

TREASURY-General

Division of Administration

Government Records

Proposed New Rules: N.J.A.C. 17:44

Authorized By: John E. McCormac, State Treasurer

Authority: N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9

(Hughes 1963).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2002-222

Submit written comments by August 30, 2002 to:
Charles Chianese, Assistant State Treasurer, &
Director of Administration and Chief Financial Officer
Department of the Treasury
Division of Administration
PO Box 211
Trenton, NJ 08625-0211

The agency proposal follows:

Summary

On January 8, 2002, the Legislature passed and the Acting Governor approved P.L. 2001, c. 404, known as the Open Public Records Act, which enacted changes in the law concerning public access to government records. The law will be effective July 7, 2002. This law expands the public's right of access to government records and facilitates the way in which that access is provided by the custodian of those records. Section 18 of the law authorizes public agencies to take anticipatory administrative action in advance as may be necessary for the smooth and efficient

implementation of the act. The Department of the Treasury proposes rules establishing the process by which members of the public may seek access to government records in the possession or control of the Department or agencies within the Department under the revised law. The act requires the custodian of government records of a public agency to adopt a form for providing public access to government records. The proposed rules in subchapter 1 establish a process to be followed by members of the public who seek access to government records held or controlled by agencies within the Department.

The act provides that all government records shall be subject to public access unless exempt from such access by: P.L. 1963, c.73 as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation 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 State Treasurer, pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), proposes to classify as exempt from public access certain records held or controlled by the Department or agencies within the Department. The act also provides that a public agency should be mindful of the need to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of

privacy. The rules proposed in subchapter 2 are designed to serve both these legislative policies by facilitating public access to government records while, at the same time, balancing citizen's reasonable expectations of privacy and the integrity and effectiveness of governmental operations.

A summary of the proposed new rules follows:

Subchapter 1. Access to Government Records

Proposed new N.J.A.C. 17:44-1.1 states the scope and applicability of the rules contained in the subchapter. These new rules apply to agencies under the supervision of the State Treasurer and those not under the supervision of the State Treasurer, commonly known as "in but not of" agencies. Also covered under these rules are the county boards of taxation and municipal tax assessors.

Proposed new N.J.A.C. 17:44-1.2 provides that the State Treasurer will designate a person to be Department records custodian. This person will be the custodian of records for the Office of the State Treasurer. Each division director or agency shall designate a custodian of records for that division or agency.

The address of the Treasury Government Records Access Unit and agency custodians are set out in this rule and will be made available to the public by posting on the Department web site. County boards of taxation should be contacted directly for records access requests; requests for records of municipal tax assessors

with respect to their assessment functions, should be made to the Treasury Government Records Access Unit.

Proposed new N.J.A.C. 17:44-1.3 provides that all requests for access to government records under the public access to government records law must be on a form approved by the Department. The requester will be asked to provide certain information on the form, including a name, address and telephone number; a brief description of the records requested, type of access (examination, inspection or copying) and medium requested; and the requester's signature and date submitted to the proper custodian. The form will also provide space for: specific directions and procedures for requesting a government record; which records will be made available; when the record will be available; the fee to be charged; the amount of prepayment of fees that is required; a statement of the requester's right to challenge a denial and the procedures for challenging a denial; whether the requester has agreed to grant an extension of time; the toll free number of the Government Records Council; a certification by the requester that they have not been convicted of an indictable offense; the custodian to sign and date; and reasons if access is denied. Copies of the form will be available at division and agency offices and on the Department and agency web site.

Proposed new N.J.A.C. 17:44-1.4 establishes the procedure for submitting requests for access to government records. Forms may be

hand delivered during normal business hours, mailed or transmitted electronically by facsimile or e-mail to the Government Records Access Unit or the appropriate agency custodian. All requests must be delivered to the Government Records Access Unit or appropriate agency custodian of records in order to trigger the requirements of the public access to government records law. Upon receipt of the form, the Government Records Access Unit or agency custodian will review it for clarity and completeness and will advise the requester of any deficiencies or request additional information, provided the requester has included contact information. The requester's identity will be required in order to ensure compliance with the provision of the law that prohibits a person convicted of an indictable offense under the laws of this State, any other state or the United States, from receiving personal information concerning the person's victim or the victim's family. Requests for records may be assigned a tracking number, if available, which will be used to track the request and respond to inquiries. The custodian will estimate the fee, including the cost of any special form of mailing requested. A request shall not be deemed complete until any prepayment required is received by the custodian. A requester will also be required to prepay any special mailing or delivery costs such as UPS or Express Mail. A requester will not be charged for ordinary mailing costs. There is no charge for merely inspecting records.

Proposed new N.J.A.C. 17:44-1.5 provides that the balance of any fee over and above the estimated prepaid fee is due on delivery of the record.

Proposed new N.J.A.C. 17:44-1.6 specifies the records for which a citizen is ordinarily entitled to immediate access. These documents include budgets, bills, vouchers, contracts and public employee salary and overtime information.

Proposed new N.J.A.C. 17:44-1.7 provides that, except as otherwise provided by law, if the custodian fails to grant access to a government record within seven business days after the custodian receives the completed request or such other time as may be required under the law or may be agreed upon, the failure will be deemed a denial of the request for access. As provided in the statute, a custodian need not respond to an anonymous request until the requester reappears before the custodian.

Proposed new N.J.A.C. 17:44-1.8 provides that if the requested records are in storage offsite at a facility outside of the regular business office of the agency, the custodian will advise the requester of the date the records will be available and the estimated cost within seven business days of receipt of the request form. This section codifies the requirements of the statute.

Proposed new N.J.A.C. 17:44-1.9 codifies the requirements of the statute concerning delivery of records in the medium requested.

The custodian will deliver the record in the medium requested

unless the agency does not maintain the record in that medium and cannot reasonably convert it. In such a case, the custodian will advise the requester of the cost of providing the record in the medium requested. Such charge may include labor.

Proposed new N.J.A.C. 17:44-1.10 deals with the computation of time. Consistent with statutes, court rules and case law, it provides that in computing the time period for granting access, the day the request is received is not included in the computation, but the last day of the period so computed is to be included. This section also clarifies that a request is not complete until all necessary information is provided by the requester and all applicable fees are paid.

Subchapter 2. Confidentiality of Records

Proposed new subchapter 2 contains a list of records deemed by the State Treasurer to be confidential and not subject to public access under the provisions of N.J.S.A. 47:1A-1 et seq. as amended and supplemented. This subchapter is proposed under the authority of N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963). Under authority of the statute, that Executive Order authorized the head or principal executive of each principal Department of State government to adopt and promulgate regulations setting forth which records of the Department shall not be deemed public records. The regulations apply to all divisions within the Department as well as those assigned or allocated to the

Department, commonly known as in, but not of, agencies. Proposed new N.J.A.C. 17:44-2.1 describes the scope and applicability of the subchapter.

Proposed new N.J.A.C. 17:44-2.2 sets forth those records of the Department that are not deemed government records for the purposes of N.J.S.A. 47:1A-1 et seq. as amended and supplemented and establishes the responsibility for access to records of the Department held by the Office of Information Technology (OIT), the State Records Center of the Division of Archives and Records Management (DARM) of the Department of State, or in an offsite storage facility outside of the regular business office of the agency, and furthermore, institutes legal custody of, and responsibility for access to, records of the Department transferred to the State Archives.

N.J.A.C. 17:44-2.2(a)1 provides that any document or information held by the Department, or any agency allocated to the Department, which includes information which a person has provided or which is otherwise maintained for a person and for which a reasonable person would hold an expectation of privacy, may not be disclosed except under court order after notice to the individual affected. This includes, but is not limited to, information or documents containing information such as Federal identification numbers, taxpayer identification numbers, proprietary information, payroll record personal information, credit card information,

electronic identification information, financial statements, balance sheets and trade secrets. This exemption fulfills the requirement of P.L. 2001, c. 404 that "a public agency has a responsibility and obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy." Treasury collects the information described above as part of its normal business. When citizens or businesses provide this information they expect that privacy of the data will be maintained. With identity theft and other criminal activity prevalent, it is important that the confidentiality of this information be protected. If someone wants this information, that person can make the request of the citizen directly, and the citizen can determine and control what information will be disclosed.

N.J.A.C. 17:44-2.2(a)2 exempts financial information, including but not limited to, financial statements, financial negotiation documents, property appraisals or feasibility studies, made, maintained or kept on file or received in connection with a contractual, funding, real estate transaction or commercial regulatory matter that requires the review and approval of the Department, or any agency allocated to the Department, until final action has been taken. Proprietary rights and personal privacy rights shall continue even after final action. This exemption

protects information that Treasury collects as part of its normal business. For citizens or businesses to provide this information they need to expect that privacy of the data will be maintained. This material is often used in the internal deliberative process. Agencies need such information to evaluate the credit worthiness of an applicant and to structure transactions. Protection of this information will encourage an applicant to provide full disclosure to public agencies of its financial condition. The information is also of a type that, if disclosed, might give an advantage to the applicant's competitors. This exemption ensures the confidentiality of the negotiation process surrounding a bond or loan financing or other contractual matter, and therefore protects the integrity of those processes. This exemption also covers financial information received from a third-party which is jointly financing a borrower's project, is subject to regulatory authority review, or seeking to engage in a contractual or real estate transaction with or through the public agency.

N.J.A.C. 17:44-2.2(a)3 exempts information from financial statements of consultants or contractors submitted as a requirement for the pre-qualification/classification process, not otherwise published by Treasury or agencies allocated to the Department. The Department needs to collect this information to determine qualification to engage in the public bidding process. Public access to this information may discourage potential consultants or

contractors from pre-qualifying and participating in the bidding process. Financial records could be misused by a competitor to drive a consultant or contractor out of business. If someone wants this information, that person can make the request of the consultant or contractor directly, and the public interest is best served when the consultant or contractor can determine and control what information will be disclosed.

N.J.A.C. 17:44-2.2(a)4 exempts financial information of non-State Cash Management Fund participants. N.J.S.A. 52:18A-90.4 opened the Cash Management Fund to counties, municipalities, school districts, and the agencies or authorities created by these entities. Neither the State Treasurer, nor the Division of Investment, has any jurisdiction or authority over the information or records of "other-than-State" entities. In fact, both the Treasurer and the Investment Division Director are fiduciaries and trustees of the assets invested and transactions executed on behalf of CMF participants. These positions of trust do not carry with them the liberty to divulge information regarding fund participants to third parties. If someone wants this information, that person can make the request of the Cash Management Fund participant directly, and the participant can determine what information is required to be disclosed.

N.J.A.C. 17:44-2.2(a)5 exempts Unclaimed Property records other than the name and address of the property owner, which are

available on the Treasury website. N.J.S.A. 46:30B-76.1 establishes the confidentiality of Unclaimed Property records. Unclaimed Property data such as the source of the funds being held (uncashed checks, unclaimed dividends, lost stock etc.) and the amount being held are available to the owner upon inquiry to the Unclaimed Property Administrator. Publication or general release of such data defeats the owner's reasonable expectation of privacy.

Also exempted N.J.A.C. 17:44-2.2(a)6 through 9 are the following records that relate to property tax:

- Income and expense information provided to municipal tax assessors pursuant to N.J.S.A. 54:4-34;
- Appraisals of real property prepared in connection with tax appeals, which have not been admitted into evidence before a County Board of Taxation or the Tax Court;
- Income, expense and other financial information contained on local property tax record cards, on computer assisted mass appraisal (CAMA) systems, and on applications, statements and supporting documentation for deductions, exemptions and farmland assessments; and
- Personal information such as age, medical condition/disability, and veteran status, reflected on applications and statements submitted in support of eligibility for local property tax exemptions and deductions, and supporting documentation, such as proofs of age, death,

medical condition/disability and veteran status, submitted in support of such applications or statements.

The property tax function does not carry the blanket statutory confidentiality of other Division of Taxation records provided in N.J.S.A. 54:50-8 and 54:50-9. Citizen data is provided with an expectation that the privacy of the information will be maintained. Without such protection citizens might be unwilling to provide the information, and may not receive benefits to which they are entitled.

For the New Jersey Economic Development Authority (EDA), N.J.A.C. 17:44-2.2(a)10 exempts commitments between lending institutions and applicants until the transaction is complete. This exemption is in the public interest to protect applicants to the EDA who have a reasonable expectation that the confidentiality of transactions will be held until the transaction is complete. Lenders' competitive advantage may also be impacted by disclosure.

Release of this information prior to the transaction's completion could jeopardize the business interests of the parties and interfere with the mission of the EDA by discouraging lenders from competing and otherwise participating in EDA sponsored projects.

N.J.A.C. 17:44-2.2(a)11 protects a variety of medical, personal contact and financial data which may be in the possession of the Department or any agency allocated to the Department. Citizens may be asked directly for this information by outside

parties and can opt to provide it if the citizen so chooses, in keeping with individual privacy preferences. This exemption does not prevent individuals from obtaining their own personal information through written requests.

N.J.A.C. 17:44-2.2(a)12 exempts examination data which is proprietary and may be deemed to be a trade secret. Disclosure of examination data would jeopardize the integrity of the examination process. Examination grades are excluded from disclosure as personal information for which a reasonable person has an expectation of privacy.

N.J.A.C. 17:44-2.2(a)13 clarifies that records obtained by the Department of the Treasury, or any agency allocated to the Department, from other public agencies will retain exempt status. Identical provisions in the "Confidentiality of Records" regulations of other Departments will clarify that records provided to other public agencies by this Department, or any agency allocated to this Department, will retain exempt status. Government records access requests for information from other State agencies, local government agencies, or other branches of State Government that may be held or processed by Treasury but are the responsibility of another agency, local government or branch of State Government may best be made directly to the agency, local government or branch of State Government. For example, the exemption for academic research allowed to public institutions of

higher education may be exercised by the New Jersey Facilities Authority.

N.J.A.C. 17:44-2.2(a)14 exempts records of this Department or any agency allocated to this Department held by the Office of Information Technology (OIT) or the State Records Storage Center of the Division of Archives and Records Management (DARM), in the Department of State, or an offsite storage facility outside of the regular business office of the agency. Such records shall be accessible for inspection or copying only through a request to the proper custodian of this Department or agency allocated to this Department. OIT maintains many of the computer systems on which Treasury's data resides. DARM provides records storage services for State records not in current use. Neither OIT nor DARM is the owner or the custodian of record for these records. This exemption clarifies for the public that records access requests for information that is not owned by OIT or DARM must be made directly to the public agency that owns the data. That agency will know what records can or cannot be provided and any exemptions to protect the public interest that may apply.

Because a 60-day comment period has been provided on this notice of proposal, this notice is excepted from the rulemaking calendar requirement of N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules implement the requirements of N.J.S.A. 47:1A-1 et seq. as amended and supplemented by P.L. 2001, c.404. The proposed new rules will have a positive social impact by establishing a procedure for public access to government records held or controlled by the Department of the Treasury. The law requires that government records be readily accessible for inspection, copying or examination by citizens of this State unless exempt by law or regulation, but also calls upon a public agency to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure would violate the citizen's reasonable expectation of privacy. These proposed new rules attempt to balance the competing policies in the statute and to exclude records where it would not be in the public interest to permit indiscriminate disclosure or copying of certain records. The proposed new rules also provide safeguards to protect citizens, businesses or governments with whom the Department contracts, does business, reviews, or regulates. Personal and financial information is kept confidential to avoid violating a citizen's reasonable expectation of privacy.

Economic Impact

The proposed new rules will not have an economic impact on the public in excess of that provided by the statute. Persons requesting copies of government records will be required to pay the

fees authorized by the statute for copies of records. The proposed rules do not impose any additional costs. The cost incurred will depend on the type and volume of records requested and the medium of delivery.

The Department, however, will incur costs in processing requests for access to government records in the time set by the Act.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal standards. The Federal Freedom of Information Act, 5 U.S.C. § 550a et seq., does not apply to records of State government and does not constitute a Federal standard.

Jobs Impact

The proposed new rules will not have an impact on the number of jobs generated or lost in the private sector in New Jersey. They may, however, require public agencies in this State to increase the number of employees designated to respond to requests for public access.

Agriculture Industry Impact

The proposed new rules will not have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules do not impose reporting or recordkeeping requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose compliance requirements on all persons seeking access to government records pursuant to N.J.S.A. 47:1A-1 et seq. as amended and supplemented. All persons, including small businesses, will be required to submit requests for access to government records on a form approved by the Department. The statute requires the custodian of records to adopt a form for access to records. The statute authorizes fees for copies of government records. There is no exception for small businesses. The cost depends on the number of copies requested. The proposed new rules provide that the fee will be the maximum set forth in the statute or a fee authorized by the statute that does not exceed the actual cost of providing the record. The cost to the Department of providing the record does not depend on whether the requester is a small business.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

Chapter 44

Government Records

SUBCHAPTER 1 GOVERNMENT RECORDS

17:44-1.1 Scope and applicability

The rules in this subchapter apply to the Department of the Treasury and all divisions and agencies in the Department, including those agencies allocated to the Department to satisfy the requirements of Article V, Section 4, Paragraph 1 of the New Jersey Constitution, commonly known as "in but not of" agencies; and when used in this subchapter, the term Department means all such divisions and agencies, including the county boards of taxation and municipal tax assessors with respect to their assessment functions.

17:44-1.2 Custodian of records

(a) Pursuant to P.L. 2001, c. 404, the State Treasurer shall designate a custodian of records for the Department of the Treasury, who shall be responsible for requests for access to government records of the Office of the State Treasurer.

(b) Each Division director, agency director or governing body, as the case may be, shall designate a custodian of records or designee who shall be responsible for requests for access to records held or controlled by that division or agency. Each of the county boards of taxation will also designate a custodian of records.

(c) The address and other contact information for contacts or custodians shall be posted on the Department of the Treasury web site (www.state.nj.us/treasury) and otherwise made available to the public as set forth in this section. The contact information for requests for Treasury divisions, municipal tax assessors with respect to their assessment functions, and the Capital City Redevelopment Corporation, the Garden State Preservation Trust and the New Jersey Building Authority is:

Treasury Government Records Access Unit
PO Box 215
Trenton, NJ 08625-0215

For "in but not of" agencies, and certain other miscellaneous offices, counsels and commissions, contact information is as follows:

Custodian of Records, New Jersey Board of Public Utilities
2 Gateway Center
Newark, NJ 07102

State of New Jersey Casino Control Commission of Records
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

Custodian of Records
Governor's Council on Alcoholism and Drug Abuse
28 West State Street-11th Floor
PO Box 345
Trenton, NJ 08625-0345

Custodian of Records, Ratepayer Advocate
31 Clinton Street, 11th Floor
PO Box 46005
Newark, NJ 07101

Custodian of Records
New Jersey Commerce and Economic Growth Commission
20 West State Street
PO Box 820
Trenton, New Jersey 08625-0820

Custodian of Records for NJ Development Authority for Small
Businesses, Minorities' and Women's Enterprises
PO Box 990
Trenton, NJ 08625-0990

Custodian of Records for Urban Programs
20 West State Street, 4th Floor
PO Box 820
Trenton, New Jersey 08625

Custodian of Records, Commission on Science and Technology
28 West State Street
PO Box 832
Trenton, NJ 08625-0832

Custodian of Records, Office of Administrative Law
PO Box 049
Trenton, NJ 08625-0049

Custodian of Records, Office of the Public Defender
25 Market Street
PO Box 850
Trenton, NJ 08625-0850

New Jersey Office of Information Technology
200 Riverview Plaza
PO Box 212
Trenton, NJ 08625-0212

Custodian of Records
The Motion Picture and Television Development Commission
153 Halsey Street
PO Box 47023
Newark, NJ 07101

Custodian of Records, The New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990

Custodian of Records, New Jersey Educational Facilities Authority
101 College Road East
Princeton, NJ 08540

Custodian of Records, Council on Local Mandates
135 West Hanover Street
PO Box 627
Trenton, NJ 08625-0627

Custodian of Records, The State Legal Services Office
(Contact each of the offices directly.)

County Boards of Taxation
(Contact each of the 21 boards directly.)

17:44-1.3 Requests for government records

(a) All requests for access to government records pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented, held or controlled by the Department of the Treasury or a division or agency thereof, shall be in writing on a form approved by the Department. For the purposes of this chapter, access means inspection, examination or copying.

(b) The requester shall be requested to provide the following information on the form:

1. The name, address, and telephone number of the requester;
2. A description of the government record sought, method of access and if copies are sought, the medium requested and mode of delivery; and
3. The date submitted to the division or agency custodian.

(c) The request form shall also include an identified space for:

1. The custodian to indicate whether the request is granted or denied;
2. Specific directions and procedures for requesting a record;
3. A statement that prepayment of fees is required and the fees to be charged;
4. The time period within which the public agency is required to make the record available;
5. The custodian to sign and date the form;
6. A statement of the requester's right to challenge a decision by the custodian to deny access;

7. The reasons for a denial of a request, in whole or in part;
8. The procedures for challenging a denial of access;
9. The custodian to indicate whether the requester has agreed to grant an extension of time;
10. A certification by the requester that they have not been convicted of an indictable offense under the laws of this State, any other state or the United States; and
11. The toll free number of the Government Records Council.

(d) Copies of the request form shall be available at the office of the Department custodian, all division and agency offices, on the Department web site, and division or agency website, if any.

17:44-1.4 Procedures for requests

(a) Request forms shall be hand-delivered during normal business hours of the public agency, mailed, or transmitted electronically by facsimile, e-mail or web site access by the requester to the Government Records Access Unit or agency custodian of records.

(b) Any officer or employee of the Department who receives a request for access to a government record shall direct the requester to the Government Records Access Unit or appropriate agency custodian of the record.

(c) Upon receipt of the request form, the custodian shall review the request form for clarity and completeness. If the request form is unclear as to the government record requested, the custodian shall advise the requester of the deficiency, provided contact information is included on the form. The custodian may require the

requester to provide additional information to identify the record or to ascertain the requester's identity and status to determine whether access is authorized. The custodian shall deny a request for access if the request is unclear or incomplete after attempting to reach a reasonable resolution with the requester. A request shall not be deemed complete until the pre-payment required under this section is received by the custodian.

(d) Inquiries and processes involving the request may include a tracking number.

(e) Upon receipt of a request form, the custodian shall estimate the cost of providing the records and 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 State of New Jersey. Except as provided otherwise by law or regulation, costs shall be those set forth in N.J.S.A. 47:1A-1 et seq., as amended and supplemented.

(f) The custodian shall sign and date the request form, enter the estimated fee and, if applicable, tracking number, and provide the requester with a copy.

(g) No fee shall be charged for inspecting or examining government records.

(h) Upon request, a custodian may allow requesters to use their own photocopying equipment to copy public records, provided that it will not disrupt the business operations of the custodian and will not endanger the public records. No special fee shall be charged to a requester who utilizes its own equipment.

17:44-1.5. Delivery of records

The custodian shall notify the requester when the records are available and shall collect any additional fees and charges due prior to delivery of copies.

17:44-1.6 Immediate access to certain records

Immediate access ordinarily shall be granted for requests to inspect, examine or copy budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.

17:44-1.7 Failure to respond

Except as provided in N.J.A.C. 17:44-1.8, a custodian shall grant or deny access within seven business days after receiving a request completed in accordance with N.J.A.C. 17:44-1.4 or such additional time as may be allowed by law or these rules or as may be agreed to by the requester. The failure to grant access shall be deemed a denial of the request, unless the requester has elected not to provide a name, address, telephone number or other means of contact. If the requester has elected not to provide contact information, the custodian shall not be required to respond until seven business days after the requester reappears before the custodian seeking a response to the original request.

17:44-1.8 Records stored offsite

If the requested record is in storage offsite at a facility outside of the regular business office of the agency, the custodian shall so advise the requester within seven business days after the custodian receives the request. The custodian shall advise the

requester 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.

17:44-1.9 Requests for copies of a government record in a specified medium

(a) Unless otherwise specifically requested, copies of records shall be provided in printed form on ordinary business size paper. The requester may request that the agency provide a copy of a record in a specific medium. If the agency maintains the government record in the medium requested, the custodian shall provide the record in the medium sought.

(b) If the agency does not maintain the government record in the medium requested, the custodian shall convert the record to the medium requested if reasonable or provide a copy in some other meaningful medium. If a requester asks for copies of a record in a medium not routinely used by the agency, not routinely developed or maintained by the agency, or requiring a substantial amount of manipulation or programming of information technology, the custodian may charge, in addition to the actual cost of duplication, a special charge which shall be reasonable and shall be based upon the cost of any extensive use of information technology or for the labor cost of providing the service actually incurred. The requester shall be given the opportunity to review and object to the charge prior to its being incurred. If the requester objects to the 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 requester and the agency.

(c) Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined or copied is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the division or agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies. The requester shall have the opportunity to review and object to the charge prior to its being incurred. If the requester objects to the 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 requester and the agency.

17:44-1.10 Computation of time

(a) In computing any period of time under P.L. 2001, c. 404 or these rules, the business day a completed request for access is received is not to be included. The last business day of the period so computed is to be included.

(b) For purposes of P.L. 2001, c. 404 and these rules, a request for access is deemed to be complete when the requester provides the information required by N.J.A.C. 17:44-1.3 and pre-pays the fees required by P.L. 2001, c. 404 and these rules.

SUBCHAPTER 2 CONFIDENTIALITY OF RECORDS

17:44-2.1 Scope and applicability

The rules in this subchapter apply to the Department of the Treasury and all divisions and agencies in the Department, including those agencies allocated to the Department to satisfy the requirements of Article V, Section 4, Paragraph 1 of the New Jersey Constitution, commonly known as "in but not of" agencies; and when used in this subchapter, the term Department means all such divisions and agencies, including the county boards of taxation and municipal tax assessors with respect to their assessment functions.

17:44-2.2 Records designated confidential

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

1. Any document or information held by the Department, which includes information which a person has provided or which is otherwise maintained for a person and for which a reasonable person would hold an expectation of privacy, shall not be disclosed except under court order after notice to the individual affected. This

includes, but is not limited to, information or documents containing information such as Federal identification numbers, taxpayer identification numbers, proprietary information, payroll record personal information, credit card information, electronic identification information, financial statements, balance sheets and trade secrets;

2. Financial information, including, but not limited to, financial statements, financial negotiation documents, property appraisals or feasibility studies, made, maintained or kept on file or received in connection with a contractual, funding, real estate transaction or commercial regulatory matter that requires the review and approval of the Department until final action has been taken. Proprietary rights and personal privacy rights shall continue even after final action;

3. Information from financial statements of consultants or contractors submitted as a requirement for the pre-qualification/classification process, not otherwise published by the Department;

4. Financial information of non-State Cash Management Fund participants;

5. Unclaimed Property records other than the name and address of the property owner, which are available on the Department website;

6. Income and expense information provided to municipal tax assessors pursuant to N.J.S.A. 54:4-34;

7. Appraisals of real property prepared in connection with tax appeals, which have not been admitted into evidence before a County Board of Taxation or the Tax Court;

8. Income, expense and other financial information contained on local property tax record cards, on computer assisted mass appraisal (CAMA) systems, and on applications, statements and supporting documentation for deductions, exemptions and farmland assessments;

9. Personal information such as age, medical condition/disability, and veteran status, reflected on applications and statements submitted in support of eligibility for local property tax exemptions and deductions, and supporting documentation, such as proofs of age, death, medical condition/disability and veteran status, submitted in support of such applications or statements;

10. For the New Jersey Economic Development Authority, commitments between lending institutions and applicants until the transaction is complete;

11. Information concerning individuals as follows:

i. information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation;

ii. home addresses, home telephone numbers, personal e-mail addresses or other personal contact information;

iii. Information in an income or other tax return;
and

iv. 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;

12. Test questions, scoring keys and other examination data pertaining to the administration of an examination or an application for public employment or licensing;

13. Records of another Department or agency allocated to that Department in the possession of this Department or any agency allocated to this Department when those records are made confidential by a regulation of that Department or agency allocated to that Department adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the Department or agency to make records confidential or exempt from disclosure; and

14. Records of this Department or any agency allocated to this Department held by the Office of Information Technology (OIT), the State Records Storage Center of the Division of Archives and Records Management (DARM), in the Department of State, or an offsite storage facility outside of the regular business office of

the agency. Such records shall remain the legal property of this agency and be accessible for inspection or copying only through a request to the proper custodian of this Department or agency allocated to this Department. In the event that records of this Department or any agency allocated to this Department have been or shall be transferred to and accessioned by the State Archives in the Division of Archives and Records Management, all such records shall become the legal property of the State Archives, and requests for access to them shall be submitted directly to the State Archives.