

N.J.A.C. 19:33

TITLE 19. OTHER AGENCIES
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
CHAPTER 33. REQUESTS FOR ACCESS TO GOVERNMENT RECORDS

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Title 19, Chapter 33 -- Chapter Notes

CHAPTER AUTHORITY:

N.J.S.A. 18A:7G-1 et seq., 47:1A-1 et seq., 52:18A-235 et seq., and 52:18A-238k.

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2021 d.009, effective January 19, 2021. See: 52 N.J.R. 1160(a), 53 N.J.R. 127(b).

§ 19:33-1.1 Scope, applicability, and definitions

(a) The rules in this subchapter apply to requests under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., for access to government records of the New Jersey Schools Development Authority.

(b) The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Access" means the inspection, examination, or provision of records to the requestor.

"Custodian" or "records custodian" means as set forth at N.J.A.C. 19:33-1.2.

"Government record," "record," or "records" shall have the same meaning as defined at N.J.S.A. 47:1A-1.1.

"OPRA" means the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

"SDA" means the New Jersey Schools Development Authority.

§ 19:33-1.2 Custodian of records

(a) Pursuant to P.L. 2001, c. 404, the Chief Executive Officer of the SDA shall designate a records custodian who shall be responsible for responding to OPRA requests directed to the SDA for access to government records.

(b) The address and other contact information for the records custodian shall be made available to the public by posting on the SDA website at www.njsda.gov.

§ 19:33-1.3 Requests for government records

- (a) All requests under OPRA for access to government records made, maintained, kept on file, or received in the ordinary course of business by the SDA, shall be in writing, either on a form approved by the SDA, or in a written document that contains the information set forth at (b) below.
- (b) The requestor shall provide the following information in his or her OPRA request:
 - 1. The name, address, and telephone number of the requestor;
 - 2. A description of the specific, identifiable government record sought, a preferred method of access (inspection or copies) and, if copies are sought, the requested medium and mode of delivery;
 - 3. The maximum cost the requestor is willing to pay to obtain access and/or copies of the requested government record;
 - 4. A certification by the requestor that the requestor has not been convicted of an indictable offense under the laws of this State, any other state, or the United States; and
 - 5. The date that the requestor submits the request.
- (c) A form for requesting access to government records is available on the SDA website at: <https://www.njsda.gov/NJSDA/Public/Opra>. Copies of the request form shall also be available at the office of the SDA's records custodian.

§ 19:33-1.4 Procedures for requesting records in the custody of the SDA

- (a) A requestor's written OPRA request shall be addressed or directed to the SDA records custodian (either by name or as "Records Custodian") and may be delivered by any of the following methods:
 - 1. By hand-delivery during the SDA's normal business hours;
 - 2. By regular mail;
 - 3. By facsimile transmission; or
 - 4. By electronic mail.
- (b) All requests must be delivered to the SDA's records custodian in order to trigger the requirements of the public access to government records law. A written request for access to government records that is addressed to the SDA records custodian and mailed or delivered to the SDA's main address will constitute delivery to SDA's records custodian. The time frame to fulfill a request for access to government records under OPRA does not begin until the request form or other form of written request has been delivered to the records custodian. A records request sent to the wrong officer or employee may result in a delay of the fulfillment of the request. An officer or employee of the SDA who receives a request for access to a government record shall advise the requestor that he or she is not authorized to accept the request and shall direct the requestor to the records custodian.

- (c) Upon receipt of the written OPRA request, the records custodian shall sign and date the written request, enter the estimated fee, assign an applicable tracking number, and provide the requestor with a copy of the same.
- (d) The records custodian shall review the request for clarity and completeness. The records custodian shall deny a request for access to a record if the request is unclear or incomplete.
- (e) Upon receipt of a written OPRA request, the records custodian shall estimate the cost of providing the record pursuant to N.J.A.C. 19:33-1.10, and if costs are applicable, shall require the pre-payment of the estimated sum and of any special mailing or delivery costs. Payment shall be made by cash, check, or money order payable to the SDA. Except as otherwise provided by law or regulation, costs shall be consistent with those set forth at N.J.S.A. 47:1A-5. In the event that the actual cost for reproduction of a government record exceeds this rate, the records custodian shall be permitted to charge the actual costs of reproducing the record. If a deposit or pre-payment is required, the request shall not be deemed complete until any required deposit or pre-payment has been received by the records custodian.
- (f) Whenever the nature, format, manner of collation, or volume of a government record to be inspected, examined, or reproduced is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size, or accommodation of the request involves an extraordinary expenditure of time and effort, the records custodian may, in addition to the actual cost of reproducing the record, assess a special service charge on the requestor that shall be reasonable and based on the actual direct cost of providing the copy or copies, including the labor and overhead costs of locating, collating, compiling, reviewing, redacting, reproducing, and delivering the requested record. The requestor shall be provided an opportunity to review and object to the special service charge prior to it having been incurred. If the requestor attempts to object to the special service charge and refuses to withdraw the request, the custodian may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requestor and the SDA.
- (g) The records custodian shall charge an additional fee representing the cost of postage on a record to be delivered to the requestor by mail or the cost of any other method of delivery identified by the requestor. The records custodian shall not provide access to, or copies of, a requested government record until the custodian has received, from the requestor, payment in full of all costs and fees associated with the record request. The custodian shall deny the request in the event that the requestor fails, or refuses, to pay the costs and fees associated with a record request.
- (h) No fee shall be charged for inspecting or examining a government record, except in situations where:
 - 1. A special service charge is permitted pursuant to N.J.S.A. 47:1A-5.c and this subchapter;
 - 2. Redaction and/or copying of government records is necessary; and/or
 - 3. An employee is required to monitor an inspection of original records by a requestor during an on-site inspection.
- (i) If a request for access to a government record would substantially disrupt SDA operations, the records custodian may deny access to the record after attempting to reach a reasonable resolution with the requestor that accommodates the interests of the requestor and the SDA.

§ 19:33-1.5 Delivery of records

The records custodian shall notify the requestor when the records are available and shall, if applicable, collect any outstanding fees and charges prior to providing access to, or copies of, a requested government record.

§ 19:33-1.6 Failure to respond

Except as provided at N.J.A.C. 19:33-1.8 or 1.9, the records custodian shall grant or deny access to a requested record within seven business days after receiving a completed request in accordance with N.J.A.C. 19:33-1.4, or within such additional time as may be allowed by law or this subchapter, or as may be agreed to by the requestor. A records custodian's failure to respond to a request shall be deemed a denial of the request, unless the requestor has elected not to provide a name, address, telephone number, or other means of contact. If the requestor has elected not to provide contact information, the records custodian shall not be required to respond until seven business days after the requestor reappears before the records custodian seeking a response to the original request.

§ 19:33-1.7 Requests for records stored offsite

If the requested record is located in an offsite storage facility outside of the regular business offices of the SDA, or is unavailable because it is in active use, the records custodian shall so advise the requestor within seven business days after the records custodian receives the request. The records custodian shall advise the requestor of the date when the record will be made available. If the record is not made available by the identified date, the request shall be deemed denied.

§ 19:33-1.8 Requests for copies of a government record in a specified medium

- (a) Unless otherwise specifically requested, copies of a record shall be provided in printed form on ordinary business size paper or in the format in which the document is maintained. The requestor may request that the SDA provide a copy of a record in a specific medium. If the SDA maintains the government record in the requested medium, the custodian shall provide the record in the medium sought.
- (b) If the SDA does not maintain the government record in the medium requested, the records custodian shall convert the record to the medium requested, if reasonable, or provide a copy in another medium meaningful to the requestor. If a requestor asks for copies of a record in a medium not routinely used, developed, or maintained by the SDA, or in a medium that would require a substantial amount of manipulation or programming of information technology, the records custodian may assess, in addition to the actual cost of duplication, a special charge that shall be based upon the cost of the extensive use of information technology and/or the cost of labor required for programming, clerical, and supervisory assistance. The requestor shall be given the opportunity to review and object to the charge prior to its being assessed. If the requestor objects to the charge and refuses to withdraw the request, the records custodian may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requestor and the SDA.

§ 19:33-1.9 Computation of time

- (a) In computing any period of time pursuant to N.J.S.A. 47:1A-1 et seq., and this subchapter, the business day upon which a completed written request for access to government records is received shall not be included. The last business day of the period shall be included in the calculation.
- (b) For purposes of N.J.S.A. 47:1A-1 et seq., and this subchapter, a request for access is deemed to be complete when the requestor provides information required at N.J.A.C. 19:33-1.3(b) and pre-pays the fees required at N.J.S.A. 47:1A-1 et seq., and this subchapter.

§ 19:33-1.10 Computation of fees

- (a) The cost for copies of a government record shall be as indicated at N.J.S.A. 47:1A-5.b. There is no cost for the emailing of records.
- (b) Special service charges will be based on the hourly rate of the lowest paid qualified employee when calculating the labor portion of the special service charge pursuant to N.J.S.A. 47:1A-5.c and d.

§ 19:33-1.11 Records held offsite

SDA records held by the Records Management Service of the Division of Revenue and Enterprise Services (DORES) in the Department of the Treasury or in an offsite storage facility outside of the regular business offices of the SDA shall remain the legal property of the SDA and requests for access to such records must be submitted directly to the SDA's records custodian. In the event that records of the SDA have reached the age at which they are required to be sent to the State Archives in DORES and were, in fact, sent to the State Archives for storage, such records have become the legal property of the State Archives, and requests for access to such records must be submitted directly to the State Archives.

§ 19:33-1.12 Administrative closure

When a requestor has failed to provide payment in full for requested records, has failed to pick up or otherwise schedule delivery of requested records, or has failed to schedule or keep an appointment with the records custodian to inspect the requested records within 45 days of the issuance of an OPRA response by the records custodian to the requestor, the custodian shall administratively close the request upon providing written notice to the requestor. The requestor remains liable for all costs and fees associated with the request when such request has been administratively closed by the custodian.

§ 19:33-2.1 Scope and applicability

The rules in this subchapter shall apply to the New Jersey Schools Development Authority.

§ 19:33-2.2 Records designated as confidential not subject to disclosure

- (a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other statute, resolution of either or both Houses of the Legislature, an Executive Order of the Governor, rule promulgated under the authority of any statute or Executive Order of the Governor, Rules of Court, any Federal law, Federal regulation, or Federal order, the

following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.:

1. All portions of records, including electronic communications, that contain advisory, consultative, or deliberative information or other records protected by a recognized privilege;
2. Records relating to mediation or other alternative dispute resolution (ADR) proceedings conducted by, or on behalf of, the SDA, except that any records that were open for public inspection, examination, or copying prior to mediation or other ADR proceeding shall continue to be available for public inspection, examination, or copying, during, and after, mediation or other ADR proceeding. Final agreements resulting from mediation or other ADR proceeding shall be available for public inspection, examination, or copying;
3. Notes of mediators or other persons involved in any ADR proceedings involving the SDA;
4. Information concerning individuals as follows:
 - i. Social Security numbers;
 - ii. Home addresses, home telephone numbers, personal cell phone numbers, or personal email addresses;
 - iii. Information relating to medical, psychiatric, or psychological history, diagnosis, treatment, or evaluation;
 - iv. Information in an income or other tax return;
 - v. Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness, except as otherwise required by law to be disclosed; and
 - vi. Any other information, the disclosure of which might reasonably be expected to endanger the safety of any person;
5. Notices, orders, reports, and decisions not yet served upon the person(s) to whom they are addressed;
6. Unapproved minutes of public meetings;
7. Minutes of closed sessions at public meetings, for such time as the issue that warranted the closed session discussion remains unresolved or uncompleted, or until the rationale for the closed session is no longer applicable;
8. Documents relating to pending contract negotiations, proposed change orders, or pending contract claims. Such documents shall be confidential and exempt from disclosure until such time that the contract negotiation, change order, or contract claim in question is resolved through a final agreement executed by the parties, is withdrawn by the claimant, or is otherwise terminated or finally adjudicated;
9. Plans and specifications for any schools or school facilities projects, whether construction of the facility depicted in such documents has been commenced or completed, including, but not limited to, drawings, diagrams, renderings, site plans, photographs, video recordings, and/or operational, training, or maintenance manuals that:

- i. Show or describe means of ingress and/or egress for such school facilities;
 - ii. Show parking areas, driveways, access areas, and the like, for school facilities, and/or that identify a securable perimeter;
 - iii. Describe details of doors, windows, skylights, access hatches, and the like, for school facilities;
 - iv. Show or describe the location, configuration, or operational parameters of critical systems or infrastructure of a school facility;
 - v. Show or describe the location, configuration, or operational parameters of alarm, security, or video surveillance systems, including, but not limited to, the location, orientation, and type of access devices, locking devices, and security cameras;
 - vi. Show or describe the operational parameters, configurations, or vulnerabilities of critical systems or equipment, or components of such critical systems;
 - vii. Show or describe emergency or security information or procedures for any building or structure comprising or ancillary to a school facility; or
 - viii. Any other documents that could assist individuals or entities that wish to do harm to the occupants of school buildings;
10. Portions of records identifying the author of scoresheets and/or evaluations prepared as part of the selection committee process for any SDA procurement. This exclusion shall not preclude the disclosure of the scoresheets or evaluations if redacted to remove the exempted information, nor shall it preclude the identification of the names and qualifications of selection committee members for a particular procurement, as required by law;
 11. Bid submissions and evaluative documents associated with a procurement subject to negotiations on price or other terms, prior to any Notice of Award for such procurement;
 12. Any documents related to the SDA's acquisition or disposition of property, identifying properties and lands to be acquired or disposed of, by the SDA, including estimates, appraisals, environmental assessments, surveys, or costs of obtaining any right-of-way, until such time as the closing of title is concluded; and
 13. Records of another department or agency, which are in the possession of the SDA, when such records are made confidential by a regulation of that department or agency adopted pursuant to N.J.S.A. 47:1A-1 et seq., and Executive Order No. 26 (McGreevey 2002), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.
- (b) For the purposes of (a)9 above, the provision of such documents to a pool of prequalified bidders for procurement purposes shall not constitute a "release" or "display" to the "general public" and shall not result in a loss of confidentiality of such documents.