

# **New Jersey Geospatial Forum Open Public Records Act (OPRA) Task Force Final Report**

Presented by Task Force Co-chairs:

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# OPRA Task Force Background:

- March 2007, Catherine Starghill of NJGRC (NJ Government Records Council) spoke to NJGF on OPRA and how it relates to GIS
- Generated many questions and concerns from audience
- In response, OPRA Task Force was created

# OPRA Task Force Background cont. :

- NJGF Executive Committee provided Task Force with discussion points
- Task Force chairs used discussion points to solicit scenarios from NJGF membership
  - Compiled scenarios into categories
  - Used as discussion points at a Task Force meeting with Ms. Starghill

# OPRA Task Force

## Discussion Categories/Responses:

- **Category A:**
  - What constitutes a record?
    - Anything maintained, kept on file or received in the course of official business
    - **Outstanding issue:** definition of a database
      - GRC's viewpoint is that a database and every record in the database are considered records
    - Must supply data set as requested; specific records
  
- **Category B:**
  - Is cartography or analysis work required?
    - Not required to create a map or a **new record**
    - Question of **'Search vs. Research'**
      - Required to do **search**: query for records based on existing information
      - Not required to do **research**: find and/or create information that doesn't already exist in your records
      - **Outstanding issue:** perceived ease of combining 2 or more datasets to create new dataset may cause some analysis to be considered search rather than research

# OPRA Task Force

## Discussion Categories/Responses:

- **Category C:**
  - How much to charge?
    - Must charge what it reasonably costs to provide information
    - Hardcopies must be actual cost of reproduction
    - Cannot charge for data itself
    - Time – **Special Services Fee** = hourly wage (without benefits) of lowest paid person able to accomplish task
  
- **Category D:**
  - Are OPRA forms standard or can GIS specific OPRA forms be created?
    - Cannot use form that limits what can be requested on it

# OPRA Task Force

## Discussion Categories/Responses:

### ■ Category E:

- Issues with copyrighted or licensed data.
  - Copyrighted data is not excluded from OPRA
  - Licensed data: GRC would tend to uphold a commercial license agreement if
    - releasing data would be in direct conflict with the license agreement
    - data is proprietary, a trade secret or would provide a competitive advantage
  - Not to be confused with data sharing agreements (DSA)
    - DSA cannot be used as basis for denying data
    - Requestor cannot be told what they can/cannot do with data

# OPRA Task Force

## Discussion Categories/Responses:

- **Category F:**
  - Withholding maps/data because of privacy and/or security issues.
    - 24 Exemptions from Disclosure for denying or redacting information
    - Custodian must prepared documented statement justifying the denial
    - Can redact addresses and phone numbers
      - Unless request made to tax assessor/collector, or clerk for ownership/property records
      - Cannot redact names

# Conclusions

- Not every request is subject to OPRA but most records maintained by government are subject to OPRA
- If request is broad and unclear, remember requestor must name an identifiable record
- GRC is not end of line: case might be adjudicated to Superior court which could/would be used for future precedent
- Substantial disruption to organization:
  - Could be cause for denial
  - Must first attempt to reach reasonable solution with requestor to accommodate requestor's interest
  - Must be proven that organization does not have the resources to meet the request
  - Subjective threshold (smaller agencies would have better chance of denial being upheld)



# Recommendations

- Focus on complete & accurate **metadata** and records management to reduce possible misuse of released data
- Stay apprised of current record retention laws
- Outstanding issue of **search vs. research**
  - Concern that governments will be requested to provide analysis/data creation
    - Special service fees may be cheaper than private sector consultant fee
  - Suggest that interested individuals consider forming a group outside the NJ Geospatial Forum to work on and propose reasonable amendments to OPRA