient	32	0.3%	Request deficient for processing and clarification not provided.
Total	193	2%	
Grand Total	12,043	100%	

Accessing NJDEP Records

The below table identifies the Access Method initially requested by Requesters upon submitting an OPRA request. However, the method of accessing the NJDEP's government records is directly related to the amount of responsive records, the cost of copying, and the media in which the NJDEP maintains the record. Normally, if the amount of responsive records is large, requesters schedule File Reviews and tag the records of interest for copying thereby reducing the copying costs. If the responsive records are less than 25 pages, the NJDEP will fax the records to the Requester. Electronic records are provided either on CD, DVD, or emailed depending in of the size of the electronic file(s).

Access Method	Year 1 FY 2003	Year 2 FY 2004	Year 3 FY 2005	Year 4 FY 2006	Year 5 FY 2007	Year 6 FY 2008	Year 7 FY 2009	Year 8 FY 2010	Year 9 FY 2011
File Review	3,699	4,870	6,078	5,106	5,193	5,790	5,295	10,069	5,450
Paper Copies	2,435	2,945	3,687	4,752	4,359	3,934	2,596	663	1,765
Electronic Copies	1,279	1,622	1,933	2,225	2,636	3,797	4,237	706	4,814
Other	303	249	444	662	456	643	312	46	14
Total	7,716	9,686	12,142	12,745	12,644	14,164	12,440	11,484	12,043

Access Method	Total # 7/2/02 – 6/30/11	Total % 7/2/02 – 6/30/11
File Review	51,550	49.1 %
Paper Copies	27,136	25.8 %
Electronic Copies	23,249	22.1 %
Other	3,129	3.0 %
Total	105,064	100%



OPRA Expenditures

The NJDEP receives no funding to operate its OPRA response program. The below chart identifies the costs of managing OPRA from inception and resource startup to end of Fiscal Year 2011. The NJDEP has expended over \$28 million processing OPRA record requests.

Fiscal Year	Based Salary Costs	Salary Additive	Fringe Rate	Indirect Rate	Total Salary Costs	Non Salary Costs	Total Costs
2002	\$7,563.69	25.16%	25.85%	26.96%	\$13,953.03	\$139,365.00	\$153,318.03
2003	\$1,431,480.38	24.50%	24.15%	26.19%	\$2,587,497.41	\$2,837.22	\$2,590,334.63
2004	\$1,402,468.89	23.00%	29.15%	26.21%	\$2,595,472.04	\$115,505.60	\$2,710,977.64
2005	\$1,543,998.17	23.00%	33.25%	26.21%	\$2,935,256.32	\$129,856.24	\$3,065,112.56
2006	\$1,738,899.65	23.00%	32.75%	26.21%	\$3,295,084.42	\$184,703.89	\$3,479,788.31
2007	\$1,680,061.89	23.00%	34.75%	21.24%	\$3,141,421.72	\$172,284.90	\$3,313,706.62
2008	\$1,721,483.59	23.00%	33.15%	20.29%	\$3,168,640.16	\$288,526.90	\$3,457,167.06
2009	\$1,626,282.50	23.00%	36.05%	20.29%	\$3,051,418.25	\$240,899.38	\$3,292,317.63
2010	\$1,445,982.62	23.00%	34.85%	20.29%	\$2,691,776.18	\$219,241.78	\$2,911,017.96
2011	\$1,671,247.05	23.00%	35.15%	20.29%	\$3,117,285.20	\$249,428.44	\$3,366,713.64
Total OPRA Costs:						\$28,340,454.08	

Note: The inclusion of certain non-salary costs and other OPRA related costs resulted in changes to the past fiscal year amounts reported in previous Annual Reports.

In comparing the NJDEP's OPRA operating costs to the number of request received on an annual basis, the average cost for the NJDEP in processing a request is \$271.66.

Fiscal Year	Total Costs	# of OPRA Requests Received	NJDEP Costs Per Request
2002	N/A	N/A	N/A
2003	\$2,590,334.63	7,716	\$335.71
2004	\$2,710,977.64	9,686	\$279.89
2005	\$3,065,112.56	12,142	\$252.44
2006	\$3,479,788.31	12,745	\$273.03
2007	\$3,313,706.62	12,644	\$262.08
2008	\$3,457,167.06	14,164	\$244.08
2009	\$3,292,317.63	12,440	\$264.66
2010	\$2,911,017.96	11,484	\$253.48
2011	\$3,366,713.64	12,043	\$279.56
Total	\$24,816,801.07	105,064	
Average cost per request		\$271.66	

Service Fees

Pursuant to OPRA (C.47:1A-5C^{iv} & C.47:1A-5D^v), a State Agency may impose a special service charge where the agency must make an extraordinary expenditure of time and effort to accommodate a request to access government records. The NJDEP applies this special service fee as follows:

The NJDEP charges a *special service fee* for an individual who is required to expend an extraordinary effort and time in order for the NJDEP to provide the records. Such activities include but shall not be limited to converting electronic records from one medium to another medium, for voluminous copy jobs the preparation of records for copying such as the disassembly (e.g. removal of staples & bindings) and reassembly of files, reviewing of records for responsiveness and privilege information, redaction of records. In addition, the NJDEP may apply a special service fee when willing to perform the required research to locate records that are requested but based on the manner to which the records are organized are not readily identifiable or for the creation of a privilege log. The requester is notified of the fee and preserves the right to authorize the special service or object to the fee prior to the NJDEP performing this service and incurring the cost. If the requester objects to the fee, the request is closed and access to the records is not granted.

The impact of the amount of OPRA requests received by NJDEP has resulted in the NJDEP creating very efficient processes in the handling of OPRA requests. The bulk of the OPRA requests received by the NJDEP fall into the normal processing time and as such, the NJDEP is unable to recover large amounts of monies through the assessment of a special service fee.

^{iv} Pursuant to OPRA (C.47:1A-5C), 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 pursuant to this section 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 public 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.

^v Pursuant to OPRA (C.47:1A-5d), the DEP will charge a special charge that shall be reasonable and shall be 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 DEP or attributable to the DEP for the programming, clerical, and supervisory assistance required, or both, if a request is for a copy of a record: 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.

The table below identifies the number of requests that had special service fee charges assessed either through the amount of time expended during the investigation of responsive records or from the time required to collect and produce the requested records.

# of Requests	<u>Year 1 & 2</u> FY 03 & 04	<u>Year 3</u> FY 05	<u>Year 4</u> FY 06	<u>Year 5</u> FY 07	<u>Year 6</u> FY 08	<u>Year 7</u> FY 09	<u>Year 8</u> FY 10	<u>Year 9</u> FY 11
Special Service Fee Assessed **	N/A*	128	1254	912	1583	899	945	1563
Special Service Fee Paid ***	N/A*	0	582	535	904	641	646	1107

*No Special Service Fees were applied during the initial 2½ years due to the NJDEP’s focus on establishing the resources and processes to address OPRA after the implementation of the Act.

** Identification of some non-standard descriptions in the NJDEP’s OPRA Tracking System resulted in an increase in Special Service Charges assessed than reported in previous Annual reports.

*** Prior to recent changes, the special service fee payment was identified under one request when the check pertained to a requester who submitted multiple requests and more than one had special service fees incurred. Hence, the above “Special Service Fee Paid” numbers are less than the actual. Currently, the NJDEP splits the amounts under the subject request accounts.

As identified in the above table, many requesters decline authorizing Special Service Fee activities, thereby never accessing the responsive records.

Currently, the NJDEP tracks the Special Service Fee dollar amount assessed in a memo field within the NJDEP OPRA Tracking System and manually issues an invoice once the requester authorizes the Special Service Fee charges. This process results in an inability to easily acquire a dollar amount of the fees assessed or incurred. In the near future, the NJDEP will be tracking and issuing invoices through a NJDEP Assessment system that will not only provide better reporting capabilities but automatically issue invoices and collect payments through the NJ Department of Treasury’s systems.

The below table provides the amount of Special Service Fees collected, which is recorded. The increase since Fiscal Year 2008 is related to better NJDEP time management on OPRA activities and several litigation cases involving the NJDEP where opposing parties are utilizing OPRA for discovery purposes and submitting a multitude of requests that involve large amounts of responsive records over numerous NJDEP Program Areas.

# of Requests	<u>Year 1 & 2</u> FY 03 & 04	<u>Year 3</u> FY 05	<u>Year 4</u> FY 06	<u>Year 5</u> FY 07	<u>Year 6</u> FY 08	<u>Year 7</u> FY 09	<u>Year 8</u> FY 10	<u>Year 9</u> FY 11
Special Service Fee Collected	N/A*	N/A*	\$19,849	\$28,667	\$65,756	\$52,646	\$51,486	\$112,580

*No Special Service Fees were applied during the initial 2½ years due to the NJDEP’s focus on establishing the resources and processes to address OPRA after the implementation of the Act.

Copying Services

Prior to November 2010, the New Jersey Department of Treasury's Print Shop maintained a "DEP Copying Unit" at the main DEP Building and copied most of the records requested by Requesters for the NJDEP, with the exception of very small amounts of responsive records from Field Office and Satellite locations. The majority of Requesters utilize Treasury's copying services and the State copying rate at the time of \$0.75 per page for the first ten pages, \$0.50 for the next ten pages, and \$0.25 per page thereafter. The NJDEP received no monies for any copy jobs completed by the Department of Treasury.

Treasury Copying Information

	<u>Year 1</u> FY 2003	<u>Year 2</u> FY 2004	<u>Year 3</u> FY 2005	<u>Year 4</u> FY 2006	<u>Year 5</u> FY 2007	<u>Year 6</u> FY 2008	<u>Year 7</u> FY 2009	<u>Year 8</u> FY 2010	<u>Year 9</u> FY 2011
# of Copy Jobs	862	1,216	648	1,770	2,638	2,712	2,209	2,272	760
Amount Invoiced	\$185,082	\$296,825	\$334,960	\$425,282	\$415,127	\$413,002	\$352,231	\$387,748	\$132,176
Amount Collected	No Information	No Information	No Information	\$414,062	\$407,503	\$404,078	\$345,906	\$383,307	\$129,918

On November 9, 2010, the copying fees significantly decreased with the enactment of Public Law 2010 c.75 that reduced the fees for letter-size copies to \$0.05 per page. The NJDEP took oversight of the "DEP Copying Unit" in November 2010 after Treasury planned on closing the Unit due to their determination that the change in fees would result in the inability to recoup the revenue needed to reimburse the Unit's operating costs.

NJDEP Copying Information

	<u>Year 1</u> FY 2003	<u>Year 2</u> FY 2004	<u>Year 3</u> FY 2005	<u>Year 4</u> FY 2006	<u>Year 5</u> FY 2007	<u>Year 6</u> FY 2008	<u>Year 7</u> FY 2009	<u>Year 8</u> FY 2010	<u>Year 9</u> FY 2011
# of Copy Jobs	543	454	331	214	100	194	270	244	1,768
Amount Invoiced	\$23,437	\$18,584	\$19,112	\$11,459	\$5,311	\$12,302	\$12,929	\$8,893	\$113,091
Amount Collected	\$21,659	\$18,423	\$19,014	\$11,459	\$5,137	\$12,302	\$12,754	\$8,806	\$112,596

** The information above refers to the NJDEP's DEP Copying Unit and does not reflect the various Field Office and Satellite Stations, or other small areas in the NJDEP that may produce and bill for their own copy jobs. The Fees include copying fee, shipping costs, and any applicable special service fees.

The NJDEP, as well as Treasury in the past, is not able to fully collect all revenue that has been invoiced. Requesters who authorize copy jobs but later refuse to pay because their needs have changed resulting in no longer needing the copies (e.g. settlement between parties) and copying errors reduces the amount collected.

As seen in the below table, the decrease in copying fees in November 2010 resulted in a 47% increase in copying job requests. Previously, the average amount of copies per fiscal year was 1.3 million pages. In FY 2011, the NJDEP produced almost 2 million pages.

Amount of Paper Copies

	<u>Year 1</u> FY 2003	<u>Year 2</u> FY 2004	<u>Year 3</u> FY 2005	<u>Year 4</u> FY 2006	<u>Year 5</u> FY 2007	<u>Year 6</u> FY 2008	<u>Year 7</u> FY 2009	<u>Year 8</u> FY 2010	<u>Year 9</u> FY 2011
# of Normal Size Pages	No Information	No Information	No Information	1,450,615	1,376,524	1,198,203	1,171,813	1,302,291	1,910,184
# of Oversized Docs	No Information	No Information	No Information	8,235	7,304	5,276	6,635	7,322	9,561

The NJDEP does not provide copies until the copying costs have been paid. Requesters do have the option of employing a Copy Vendor service which, unlike the State, may charge for time and labor, in order to receive the copies at a quicker turn around time than the DEP Copying Unit. The DEP Copying Unit normally produces the records and issues an invoice to the Requester within 15 business days of receiving the records.

OPRA Requests Denials

OPRA contains 24 exemptions restricting access to certain records. Pursuant to these exemptions, a State Agency may deny an entire Record request or partially deny a portion of the responsive records. The below table identifies the number and percentage of request denials issued by NJDEP from the inception of OPRA until the end of fiscal year 2011.

	<u>Year 1</u> FY 03	<u>Year 2</u> FY 04	<u>Year 3</u> FY 05	<u>Year 4</u> FY 06	<u>Year 5</u> FY 07	<u>Year 6</u> FY 08	<u>Year 7</u> FY 09	<u>Year 8</u> FY 10	<u>Year 9</u> FY 11	Total
# of Denials	253*	40	11	54	68	32	49	95	193	795
# of OPRA Requests	7,716	9,686	12,142	12,745	12,644	14,164	12,440	11,484	12,043	105,064
% of Denials	3.3 %	0.4 %	0.1 %	0.4 %	0.5 %	0.2 %	0.4 %	0.8 %	1.6%	0.8%(average)

* In the 1st Year, many requesters were inappropriately using OPRA for requests for information.

Note: Some “# of Denials” numbers have changed from previous reported years due to the exclusion of requests where the “Denial” response was associated with a “No Records” response.

Partial Denials refer to some portion of the responsive records to a submitted Records request being exempt from disclosure pursuant to OPRA. A Partial Denial can be as little as a part of a sentence on a page being denied or entire document(s). In such cases, the NJDEP redacts that portion of provides the remainder of the record(s). The NJDEP preserves the Requester’s right to challenge a denial to access records by notifying the Requester on the NJDEP’s Government Records Request Form response, providing a privilege log, or maintaining a redacted record in the “public” file with the identified exemption cited.

Appeals - Complaints

OPRA permits a requester who believes they have been illegally denied access to a public record to appeal a State Agency decision by filing a complaint with the NJ Government Records Council (GRC), or file suit in NJ Superior Court to challenge the decision and compel disclosure.

The GRC has received **2,481** "Denial of Access" complaints from July 2, 2002 to June 30, 2011 involving state agencies and municipalities. Even though the NJDEP has received **over 61%** of all OPRA requests submitted to state agencies (**105,064 requests**), only **25 people** filed appeals against the DEP amounting to **28 complaints** or **1.1%** of the GRC universe of complaints.

The below table provides information concerning the outcomes of the GRC complaints filed.

Appeal Outcomes

Appeals 7/2/02 – 6/30/10	
Pending	1
Withdraw	6
Mediated	3
Decided*	18
Total	28

*Appeals Decided	
DEP Favorable	13
DEP Unfavorable	5
Total	18

The following provides a brief synopsis of the unfavorable GRC decisions.

- GRC # 2009-194: Requester filed complaint for responsive records that he believed existed that the NJDEP stated did not. In a ruling dated August 24, 2010 and a Reconsideration Findings of April 20, 2011 the GRC found that the NJDEP Custodian's response was insufficient because it failed to address the Complainant's preferred method of delivery (e-mail). The NJDEP provided responsive records as they existed hard copied. Moreover, the response was insufficient because the NJDEP failed to individually address each of the Complainant's eleven (11) request items. The GRC concluded based on the NJDEP's certification that the missing records did not exist. The GRC concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
- GRC # 2008-206 & 2008-209: Requester provided two record requests on a Borough of North Haledon's OPRA Form to a DEP Employee at a public meeting. The employee informed the Requester she was not the appropriate party to receive the request but would respond to it. Employee took the requests as non-ORA requests since they were not on the NJDEP's Official Form. Employee responded in 9 business days to requester. Requester believed that there were records requested that were not provided and submitted a complaint. The GRC concluded based on the NJDEP's certification that the missing records did not exist. However, in a ruling dated Oct. 6, 2009, the GRC found that the NJDEP failed with the following:

 - NJDEP Employee failed to respond in writing to the Complainant's July 16, 2008 OPRA request within mandated seven (7) business days results in a "deemed" denial of the request.
 - NJDEP Employee failed to provide immediate access to the requested contract.

3. NJDEP Employee failed to forward the OPRA request to the Custodian or direct the Complainant to submit the request directly to the Custodian.
4. NJDEP Employee provided partial documents and stated Complainant would be contacted by another employee (attempt to fulfill the request) determined the Complainant's request to be a valid OPRA request.

Based on Spaulding v. Hudson County Register, GRC Complaint No. 2006-157 (July 2007), the GRC held that the NJDEP's attempt to fulfill said request and failure to properly notify the requester that the request was an invalid OPRA request results in the request being considered a valid OPRA request. The employee's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the employee's unlawful "deemed" denial of access and violation of N.J.S.A.47:1A-5.e. and N.J.S.A. 47:1A-5.h. appears negligent and heedless.

- GRC # 2007-220: The NJDEP responded to an OPRA request that another State Agency maintains the responsive records. However, in responding to the GRC "Denial of Access" Complaint, the evidence of record indicated that although the Custodian's initial response of no records resulted in a denial of access, the Custodian did eventually provide all records responsive to the Complainant's request. Additionally, the evidence of record shows that both the Custodian and staff misinterpreted the Complainant's OPRA request to be for only one record: a NJ Department of Personnel - Universal Job Analysis Questionnaire versus related records. Therefore, it was concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's unlawful denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.
- GRC # 2006-91: Requester requested "Interview Questions & Scoring forms" and "Report of Disposition of Certification" for a position. NJDEP responded denying access to the Interview Questions based on its Proposed OPRA Rules and McGreevey's Executive Order # 26, and referring the Requester to the Department of Personnel for the "Report of Disposition of Certification". However, it was later identified that the NJDEP maintained a copy of the report, which was provided to the Requester during the "Complaint Process". In a ruling dated December 14, 2006, the GRC found that the Complainant was not given a written reason for a delay or a lawful basis for denial of access to the requested report, within the statutorily required (7) business day time period for response, as required by statute.

There has been 7 complaints filed with the NJ Superior Court concerning NJDEP received OPRA requests. One complaint was dismissed and another withdrawn. Due to the complexity of the decisions, the NJDEP will not summarize the five decisions within the OPRA Annual Report, but will provide the NJ Superior Court cases for reference. The decisions were mostly favorable towards the NJDEP's position.

- Susan Steinman v. NJDEP (Filed in 2003)
- Tierra Solutions Inc v. NJDEP (Docket # L-604-06)
- Sportsman's Cove Marina LLC v. Fortescue Captain & Boat Owners Association In et al (Docket # CUM-L-000439-08)
- Public Employees For Environmental Responsibility v. NJDEP (Docket # L-2501-09)
- Mark Lagerkvist v. NJDEP (Docket # MER-L-2185-10)

Open Public Records Act Requests may be made by contacting:

Chief
Office of Record Access
New Jersey Department of Environmental Protection
PO Box 420, Mail Code 401-06Q
401 State Street
Trenton, NJ 08625-0442
(609) 341-3121

or online at:

www.nj.gov/dep/opra