

GRC Use Only

# New Jersey Government Records Council Denial of Access Complaint

**Please read these instructions before completing this form:**

- This form is to be used only for claims of denial of access to government records that you want the Government Records Council (GRC) to decide. Your request must have been made on or after July 8, 2002 under "OPRA," the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).
- Please print or type your responses, and provide ALL information requested. Incomplete forms will delay processing. This form is available in downloadable format from the GRC web site at [www.nj.gov/grc](http://www.nj.gov/grc).
- Only one complaint is required for each OPRA request form, regardless of the number of documents sought in the request.
- *The GRC recommends that you keep a copy of this complaint for your own files.*
- **MAIL, FAX, OR E-MAIL THIS COMPLAINT AND ALL SUPPORTING DOCUMENTATION TO:**

Government Records Council  
PO Box 819  
Trenton, NJ 08625-0819

Fax: (609) 633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)

**1. About the Requester of the Records:**

Full Name: JOHN PAFF  
Mailing Address: PO Box 5424  
City: Somerset State: NJ ZIP 08875

Please provide a phone number at which GRC staff can contact you between 8 A.M.-5 P.M., Monday-Friday: 732-873-1251

Fax Number: 908-325-0129

E-Mail Address: PAFF@POBox.com

If you are represented by an attorney in this matter, please provide:

Name: X Phone Number: \_\_\_\_\_  
Address: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

If you are an attorney who requested records and are filing this complaint **on behalf of a client**, please state the client's name:  
\_\_\_\_\_

**2. About the Custodian of Records:**

Name of the public agency from which records were requested: Lawrence Twp (Mercer)

Name of custodian on whom records request was submitted: Kathleen S. Norcia

Telephone Number: 609.844.7000 E-Mail address (if used): clerk@LawrenceTwp.com

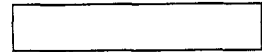
Name of custodian who denied records request (if different from above): 7001 Same

Telephone Number: \_\_\_\_\_ E-Mail address (if used): \_\_\_\_\_

Fax Number: 609-844-0984

Denial of Access Complaint

609.844.0984



3. About the Record Request:

Date your records request was provided to the custodian: 12/31/08

Did you receive a reply to your request? Yes  No

If so, state the date your request was denied: N/A - see attachment

Have you previously filed a complaint with the GRC concerning the record request that is subject of this complaint?

Yes  No

If yes, provide the GRC complaint number and a copy of the GRC decision in the matter.

Date: \_\_\_\_\_ Complaint No.: \_\_\_\_\_

Have you spoken with or written to the GRC about the record request that is subject of this complaint?

Yes  Date: \_\_\_\_\_ No

Have you filed an action in the N.J. Superior Court concerning the record request that is subject of this complaint?

No  Yes  If Yes, Docket Number: \_\_\_\_\_

4. Offer of Mediation (please refer to the attached documents for details):

Are you interested in participating in mediation? Yes  No

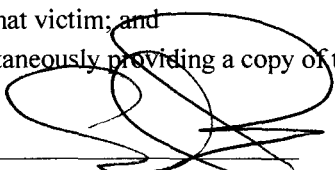
5. Documents to submit with this Form:

- Complete the attached **Records Denied List** to describe the records to which you were denied access.
- Attach** a copy of the OPRA Records Request form you filed with the public agency and any correspondence between you and the record custodian(s) or custodial agency staff that concern the portion of your OPRA request that was denied. Be sure to include any e-mail, memoranda, phone messages, or any other documents such as affidavits, or certifications related to the request and the denial.
- Summarize** the facts of this complaint by writing the content, time and date of any interaction you had with the custodian regarding the OPRA records request that is the subject of this complaint. Use the attached **Detail Summary** for this purpose.
- Provide** any legal arguments, allegations or other information you would like the GRC to consider in deciding this complaint. Use the attached **Detail Summary** for this purpose.
- Sign** the Agreement to Mediate if you wish to participate in the mediation process.

6. Verification of Complaint:

By signing this complaint, I affirm that:

- I am the person who submitted the OPRA request for records which is the subject of this Complaint;
- The information I have provided is true to the best of my knowledge and belief;
- The documents submitted with this Complaint are true copies of material which I believe is relevant to my claim;
- I am not seeking disclosure of any personal information pertaining to the victim of any crime committed by me, which is an indictable offense under the laws of the State of New Jersey, or any other State, or pertaining to the family of that victim; and
- I am simultaneously providing a copy of this complaint to the Custodian of Records.

 Signature (required)

1-6-09 Date

→ via email on 1/6/09

**New Jersey Government Records Council  
Denial of Access Complaint - Detail Summary**

**Use this form to summarize the content, time and date of any conversations regarding this complaint, along with the names of the participants and any witnesses.**

*See attached*

New Jersey Government Records Council  
Denial of Access Complaint – Records Denied List

Name of Complainant: PAFF

This is page 1 of 1.

Please fill out this form describing the record (or portion of it) to which access has been denied, the response to your request, including the reason given for denial of access. Submit additional pages if necessary.

Item #	Description of record (or portion)	Response to request
	<i>See attached</i>	

## Summary of John Paff's Complaint against Lawrence Township

### FACTS:

On or about December 31, 2008, I submitted a records request on Lawrence Township's official request form.<sup>1</sup> A copy of that request form, as completed, is attached to this Complaint. On January 6, 2009, the Township provided the records that were responsive to my request.

### ARGUMENT

The sole object of this complaint is to raise a challenge that Lawrence Township's official request form, like many other similar forms used by municipalities and other government agencies across New Jersey, is not compliant with the Open Public Records Act (OPRA). There are six issues with the form. The first has been previously addressed by the Council and the others have not, to my knowledge, ever been addressed.

1. ¶ 3 on the second page of Lawrence Township's form states: "The terms 'public record' and 'government record' in New Jersey do not include . . . Pension and personnel records." This issue was addressed by the Council in O'Shea v. West Milford, Complaint No. 2007-237. In O'Shea, the Council found that the form's blanket statement that all "personnel files" were exempt, without informing the requestor that some "personnel file" were nonexempt, was "misinformation" that could "deter [some requestors] from submitting an OPRA request for certain personnel records." The Council ordered the Custodian to amend its OPRA request form. This is the same relief I seek here.
2. The same section of Lawrence Township's form also makes the blanket statement that "Criminal investigatory records" are not public records. But, N.J.S.A. 47:1A-3(b) expressly lists several exceptions to this rule. If a request form violates OPRA by not informing requestors of the exceptions to the "personnel files" rule, the logic of O'Shea suggests that a form likewise violates OPRA if it does not inform requestors of the exceptions to "criminal investigatory records" rule.
3. The first page of Lawrence Township's form requires the requestor to certify that he or she has "not been convicted of any indictable offense under the laws of this State, any other state or the United States and am not seeking government records containing personal information pertaining to the victim or victim's family as provided by N.J.S.A. 47:1A-1 et seq."

This provision was apparently included within the certification in response to N.J.S.A. 47:1A-2.2, which is intended to prevent a convicted criminal from accessing "government records containing personal information pertaining to the person's victim or the victim's family." This statutory safeguard is narrowly drawn to prevent a person who was convicted of a crime where there was an identifiable victim from using OPRA to get the victim's or the victim's family's "home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information." But, the statement in Lawrence' certification goes well beyond this purpose.

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<sup>1</sup> The form is on-line at <http://www.lawrencetwp.com/documents/Government%20Records%20Request%20Form.pdf>

Suppose that a person was convicted in 1998 of say, theft of \$200 or more but less than \$500, which is a crime of the fourth degree, i.e. an indictable offense, in accordance with N.J.S.A. 2C:20-2(b)(3). Suppose further that that person in 2008 wished to submit an OPRA request to the Lawrence Township Clerk to obtain the Lawrence Township Planning Board's public meeting minutes. Would that requestor be able to truthfully certify<sup>2</sup> to the statement on Lawrence Township's OPRA request form?

The certification required by Lawrence Township's form requires the requestor to certify to the truth of a conjunction of two statements: a) that he or she has never been convicted of an indictable offense, and b) that he or she is not seeking personal information regarding the victim or the victim's family. "A compound that is the conjunction of two statements is true if and only if each of the component statements is true. 'P and Q' is true if and only if 'P' is true, and 'Q' is true."<sup>3</sup> Or, stated another way, "when P is True and Q is True, then the statement "P AND Q" is true. In all other possibilities, the statement "P AND Q" is false."<sup>4</sup>

Accordingly, our hypothetical requestor could never certify to the truth of Lawrence Township's compound statement because he or she, in fact, had been convicted of an indictable offense and thus cannot satisfy the first prong of the compound statement. The net effect is that our hypothetical requestor cannot truthfully sign the certification required by Lawrence Township regardless of whether or not the records he or she seeks contain any identifiable victim information.

The certification required by Lawrence Township's form goes far beyond the statute's purpose. Instead of preventing criminals from using OPRA to get personal identifying information on their victims and their victims' family's, it effectively prevents convicted criminals—even those whose crime had no identifiable victim—from accessing meeting minutes, official resolutions and other innocuous, non-personal government records.

Since the certification required by Lawrence Township's request form may "deter [some requestors] from submitting an OPRA request," the Council, following its reasoning in O'Shea, ought to require Lawrence Township to amend its form.

4. ¶ 2 on the second page of Lawrence Township's form informs requestors that, in accordance with N.J.S.A. 47:1A-5(c), the Township "may impose a reasonable special service charge" on certain requests. But, the form does not inform the requestor that the same statute says that requestor shall have the opportunity to review and object to the charge prior to it being incurred."<sup>5</sup>

This language is likely to "deter [some requestors] from submitting an OPRA request" out of concern that they will be billed for, and required to pay, a special service charge before knowing

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<sup>2</sup> Making a false statement on the certification would constitute a crime of the fourth degree. "False swearing. A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a crime of the fourth degree." N.J.S.A. 2C:28-2.

<sup>3</sup> "Conjunctive Syllogisms & Dilemmas," Dr. David Naugle, Chair and professor of philosophy, Dallas Baptist University at [http://www.dbu.edu/naugle/pdf/2302\\_handouts/conjunctive\\_syll\\_dil.pdf](http://www.dbu.edu/naugle/pdf/2302_handouts/conjunctive_syll_dil.pdf)

<sup>4</sup> The "Math Forum" at Drexel University. <http://mathforum.org/library/drmath/view/64489.html>

<sup>5</sup> Compare to the Council's Model Request Form which states: "We will notify you of any special charges, special service charges or other additional charges authorized by State law or regulation before processing your request."

how much it is. If Lawrence Township informs the requestor of his or her *duties* under OPRA it ought to be also be required to inform the requestor of his or her *rights*.

5. ¶ 7 on the second page of Lawrence Township's form informs requestors that:

If you [sic] request for access to a government record has been denied or unfiled within the time permitted by law, you have a right to challenge the decision by the Township of Lawrence to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint in writing with the Government Records Council (GRC) in the Department of Community Affairs.

But, N.J.S.A. 47:1A-5(f)(4) requires request forms to contain "a statement of the requestor's right to challenge a decision by the public agency to deny access **and the procedure for filing an appeal.**" (emphasis added). Lawrence Township's form does not sufficiently provide the requestor "the procedure for filing an appeal."

The Council's Model Request Form states:

If your request for access to a government record has been denied or unfiled within the time permitted by law, you have a right to challenge the decision by the Name of Agency to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint in writing with the Government Records Council (GRC). You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The Council can also answer other questions about the law.

Apparently, Lawrence Township opted to use only the first two sentences of the language taken from the Model Form and, instead of informing the requestor of the Council's contact information, the Township elected on only inform the requestor that the Council is "in the Department of Community Affairs." Apparently, the requestor is left to determine the Council's contact information for himself or herself.

The Legislature determined that it is important for denied requestors to be informed of "the procedure for filing an appeal." Since Lawrence Township's form does not comply with this requirement it violates the OPRA.

6. The first page of the form lists a blank where the requestor is asked for his or her "D.O.B." (i.e. Date of Birth). ¶ 1 on the second page of the form states that "State law requires that in order to request access to government records, **you must complete**, sign and date the request form adopted by the Township of Lawrence." (Emphasis added). Finally, ¶ 8 on the second page informs the requestor that anybody could access the information on the request form, including the requestor's date of birth, by submitting an OPRA request.

People are, and should be, legitimately concerned about placing their dates of birth in the public realm. The New Jersey Department of Banking and Insurance<sup>6</sup>, for example, warns that

Identity theft involves acquiring key pieces of someone's identifying information, such as name, address, **date of birth**, social security number, etc., in order to impersonate them. This information enables the identity thief to commit numerous forms of fraud . . . (emphasis supplied)

N.J.S.A. 47:1A-5(f) states that a request form “shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought.” Nothing in that provision or elsewhere in OPRA authorizes custodians to ask for a requestor’s date of birth on their request forms. The question appears to have no legitimate value to the Custodian and serves only to intimidate requestors and deter them from making record requests.

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<sup>6</sup> See [http://www.state.nj.us/dobi/division\\_consumers/finance/identitytheft.htm](http://www.state.nj.us/dobi/division_consumers/finance/identitytheft.htm)



EMAIL CLERK@lawrence.twp.nj.us

Township of Lawrence  
Mercer County, New Jersey

**Government Records Request Form**

See next page for Important Information

Please print

First Name John MI      Last Name Paff D.O.B.     

Company     

Mailing Address PO Box 5424

City Somerset State NJ Zip 08875 Email PAFF@POBOX.COM

Daytime Telephone: Area Code 732 Number 873 1251 Ext.     

Preferred Delivery:  Pick-up  U.S. Mail  FAX or Email

**Certification:** Under penalty of N.J.S.A. 2C:28-3, I certify that I have not been convicted of any indictable offense under the laws of this State, any other state or the United States and am not seeking government records containing personal information pertaining to the victim or the victim's family as provided by N.J.S.A. 47:1A-1, et seq.

Signature [Signature] Date 12-31-08

**Requested information**

**Document ID No.**

Description of Document

To Expedite Your Request Be as Specific as Possible

Settlement Agreement in Tiv Johnson v. Lawrence  
TWP et al Federal Docket 05cv5966

**For Department Use Only**

Tracking # <u>    </u>	Est. Document Cost	\$ <u>    </u>
Received Date <u>    </u>	Est. Delivery Cost	\$ <u>    </u>
Ready Date <u>    </u>	Est. Extras Cost	\$ <u>    </u>
Total Pages <u>    </u>	Total Est. Cost	\$ <u>    </u>
Documents Provided <u>    </u>	Deposit:	\$ <u>    </u>
	FINAL COST	\$ <u>    </u>
	BALANCE DUE	\$ <u>    </u>

The applicant hereby acknowledges receipt of a copy of this form with the date on which the requested information is expected to be available and the estimated cost.

Applicant's Signature     

Date

## PUBLIC ACCESS TO GOVERNMENT RECORDS

1. State law requires that in order to request access to government records, you must complete, sign and date the request form adopted by the Township of Lawrence. Your request is not considered filed until the appropriate custodian of the record requested has received the request form. If you submit a request for access to government records to someone other than the appropriate custodian, do not complete this request form, or attempt to make a request by telephone or fax, the Open Public Records Act and its deadlines, restrictions and remedies will not apply to your request.
2. Pursuant to N.J.S.A. 47:1A-5c, this office may impose a reasonable special service charge if the nature, format, manner of collation, or volume of a government record is such that it cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate your request. Requests with estimated fees exceeding \$25.00 must be accompanied by a 50% deposit.
3. The terms “public record” and “government record” in New Jersey do not include:
  - Criminal investigatory records
  - Victim’s records
  - Inter-agency or intra-agency advisory, consultative or deliberative materials
  - Emergency or security information or procedures for buildings and facilities
  - Administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security
  - Information regarding labor-management negotiations including statements of strategy or negotiating position
  - Pension and personnel records
4. By State law, this office must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state or the United States, who is seeking government records containing personal information pertaining to the person’s victim or the victim’s family.
5. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
6. Township of Lawrence will notify you that it grants or denies a request for access to government records within seven (7) business days after the custodian of the record requested receives the request, provided that the record is currently available and not in storage or archived. If the record requested is not currently available or is in storage or archived, the custodian will advise you within seven (7) business days when the record can be made available and the estimated cost. If this office is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request response form and send you a signed and dated copy.
7. If your request for access to a government record has been denied or unfiled within the time permitted by law, you have a right to challenge the decision by the Township of Lawrence to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint in writing with the Government Records Council (GRC) in the Department of Community Affairs.
8. Information provided on this form may be subject to disclosure under the Open Public Records Act.