

My OPRA Request Was Denied. Now What?

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OPRA requires public agencies to respond within 7 business days of your request. (Tip: Begin counting the first business day after you filed the request). A public agency must respond within 7 business days and either: 1) Produce responsive records; 2) Tell you that access is being denied and reason for the denial; or 3) Ask for an extension of time to respond.

But what do you do if the government fails to respond (a deemed denial) or denies access to a record that you know is not exempt?

The best course of action is to immediately speak to an attorney, who can work with you to gain access to the records. This frequently requires a lawsuit filed in Superior Court. The most important thing to remember is that your action must be filed within the statute of limitations, which is 45 days. The process for filing a lawsuit in Superior Court is as follows:

1. A Verified Complaint and Order to Show Cause is filed. Each county has a designated "OPRA Judge" who will hear the matter.
2. The OPRA Judge will review and sign the Order to Show Cause, which sets a briefing schedule and a hearing date.
3. The pleadings are then served upon the public agency and custodian.
4. Often, a public agency may work with your attorney to settle the case by producing records and paying the attorneys' fees.
5. If the parties are unable to settle, the agency will file an answer and opposition to your lawsuit.
6. Your attorney then has an opportunity to file a reply brief
7. A hearing is held, wherein the judge will hear arguments from both sides. For simple cases, the Judge will usually enter a ruling that day. More complex cases may require a little more time for an opinion to issue. In certain circumstances, the court may allow for

discovery (interrogatories, depositions) to occur.

8. If you win, the Judge will order the agency to produce records to you and your attorney will file a fee application asking the Court to order the agency to pay your counsel fees and costs of suit. (Many attorneys, like Pashman Stein Walder Hayden, represent requestors on a contingency basis which means that if you lose, you will not owe any counsel fees).