

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

RECEIVED
2015 SEP 24 AM 10:14
NEW JERSEY GOVERNMENT RECORDS COUNCIL

1. About the Requester of the Records:

Full Name: ART RITTENHOUSE

Mailing Address: 33 DELIKAT LN

City: SAYREVILLE State: NJ ZIP 08872-2709

Please provide a phone number at which GRC staff can contact you between 8 A.M.-5 P.M., Monday-Friday: 732-715-0254

Fax Number: _____

E-Mail Address: RITTL@GOL.COM

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: BOROUGH OF SAYREVILLE

Name of custodian on whom records request was submitted: TERRY ENERBAK

Telephone Number: 732-390-7025 E-Mail address (if used): TERRY@SAYREVILLE.COM

Name of custodian who denied records request (if different from above): MICHAEL R. DUPONT

Telephone Number: 732-741-6681 E-Mail address (if used): _____

Fax Number: 732-576-1787

3. About the Record Request:

Date your records request was provided to the custodian: 8/29/2015

Did you receive a reply to your request? Yes [checked] No []

If so, state the date your request was denied: 9/1/2015

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

Yes [checked] No []

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

Date: Complaint No.: NONE GIVEN

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

Yes [checked] 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 [checked] 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 [checked]

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.
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.
Provide any legal arguments, allegations or other information you would like the GRC to consider in deciding this complaint.
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 9/22/2015

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.

SEE DENIAL OF ACCESS FORM

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

Name of Complainant: Art Rittenhouse

This is page 1 of 1

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
1	EMAIL FROM JESSICA IN CLERK'S OFFICE	CLAIMS SHE (PILGRIMAGE) DID NOT USE BRANCH PHONE. DOES NOT ADDRESS USE OF PERSONAL PHONE
2	EMAIL FROM MICHAEL DEBONT'S OFFICE	ADDRESSES LETTER SENT TO CANCEL FROM RITTENHOUSE
3	LETTER FROM MICHAEL DEBONT DENYING ORAL REQUEST	DEBONT REFUSES N.J.S.A. 47:14-34 AND DENIES US (COPY OF BOUNDARY 1990-5 408 2009) AND N.J.S.A. 47:14-16(G).
	"	MR. DEBONT DOES NOT ADDRESS THE FACT THAT THE PRIVATE CELL PHONE COMPANY TO CONDUCT BRANCH OF SPONSORING BUSINESS WHICH THE PHONE WAS NO PART TO.
	"	IN SEPT OF 2014 IN RESPONSE TO AN ORAL REQUEST (WROTE) MR. DEBONT HAD MY ORAL REQUEST AND I SENT PRIVATE EMAIL AND PHONE OFFER.
	"	MR. DEBONT ACTS IN A MANNER WHICH DOES NOT IN THE INTERESTS OF THE BRANCH OF SPONSORING.

Borough of Sayreville
167 MAIN STREET
SAYREVILLE, NJ 08872

REQUEST FOR ACCESS TO GOVERNMENT RECORDS

FOR MUNICIPAL USE ONLY

Date Received

Date of Response

9/1/15
from a boy

SEE INSTRUCTIONS ON THE OTHER SIDE

NAME:
ADDRESS:

ART RITTERHOUSE
33 DELLICOURT LN
SAYREVILLE NJ 08872
908-915-0254

TELEPHONE (DAY):

Information Requested:

Copy of Minutes: [Specify board/entity, date, topic, or other identifying information]

Copy of Ordinance/Resolution: [Specify date, number or other identifying information]

Police/Accident Report Identify Accident Fee _____

License Information [Specify] _____

Other [Specify] Minutes and Text of meeting from 9/1/15
RECEIVED BY LAW ENFORCEMENT FROM SAYREVILLE
OFFICE ON AUG 24, 2015
MEETING FROM 7:00 PM TO 8:00 PM

Information on a Specific Property:

Address _____

Block _____ Lot _____

Municipal Lien Search Fee \$10.00

List of Property Owners within 200'
Provided in N.J.S. 40:55D-12, the fee is the greater of \$.25 per name or \$10.00

#1

Jessica

From: Jessica
Sent: Friday, August 28, 2015 2:32 PM
To: Art Rittenhouse
Subject: FW: OPRA Request

Councilman Rittenhouse,

In response to your OPRA request, below is the response I received from Councilwoman Kilpatrick.

Jessica Morelos
Assistant Municipal Clerk
732-390-7023 phone
732-390-0509 fax
jessica@sayreville.com

-----Original Message-----

From: Vicky Kilpatrick
Sent: Friday, August 28, 2015 1:26 PM
To: Jessica <Jessica@sayreville.com>
Subject: RE: OPRA Request

Good Afternoon Jessica,

In response to Mr. Rittenhouse's OPRA request, no emails or text messages were exchanged on my borough phone.

Respectfully,

Vicky Kilpatrick

From: Jessica
Sent: Friday, August 28, 2015 12:46 PM
To: Vicky Kilpatrick
Subject: OPRA Request

Councilwoman Kilpatrick,

Attached is an OPRA request received from Councilman Rittenhouse. Please respond back to us. I'm also mailing a copy to your home address. Have a good weekend!!

Jessica Morelos
Assistant Municipal Clerk
732-390-7023 phone
732-390-0509 fax
jessica@sayreville.com<mailto:jessica@sayreville.com>

#1

From: canonclerks@sayreville.com [mailto:canonclerks@sayreville.com]
Sent: Friday, August 28, 2015 12:47 PM
To: Jessica <Jessica@sayreville.com>
Subject: Attached Image



2015 AUG 28 PM 3:03
010000000000000000000000

167 MAIN STREET
SAYREVILLE, NEW JERSEY 08872

TEL (732) 390-7020 • FAX (732) 390-7025 • FAX (732) 390-0509

MEMORANDUM

TO: Councilwoman Victoria Kilpatrick

cc: Daniel Frankel, Business Administrator
Michael DuPont, Borough Attorney

FROM: Municipal Clerk's Office

SUBJECT: See Attached

DATE: August 28, 2015

Attached is a copy of a request for public records received from Art Rittenhouse. In accordance with the Open Public Records Act, please respond to this request within 7 working days. The information can be forwarded to the Municipal Clerk's Office and we will forward it to Art Rittenhouse. Please note if you do or do not have any of the requested information. Thank you.

Victoria Kilpatrick

Mayor, Sayreville Municipal Government - employee

Terry Farbaniec

#2

From: Miriam McManus <mcmamus@redbanklaw.com>
Sent: Tuesday, September 01, 2015 11:12 AM
To: Terry Farbaniec; Dan Frankel
Cc: dupont@redbanklaw.com
Subject: Rittenhouse OPRA Request
Attachments: 082815 mrd to rittenhouse re kirkpatrick emails.docx

Terry – I put letter to Councilman Rittenhouse in mail today.

Miriam

Miriam A. McManus
Paralegal
McKenna, DuPont, Higgins & Stone
229 Broad Street
Red Bank, NJ 07701
Phone: 732-741-6681
Fax: 732-741-3056

732-741-6681
 732-741-3056
 100 Broad Street
 Red Bank, NJ 07701

THIS IS A CONFIDENTIAL COMMUNICATION. The information contained in this email is attorney-client privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the recipient you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please notify us immediately by reply e-mail or by telephone at 732-741-6681

#3

MCKEYNA, DUPONT, HUGGINS & STONI

ATTORNEYS AT LAW
CORPORATE ATTORNS

ROBERT J. MCKEYNA - JR.
MICHAEL D. DUPONT
STEPHEN G. HUGGINS
JENNIFER STEINBERG
LEWIS G. WARDLASHINE
Member of N.J. Bar & A.A.S. 2011
Member of N.J. Bar & A.A.S. 2012

GENERAL OFFICE
P.O. BOX 600
NICE BANK NEW BRUNSWICK, NJ
TELEPHONE: 732-741-6662
TELEFAX: 732-741-6667
1000 Highway 108, Suite 100
Middletown, NJ 07940-1000

William C. Grogan
Member of N.J. Bar
2011-2012

August 31, 2015

Councilman Art Rittenhouse
33 Delikat Lane
Sayreville, NJ 08872

Re: **OPRA Request for Councilwoman Vicky Kirkpatrick Cell**

Dear Councilman Rittenhouse:

I have had the opportunity to review the OPRA request forwarded to the Borough of Sayreville on August 28, 2015 and on behalf of the Borough of Sayreville, hereby deny your OPRA request.

1. ***Emails and text messages received by Councilwoman Vicki Kirkpatrick during August 24, 2015 Sayreville Council Meeting from 7:00 p.m. to 10:00 p.m.***

A. We believe that this request is exempt under **N.J.S.A. 47:1A-24** which in part states:

...if the agency has a confidentiality and/or integrity interest in the information and the information is not otherwise available.

The Board of Municipal and County Officers of the Borough of Sayreville has the honor to certify that the information requested is not available to the public under the provisions of the **Open Public Access Act**, **N.J.S.A. 40:68-1** and the **Freedom of Information Act**, **N.J.S.A. 17:27**.

Councilwoman Vicky Kirkpatrick's cell phone number is 732-741-6662 and the Borough of Sayreville has no way to determine if a subpoenaed cell phone contains any records.

This is in accordance with **N.J.S.A. 47:1A-16(b)** which provides that a governmental agency is not required to disclose information if the information is not otherwise available.

#3

And finally, the document appears to be not a public document

Thank you for your attention to this matter

Very truly yours

MICHAEL R. DUPONT

Phone email: dupont@redbanklaw.com

MRD/mam

HS

McKENNA, DuPONT, HIGGINS & STONE

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

EDWARD J. McKENNA, JR. *
MICHAEL R. DuPONT *
KERRY E. HIGGINS
JENNIFER STONE HALL *
EDWARD G. WASHBURN E
* Member of N.J., N.Y. & WASH D.C. Bar
* Member of N.J. & N.Y. Bar

229 BROAD STREET
P.O. BOX 516
MPO BANK, NEW JERSEY 07701
TELEPHONE (732) 741-6681
TELEFAX (732) 575-1737
mchs@redbanklaw.com
http://www.redbanklaw.com

William T. McGovern
Gordon N. Gemma
Of Counsel

August 31, 2015

Councilman Art Rittenhouse
33 Delikat Lane
Sayreville, NJ 08872

Re: **OPRA Request for Councilwoman Vicki Kirkpatrick Cell**

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1. ***Emails and text messages received by Councilwoman Vicki Kirkpatrick during August 24, 2015 Sayreville Council Meeting from 7:00 p.m. to 10:00 p.m.***

a. We believe that this request is exempt under *N.J.S.A. 47:1A-24* which in part states:

"a public agency has a responsibility and an obligation to safeguard from public Access a citizen's personal information".

Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests. ***Burnette v County of Bergen***, 198 N.J. 408 (2009).

Councilwoman Kirkpatrick's cell phone is a personal cell phone and the Borough of Sayreville has no control over that device or the information contained therein.

b. Request is exempt under *N.J.S.A. 47:1A-16(c)* Personal Identifying Information namely *Unlisted telephone numbers*

#3

c. And finally, the document requested is not a public document.

I thank you for your attention to this matter.

Very truly yours,

MICHAEL R. DUPONT

Direct email: dupont@redbanklaw.com

MRD/mam

Using Mediation to Resolve Complaints

❖ The Mediation Option

The New Jersey Government Records Council offers mediation to resolve disagreements arising from a request for government records. A trained, neutral mediator is available to assist the parties – the person who was allegedly denied access to a government record and the custodian who allegedly denied access -- reach a mutually acceptable resolution to their differences.

❖ What Is Mediation?

Mediation is an informal, non-adversarial, voluntary problem-solving process. The purpose of the mediation is to:

- i. Promote discussion between the parties,
- ii. Assist parties to develop and exchange pertinent information and data concerning the issues in dispute, and
- iii. Assist parties to develop proposals that will enable them to arrive at a mutually acceptable outcome.

The mediator is an impartial, third party whose purpose is to help frame the issues, focus discussion, clarify points of agreement and disagreement, and assist parties in considering options to resolve the dispute. The mediator is not a judge and has no authority to determine the merits of the complaint or the outcome of the mediation, nor does a mediator act as an advocate for any party to the dispute. Ultimately, the parties control whether and how the dispute is resolved.

❖ Features of Mediation:

Voluntary - Both parties must agree to participate in mediation. Any party to the mediation may withdraw at any time by notifying the mediator and all other parties involved. The mediator can also terminate the process at any point if it appears that further mediation would be unproductive. Settlement, too, is entirely voluntary. If a settlement is reached, however, the mediator will assist the parties in putting their agreement into written form. Once all parties sign a Mediation Settlement Agreement, it becomes binding and all parties are obligated to fulfill the promises made in the Agreement.

Confidential - Information that is disclosed in the course of mediation and not otherwise obtainable is confidential, for settlement purposes only, and cannot be used in any future proceeding unless expressly agreed to by the parties. Records of the proceeding - stenographic, electronic or otherwise - will be maintained in a confidential file pursuant to the Uniform Mediation Act (N.J.S.A. 2A:23C-1 et seq.). Parties will not be bound by anything said or done in mediation unless and until there is a written Mediation Settlement Agreement.

Informal - Mediation is not a legal proceeding. There will be no testimony or witnesses, and rules of evidence do not apply. Rather, mediation is informal and aimed at reaching terms agreeable to both parties.

❖ Why Consider Mediation?

No cost - Mediation is free to both parties. If both parties agree to try mediation, there is no obligation for the custodian to formally respond to the complaint, or for the person requesting records to prepare testimony.

Prompt, convenient and private - Mediation takes place at a mutually agreed upon time and place; the mediation session is a private, informal discussion.

No representation necessary - Although the parties may each bring a legal representative. It is essential however, that participants in the mediation have decision-making authority, that is, the ability to commit to a settlement, or in the case of the custodian, to obtain such authority by telephone.

Parties control the outcome - Parties negotiate the terms that meet their interests. Parties will not be bound by anything said or done at the mediation unless a Mediation Settlement Agreement is signed. In addition, parties do not waive any of their rights by coming to mediation, nor will they be sanctioned for not participating or not reaching agreement.

❖ **How does Mediation Work?**

Once both parties sign the **Agreement to Mediate**, a mediator will contact the parties to conduct an initial conference call to describe the mediation process, to identify the people with decision-making authority who need to be present at the mediation session, to provide the mediator with a brief overview of the issues, and to schedule the mediation. It is the responsibility of each party to notify their legal representative, if any, of the pending mediation session.

The mediator opens the mediation session by describing his or her role as an impartial, third party and explaining the mediation procedure. Each party then will have an opportunity to discuss issues of concern. The mediator will meet jointly and separately with the parties to further the exchange of information, to help parties understand one another's perspective, and to explore settlement options.

If settlement is reached, the terms of the agreement will be reduced to writing and signed by the parties. A copy of the Mediation Settlement Agreement is given to each party. If there is no agreement, the matter will be referred for adjudication by the GRC.

❖ **Who is the Mediator?**

The GRC provides mediation services to promote the use of means other than litigation to resolve disputes affecting the public interest. The Mediator is an attorney well versed in the Open Public Records Act and is professionally trained in dispute resolution.

❖ **For more information**

For more information about mediation or if you have any questions please contact:

New Jersey Government Records Council
101 South Broad Street
PO Box 819
Trenton, NJ 08625-0819
Phone: (609) 292-6830
Fax: (609) 633-6337
Web: www.nj.gov/grc

**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 checked="" type="checkbox"/> NO, I do not want to participate in mediation.
---	--

Andy R. JENNIFER
Name of Principal (Please Print)

[Signature]
Signature

9/27/2015
Date

I am the Complainant I am the Custodian

Name of Legal Representative (Please Print)

Signature

Date

Name of Representative (Please Print)

Signature

Date



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

September 9, 2015

PAGE 1 OF 18

Mr. Art Rittenhouse
Councilman
33 Delikat Lane
Sayreville, NJ 08872-2209

Dear Councilman Rittenhouse:

Thank you for contacting the NJ Government Records Council ("GRC").

If you make an official OPRA request of a records custodian in New Jersey and you believe you are unlawfully denied access to government records, you may file an action in Superior Court and pay the court filing fee or file a denial of access complaint with our agency (the GRC). Please note that filing in court may result in your complaint being resolved more quickly than filing with the GRC. Additionally, the court can assess your common law right of access whereas the GRC cannot. Should you choose to file a complaint in Superior Court, you must contact the Court Clerk for the county in which you plan to file. Should you choose to file a complaint with the GRC, you must download a Denial of Access Complaint form from our website (<http://www.nj.gov/grc/register/>), fill it out and send it to our agency.

All Denial of Access Complaints must be submitted to the following:

Government Records Council
101 South Broad Street
PO Box 819
Trenton NJ 08625-0819
or
(609) 633-6337 Fax
or
grc@dca.state.nj.us

Sincerely,

Government Records Council

Art Rittenhouse
9/22/2015

