

How Soon Must Government Records Be Available to Requestors?

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Section 5 of OPRA is clear that government records must be available “as soon as possible.” It then provides an outer time limit for public agencies—records must be produced as soon as possible, “but not later than seven business days after receiving the request.”

Unfortunately, fewer and fewer public agencies comply with these rigid timelines. Most agencies produce records on the 7th business day, even though they are supposed to be available “as soon as possible.” And many agencies have moved to automatically taking an extension of time for each and every OPRA request, even requests that would require minimal time and effort to fulfill. The New Jersey Supreme Court has stated that the purpose of OPRA is to ensure “swift access” to government records, but the actions of many public agencies have made obtaining government records a drawn out, lengthy process.

In enacting OPRA, the Legislature declared that some records should be so readily available that the 7-day outer limit is not applicable at all. Some records, such as budgets and contracts, must be made available “immediately.” Simply put, any person should be able to walk into city hall (or send an email to the city clerk) and “immediately” receive a copy of the city’s budget, contracts, vouchers, etc. Unfortunately, this is not always how it works.

As detailed in an article by *The Record*, a records requestor went to the Clifton Board of Education to obtain a copy of, among other records, a contract between the BOE and a tree cutting service. Initially she was told that she would have to wait 7 business days. Because she wanted the contract for the BOE meeting the next night and knew her rights, the requestor demanded that she was entitled to “immediate” access to the contract. Ultimately, the BOE let her look at the contract, but would not let her take pictures of it with her phone’s camera or have an actual copy of the contract. Even though a copy of the contract had already been made, the BOE’s employee tore that

copy up and instead told the requestor that the contract would be released “within 7 business days.” The requestor filed a complaint with the Government Records Council,* alleging it is a violation of both OPRA’s “immediate access” provision. It is also clear that the record was not produced “as soon as possible.”