

**GOVERNMENT RECORDS COUNCIL**  
**Draft Regulations**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**1:1-1.1 Purpose and Scope**

To be completed

**1:1-1.2 Definitions**

"Act" or "OPRA" means the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., as amended by P.L.2001, c. 404.

"Adjudication" means any action in which the Council receives, hears or considers submissions, exhibits or testimony from any person or entity or convenes for the purpose of deciding any or all issues presented by an OPRA Complaint.

"Administrative Case Closure" means the document that the Council's Staff issues to parties closing a Complaint by the power vested in the Staff by the Council.

"Administrative Case Disposition" means the document that the Council's Staff issues to parties when the Complainant voluntarily withdraws or settles its Complaint with the Council.

"Administrative Procedures Act" means P.L. 1968, c.410 (C.52: 14B-1 et seq.).

"Advisory, Consultative and Deliberative" means the privilege of "inter-agency or intra-agency advisory, consultative and deliberative material" as stated in N.J.S.A. 47:1A-1.1 – definition of a "Government Record."

"Advisory Opinion," pursuant to N.J.S.A. 47:1A-7(b), means an opinion issued by the Government Records Council regarding whether a particular type of record is a Government Record which is accessible to the public.

"Chairperson" means Chairperson of the Government Records Council.

"Complaint" or "OPRA Complaint" refers to the document submitted to the Council on a form authorized by the Council in which a Requestor claims, in writing, that a Custodian of Government Record has denied the Requestor access to a Government Record.

"Complainant" means a person who files a Complaint with the Council.

"Council" means the New Jersey Government Records Council.

"Custodian" means the person charged by a Public Agency with the responsibility for responding to a request for access to Government Records pursuant to OPRA.

"Decision" means any Interim, Final or Supplemental Decisions rendered by the Council in its capacity as an adjudicatory body. It shall also mean Administrative Case Closures or Administrative Case Dispositions

"Complaint" or "Complaint Form" means the Council's Denial of Access Complaint filed by a Requestor to initiate a Complaint with the Council, in such form and content as the Council may prescribe.

"Effective Date" means the date upon which the Council makes a Decision related to a matter before it awaiting Adjudication, or such other date upon which the Council desires to make a Decision effective.

"Fair Preponderance of the Credible Evidence" refers to the weight of evidence, expressed, as a percent to total, needed by a party to prevail in its position(s) before the Council. The weight of a party's submissions must be 51% or more.

"Final Decision" means a Decision issued by the Council, which dismisses a Complaint.

"Government Record" or "Record," pursuant to N.J.S.A. 47:1.1, means 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 his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency [A]dvisory, [C]onsultative, or [D]eliberative material. See N.J.S.A. 47:1A-1 et seq. for additional information on exemptions to disclosure under OPRA.

"Hearing Officer" includes Council members or Commissioner designees, or designees authorized by the Council at one of its public meetings to receive testimony and documentary evidence regarding an OPRA Complaint, to inspect records or receive testimony in person or *in camera*, as appropriate, and to assemble a record of those proceedings for review and Adjudication by the Council.

*"In camera"* or *"In camera inspection"* means a proceeding in which the Council or Hearing Officer inspects a Government Record and receives testimony, if requested by the Council or Hearing Officer, necessary for the Council to determine whether the record requested by the Complainant should be publicly accessible under OPRA over a Public Agency's objection or claim that the Government Record is exempt from disclosure by virtue of a provision in the Act. Unauthorized persons are not permitted to inspect, copy or otherwise learn of the contents of such records, except as provided in these regulations or by Decision of the Council.

*"Inquiry"* means a request from the public or from a Public Agency for information or assistance with OPRA and/or Council matters or issues.

*"Interim Decision"* means a Decision issued by the Council, which addresses a Complaint in part.

*"Letter of Representation"* means a letter issued by a representing a Party in a proceeding before the Council.

*"Mediation,"* pursuant to N.J.S.A. 47:1A-7(b), means an informal, non-adversarial process led by a Mediator and having the objective of helping the parties reach a mutually acceptable, voluntary agreement.

*"Mediation Settlement Agreement"* means a written agreement between the Complainant and the Custodian reached during the Mediation process memorializing a resolution of some or all of the issues presented during the Mediation process.

*"Mediator,"* pursuant to N.J.S.A. 47:1A-7(b) means a neutral individual who is trained in dispute resolution techniques and who was selected by the Council to intervene between parties in an effort to help them resolve their differences.

*"Party"* means a Complainant, Custodian, Public Agency and or their respective Representatives in any proceeding before the Council.

*"Penalty"* means the civil Penalty which may be imposed upon a Custodian, pursuant to N.J.S.A. 47:1A-11, who knowingly and willfully violates OPRA, and is found to have unreasonably denied access to the requested record under the totality of the circumstances.

*"Prima facie"* means sufficient to establish a fact or raise a presumption unless disproved or rebutted

*"Pro hac vice"* means a Council-approved appearance by an out-of-state lawyer for one particular case.

"Public Agency" or "Agency" means any of the principal departments in the executive branch of State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the legislature of the State and any office, board, bureau or commission within or created by the legislative branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

"Quash" means a Party's request that the Council nullify a subpoena issued by the Council.

"Representative" means a person(s) who has the authority to represent a Party in a proceeding before the Council.

"Requestor" means a person who delivers to a Public Agency a written request to copy, examine or inspect a government record pursuant to OPRA.

"Residuum of Competent Evidence" means admissible evidence that carries at least the smallest weight.

"Secretary" means Secretary of the Council.

"Staff" or "Council Staff" means the Staff of the Council.

"Statement of Information" means a written response to an OPRA Complaint, and all attachments thereto, submitted to the Council by a Custodian or its Representative. It shall also mean a written submission not on the Council's form, but which provides the information requested on the Council's form.

"*Sua sponte*" means the Council's ability to raise issues or matters not raised by the Parties.

"Supplemental Decision" means a Decision issued by the Council, which follows a Final Decision.

"Vice Chairperson" means the Vice Chairperson of the Council.

### **1:1-1.3 Description of Government Records Council**

Pursuant to N.J.S.A. 47:1A-7(a), the Council shall consist of the Commissioners of the Department of Community Affairs and the Department of Education, or their designees, and three members of the public (not more than two of which can be of the same political party) appointed by the Governor with the advice and consent of the Senate. An Executive Director, professional and clerical Staff, supports the Council.

#### **1:1-1.4 Responsibilities of Government Records Council**

Pursuant to N.J.S.A. 47:1A-7(b), the Council shall have the following responsibilities:

- (a) Adjudicate OPRA Complaints filed with the Council regarding access to Government Records,
- (b) Make Mediation services available free of charge to Complainants and Custodians,
- (c) Respond to inquiries about the Act or the Government Records Council from the public and public agencies,
- (d) Provide information about the Act and services available from the Council,
- (e) Maintain a toll-free help-line and website to assist the public and records Custodians in obtaining information about the Act, the Council and issues and matters regarding access to Government Records,
- (f) Issue Advisory Opinions on the accessibility of Government Records,
- (g) Make training opportunities available to Custodians, and public officers, employees and officials concerning the provisions of the Act,
- (h) Prepare for Custodians lists of the types of records in possession of public agencies, which are government, records accessible under OPRA.

### **SUBCHAPTER 2. COMPLAINT PROCESS**

#### **1:1-2.1 General Provisions**

- (a) Any Requestor who is denied access, in whole or in part, to a Government Record pursuant to the provisions of OPRA may file a Complaint with the Council. N.J.S.A. 47:1A-6.
- (b) The right to institute any proceeding before the Council shall solely be the right of the Requestor. N.J.S.A. 47:1A-6.
- (c) The Council will handle Complaints in a summary or expedited manner. N.J.S.A. 47:1A-6.
- (d) Upon receipt of a Complaint, the Council will first determine whether any portion of the Complaint is outside its jurisdiction, frivolous, or without factual basis. If the Complaint falls within any of said categories, the Council shall issue a Final Decision to all parties so stating and shall dismiss the Complaint.
- (e) If the Council concludes that the Complaint is within its jurisdiction and is neither frivolous nor without factual basis, the Council shall proceed with the Adjudication process.

(f) If the Council is unable to make a determination as to the accessibility of a Government Record based upon the Complaint and the Custodian's response thereto, the Council shall conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a state Agency in contested cases pursuant to the Administrative Procedures Act, P.L. 1968, c.410 (C.52:14B-1 et seq.), insofar as they may be applicable and practicable. N.J.S.A. 47:1A-7.e.

(g) The Council may, at its own discretion, refer any matter before it to the New Jersey Office of Administrative Law for fact finding or recommendation to the Council.

(h) The Council shall not charge any Party a fee in regard to actions filed with or proceedings before the Council. N.J.S.A. 47:1A-7(f).

### **1:1-2.2 Complainant Submissions**

(a) The Complainant submitting a completed Denial of Access Complaint to the Council initiates the Complaint process.

(b) Complaints should be submitted on the Council's Denial of Access form. If not submitted on said form, submissions must contain substantially all of the information requested on the Council's form.

(c) The Council shall provide a copy of all Complaints to the Custodian of record.

(d) The Complaint shall include any information or argument(s), which the Complainant wishes to bring to the Council's attention.

(e) The Complaint may also include any attachments, affidavits, certifications or documentation deemed appropriate or supportive of the allegations set forth in the Complaint.

(f) Complainants shall list all of the issues Complainant wishes the Council to address on their Complaint submission or on the attachments thereto. Failure by the Complainant to identify or list an issue in the Complaint shall not preclude the Council from raising an issue *sua sponte*.

(g) Complaint forms may be obtained from the Council's Staff or downloaded from the Council's website.

(h) Complainants may offer a rebuttal to the Custodian's response to the Complaint (see 1:1-2.3 below) only if such rebuttals are submitted to the Council within seven (7) days following receipt of the Custodian's response. The Council will not accept additional Complainant submissions after said rebuttal unless the Council, working through its Executive Director, orders same or offers its express approval for same.

(i) Complaint amendments

1. A Complainant may amend his/her Complaint as a matter of right within thirty (30) days after the filing of the initial Complaint. Such amendments must be submitted in writing with copies to the Council.

2. Additional amendments or supplements beyond the thirty (30) day period in 1:1-2.2(i)1 above shall only be allowed by leave of the Council acting through its Executive Director.

3. The Council shall provide Custodians with copies of amendments

4. Complainants may offer a rebuttal to the Custodian's response to the Complaint amendment (see 1:1-2.3(e) below) only if such rebuttals are submitted to the Council within seven (7) days following receipt of the Custodian's response. The Council will not accept additional Complainant submissions after said rebuttal unless the Council, working through its Executive Director, orders same or offers its express approval for same.

(j) The Council, working through its Executive Director, may require Complainants to submit within prescribed time limits set by the Executive Director additional information deemed necessary for the Council to adjudicate the issue(s).

### **1:1-2.3 Custodian/Public Agency Submissions**

(a) Custodians shall submit completed Statements of Information to the Council and the Complainant detailing their positions with respect to all Complaints filed with the Council in all cases where Mediation was declined, or not elected by either Party, or where Mediation was elected but through which the parties did not fully resolve the issue(s) presented.

(b) Council's Staff will issue SOI forms to Custodians for each Complaint. SOI forms may also be downloaded from the Council's website.

(c) The Custodian shall endeavor to utilize the Council's SOI form. If the Council's SOI form is not used, Custodian submissions must contain, at a minimum, the information requested in the SOI form.

(d) Custodians shall submit completed and signed SOI's to the Council's Staff not later than seven (7) business days from the date of receipt of the SOI form from the Council's Staff. The Council will not accept additional submissions beyond the filing of the SOI unless the Council, working through its Executive Director, orders same or offers its express approval for same. Failure to comply with this time period may result in the case being adjudicated and decided with the information on record at the time of said adjudication.

(e) If a Complainant amends its complaint pursuant to 1:1-2.2(i) above, the Custodian shall have seven (7) days from the date of receipt of same to submit its position regarding same with the Council. The Council will not accept additional submissions beyond said seven (7) day period unless the Council, working through its Executive Director, orders same or offers its express approval for same. Failure to comply with this time period may result in the case being adjudicated and decided with the information on record at the time of said adjudication.

(f) In the event someone other than the Custodian, (i.e., legal counsel), completes the SOI, the Custodian is still required to sign the SOI.

(g) A Custodian's failure to submit a completed and signed SOI may result in the Council's issuing a Decision in favor of the Complainant.

(h) The SOI may include any information or arguments concerning the Complaint, which the Custodian wishes to bring to the Council's attention, including any attachments, affidavits, certifications or documentation the Custodian deems appropriate.

(i) SOI's, along with any accompanying documentation, must be submitted within the guidelines set by the Council's Staff during its preparation of the case for Adjudication.

(j) The Council, working through its Executive Director, may require Custodians to submit, within prescribed time limits set by the Executive Director, additional information deemed necessary for the Council to adjudicate the issue(s)

#### **1:1-2.4 Administrative Deadline for Filing a Denial of Access Complaint**

A Complainant shall have one (1) year from the date of its OPRA request for access to a Government Record to file a Denial of Access Complaint with the Council.

#### **1:1-2.5 Service of Documents**

(a) All written communications to the Council shall be dated, state the name of the sender, the street and/or PO Box address of the sender, the facsimile number or e-mail address to which replies should be sent, and, where applicable, the name and case number of the Complaint.

(b) Any person submitting any document or communication of any sort to the Council or the Council's Staff regarding a Complaint shall also mail, e-mail, send via facsimile or hand-deliver a complete copy of the submission to every Party named in the Complaint and to any other person the Council or Hearing Officer shall direct.

(c) Any copy of a document submitted to the Council or its Staff that shows the date and name and address of the person to whom it was delivered shall be *prima facie* evidence of such service and the date thereof.

(d) A facsimile receipt shall be *prima facie* evidence that a document was sent to and received at the facsimile number indicated on the receipt on the date shown on the receipt.

(e) E-mail transmissions shall be made pursuant to the Uniform Electronic Transactions Act, N.J.S.A. 12:12-1 through 12A: 12-26, to the extent its provisions are applicable and practicable.

(f) Copies of all submissions to the Council must be provided to all parties for the Council to consider the submissions.

**1:1-2.6 Representation**

(a) Any Party named in a Complaint may represent themselves in any matter before the Council.

(b) Any person authorized by a Party named in the Complaint may offer representation in matters before the Council.

(c) Representatives of any Party named in a Complaint are not required to be attorneys at law in order to appear before the Council.

(d) Letters of representation – The Representatives of any Party named in a Complaint shall file with the Council written authorization signed by the named Party he/she represents and a copy of said authorization shall be served upon all parties at the same time the Council receives a copy.

(e) Objections to representation – Objections to the representation by another of a Party to the Complaint must be in writing, presented to the Council, served on all parties, and include, but not by way of limitation:

1. Council's case reference, name and case number,
2. Clear identification of the Representative(s) in question, and
3. Detailed explanation of the reason(s) for the objection(s).

(f) Attorneys not licensed to practice law in New Jersey

1. Attorneys not licensed to practice law in New Jersey may represent parties in any action(s) before the Council

2. If the Council decides in favor of a Party who raised an objection to representation by an attorney not licensed to practice law in New Jersey, the attorney being objected to will not be acknowledged by the Council unless she/he:

- i. Files a motion with the Council for admittance *pro hac vice*

(1) Attorneys seeking admittance *pro hac vice* must be licensed in another jurisdiction and be in good standing therein,

(2) Attorneys seeking admission *pro hac vice* must serve said motion upon all parties

ii. Works through an attorney licensed to practice law in New Jersey and provides the Council with a Letter of Representation from said licensed attorney.

**1:1-2.7 Mediation**

(a) Upon receipt of a Complaint, the Council shall offer the parties Mediation.

(b) Mediation shall be at no cost to any Party.

(c) A Complaint will be referred for Mediation only if the Complainant and Custodian agree to enter into such a process.

(d) A Party who fails to respond to an offer of Mediation within five (5) business days from the date of receipt of the Council Staff's offer shall be deemed to have rejected the offer of Mediation.

(e) A Mediator, who shall be trained in Mediation and selected by the Council, will conduct all Mediation activities.

(f) Mediation practices shall be governed by N.J.S.A. 2A: 23C-1 to 2A: 23C-13.

(g) Neither the Mediator nor any person participating in Mediation shall divulge to anyone the content of any Mediation session or share any document produced in the course of Mediation without the written consent of the Party who made the statement or produced the document.

(h) Representatives of parties may attend Mediation but are bound by the rules and regulations with respect to Mediation as set forth herein.

(i) Parties may cease participation in the Mediation process at any time and elect to have their case referred back to the Council for Adjudication.

(j) The Mediator may cease proceedings and refer the case back to the Council if she/he feels that the process is not productive.

(k) The Mediator will refer all cases back to the Council at the conclusion of the Mediation proceedings, whether resolved or not, for closure.

(l) The Council shall dismiss any Complaint upon receipt of a notice from the Mediator that there exists a Mediation Settlement Agreement from the Mediator that the matters presented in the Complaint have been either resolved or voluntarily dismissed by all parties.

**1:1-2.8 Parties to a Complaint**

The Complainant and Custodian of a Public Agency shall always be the primary parties named in a Complaint.

**1:1-2.9 Council Complaint Deliberations – No Hearing**

(a) Place of deliberations - Unless otherwise provided by the Council, all Council deliberations and meetings shall be held at the principal office of the Council located in Trenton, NJ, or such other location as the Council may from time to time designate as its official office address.

(b) The Council members shall review Staff findings and recommendations as well as all Party submissions and vote during open public meetings of the Council.

(c) The Council shall convene in closed session to receive legal advice and/or to conduct *in camera inspections* and the Council will deliberate in open session before reaching a Decision on any matter to be adjudicated in accordance with the "Open Public Meetings Act" P.L.1975, c.231 (C.10: 4-6 to 10:4-21).

(d) Parties are not permitted to make oral or written presentations to the Council regarding the Complaint at Council meetings unless expressly requested to by the Council.

(e) The Council will issue its Decision as soon as practicable following the adjudicatory proceedings.

**1:1-2.10 Council Complaint Deliberations – Hearing**

(a) If the Council is unable to make a determination as to the accessibility of a Government Record based upon the Complaint and the Custodian's response thereto, the Council may conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a state Agency in contested cases pursuant to the Administrative Procedures Act, P.L. 1968, c.410 (C.52: 14B-1 et seq.), insofar as they may be applicable and practicable. N.J.S.A. 47:1A-7.e.

(b) The Council may, at its own discretion, refer any matter before it to the New Jersey Office of Administrative Law for fact finding or recommendation to the Council.

(c) Place of hearings – Unless otherwise provided for by the Council, all Council hearings shall be held at the principal office of the Council in Trenton, NJ.

(d) Notice of hearings – The Council shall provide the parties with advance written notice of the proceedings, which notice shall include, but not be limited to:

1. A statement of the hearing issue(s),
2. A list of persons notified,

3. Location of the hearing,
4. Approximate time of hearing,
5. Timelines for document and argument submissions, and
6. Deadlines for parties to present to Council witness lists and other submissions.

(e) Pre-hearing conferences:

1. The Council may conduct pre-hearing conferences with the parties for the purposes of clarifying the hearing issues and procedural matters. Pre-hearing conferences may be held in person or by teleconference

2. The Council shall provide the parties with advance written notice of pre-hearing conferences, which includes, but is not limited to:

- i. A statement of the hearing issue(s),
- ii. A list of persons notified,
- iii. Location, and
- iv. Time of proceedings.

(f) Continuances or postponements of hearings:

1. Any Party seeking a continuance or postponement of a hearing must:

i. Attempt, in writing, to obtain consent for the continuance or postponement from all parties in the case.

ii. Submit a written petition to the Council for consideration within five (5) business days of the hearing,

iii. Copy all parties, including any intervenors,

iv. Include the reason(s) for the request and the rationale supporting each reason,

v. Include proof of the attempt(s) to obtain consent for the continuance or postponement from all parties in the case and the results of such efforts.

2. The Council shall determine whether to grant a continuance or postponement and provide a written response to the petitioning Party all other parties in the matter.

3. The Council may, in its sole discretion, decide to continue or postpone a hearing.

(g) Production of documents – At the request of the Council, a Public Agency shall produce documents with respect to matters before the Council. N.J.S.A. 47:1A-7.c.

(h) Witnesses:

1. At the request of the Council, a Public Agency shall ensure the attendance of witnesses with respect to any action before the Council. N.J.S.A. 47:1A-7.c.

2. Parties are responsible for arranging for the attendance of witnesses at hearings.

3. Parties unable to obtain cooperation or assurances from a prospective witness may petition the Council to issue a subpoena to said witness(es).

4. The Chairperson, Vice Chairperson, Secretary or designee of the Council shall be authorized to administer oaths and take testimony under oath.

5. Parties must submit a list of witnesses to the Council not later than five (5) days in advance of a hearing. Said lists must, at a minimum, include the following:

i. Witness name,

ii. Witness contact information including address, phone and fax numbers and email address, if applicable,

iii. Relevance of testimony to the proceedings,

iv. A statement of the witness' knowledge, special experience, training or education relating to the matters before the Council.

(i) Subpoenas

1. The Council may subpoena documents and witnesses with respect to the Council's investigation of any Complaint or the holding of any Council proceeding.

2. Petitions to the Council for issuance of a subpoena(s) must be in writing and, at a minimum, include:

i. Witness name,

ii. Witness contact information, including address, phone and fax numbers and email address, if applicable, and

iii. Relevance of testimony to the proceedings,

iv. A statement of the witness' knowledge, special experience, training or education relating to the matters before the Council

### 3. Motions to Quash

i. Upon petition by a Party served upon the Executive Director no later than three (3) business days in advance of the date compliance with the subpoena is required, a Party may object to the issuance of a subpoena. The subpoena may be Quashed or modified for good cause shown provided the Executive Director, and the Chairman, or Vice Chairman or Secretary of the Council agree to Quash or modify said subpoena. A Decision made by the Executive Director and one of the aforementioned officers shall be binding upon the Council.

ii. The petition seeking to Quash or modify a subpoena shall detail the reason(s) for the objection(s) and shall contain supporting rationale for each such reason.

iii. Enforcement – The Council, pursuant to the provisions of the New Jersey Administrative Procedures Act, and/or the New Jersey Superior Court, shall have jurisdiction to enforce compliance with subpoenas issued by the Council.

#### (j) Rules of evidence

1. The Council may relax the rules of evidence found in the Administrative Procedures Act, P.L. 1968, c.410 (C.52: 14B-1 et seq.)

2. All evidence may be considered, even hearsay, as long as it is relevant, material and probative.

3. Irrelevant, immaterial and unduly repetitious evidence will be curtailed or excluded.

#### (k) Burdens of proof

1. A Public Agency bears the burden of proving that a denial of access of a Government Record, in whole or in part, is authorized by law.

2. Complainants bear the burden of proving the allegations set forth in the Complaint, by a Fair Preponderance of the Credible Evidence.

3. Decisions made by the Council in favor of a Public Agency must be based on a Residuum of Competent Evidence.

4. The Council may question, examine, cross-examine, or otherwise initiate testimony or input from any Party or witness and may also cause the production of evidence and/or documentation.

5. The Council may initiate action *sua sponte* if it deems such action appropriate or necessary and if said action on behalf of the Council would be in the interest of furthering the provisions and intent of OPRA.

(l) Filing of additional documentation or arguments:

1. The Council reserves the right not to consider documentation submitted by a Complainant and/or Custodian unless it has been submitted to the Council and the other parties named in the Complaint not later than ten (10) business days in advance of the hearing.

2. A written statement by the Party shall accompany each such submission explaining the relevance of such submission.

3. Parties filing submissions must provide copies to each of the parties to the Complaint and provide proof of service to the Council contemporaneously therewith.

4. The Council will not accept any submissions at the hearing that has not been provided to the other Party pursuant to these regulations, unless the Chairperson authorizes said submission(s).

**1:1-2.11 in camera Proceedings**

(a) Place of *in camera* inspections – Unless otherwise provided by the Council, all *in camera* proceedings shall be held at the principal office of the Council located in Trenton, NJ.

(b) The Council shall order an *in camera* inspection solely at its discretion .

(c) Notices of proceeding – The Council will issue a notice to the Public Agency, with copies to all other parties, stating when, where and what time the *in camera* document(s) are to be delivered to the Council.

(d) Presentation of documents to the Council – In an open public Council meeting, the Custodian and/or its Representative will be called upon to hand-deliver the *in camera* document(s), in a sealed format, to the Executive Director of the Council, or such other person as the Council may designate, along with:

1. A certification signed by the Custodian stipulating that the copies of the *in camera* documents delivered to the Council are true and complete copies of the records in question with no alterations or redactions.

2. An *in camera* inspection index that:

i. References each record, or any part(s) thereof, claimed to be exempt from disclosure,

ii. Lists the reason(s) that each record, or any part(s) thereof are alleged to be exempt from disclosure. The descriptions should be general enough to explain the exemptions without compromising the alleged privilege.

iii. Provides generic document descriptions and/or distinct document labels, i.e. numeric order.

(d) The Council member, or its designee receiving *in camera* documents shall retain said documents in a secure Council file.

(e) Neither the Council, nor anyone else authorized to inspect the documents, shall make copies of same.

(f) Anyone authorized to access the documents shall not take any notes making reference to specific information contained in the documents.

(g) The Council shall review the *in camera* document(s) in closed session at any of its regular meetings conducted pursuant to the "Open Public Meetings Act" P.L.1975, c.231 (C.10: 4-6 to 10:4-21).

(h) Neither the Requestor nor the Custodian nor any of their respective Representatives shall be present during the closed session review.

(i) After inspecting the document(s), the Council shall announce its Decision at an open public meeting and provide written notice of its Decision to all interested parties in the matter.

(j) During public session, anyone involved in the *in camera* inspection shall forego all mention of the specific contents of the document(s). Reference shall only be made to the assigned reference number or to the generic descriptions in the *in camera* index.

(k) Upon completion of the *in camera* proceedings, the Council will seal the documents and return them to the Public Agency.

#### **1:1-2.12 Decisions of the Council**

(a) All Council Decisions shall be reduced to writing and shall be sent to the interested parties in the matter as soon as possible following Adjudication.

(b) The Council will issue the following types of Decisions:

1. Final Decision,
2. Interim Decision,
3. Supplemental Decision,

4. Administrative Case Closure,
5. Administrative Case Disposition.

(c) "Effective Date" means the date upon which the Council makes a Decision related to a matter before it awaiting Adjudication, or such other date upon which the Council desires to make a Decision effective.

(d) Unless the Council otherwise directs, the Effective Date of a Council's Decision shall be utilized in calculating all time frames set forth in a Decision and the time frames for calculating when motions for reconsideration and appeals must be filed.

#### **1:1-2.13 Reconsideration of Council Decisions**

(a) Requests for reconsideration must be filed within five (5) business days following the Effective Date of Council's Decision.

(b) Requests must be in writing, delivered to the Council and contemporaneously served upon all parties.

(c) The Council shall provide all parties in a matter before the Council with written notification of whether a request for reconsideration has been accepted by the Council.

#### **1:1-2.14 Appeals from Council Decisions**

(a) Any Party desiring to appeal a Decision of the Council shall appeal same to the Appellate Division of the Superior Court (Court) of New Jersey within the time frame(s) prescribed by law.

(b) Parties seeking to file an appeal to the Court must file, with the Council, a Stay of the Council's Decision as outlined in 1:1-2.14 below.

#### **1:1-2.15 Stays of Council Decisions**

(a) Requests for a stay of the Effective Date of a Council's Decision must be made prior to the last day by which action was to have been taken in accordance with a Council order.

(b) The Council, acting through its Executive Director and a member of the Council may grant a stay for the period of time, but in no event longer than the date of the next regular meeting of the Council.

(c) A request for a stay must be in writing and include a detailed analysis of the issue(s), which includes, but is not necessarily limited to, the appellant's positions with regard to the following factors that the Council will include in the Decision-making process:

1. The clear likelihood of success on the merits of the claim,

2. The danger of irreparable harm in the absence of a Stay,
3. The harm to others if a Stay is granted, and,
4. The public interest.

**1:1-2.16 Attorney's Fees**

(a) Reasonable attorney's fees may only be awarded where the Council has rendered a Final Decision in favor of the Complainant.

(b) The Council will not consider requests for charges.

(c) The Complainant, or its attorney(s), must submit an application to the Council for an award of attorney's fees within ten (10) business days following the Effective Date of Final Decision by the Council. The application must include a certification from the attorney(s) involved that includes, but not by way of limitation, the following:

1. Council's case reference,
2. Law firm affiliation,
3. Statement of client representation,
4. Hourly rate(s) of all attorneys and support staff involved in the case,
5. Copies of weekly time sheets for each person involved in the case, which includes detailed descriptions of all activities attributable to the project in 0.1 increments [six (6) minutes],
6. Evidence that the rates charged are in accordance with prevailing market rates in the relevant community. Such evidence shall include, but is not necessarily limited to:
  - i. Years of related or similar experience,
  - ii. Skill level, and
  - iii. Reputation.
7. Detailed listing of any expense reimbursements with supporting documentation for such costs.

(d) The Complainant, or Complainant's counsel, must serve all parties with the application for attorney's fees and all attachments thereto.

(e) The Custodian shall be afforded ten (10) business days from the date of service to object to the attorney's fee requested.

(f) All objections to applications for attorney's fees must be in writing to the Council and served upon the all parties.

(g) The Council shall:

1. Consider all submissions of the parties concerning the attorney fee applications.
2. Determine the amount of a reasonable attorney fee, if any, to be awarded to Complainant's attorney.
3. The attorney's fee requested by Complainant's attorney shall be predicated upon the number of hours and rate based on:
  - i. Applicable law,
  - ii. The submissions of the parties,
  - iii. The Council's own discretion.

**1:1-2.17 Violations, penalties, disciplinary proceeding**

(a) Standard for Penalty imposition – Public officials, officers, employees or Custodians who knowingly and willfully violate P.L.1963, c.73 (C.47: 1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances shall be subject to a civil Penalty.

(b) Penalty amounts

1. \$1,000 for initial violation,
2. \$2,500 for a second violation that occurs within ten (10) years of an initial violation,
3. \$5,000 for a third violation that occurs within ten (10) years of an initial violation.

(c) The Council shall not impose a Penalty unless it has undertaken, or caused the Office of Administrative Law to have undertaken, an expedited or summary hearing to determine whether a public official, officer, employee or Custodian knowingly and willfully violated P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and unreasonably denied access under the totality of the circumstances.

(d) Penalties shall be collected and enforced in proceedings in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A: 58-10 et seq.), and the rules of court governing actions for the collection of civil penalties.

(e) The Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the Penalty imposed by this section.

(f) Appropriate disciplinary proceedings may be initiated by a Public Agency against a public official, officer, employee or Custodian against whom a Penalty has been imposed.

### **SUBCHAPTER 3 - Inquiries for information regarding OPRA or the Council**

#### **1:1-3.1 General Provisions**

(a) Any person may call or write the Council with a request for information regarding the OPRA and related matters or Council procedures.

(b) The Council, where possible, will direct inquirers to available resources, i.e., Council case Decisions, OPRA citations, publications available through the Council, etc., that might assist inquirers with their Decision making.

(c) Guidance offered during the Inquiry process shall not constitute Final Decisions of the Council, is not legal advice and shall not alter any legal right or liability already existing in New Jersey or federal law.

### **SUBCHAPTER 4 - Advisory Opinions from the Government Records Council**

#### **1:1-4.1 – General Provisions**

(a) Pursuant to N.J.S.A. 47:1A-7(b), the Government Records Council shall issue Advisory Opinions as to whether a particular type of record is a Government Record which is accessible to the public.

(b) Advisory Opinions address whether general categories of records are disclosable and do not serve as case-specific Decisions of the Council.

(c) Advisory Opinions do not constitute Final Decisions of the Council, are not legal advice and shall not alter any legal right or liability already existing in New Jersey or federal law.

(d) Advisory Opinions shall not amend the rights, duties and privileges outlined in N.J.S.A. 47:1A-1 et seq.

(e) The issuance of Advisory Opinions shall not prejudice any Party's rights to file a Complaint with the Council.