

ASSEMBLY, No. 5468

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 18, 2023

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblyman P. CHRISTOPHER TULLY

District 38 (Bergen and Passaic)

SYNOPSIS

Permits Government Records Council staff attorneys to adjudicate certain government records complaints.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the duties of the staff attorneys of the
2 Government Records Council to adjudicate certain government
3 records complaints, and amending P.L.2001, c.404.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 8 of P.L.2001, c.404 (C.47:1A-7) is amended to read
9 as follows:

10 8. a. There is established in the Department of Community
11 Affairs a Government Records Council. The council shall consist
12 of the Commissioner of Community Affairs or the commissioner's
13 designee, the Commissioner of Education or the commissioner's
14 designee, and three public members appointed by the Governor,
15 with the advice and consent of the Senate, not more than two of
16 whom shall be of the same political party. The three public
17 members shall serve during the term of the Governor making the
18 appointment and until the appointment of a successor. A public
19 member shall not hold any other State or local elected or appointed
20 office or employment while serving as a member of the council. A
21 public member shall not receive a salary for service on the council
22 but shall be reimbursed for reasonable and necessary expenses
23 associated with serving on the council and may receive such per
24 diem payment as may be provided in the annual appropriations act.
25 A member may be removed by the Governor for cause. Vacancies
26 among the public members shall be filled in the same manner in
27 which the original appointment was made. The members of the
28 council shall choose one of the public members to serve as the
29 council's chair. The council may employ an executive director and
30 such professional and clerical staff as it deems necessary and may
31 call upon the Department of Community Affairs for such assistance
32 as it deems necessary and may be available to it.

33 b. The Government Records Council shall:
34 establish an informal mediation program to facilitate the
35 resolution of disputes regarding access to government records;
36 receive, hear, review and adjudicate a complaint filed by any
37 person concerning a denial of access to a government record by a
38 records custodian;
39 issue advisory opinions, on its own initiative, as to whether a
40 particular type of record is a government record which is accessible
41 to the public;
42 prepare guidelines and an informational pamphlet for use by
43 records custodians in complying with the law governing access to
44 public records;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 prepare an informational pamphlet explaining the public's right
2 of access to government records and the methods for resolving
3 disputes regarding access, which records custodians shall make
4 available to persons requesting access to a government record;

5 prepare lists for use by records custodians of the types of records
6 in the possession of public agencies which are government records;

7 make training opportunities available for records custodians and
8 other public officers and employees which explain the law
9 governing access to public records; and

10 operate an informational website and a toll-free helpline staffed
11 by knowledgeable employees of the council during regular business
12 hours which shall enable any person, including records custodians,
13 to call for information regarding the law governing access to public
14 records and allow any person to request mediation or to file a
15 complaint with the council when access has been denied;

16 In implementing the provisions of subsections d. and e. of this
17 section, the council shall: act, to the maximum extent possible, at
18 the convenience of the parties; utilize teleconferencing, faxing of
19 documents, e-mail and similar forms of modern communication;
20 and when in-person meetings are necessary, send representatives to
21 meet with the parties at a location convenient to the parties.

22 In implementing the provisions of this section, the staff attorneys
23 of the council, as authorized by the council, shall receive, hear,
24 review, and adjudicate complaints filed by a person concerning a
25 denial of access to a government record by a records custodian. A
26 decision of a staff attorney may be appealed to the council in
27 accordance with procedures established by the council.

28 In the event that a complaint involves a novel or complex matter,
29 the council shall convene to adjudicate the complaint after staff
30 attorneys conduct a review, investigation, and hearing, and prepare
31 a report on the complaint.

32 c. At the request of the staff attorneys of the council, a public
33 agency shall produce documents and ensure the attendance of
34 witnesses with respect to the **【council's】** investigation by the
35 council's staff attorneys of any complaint or the holding of any
36 hearing.

37 d. Upon receipt of a written complaint signed by any person
38 alleging that a custodian of a government record has improperly
39 denied that person access to a government record, the council shall
40 offer the parties the opportunity to resolve the dispute through
41 mediation. Mediation shall enable a person who has been denied
42 access to a government record and the custodian who denied or
43 failed to provide access thereto to attempt to mediate the dispute
44 through a process whereby a neutral mediator, who shall be trained
45 in mediation selected by the council, acts to encourage and facilitate
46 the resolution of the dispute. Mediation shall be an informal,
47 nonadversarial process having the objective of helping the parties
48 reach a mutually acceptable, voluntary agreement. The mediator

1 shall assist the parties in identifying issues, foster joint problem
2 solving, and explore settlement alternatives.

3 e. If any party declines mediation or if mediation fails to
4 resolve the matter to the satisfaction of all parties, the staff
5 attorneys of the council shall initiate an investigation concerning
6 the facts and circumstances set forth in the complaint. The staff
7 attorneys of the council shall make a determination as to whether
8 the complaint is within its jurisdiction or frivolous or without any
9 reasonable factual basis. If the staff attorneys of the council shall
10 conclude that the complaint is outside its jurisdiction, frivolous or
11 without factual basis, **[it]** they shall reduce that conclusion to
12 writing and transmit a copy thereof to the complainant and to the
13 records custodian against whom the complaint was filed.
14 Otherwise, the staff attorneys of the council shall notify the records
15 custodian against whom the complaint was filed of the nature of the
16 complaint and the facts and circumstances set forth therein. The
17 custodian shall have the opportunity to present the **[board]** staff
18 attorneys with any statement or information concerning the
19 complaint which the custodian wishes. If the staff attorneys of the
20 council **[is]** are able to make a determination as to a record's
21 accessibility based upon the complaint and the custodian's response
22 thereto, **[it]** they shall reduce that conclusion to writing and
23 transmit a copy thereof to the complainant and to the records
24 custodian against whom the complaint was filed. If the staff
25 attorneys of the council **[is]** are unable to make a determination as
26 to a record's accessibility based upon the complaint and the
27 custodian's response thereto, **[the council]** they shall conduct a
28 hearing on the matter in conformity with the rules and regulations
29 provided for hearings by a State agency in contested cases under the
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
31 seq.), insofar as they may be applicable and practicable. **[The]**
32 Upon an appeal from a decision of the staff attorneys, the council
33 shall, by a majority vote of its members, render a decision as to
34 whether the record which is the subject of the complaint is a
35 government record which must be made available for public access
36 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
37 supplemented. If the staff attorneys of the council determine, or the
38 council determines, by a majority vote of its members, that a
39 custodian has knowingly and willfully violated P.L.1963, c.73
40 (C.47:1A-1 et seq.), as amended and supplemented, and is found to
41 have unreasonably denied access under the totality of the
42 circumstances, the council may impose the penalties provided for in
43 section 12 of P.L.2001, c.404 (C.47:1A-11). A decision of the
44 council may be appealed to the Appellate Division of the Superior
45 Court. A decision of the council shall not have value as a precedent
46 for any case initiated in Superior Court pursuant to section 7 of
47 P.L.2001, c.404 (C.47:1A-6). All proceedings of the staff attorneys

1 and of the council pursuant to this subsection shall be conducted as
2 expeditiously as possible.

3 f. The council shall not charge any party a fee in regard to
4 actions filed with the council. The council shall be subject to the
5 provisions of the "Open Public Meetings Act," P.L.1975, c.231
6 (C.10:4-6), except that the council may go into closed session
7 during that portion of any proceeding during which the contents of a
8 contested record would be disclosed. A requestor who prevails in
9 any proceeding shall be entitled to a reasonable attorney's fee.

10 g. The council shall not have jurisdiction over the Judicial or
11 Legislative Branches of State Government or any agency, officer, or
12 employee of those branches.
13 (cf: P.L.2001, c.404, s.8)

14

15 2. Section 6 of P.L.2001, c.404, (C.47:1A-5) is amended to read
16 as follows:

17 6. a. The custodian of a government record shall permit the
18 record to be inspected, examined, and copied by any person during
19 regular business hours; or in the case of a municipality having a
20 population of 5,000 or fewer according to the most recent federal
21 decennial census, a board of education having a total district
22 enrollment of 500 or fewer, or a public authority having less than
23 \$10 million in assets, during not less than six regular business hours
24 over not less than three business days per week or the entity's
25 regularly-scheduled business hours, whichever is less; unless a
26 government record is exempt from public access by: P.L.1963, c.73
27 (C.47:1A-1 et seq.) as amended and supplemented; any other
28 statute; resolution of either or both houses of the Legislature;
29 regulation promulgated under the authority of any statute or
30 Executive Order of the Governor; Executive Order of the Governor;
31 Rules of Court; any federal law; federal regulation; or federal order.
32 Prior to allowing access to any government record, the custodian
33 thereof shall redact from that record any information which
34 discloses the social security number, credit card number, unlisted
35 telephone number, or driver license number of any person, or, in
36 accordance with section 2 of P.L.2021, c.371 (C.47:1B-2), the home
37 address, whether a primary or secondary residence, of any active,
38 formerly active, or retired judicial officer, prosecutor, or law
39 enforcement officer, or, as defined in section 1 of P.L.2021, c.371
40 (C.47:1B-1), any immediate family member thereof; except for use
41 by any government agency, including any court or law enforcement
42 agency, in carrying out its functions, or any private person or entity
43 acting on behalf thereof, or any private person or entity seeking to
44 enforce payment of court-ordered child support; except with respect
45 to the disclosure of driver information by the New Jersey Motor
46 Vehicle Commission as permitted by section 2 of P.L.1997, c.188
47 (C.39:2-3.4); and except that a social security number contained in
48 a record required by law to be made, maintained or kept on file by a

1 public agency shall be disclosed when access to the document or
2 disclosure of that information is not otherwise prohibited by State
3 or federal law, regulation or order or by State statute, resolution of
4 either or both houses of the Legislature, Executive Order of the
5 Governor, rule of court or regulation promulgated under the
6 authority of any statute or executive order of the Governor. Except
7 where an agency can demonstrate an emergent need, a regulation
8 that limits access to government records shall not be retroactive in
9 effect or applied to deny a request for access to a government
10 record that is pending before the agency, the staff attorneys of the
11 council, the council or a court at the time of the adoption of the
12 regulation.

13 b. (1) A copy or copies of a government record may be
14 purchased by any person upon payment of the fee prescribed by law
15 or regulation. Except as otherwise provided by law or regulation
16 and except as provided in paragraph (2) of this subsection, the fee
17 assessed for the duplication of a government record embodied in the
18 form of printed matter shall be \$0.05 per letter size page or smaller,
19 and \$0.07 per legal size page or larger. If a public agency can
20 demonstrate that its actual costs for duplication of a government
21 record exceed the foregoing rates, the public agency shall be
22 permitted to charge the actual cost of duplicating the record. The
23 actual cost of duplicating the record, upon which all copy fees are
24 based, shall be the cost of materials and supplies used to make a
25 copy of the record, but shall not include the cost of labor or other
26 overhead expenses associated with making the copy except as
27 provided for in subsection c. of this section. Access to electronic
28 records and non-printed materials shall be provided free of charge,
29 but the public agency may charge for the actual costs of any needed
30 supplies such as computer discs.

31 (2) No fee shall be charged to a victim of a crime for a copy or
32 copies of a record to which the crime victim is entitled to access, as
33 provided in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

34 c. Whenever the nature, format, manner of collation, or volume
35 of a government record embodied in the form of printed matter to
36 be inspected, examined, or copied pursuant to this section is such
37 that the record cannot be reproduced by ordinary document copying
38 equipment in ordinary business size or involves an extraordinary
39 expenditure of time and effort to accommodate the request, the
40 public agency may charge, in addition to the actual cost of
41 duplicating the record, a special service charge that shall be
42 reasonable and shall be based upon the actual direct cost of
43 providing the copy or copies; provided, however, that in the case of
44 a municipality, rates for the duplication of particular records when
45 the actual cost of copying exceeds the foregoing rates shall be
46 established in advance by ordinance. The requestor shall have the
47 opportunity to review and object to the charge prior to it being
48 incurred.

1 d. A custodian shall permit access to a government record and
2 provide a copy thereof in the medium requested if the public agency
3 maintains the record in that medium. If the public agency does not
4 maintain the record in the medium requested, the custodian shall
5 either convert the record to the medium requested or provide a copy
6 in some other meaningful medium. If a request is for a record: (1)
7 in a medium not routinely used by the agency; (2) not routinely
8 developed or maintained by an agency; or (3) requiring a substantial
9 amount of manipulation or programming of information technology,
10 the agency may charge, in addition to the actual cost of duplication,
11 a special charge that shall be reasonable and shall be based on the
12 cost for any extensive use of information technology, or for the
13 labor cost of personnel providing the service, that is actually
14 incurred by the agency or attributable to the agency for the
15 programming, clerical, and supervisory assistance required, or both.

16 e. Immediate access ordinarily shall be granted to budgets,
17 bills, vouchers, contracts, including collective negotiations
18 agreements and individual employment contracts, and public
19 employee salary and overtime information.

20 f. The custodian of a public agency shall adopt a form for the
21 use of any person who requests access to a government record held
22 or controlled by the public agency. The form shall provide space
23 for the name, address, and phone number of the requestor and a
24 brief description of the government record sought. The form shall
25 include space for the custodian to indicate which record will be
26 made available, when the record will be available, and the fees to be
27 charged. The form shall also include the following: (1) specific
28 directions and procedures for requesting a record; (2) a statement as
29 to whether prepayment of fees or a deposit is required; (3) the time
30 period within which the public agency is required by P.L.1963, c.73
31 (C.47:1A-1 et seq.) as amended and supplemented, to make the
32 record available; (4) a statement of the requestor's right to challenge
33 a decision by the public agency to deny access and the procedure
34 for filing an appeal; (5) space for the custodian to list reasons if a
35 request is denied in whole or in part; (6) space for the requestor to
36 sign and date the form; (7) space for the custodian to sign and date
37 the form if the request is fulfilled or denied. The custodian may
38 require a deposit against costs for reproducing documents sought
39 through an anonymous request whenever the custodian anticipates
40 that the information thus requested will cost in excess of \$5 to
41 reproduce.

42 g. A request for access to a government record shall be in
43 writing and hand-delivered, mailed, transmitted electronically, or
44 otherwise conveyed to the appropriate custodian. A custodian shall
45 promptly comply with a request to inspect, examine, copy, or
46 provide a copy of a government record. If the custodian is unable
47 to comply with a request for access, the custodian shall indicate the
48 specific basis therefor on the request form and promptly return it to

1 the requestor. The custodian shall sign and date the form and
2 provide the requestor with a copy thereof. If the custodian of a
3 government record asserts that part of a particular record is exempt
4 from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)
5 as amended and supplemented, the custodian shall delete or excise
6 from a copy of the record that portion which the custodian asserts is
7 exempt from access and shall promptly permit access to the
8 remainder of the record. If the government record requested is
9 temporarily unavailable because it is in use or in storage, the
10 custodian shall so advise the requestor and shall make arrangements
11 to promptly make available a copy of the record. If a request for
12 access to a government record would substantially disrupt agency
13 operations, the custodian may deny access to the record after
14 attempting to reach a reasonable solution with the requestor that
15 accommodates the interests of the requestor and the agency.

16 h. Any officer or employee of a public agency who receives a
17 request for access to a government record shall forward the request
18 to the custodian of the record or direct the requestor to the
19 custodian of the record.

20 i. (1) Unless a shorter time period is otherwise provided by
21 statute, regulation, or executive order, a custodian of a government
22 record shall grant access to a government record or deny a request
23 for access to a government record as soon as possible, but not later
24 than seven business days after receiving the request, provided that
25 the record is currently available and not in storage or archived. In
26 the event a custodian fails to respond within seven business days
27 after receiving a request, the failure to respond shall be deemed a
28 denial of the request, unless the requestor has elected not to provide
29 a name, address or telephone number, or other means of contacting
30 the requestor. If the requestor has elected not to provide a name,
31 address, or telephone number, or other means of contacting the
32 requestor, the custodian shall not be required to respond until the
33 requestor reappears before the custodian seeking a response to the
34 original request. If the government record is in storage or archived,
35 the requestor shall be so advised within seven business days after
36 the custodian receives the request. The requestor shall be advised
37 by the custodian when the record can be made available. If the
38 record is not made available by that time, access shall be deemed
39 denied.

40 (2) During a period declared pursuant to the laws of this State as
41 a state of emergency, public health emergency, or state of local
42 disaster emergency, the deadlines by which to respond to a request
43 for, or grant or deny access to, a government record under
44 paragraph (1) of this subsection or subsection e. of this section shall
45 not apply, provided, however, that the custodian of a government
46 record shall make a reasonable effort, as the circumstances permit,
47 to respond to a request for access to a government record within
48 seven business days or as soon as possible thereafter.

1 j. A custodian shall post prominently in public view in the part
2 or parts of the office or offices of the custodian that are open to or
3 frequented by the public a statement that sets forth in clear, concise
4 and specific terms the right to appeal a denial of, or failure to
5 provide, access to a government record by any person for
6 inspection, examination, or copying or for purchase of copies
7 thereof and the procedure by which an appeal may be filed.

8 k. The files maintained by the Office of the Public Defender that
9 relate to the handling of any case shall be considered confidential
10 and shall not be open to inspection by any person unless authorized
11 by law, court order, or the State Public Defender.

12 (cf: P.L.2021, c.371, s.11)

13
14 3. This act shall take effect immediately.
15
16

17 STATEMENT

18
19 The Government Records Council (GRC) has many duties with
20 regard to the law commonly referred to as the open public records
21 act. Among its duties, the GRC adjudicates complaints submitted
22 to the council concerning a denial of access to a government record
23 by a records custodian.

24 The council consists of the Commissioner of the Department of
25 Community Affairs, the Commissioner of the Department of
26 Education, and three public members appointed by the Governor.
27 The council employs an executive director, professional staff, such
28 as a staff attorney, and clerical staff as it deems necessary.

29 Under this bill, the staff attorneys of the council will receive,
30 hear, review, and adjudicate complaints. The decision of a staff
31 attorney may be appealed to the council.

32 Under current law, a decision of the council may be appealed to
33 the Appellate Division of the Superior Court.

34 Under current practice, the council meets monthly for the
35 adjudication of complaints and other matters. This bill will permit
36 staff attorneys to adjudicate complaints on a regular basis, which
37 should help alleviate the council's backlog of complaints.

38 This bill is in response to the recommendations of the Office of
39 the State Comptroller (OSC) July 2022 report regarding the GRC
40 and its review and adjudication of public records complaints. The
41 OSC expressed concern that the GRC has not processed public
42 records complaints in a timely manner and recommended that the
43 GRC utilize the staff attorneys of the council to receive, hear,
44 review, and adjudicate complaints. The council will retain its
45 current process to hear appeals of decisions of staff attorneys.