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Basics of the Pennsylvania and New Jersey Public Records Laws

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What is the Title of the Act?

Pennsylvania: The Right to Know Act

New Jersey: The Open Public Records Act

To Whom Does the Act Apply?

Pennsylvania: The Act applies to any office, department, board or commission of the executive branch of the Commonwealth, any political subdivision of the Commonwealth, the Pennsylvania Turnpike Commission, the State System of Higher Education or any State or municipal authority or similar organization created by or pursuant to a statute which declares in substance that such organization performs or has for its purpose the performance of an essential governmental function. The Act does *not* apply to the Legislature or the Courts.

New Jersey: The Act applies to all executive branches of government, including state colleges and universities, and all counties, municipalities, school districts, and other local agencies. The Act *does* apply, with some exceptions, to the Legislature. It does *not* apply to the Courts.

What Are the Records Made Available Under the Act?

Pennsylvania: The Act has a very narrow definition of public records. Public records constitute *only* (1) accounts, contracts and receipts dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and (2) any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons. The burden is on the requestor to establish that the document sought is a public record.

New Jersey: Any document in an agency's possession that is held by the agency for a "government purpose" is presumptively public. Unlike Pennsylvania, the presumption is that documents in an agency's possession are public. If the agency denies access, it is the agency's burden to show that the document comes within some exception provided by law.

What Exceptions Apply to Make Records Unavailable?

Pennsylvania: Even if a document falls within the narrow definition of a "public record" under the Act, the agency can deny the request for a number of reasons, including that (1) the document would reveal the contents of a government investigation; (2) the document would

violate the personal security or reputation of a person; or (3) disclosure of the document is prohibited by law or disclosure would result in the loss of federal funding. It is the agency's burden to prove that an exception is applicable.

New Jersey: There are a number of exceptions to the definition of "public record" under the OPRA including: (1) communications a legislator receives from a constituent; (2) medical examiner records; (3) some criminal investigation records; (4) victim records; (5) documents constituting trade secrets; (6) privileged documents; (7) documents that if revealed would raise security concerns; (8) certain employment records of public employees such as sexual harassment complaints. (Note that elsewhere the Act specifies what type of information relating to criminal investigations is made public, including basic information about the crime, including the names of the defendant and the victim, and the nature of the charges).

How Do I Submit a Request?

Pennsylvania: While some agencies will accept oral requests, requests should generally be in writing. Each agency will have procedures that should be followed, which are generally available on the agency's web-site. Commonwealth Agencies are generally more organized in this regard. Where a specific individual or "Right to Know" officer is designated by the agency, all requests should be submitted to that person. Most agencies will accept requests by facsimile. Requests should be clear and concise.

New Jersey: You should contact the "custodian of records" of the agency from which you seek records. At the municipal level, that person is generally the municipal clerk. At other agencies, it will be whoever has been designated by that agency. You should obtain a copy of that agency's request form, and follow the instructions on the form. Requests should be clear and concise.

How Long Does the Agency Have to Respond?

Pennsylvania: A Commonwealth Agency has 10 business days to respond; however, the agency may request additional time under some circumstances, including to seek a legal opinion as to whether the document is a public record. A Non-Commonwealth Agency has 5 business days to respond, subject to the same right to request additional time.

New Jersey: Certain records, including budgets, bills and contracts, are supposed to be made immediately available by the agency. Otherwise, the agency has seven days to respond; however, it may seek additional time if the information sought is in archives.

In What Format Can I Get the Records?

Pennsylvania: You may request the records in the format in which they are kept by the agency. If the records exist in a particular medium, the agency must give you access to the documents in

that medium. If the documents exist only electronically, the agency must give you the documents in paper format if you request it in that format.

New Jersey: The agency must provide the information in the format requested, but you may be required to pay to change the information from one medium to another.

What are the Fees?

Pennsylvania: An agency can charge only “reasonable” costs of reproduction, which should be based on prevailing market rates. The agency may add a fee for “enhanced” electronic access to documents.

New Jersey: The agency may charge no more than \$.75 per page for the first ten pages, \$.50 per page for the next ten pages, and \$.25 per page for any additional pages. Generally, the agency may not charge “search fees” or other enhancement fees, except for special types of records.

What Are My Rights to Appeal?

Pennsylvania: If a Commonwealth Agency denies your request, you must first file “exceptions” with the agency that denied your request. Exceptions must be filed within 15 business days of the mailing date of the denial. If a Non-Commonwealth Agency denies your request, you have the option of filing exceptions, or proceeding directly to Common Pleas court.

New Jersey: You have the option of either filing a lawsuit in Superior Court, or appealing the decision to the Government Records Council (“GRC”), which is a part of New Jersey’s Department of Community Affairs. The GRC seeks to mediate disputes, but will also resolve them in a quasi-judicial format if mediation does not succeed.

Online Resources

You may find the following links helpful:

Pennsylvania:

The Media Survival Kit is available at Dechert LLP’s website, www.dechert.com, under “lawyer publications”

Also, the Reporters Committee for Freedom of the Press’ site, [Tapping Officials’ Secrets](http://www.rcfp.org/cgi-local/tapping/index.cgi), is very helpful: <http://www.rcfp.org/cgi-local/tapping/index.cgi>.

New Jersey:

The GRC’s website contains useful information, at www.nj.gov/grc.