

New Jersey Government Records Council Denial of Access Complaint

Please read these instructions before completing this form:

- This form is to be used only for claims of denial of access to government records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002 under “OPRA,” the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).
- Please print or type your responses, and provide ALL information requested. Incomplete forms will delay processing. This form is available in downloadable format from the GRC web site at www.nj.gov/grc.
- Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- *The GRC recommends that you keep a copy of this complaint for your own files.*
- **MAIL, FAX, OR E-MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENTATION TO:**

Government Records Council
 PO Box 819
 Trenton, NJ 08625-0819

Fax: (609) 633-6337
 E-mail: grc@dca.state.nj.us

1. About the Requester of the Records:

Full Name: _____

Mailing Address: _____

City: _____ State: _____ ZIP _____

Please provide a phone number at which GRC staff can contact you between 8 A.M.-5 P.M., Monday-Friday: _____

Fax Number: _____

E-Mail Address: _____

If you are represented by an attorney in this matter, please provide:

Name: _____ Phone Number: _____

Address: _____ Fax Number: _____

E-mail Address: _____

If you are an attorney who requested records and are filing this complaint **on behalf of a client**, please state the client’s name:

2. About the Custodian of Records:

Name of the public agency from which records were requested: _____

Name of custodian on whom records request was submitted: _____

Telephone Number: _____ E-Mail address (if used): _____

Name of custodian who denied records request (if different from above): _____

Telephone Number: _____ E-Mail address (if used): _____

Fax Number: _____

3. About the Record Request:

Date your records request was provided to the custodian: _____

Did you receive a reply to your request? Yes No

If so, state the date your request was denied: _____

Have you previously filed a complaint with the GRC concerning the record request that is subject of this complaint?

Yes No

If yes, provide the GRC complaint number and a copy of the GRC decision in the matter.

Date: _____ Complaint No.: _____

Have you spoken with or written to the GRC about the record request that is subject of this complaint?

Yes Date: _____ No

Have you filed an action in the N.J. Superior Court concerning the record request that is subject of this complaint?

No Yes If Yes, Docket Number: _____**4. Offer of Mediation (please refer to the attached documents for details):**Are you interested in participating in mediation? Yes No **5. Documents to submit with this Form:**

- Complete** the attached **Records Denied List** to describe the records to which you were denied access.
- Attach** a copy of the OPRA Records Request form you filed with the public agency and any correspondence between you and the record custodian(s) or custodial agency staff that concern the portion of your OPRA request that was denied. Be sure to include any e-mail, memoranda, phone messages, or any other documents such as affidavits, or certifications related to the request and the denial.
- Summarize** the facts of this complaint by writing the content, time and date of any interaction you had with the custodian regarding the OPRA records request that is the subject of this complaint. Use the attached **Detail Summary** for this purpose.
- Provide** any legal arguments, allegations or other information you would like the GRC to consider in deciding this complaint. Use the attached **Detail Summary** for this purpose.
- Sign** the Agreement to Mediate if you wish to participate in the mediation process.

6. Verification of Complaint:

By signing this complaint, I affirm that:

- I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- The information I have provided is true to the best of my knowledge and belief;
- The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim;
- I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me, which is an indictable offense under the laws of the State of New Jersey, or any other State, or pertaining to the family of that victim; and
- I am simultaneously providing a copy of this complaint to the Custodian of Records.

Signature (required)_____
Date

**New Jersey Government Records Council
Agreement to Mediate
GRC Complaint No. 20XX-XX**

By participating in mediation, I/we agree:

1. To engage in a good faith effort to resolve the above referenced complaint filed with the Government Records Council (“GRC”) concerning access to records or related matters described in the Complaint;
2. That I will abide by any procedural rules set forth by the mediator. Such rules may include the establishment of a timetable for completion of mediation and/or phases of the mediation, a requirement that the parties periodically reduce settled issues to writing, a requirement that the parties personally meet with the mediator at a mutually convenient time and place and such other reasonable procedural rules deemed by the mediator to facilitate the mediation process.
3. That all discussions and documents arising during mediation are confidential unless otherwise legally obtainable. Documents provided in mediation cannot be used in a GRC hearing or appeal from a GRC determination unless those documents are public records or the party with control over the documents consents to their use in such a proceeding. Conversations with the mediator or with the other party during mediation will not constitute statements that can be used in a later GRC hearing or appeal from a GRC determination;
4. That I will not subpoena the mediator to testify or to produce any mediation materials whatsoever following the mediation. I acknowledge that the mediator will not testify on behalf of any party in any pending or future administrative or judicial proceeding, or disclose any information obtained during mediation unless the parties expressly consent to such disclosure, or unless law or court order requires disclosure. I further agree that the mediator will be held harmless for any claim arising from the mediation process;
5. That the mediation session will not be recorded (either video or audio) and that no transcript of the session will be produced;
6. That the mediator will not decide who is right or wrong, and that I shall not ask the mediator to act as my advocate. I acknowledge that the mediator will try to help the parties reach their own resolution of this dispute by encouraging discussion; however, if the mediator determines that the mediation process is no longer productive the mediator may unilaterally terminate said mediation and refer the matter back to the GRC for further processing;
7. That when a settlement is reached, it shall be put in writing and signed, and shall be binding upon all parties to the agreement. A copy shall be provided to the GRC. If the complaint is not resolved during mediation, the complaint will be transferred to the GRC for further processing.

The parties to this agreement, whose names and signatures appear below, are the only persons authorized to participate in the mediation process. The principal’s representative, if any, affirms that he/she is authorized to act by, and on behalf of, the principal.

<input type="checkbox"/> YES, I want to participate in mediation.	<input type="checkbox"/> NO, I do not want to participate in mediation.
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Name of Principal (Please Print)	Signature	Date
<input type="checkbox"/> I am the Complainant <input type="checkbox"/> I am the Custodian		

Name of Legal Representative (Please Print)	Signature	Date
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Name of Representative (Please Print)	Signature	Date
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**New Jersey Government Records Council
Denial of Access Complaint - Detail Summary**

Use this form to summarize the content, time and date of any conversations regarding this complaint, along with the names of the participants and any witnesses.

**New Jersey Government Records Council
Denial of Access Complaint – Records Denied List**

Name of Complainant: _____

This is page _____ of _____.

Please fill out this form describing the record (or portion of it) to which access has been denied, the response to your request, including the reason given for denial of access. Submit additional pages if necessary.

Item #	Description of record (or portion)	Response to request

EXHIBIT 1

OPRA Request

to Borough of Westwood

Submitted via Fax to 201-664-4260 on Saturday, July 16, 2016 at 1:30 PM

Requestor: **Libertarians for Transparent Government, a NJ Nonprofit Corporation.**

This is our request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records via e-mail to NJTransparency@yahoo.com. If you have any questions please call 732-873-1251.

Records Requested:

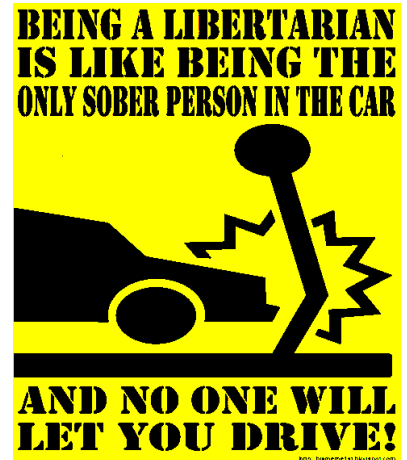
For the case of Theresa Carabetta v. Borough, Docket No. BER-L-7564-14, which the court's computer system shows as having settled on April 11, 2016, we would like the following records:

1. The most recently amended civil complaint filed by the Plaintiff or, if there are no amendments, please send the original civil complaint. Please do not send us summonses, case information statements, etc.
2. The agreement(s) that sets forth the terms and amount of settlement, i.e. the "settlement agreement(s)" related to this case.
3. If the Borough of Westwood provides us with all of the unredacted settlement agreement(s), as requested in #2 above, by no later than seven business days after receiving this request, then you may ignore this paragraph of this request. Otherwise, after reading the "Statement" below, please send us all informal agreements, draft agreements, correspondence, e-mails etc. related to this case that disclose the settlement amount and/or any other settlement terms. We do not want internal communications between the Borough of Westwood and/or its insurer and/or its attorneys. Rather, we want the informal agreements, draft agreements, correspondence, e-mails etc. exchanged between a) the Borough of Westwood and/or its agents/attorneys/insurers and b) the Plaintiff and/or his or her agents/attorneys/insurers.

Statement Regarding #3 of the above request.

We often encounter situations where, in response to a records request for an agreement memorializing a recent settlement of a lawsuit against a government agency, we are told that the settlement agreement is "not yet available" even though a meeting of the minds has been reached among the parties and the matter has been marked "settled" in the court's records. The typical justification for the denial is that the settlement agreement has not yet been formalized or that it has not received the signatures of all parties.

The practice of a blog that we communicate with (<http://njcivilsettlements.blogspot.com/>) is to report on settlements of lawsuits against local government officials and employees and then direct newspaper journalists to those reports. In some case, the newspapers, having



been alerted to a settlement by way of the blog, will publish their own articles on the settlements. We desire this because the newspapers are able to reach wider audiences than the blog. The problem is that the news value of settlements, and thus the blog's chance of having articles about a given settlement published in the regular news media, decreases as time elapses.

We don't think that our (and the public's) right to know the amount and terms of lawsuit settlement should depend on how high of a priority the lawsuit parties' attorneys and insurers place on getting the settlement agreement reduced to writing and signed by all parties. Accordingly, we are making this request to gain disclosure of any other documents, such as letters and e-mails between the parties and/or their lawyers or insurers, that disclose the agreed upon settlement terms. It seems to us that after a meeting of minds between the lawsuit parties has been reached, there ought to be some sort of documentation, even if it is only an e-mail from your agency's lawyer to plaintiff's lawyer saying "OK, this is to confirm our discussion last Friday where we agreed that our government agency will pay your client \$175,000 in return for a full release with a standard confidentiality agreement." It is this sort of correspondence that we seek.

Important notes regarding your response to # 3 of this request.

Several records custodians, in responding to #3, have failed or refused to identify which settlement documents are responsive to our request and often fail to even confirm or deny that such responsive records exist. For example, they may respond "Draft settlement agreements or settlement communications are exempt from disclosure because they are attorney-client privileged." But, such a response does not let us know whether any responsive records exist. So, when responding to #3 of our request, recognize that you are required by OPRA to:

First, find out from the Borough of Westwood's agents, attorneys and insurers whether any responsive records exist. It is, of course, very likely that responsive records would not be located at your agency's headquarters but held by the attorney(s) who defended the civil suit and/or agency's insurer(s)¹. Then, in your response to #3 of our request, set forth in detail your efforts to gain the cooperation with your agency's attorneys, insurers and agents and inform us of the extent of their cooperation. Without being informed whether these attorneys and insurers searched their records, we are unable to conclude that the Borough of Westwood's search was adequate.

Second, you are required by OPRA to identify the records within the scope of #3 above even if you claim that they are exempt from disclosure. If no records are within the scope of #3, you are required to plainly state in your response that no such records exist.

Third, for each record that is suppressed in its entirety or partially (i.e. redacted), you are required by OPRA to explain your justification for the suppression or redaction with enough detail and precision to allow us to judge for ourselves whether your decision to suppress or redact was correct.

¹ The Borough of Westwood is under a duty to seek out and retrieve responsive records from its attorneys, insurers or other agents when responding to an OPRA request. Burnett v. Gloucester, 415. N.J. Super. 506, 517 (App. Div. 2010).

EXHIBIT 2



John Paff <opengovtissues@gmail.com>

OPRA Request

1 message

Karen Hughes <khughes@westwoodnj.gov>
To: NJTransparency@yahoo.com

Tue, Jul 19, 2016 at 3:52 PM

Regarding your OPRA request for Carabetta v. Borough of Westwood, please be advised that the case was handled for the Borough by the Joint Insurance Fund (JIF). You will need to file an OPRA request with them for the documents you seek. The email address to use is opra@permainc.com.

Karen Hughes, Borough Clerk

Borough of Westwood

101 Washington Avenue

Westwood, NJ 07675

201-664-7100 ext. 101 phone

201-664-4260 fax

EXHIBIT 3



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END OF LIST

VENUE	: BERGEN	COURT	: LAW CVL	DOCKET #	: L 007564	14
CASE TITLE	: CARABETTA VS BOROUGH OF WESTWOOD					
SE DISP	: ST SCHED TRIAL	DISP DATE	: 04 11 2016	CASE STATUS	: CLOSED	
PTY	PARTY NAME		PTY	PTY	DISP	
NO			TYPE	STATUS	DATE	
001	CARABETTA	THERESA	L PF	SETTLED	04 11	2016
002	BOROUGH OF	WESTWOOD	DF	SETTLED	04 11	2016
003	MCNAMARA	COLIN	DF	SETTLED	04 11	2016

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Session ID: UVPW16 Case Count: 1

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