



## **OPRA REPORT: 2012 - 2016**

# 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

# INTRODUCTION

The Open Public Records Act (OPRA) took effect on July 7, 2002. This Act defined what is a government record<sup>i</sup> and established timeframes for providing access to state and local government documents. OPRA also identified 24 exceptions<sup>ii</sup> to the definition of a government record, thereby restricting access to certain types of public records<sup>iii</sup>.

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 10 to coordinate OPRA activities with the nine (9) Program Area's Assistant Commissioner Records Custodians (ACRCs) and (91) File Officers addressing 10 NJDEP building locations and over 40 park offices 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, emailing 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](http://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 185,000 requests since the Act took effect on July 7, 2002 to the end of Fiscal Year 2016 (i.e. June 30, 2016).

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<sup>i</sup> 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.

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

<sup>iii</sup> 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	13 Years 7/7/02 to 6/30/16	Percentage %	FY 16 #s
Environmental Protection	185,701	60.73%	17,723
Law & Public Safety	19,075	6.24%	2,352
Health & Senior Services	16,284	5.33%	1,574
Corrections	12,901	4.22%	1,317
Treasury	12,100	3.96%	1,203
Transportation	11,639	3.81%	1,279
Banking & Insurance	7,900	2.58%	564
Community Affairs	7,622	2.49%	878
Education	6,518	2.13%	659
Labor	6,362	2.08%	644
Human Services	5,536	1.81%	688
Civil Service Commission	5,419	1.77%	492
State	3,046	1.00%	474
Governor, Office of	1,751	0.57%	183
Commissions & Agencies	1,418	0.46%	413
Children & Families	995	0.33%	163
Agriculture	863	0.28%	97
Military & Veterans Affairs	334	0.11%	28
Commerce Commission	303	0.10%	0
Public Advocate	12	0.00%	0
<b>TOTAL:</b>	<b>305,779</b>	<b>100%</b>	<b>30,731</b>

Categorizing NJDEP OPRA Requesters		
Requester Type	7/7/02 to 6/30/16	Percentage
Consultant	135,152	72.78%
Legal Firm	22,987	12.38%
Commercial/Industrial	10,494	5.65%
Individual Citizen	9,089	4.89%
Data Service Provider	2,782	1.50%
Watchdog Group	2,290	1.23%
Government Agency	1,630	.88%
Press Agency	941	.51%
Other	343	.18%
<b>TOTAL:</b>	<b>185,707</b>	<b>100%</b>

92% is for commercial use

## NJDEP versus Federal Departments

Due to the voluminous amount of OPRA requests the NJDEP receives per fiscal year, the NJDEP is comparative to Federal Department's that receive requests under the Freedom of Information Act (FOIA). It should be note that while the NJDEP is one agency, the Federal Departments consist of numerous large agencies that span the entire Nation as well as United States territories. In comparing the FY 2015 data, the NJDEP processes requests in a more cost-effective manner and receives more requests than half the Federal Departments.

### *NJDEP versus Federal Departments (FY 2015)*

United States Department OF	Number of Agencies	Total Dept. FOIA Requests	Processing Costs \$	Highest Agency within Department
Homeland Security	14	281,138	\$51,918,433.00	* USCIS (162,986) requests
Justice	37	67,783	\$62,481,252.00	* EOIR (31,513) requests
Defense	32	57,498	\$71,903,054.00	* ARMY (29,616) requests
Health& Human Services	12	43,085	\$48,575,916.00	* CMS (26,556) requests
Veterans Affairs	24	29,716	\$13,178,520.00	* VHA (25,525) requests
State	2	24,837	\$29,416,609.00	* DoS (24,747)requests
Agriculture	19	20,132	\$10,578,232.00	* FSA (14,854) requests
<b>NJDEP</b>	<b>1</b>	<b>17,615</b>	<b>\$3,217,885.90</b>	
Labor	24	16,792	\$15,668,723.00	* OSHA (9,123) requests
Treasury	9	13,922	\$18,209,435.00	* IRS (10,197) requests
Transportation	12	13,374	\$9,579,702.00	* FAA (9,636) requests
EPA	11	10,910	\$9,848,226.00	* Region 2 (2,227) requests
Interior	12	6,792	\$11,722,357.00	* BIA (1,869) requests
Energy	19	2,356	\$9,856,694.00	* HQ (1,075) requests
Education	36	2,297	\$4,522,359.00	* OM-OCPO (220) requests
Commerce	13	2,230	\$15,219,439.00	* Census (543) requests
Housing and Urban Dev.	12	2,230	\$3,571,694.00	* HQ (1004) requests

The NJDEP has continually experienced an increase in the number of submitted OPRA record requests from Fiscal Year (FY) 2012 to FY 2016 after the growth in economy compared to Fiscal Years 2009 through 2011 (See 2011 Annual Report). The number of OPRA requests received between FY 2009 through FY 2016 demonstrates that the number of OPRA request received by the NJDEP is a “litmus test” to New Jersey’s state of the economy. There is a correlation between the economy and its effect on property transactions and development, which causes an impact to environmental remedial and redevelopment projects, where access to NJDEP records is required. In general, the NJDEP receives approximately 1,477 requests per month.

### Yearly Breakdown of OPRA Request Numbers

Month	OPRA Year 10	OPRA Year 11	OPRA Year 12	OPRA Year 13	OPRA Year 14
	FY 12 7/1/11 – 6/30/12	FY 13 7/1/12 – 6/30/13	FY 14 7/1/13 – 6/30/14	FY 15 7/1/14 – 6/30/15	FY 16 7/1/15 – 6/30/16
July	916	1,348	1,502	1,413	1,573
August	999	1,403	1,551	1,399	1,445
September	1,061	1,059	1,372	1,380	1,453
October	1,031	1,193	1,522	1,604	1,486
November	1,036	1,088	1,273	1,270	1,322
December	1,023	950	1,144	1,422	1,293
January	1,056	1,295	1,381	1,478	1,389
February	1,278	1,315	1,387	1,520	1,492
March	1,249	1,274	1,569	1,544	1,632
April	1,137	1,473	1,600	1,577	1,483
May	1,290	1,405	1,447	1,474	1,573
June	1,124	1,212	1,342	1,534	1,582
<b>TOTAL:</b>	<b>13,200</b>	<b>15,015</b>	<b>17,090</b>	<b>17,615</b>	<b>17,723</b>
Percentage Increase from prior year	8.77%	12.09%	12.14%	2.98%	0.06%

The NJDEP receives over 98% of OPRA requests though the NJDEP’s online submittal process (web).

### Method of Submitting OPRA Requests to NJDEP

Method	FY 12	FY 13	FY 14	FY 15	FY 16
	7/1/11 – 6/30/12	7/1/12 – 6/30/13	7/1/13 – 6/30/14	7/1/14 – 6/30/15	7/1/15 – 6/30/16
Hardcopy	304	251	352	339	267
Web	12,896	14,764	16,738	17,276	17,456
<b>Total</b>	<b>13,200</b>	<b>15,015</b>	<b>17,090</b>	<b>17,615</b>	<b>17,723</b>
% Submitted via Web	97.7%	98.3%	97.9%	98.1%	98.49%

## 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 22%) benefit from accessing the NJDEP's records but are not burden 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 equates to over \$700,000 per fiscal year.

### Period: July 7, 2002 to June 30, 2016

State & Countries	Total	State & Countries	Total
<b>New Jersey</b>	144,411	Arizona	67
Pennsylvania	17,414	<b>Canada</b>	64
New York	9,373	Kansas	59
Maryland	1,933	Alabama	53
Massachusetts	1,519	Oregon	49
Connecticut	1,443	Arkansas	41
Illinois	941	Oklahoma	29
California	922	Utah	18
Texas	916	Nevada	16
Virginia	840	Idaho	15
Michigan	738	West Virginia	15
Delaware	550	Iowa	14
Florida	535	New Mexico	12
Colorado	444	Wyoming	11
Ohio	440	Nebraska	10
Washington, DC	407	Hawaii	6
Georgia	404	South Dakota	6
North Carolina	264	<b>Indonesia</b>	6
Tennessee	242	<b>Puerto Rico</b>	6
New Hampshire	230	Alaska	5
Vermont	215	Mississippi	3
Kentucky	146	Montana	3
Missouri	146	<b>France</b>	3
Minnesota	128	North Dakota	2
South Carolina	113	<b>England</b>	2
Maine	87	<b>Germany</b>	2
Wisconsin	80	<b>Australia</b>	1
Rhode Island	79	<b>Belgium</b>	1
Indiana	77	<b>Italy</b>	1
Washington	74	<b>Portugal</b>	1
Louisiana	68	<b>Trinidad &amp; Tobago</b>	1

Type of Request	Total	Percentage
In State	144,411	77.8%
Out of State	<u>41,290</u>	22.2%
<i>Total Requests</i>	<b>185,701</b>	

## 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 for the Fiscal Years 2012 through 2016.

### Total Number of Assignments

<b>Program Area</b>	<b><u>Year 10</u> FY 12</b> <small>7/1/11 to 6/30/12</small>	<b><u>Year 11</u> FY 13</b> <small>7/1/12 to 6/30/13</small>	<b><u>Year 12</u> FY 14</b> <small>7/1/13 to 6/30/14</small>	<b><u>Year 13</u> FY 15</b> <small>7/1/14 to 6/30/15</small>	<b><u>Year 14</u> FY 16</b> <small>7/1/15 to 6/30/16</small>	<b>TOTAL Assignments</b>
Site Remediation & Waste Management <small>(Solid Waste added to SRP 7/15)</small>	10,662	11,798	13,350	13,608	14,002	63,420
Compliance & Enforcement	5,215	6,056	6,064	6,279	7,622	31,236
Land Use Management	3,987	4,679	5,069	5,725	7,278	26,738
Water Resources Management	3,408	4,382	4,776	5,179	6,064	23,809
Environmental Management	4,862	5,906	5,828	6,091	N/A	22,687
Air Quality, Energy & Sustainability <small>(Created 7/15)</small>	N/A	N/A	N/A	N/A	5,769	5,769
Natural & Historic Resources	383	303	393	269	342	1,690
Office of Record Access <small>(Acts as Program, oversees General Services &amp; Systems Coord. and Deputy Commissioner Area)</small>	N/A	45	145	105	174	469
Council & Legal	30	41	45	48	22	186
Commissioner's Office	44	29	37	36	33	179
Budget & Finance	51	30	28	20	40	169
Deputy Commissioner's Office	24	58	22	8	N/A	112
Policy & Planning	20	5	N/A	N/A	N/A	25
Sustainability & Green Energy	16	2	0	0	N/A	18
Engineering & Construction <small>(Created 2/16)</small>	N/A	N/A	N/A	N/A	2	2
<b># of Assignments:</b>	<b>28,702</b>	<b>33,334</b>	<b>35,757</b>	<b>37,368</b>	<b>41,348</b>	<b>176,509</b>
<b># of OPRA Requests</b>	13,200	15,015	17,090	17,615	17,723	<b>80,643</b>



## 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 80,643 requests submitted to the NJDEP from Fiscal Year 2012 through Fiscal Year 2016, only 1,746 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 & Waste Management 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 <small>7/1/11 to 6/30/16</small>	# of OPRA Requests Not Assigned	# of OPRA Requests Assigned
80,643	1,763	78,880

Program Area	# of OPRA Requests Assigned to Program <small>7/1/11 to 6/30/16</small>	% of Requests Received by Program
Site Remediation & Waste Management	63,420	80%
Compliance & Enforcement	31,236	40%
Air Quality, Energy & Sustainability <small>(Includes Environmental Management, Sustainability &amp; Green Energy)</small>	28,476	36%
Land Use Management	26,738	34%
Water Resources Management	23,809	30%
Natural & Historic Resources <small>(includes Engineering &amp; Construction)</small>	1,692	2%
Commissioner Office, Deputy Commissioner Office & Government & Legislative Affairs <small>(Includes Council &amp; Legal, Office of Record Access, Budget &amp; Finance)</small>	946	1%

## FY 2016 Assignment Percentages #

# of OPRA Requests Received 7/1/15 to 6/30/16	# of OPRA Requests Not Assigned	# of OPRA Requests Assigned
17,723	252	17,471

Program Area	# of OPRA Requests Assigned to Program 7/1/15 to 6/30/16	% of Requests Received by Program
Site Remediation	14,002	80%
Compliance & Enforcement	7,622	44%
Land Use Management	7,278	42%
Water Resources Management	6,064	35%
Air Quality, Energy & Sustainability	5,769	33%
Natural & Historic Resources (includes Engineering & Construction)	344	2%
Office of Record Access (Acts as Program, oversees General Services & Systems Coord. and Deputy Commissioner Area)	174	1%
Budget & Finance	40	0.2%
Commissioner's Office	33	0.2%
Council & Legal	22	0.1%

## REQUEST RESPONSES

The below table identifies the types of OPRA request responses issued for the **17,723** request received in Fiscal Year 2016. Please note that the actual response is more elaborate providing detail information to the requester concerning the denial aspect or accessing the records.

<b>Records Available Category</b>			
<b>Response Type</b>	<b>#</b>	<b>%</b>	<b>Description</b>
<b>Records Available</b>	7,793	<b>44%</b>	Responsive records located.
<b>Records Available &amp; Special Service Fee</b>	1	<b>0.01%</b>	Responsive records located and extraordinary time service fee incurred.
<b>Faxed Records</b>	582	<b>3.3%</b>	Responsive records located and faxed.
<b>Email Sent Records</b>	1,489	<b>8.4%</b>	Responsive records located and emailed.
<b>CD Created Records</b>	201	<b>1.1%</b>	Responsive records located and provided on CD/DVD.
<b>Partial Denial</b>	2,276	<b>12.8%</b>	Responsive records located with some records privileged (Partial Denial).
<b>Partial Denial &amp; Special Service Fee</b>	5	<b>0.03%</b>	Responsive records located with some records privileged (Partial Denial) and extraordinary time service fee incurred.
<b>Multiple Site Request</b>	14	<b>0.08%</b>	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.
<b>Web Access Records</b>	88	<b>0.5%</b>	Responsive records located and on web.
<b>TOTAL:</b>	<b>12,449</b>	<b>70.2%</b>	

<b>No Records Available Category</b>			
<b>No Records</b>	4,228	<b>23.9%</b>	No responsive records located.
<b>TOTAL:</b>	<b>4,228</b>	<b>23.9%</b>	

<b>Request Closed Category</b>			
<b>Duplicate Request</b>	158	<b>0.9%</b>	Request is exact duplicate of another request by requester within same 7-day period.
<b>Request Closed</b>	94	<b>0.5%</b>	Requester closed request.
<b>Combining Requests</b>	2	<b>0.01%</b>	Responsive records are the same for another request submitted and the processing will be tracked under the other request.
<b>TOTAL:</b>	<b>254</b>	<b>1.4%</b>	

<b>Denial Category</b>			
<b>Denial</b>	791	<b>4.5%</b>	Request denied.
<b>Administratively Deficient</b>	1	<b>0.01%</b>	Request deficient for processing and clarification not provided.
<b>TOTAL:</b>	<b>792</b>	<b>4.5%</b>	

# 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 75 pages, the NJDEP will either fax or email the records to the Requester.

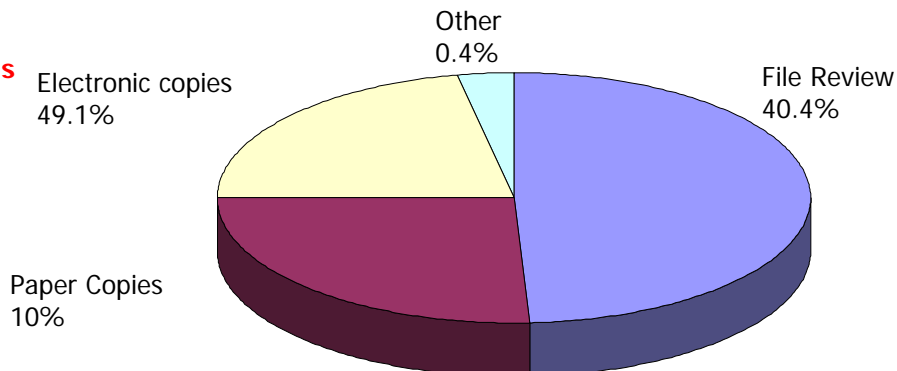
Since the inception of OPRA, the request to provide responsive records in electronic format has consistently increased each Fiscal Year. Electronic records are provided either on CD, DVD, or emailed depending on the size of the electronic file(s). Often, electronic records are not able to be mailed as most Internet Providers restrict email attachments to 10MB.

In general, the NJDEP does not convert hard copy records to electronic format as hard copy records are a meaningful medium.

<b>Access Method</b>	<b>Year 10 FY 2012</b>	<b>Year 11 FY 2013</b>	<b>Year12 FY 2014</b>	<b>Year 13 FY 2015</b>	<b>Year 14 FY 2016</b>
File Review	5,457	6,304	6,996	7,106	6,690
Paper Copies	1,976	1,727	1,727	1,365	1,276
Electronic Copies	5,733	6,937	8,294	9,025	9,666
Other	34	47	73	119	91
<b>Total</b>	<b>13,200</b>	<b>15,015</b>	<b>17,090</b>	<b>17,615</b>	<b>17,723</b>

<b>Access Method</b>	<b>Total # 7/1/11 – 6/30/16</b>	<b>Total % 7/1/11 – 6/30/16</b>
File Review	32,553	40.4 %
Paper Copies	8,071	10.0 %
Electronic Copies	39,655	49.2 %
Other	364	0.4 %
<b>Total</b>	<b>80,643</b>	<b>100 %</b>

Graph needs updating



# 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 2016. The NJDEP has expended over \$44 million processing OPRA record requests.

<b>Fiscal Year</b>	<b><u>Based Salary Costs</u></b>	<b><u>Salary Additive</u></b>	<b><u>Fringe Rate</u></b>	<b><u>Indirect Rate</u></b>	<b><u>Total Salary Costs</u></b>	<b><u>Non Salary Costs</u></b>	<b><u>Total Costs</u></b>
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	\$1,618,190.80	23.00%	36.05%	20.29%	\$3,036,235.67	\$240,899.38	\$3,292,317.63
2010	\$1,447,436.72	23.00%	34.85%	20.29%	\$2,694,483.06	\$219,241.78	\$2,911,017.96
2011	\$1,672,684.80	23.00%	35.15%	20.29%	\$3,119,966.96	\$249,428.44	\$3,366,713.64
2012	\$1,591,188.02	23.00%	37.95%	21.50%	\$3,042,009.39	\$189,262.84	\$3,231,272.23
2013	\$1,420,710.03	23.00%	45.35%	20.04%	\$2,824,662.79	\$208,770.31	\$3,033,433.10
2014	\$1,435,704.11	23.00%	50.75%	20.04%	\$2,949,833.56	\$234,432.39	\$3,184,265.95
2015	\$1,561,291.68	23.00%	40.15%	20.04%	\$3,004,307.71	\$213,578.19	\$3,217,885.90
2016	\$1,526,932.98	23.00%	45.25%	19.03%	\$3,018,555.63	\$293,436.13	\$3,311,991.76
<b>Total OPRA Costs:</b>						<b>\$44,319,303.02</b>	

Even though the number of requests received by the NJDEP has continually increased each fiscal year, the NJDEP's continuing efforts to provide efficient processing has resulted in a decrease in OPRA operating costs of processing a request each fiscal year. The current average (i.e. last three years) cost of processing an OPRA request is \$185.29.

<b>Fiscal Year</b>	<b>Total Costs</b>	<b># of OPRA Requests Received</b>	<b>NJDEP Costs Per Request</b>
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
2012	\$3,231,272.23	13,200	\$244.79
2013	\$3,033,433.10	15,015	\$202.03
2014	\$3,184,265.95	17,090	\$186.32
2015	\$3,217,885.90	17,615	\$182.68
2016	\$3,311,991.76	17,723	\$186.87
<b>Total</b>	<b>\$44,165,984.99</b>	<b>185,707</b>	



# Service Fees

Pursuant to OPRA (C.47:1A-5C<sup>i</sup> & C.47:1A-5D<sup>ii</sup>), 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, reviewing of records for responsiveness and privilege information, and 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.

The table below identifies the number of requests that had special service fee charges assessed and collected. As identified in the table, requesters can decline authorizing Special Service Fee activities, thereby never accessing the responsive records.

# of Requests	Year 10 FY 12	Year 11 FY 13	Year 12 FY 14	Year 13 FY 15	Year 14 FY 16
Special Service Fee <b>Assessed</b>	1382	4	8	1	5
Special Service Fee <b>Paid</b>	1024	3	1	1	1

<sup>i</sup> 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.

<sup>ii</sup> Pursuant to OPRA (C.47:1A-5d), the NJDEP 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 NJDEP or attributable to the NJDEP 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 significant decrease in Special Service Fees assessed after Fiscal Year 2012 is the result of the NJDEP ending the assessment of a fee in association with broad environmental due diligence requests for all remedial, permitting and enforcement records on a particular property. This requests involved assigning the requests to multiple NJDEP programs, large coordination and search efforts among numerous staff resulting in extraordinary efforts. Additionally, the NJDEP suspended its assessment of a special service fee for voluminous copy jobs that required extraordinary efforts in preparation of the records for copying such as the disassembly (e.g. removal of staples & bindings) and reassembly of files.

The below table provides the amount of Special Service Fees collected for FY 12 thru FY 16.

<b># of Requests</b>	<u>Year 10</u> <b>FY 12</b>	<u>Year 11</u> <b>FY 13</b>	<u>Year 12</u> <b>FY 14</b>	<u>Year 13</u> <b>FY 15</b>	<u>Year 14</u> <b>FY 16</b>
Special Service Fee <b>Collected</b>	\$97,928.12	\$799.06	\$195.33	\$1,081.28	\$78.44



# Copying Services

The NJDEP' Office of Record Access's DEP Copying Unit is the primary unit for copying government records in response to OPRA record requests. The DEP Copying Unit employs two full time employees and three Hourlies who produce copies from hardcopy, microfilm, and digital (e.g. CDs) medium.

Pursuant to OPRA, the NJDEP assesses a copying fee of \$0.05 per page for letter & legal-size copies, \$3.00 for oversized black & white copies, \$5.00 for oversized color copies, and \$0.55 for CDs/DVS.

The below table identifies the number of copy jobs and dollar amount collected for Fiscal Year 2012 through Fiscal Year 2016.

	<u>Year 10</u>	<u>Year 11</u>	<u>Year 12</u>	<u>Year 13</u>	<u>Year 14</u>
	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b># of Copy Jobs</b>	2,788	3,064	2,765	2,619	2,249
<b>Amount Collected</b>	\$225,813	\$246,184	\$181,326	\$159,748	\$197,609

\*\* 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.

## Amount of Paper Copies

	<u>Year 10</u>	<u>Year 11</u>	<u>Year 12</u>	<u>Year 13</u>	<u>Year 14</u>
	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b># of Normal Size Pages</b>					
<b># of Oversized Docs</b>					
<b># of CDs/DVS</b>					

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 turnaround 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 ORPA until the end of Fiscal Year 2016.

FY	# of Denials	# of OPRA Requests	% of Denials
<b>2003</b> (7/2/02 – 7/6/03)	253*	7,716	3.3 %
<b>2004</b> (7/7/03 – 7/6/04)	40	9,686	0.4 %
<b>2005</b> (7/7/04 – 7/6/05)	11	12,142	0.1 %
<b>2006</b> (7/7/05 – 7/6/06)	54	12,745	0.4 %
<b>2007</b> (7/7/06 – 7/6/07)	68	12,644	0.5 %
<b>2008</b> (7/7/07 – 6/30/08)	32	14,164	0.2 %
<b>2009</b> (7/1/08 – 6/30/09)	49	12,440	0.4 %
<b>2010</b> (7/1/09 – 6/30/10)	95	11,484	0.8 %
<b>2011</b> (7/1/10 – 6/30/11)	193	12,043	1.6%
<b>2012</b> (7/1/11 – 6/30/12)	118	13,200	0.9%
<b>2013</b> (7/1/12 – 6/30/13)	445**	15,015	2.9%
<b>2014</b> (7/1/13 – 6/30/14)	858**	17,090	5.0%
<b>2015</b> (7/1/14 – 6/30/15)	1100**	17,615	6.2%
<b>2016</b> (7/1/15 – 6/30/16)	761**	17,723	4.3%

<b>Total:</b>	4,077	185,707	2.2%
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\* In the 1<sup>st</sup> Year, many requesters were inappropriately using OPRA for requests for information.

\*\* In FY2013, the NJDEP “cracked down” on overly broad requests involving property due diligence where the requests lacked detail information on the records sought.

**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.

### GRC Complaints

The **GRC** has received **4,395** “Denial of Access” complaints from July 2, 2002 to June 30, 2016 involving state agencies and municipalities. Even though the NJDEP has received **over 60%** of all OPRA requests submitted to state agencies (**185,701 requests**), only **35 people** filed appeals against the DEP amounting to **44** complaints, **0.02%** of the NJDEP requests received, and **1%** of the GRC universe of complaints.

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

<b>Total Appeals</b> 7/2/02 – 6/30/16	<b>Appeals Pending</b>	<b>Appeals Withdraw</b>	<b>Appeals Mediated</b>	<b>Appeals Decided</b>	<b>DEP Favorable</b>	<b>DEP Unfavorable</b>	<b>DEP Tied – Favorable to both Parties</b>
44	2	10	3	29	22	6	1

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

- GRC # 2014-293: Requester, who was a former employee, sought email and personnel records involving themselves. NJDEP denied those personnel records they were not entitled to and certain email records that fell into deliberative communications. Requester filed complaint because they believe they were entitled to the records. Communication issue resulted in record production delay and NJDEP provided the responsive records in existing format (i.e. hardcopy) versus preferred electronic format. GRC found that records should have been provided electronically and refund provided. Privilege concerns became moot as NJDEP waived privilege and provided 26 email records to conclude matter. NJDEP continues to believe that the production of records in paper was a meaningful medium, but did not seek to appeal the GRC ruling.
- 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 believe 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:

1. 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.
2. 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 NJDOP 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.

### **NJ Superior Court Complaints**

There has been 18 complaints filed with the **NJ Superior Court** concerning NJDEP received OPRA requests.

<b>Total Appeals</b> 7/2/02 – 6/30/16	<b>Appeals Pending</b>	<b>Appeals Withdraw</b>	<b>Appeals Settled</b>	<b>Appeals Decided</b>	<b>DEP Favorable</b>	<b>DEP Unfavorable</b>
20	1	8	3	8	6	2

Due to the complexity of the decisions, the NJDEP will not summarize the four unfavorable decisions within the OPRA Annual Report, but will provide the NJ Superior Court cases for reference.

- Public Employees For Environmental Responsibility v. NJDEP (Docket # MER-L-2501-09)
- NJ Audubon Society v. NJDEP (Docket # MER-L-2306-11)

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](http://www.nj.gov/dep/opra)