

ASSEMBLY, No. 5613

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 15, 2023

Sponsored by:

Assemblyman JOE DANIELSEN

District 17 (Middlesex and Somerset)

SYNOPSIS

Makes various changes to process for requesting access to government records for commercial purposes.

CURRENT VERSION OF TEXT

As introduced.



A5613 DANIELSEN

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1 AN ACT concerning requests for access to government records for
2 commercial purposes and amending P.L.1995, c.23 and
3 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 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to read
9 as follows:

10 1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
11 supplemented:

12 "Biotechnology" means any technique that uses living
13 organisms, or parts of living organisms, to make or modify
14 products, to improve plants or animals, or to develop micro-
15 organisms for specific uses; including the industrial use of
16 recombinant DNA, cell fusion, and novel bioprocessing techniques.

17 "Commercial purpose" means the direct or indirect use of any
18 part of a government record for sale, resale, solicitation, rent or
19 lease of a service, or any use by which the user expects a profit
20 either through commission, salary, or fee. "Commercial purpose"
21 shall not include using, distributing, gathering, procuring,
22 transmitting, compiling, editing, disseminating, or publishing of
23 information or data by the news media, or any parent, subsidiary, or
24 affiliate of any news media, as defined by section 2 of P.L.1977,
25 c.253 (C.2A:84A-21a), or by any news, journalistic, educational,
26 scientific, scholarly, or governmental organization.

27 "Custodian of a government record" or "custodian" means in the
28 case of a municipality, the municipal clerk and in the case of any
29 other public agency, the officer officially designated by formal
30 action of that agency's director or governing body, as the case may
31 be.

32 "Government record" or "record" means any paper, written or
33 printed book, document, drawing, map, plan, photograph,
34 microfilm, data processed or image processed document,
35 information stored or maintained electronically or by sound-
36 recording or in a similar device, or any copy thereof, that has been
37 made, maintained or kept on file in the course of his or its official
38 business by any officer, commission, agency or authority of the
39 State or of any political subdivision thereof, including subordinate
40 boards thereof, or that has been received in the course of his or its
41 official business by any such officer, commission, agency, or
42 authority of the State or of any political subdivision thereof,
43 including subordinate boards thereof. The terms shall not include
44 inter-agency or intra-agency advisory, consultative, or deliberative
45 material.

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 A government record shall not include the following information
2 which is deemed to be confidential for the purposes of P.L.1963,
3 c.73 (C.47:1A-1 et seq.) as amended and supplemented:

4 information received by a member of the Legislature from a
5 constituent or information held by a member of the Legislature
6 concerning a constituent, including, but not limited to, information
7 in written form or contained in any e-mail or computer data base, or
8 in any telephone record whatsoever, unless it is information the
9 constituent is required by law to transmit;

10 any memorandum, correspondence, notes, report or other
11 communication prepared by, or for, the specific use of a member of
12 the Legislature in the course of the member's official duties, except
13 that this provision shall not apply to an otherwise publicly-
14 accessible report which is required by law to be submitted to the
15 Legislature or its members;

16 any copy, reproduction or facsimile of any photograph, negative
17 or print, including instant photographs and videotapes of the body,
18 or any portion of the body, of a deceased person, taken by or for the
19 medical examiner at the scene of death or in the course of a post
20 mortem examination or autopsy made by or caused to be made by
21 the medical examiner except:

22 when used in a criminal action or proceeding in this State which
23 relates to the death of that person,

24 for the use as a court of this State permits, by order after good
25 cause has been shown and after written notification of the request
26 for the court order has been served at least five days before the
27 order is made upon the county prosecutor for the county in which
28 the post mortem examination or autopsy occurred,

29 for use in the field of forensic pathology or for use in medical or
30 scientific education or research, or

31 for use by any law enforcement agency in this State or any other
32 state or federal law enforcement agency;

33 criminal investigatory records;

34 the portion of any criminal record concerning a person's
35 detection, apprehension, arrest, detention, trial or disposition for
36 unlawful manufacturing, distributing, or dispensing, or possessing
37 or having under control with intent to manufacture, distribute, or
38 dispense, marijuana or hashish in violation of paragraph (11) of
39 subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or
40 hashish in violation of paragraph (12) of subsection b. of that
41 section, or a violation of either of those paragraphs and a violation
42 of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or
43 subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for
44 distributing, dispensing, or possessing, or having under control with
45 intent to distribute or dispense, on or within 1,000 feet of any
46 school property, or on or within 500 feet of the real property
47 comprising a public housing facility, public park, or public
48 building, or for obtaining, possessing, using, being under the

1 influence of, or failing to make lawful disposition of marijuana or
2 hashish in violation of paragraph (3) or (4) of subsection a., or
3 subsection b., or subsection c. of N.J.S.2C:35-10, or for a violation
4 of any of those provisions and a violation of N.J.S.2C:36-2 for
5 using or possessing with intent to use drug paraphernalia with that
6 marijuana or hashish;

7 victims' records, except that a victim of a crime shall have access
8 to the victim's own records;

9 any written request by a crime victim for a record to which the
10 victim is entitled to access as provided in this section, including,
11 but not limited to, any law enforcement agency report, domestic
12 violence offense report, and temporary or permanent restraining
13 order;

14 personal firearms records, except for use by any person
15 authorized by law to have access to these records or for use by any
16 government agency, including any court or law enforcement
17 agency, for purposes of the administration of justice;

18 personal identifying information received by the Division of Fish
19 and Wildlife in the Department of Environmental Protection in
20 connection with the issuance of any license authorizing hunting
21 with a firearm. For the purposes of this paragraph, personal
22 identifying information shall include, but not be limited to, identity,
23 name, address, social security number, telephone number, fax
24 number, driver's license number, email address, or social media
25 address of any applicant or licensee;

26 trade secrets and proprietary commercial or financial information
27 obtained from any source. For the purposes of this paragraph, trade
28 secrets shall include data processing software obtained by a public
29 body under a licensing agreement which prohibits its disclosure;

30 any record within the attorney-client privilege. This paragraph
31 shall not be construed as exempting from access attorney or
32 consultant bills or invoices except that such bills or invoices may be
33 redacted to remove any information protected by the attorney-client
34 privilege;

35 administrative or technical information regarding computer
36 hardware, software and networks which, if disclosed, would
37 jeopardize computer security;

38 emergency or security information or procedures for any
39 buildings or facility which, if disclosed, would jeopardize security
40 of the building or facility or persons therein;

41 security measures and surveillance techniques which, if
42 disclosed, would create a risk to the safety of persons, property,
43 electronic data or software;

44 information which, if disclosed, would give an advantage to
45 competitors or bidders;

46 information generated by or on behalf of public employers or
47 public employees in connection with any sexual harassment
48 complaint filed with a public employer or with any grievance filed

1 by or against an individual or in connection with collective
2 negotiations, including documents and statements of strategy or
3 negotiating position;
4 information which is a communication between a public agency
5 and its insurance carrier, administrative service organization or risk
6 management office;
7 information which is to be kept confidential pursuant to court
8 order;
9 any copy of form DD-214, NGB-22, or that form, issued by the
10 United States Government, or any other certificate of honorable
11 discharge, or copy thereof, from active service or the reserves of a
12 branch of the Armed Forces of the United States, or from service in
13 the organized militia of the State, that has been filed by an
14 individual with a public agency, except that a veteran or the
15 veteran's spouse or surviving spouse shall have access to the
16 veteran's own records;
17 any copy of an oath of allegiance, oath of office or any
18 affirmation taken upon assuming the duties of any public office, or
19 that oath or affirmation, taken by a current or former officer or
20 employee in any public office or position in this State or in any
21 county or municipality of this State, including members of the
22 Legislative Branch, Executive Branch, Judicial Branch, and all law
23 enforcement entities, except that the full name, title, and oath date
24 of that person contained therein shall not be deemed confidential;
25 that portion of any document which discloses the social security
26 number, credit card number, unlisted telephone number or driver
27 license number of any person, or, in accordance with section 2 of
28 P.L.2021, c.371 (C.47:1B-2), that portion of any document which
29 discloses the home address, whether a primary or secondary
30 residence, of any active, formerly active, or retired judicial officer,
31 prosecutor, or law enforcement officer, or, as defined in section 1 of
32 P.L.2021, c.371 (C.47:1B-1), any immediate family member
33 thereof; except for use by any government agency, including any
34 court or law enforcement agency, in carrying out its functions, or
35 any private person or entity acting on behalf thereof, or any private
36 person or entity seeking to enforce payment of court-ordered child
37 support; except with respect to the disclosure of driver information
38 by the New Jersey Motor Vehicle Commission as permitted by
39 section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social
40 security number contained in a record required by law to be made,
41 maintained or kept on file by a public agency shall be disclosed
42 when access to the document or disclosure of that information is not
43 otherwise prohibited by State or federal law, regulation or order or
44 by State statute, resolution of either or both houses of the
45 Legislature, Executive Order of the Governor, rule of court or
46 regulation promulgated under the authority of any statute or
47 executive order of the Governor;

A5613 DANIELSEN

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1 a list of persons identifying themselves as being in need of
2 special assistance in the event of an emergency maintained by a
3 municipality for public safety purposes pursuant to section 1 of
4 P.L.2017, c.266 (C.40:48-2.67); and

5 a list of persons identifying themselves as being in need of
6 special assistance in the event of an emergency maintained by a
7 county for public safety purposes pursuant to section 6 of P.L.2011,
8 c.178 (C.App.A:9-43.13).

9 A government record shall not include, with regard to any public
10 institution of higher education, the following information which is
11 deemed to be privileged and confidential:

12 pedagogical, scholarly and/or academic research records and/or
13 the specific details of any research project conducted under the
14 auspices of a public higher education institution in New Jersey,
15 including, but not limited to, research, development information,
16 testing procedures, or information regarding test participants,
17 related to the development or testing of any pharmaceutical or
18 pharmaceutical delivery system, except that a custodian may not
19 deny inspection of a government record or part thereof that gives
20 the name, title, expenditures, source and amounts of funding and
21 date when the final project summary of any research will be
22 available;

23 test questions, scoring keys and other examination data
24 pertaining to the administration of an examination for employment
25 or academic examination;

26 records of pursuit of charitable contributions or records
27 containing the identity of a donor of a gift if the donor requires non-
28 disclosure of the donor's identity as a condition of making the gift
29 provided that the donor has not received any benefits of or from the
30 institution of higher education in connection with such gift other
31 than a request for memorialization or dedication;

32 valuable or rare collections of books or documents obtained by
33 gift, grant, bequest or devise conditioned upon limited public
34 access;

35 information contained on individual admission applications; and
36 information concerning student records or grievance or
37 disciplinary proceedings against a student to the extent disclosure
38 would reveal the identity of the student.

39 "Personal firearms record" means any information contained in a
40 background investigation conducted by the chief of police, the
41 county prosecutor, or the Superintendent of State Police, of any
42 applicant for a permit to purchase a handgun, firearms identification
43 card license, or firearms registration; any application for a permit to
44 purchase a handgun, firearms identification card license, or firearms
45 registration; any document reflecting the issuance or denial of a
46 permit to purchase a handgun, firearms identification card license,
47 or firearms registration; and any permit to purchase a handgun,
48 firearms identification card license, or any firearms license,

1 certification, certificate, form of register, or registration statement.
2 For the purposes of this paragraph, information contained in a
3 background investigation shall include, but not be limited to,
4 identity, name, address, social security number, phone number, fax
5 number, driver's license number, email address, social media
6 address of any applicant, licensee, registrant or permit holder.

7 "Public agency" or "agency" means any of the principal
8 departments in the Executive Branch of State Government, and any
9 division, board, bureau, office, commission or other instrumentality
10 within or created by such department; the Legislature of the State
11 and any office, board, bureau or commission within or created by
12 the Legislative Branch; and any independent State authority,
13 commission, instrumentality or agency. The terms also mean any
14 political subdivision of the State or combination of political
15 subdivisions, and any division, board, bureau, office, commission or
16 other instrumentality within or created by a political subdivision of
17 the State or combination of political subdivisions, and any
18 independent authority, commission, instrumentality or agency
19 created by a political subdivision or combination of political
20 subdivisions.

21 "Law enforcement agency" means a public agency, or part
22 thereof, determined by the Attorney General to have law
23 enforcement responsibilities.

24 "Law enforcement officer" means a person whose public duties
25 include the power to act as an officer for the detection,
26 apprehension, arrest and conviction of offenders against the laws of
27 this State.

28 "Constituent" means any State resident or other person
29 communicating with a member of the Legislature.

30 "Judicial officer" means any active, formerly active, or retired
31 federal, state, county, or municipal judge, including a judge of the
32 Tax Court and any other court of limited jurisdiction established,
33 altered, or abolished by law, a judge of the Office of Administrative
34 Law, a judge of the Division of Workers' Compensation, and any
35 other judge established by law who serves in the executive branch.

36 "Member of the Legislature" means any person elected or
37 selected to serve in the New Jersey Senate or General Assembly.

38 "Criminal investigatory record" means a record which is not
39 required by law to be made, maintained or kept on file that is held
40 by a law enforcement agency which pertains to any criminal
41 investigation or related civil enforcement proceeding.

42 "Victim's record" means an individually-identifiable file or
43 document held by a victims' rights agency which pertains directly to
44 a victim of a crime except that a victim of a crime shall have access
45 to the victim's own records.

46 "Victim of a crime" means a person who has suffered personal or
47 psychological injury or death or incurs loss of or injury to personal
48 or real property as a result of a crime, or if such a person is

1 deceased or incapacitated, a member of that person's immediate
2 family.

3 "Victims' rights agency" means a public agency, or part thereof,
4 the primary responsibility of which is providing services, including,
5 but not limited to, food, shelter, or clothing, medical, psychiatric,
6 psychological or legal services or referrals, information and referral
7 services, counseling and support services, or financial services to
8 victims of crimes, including victims of sexual assault, domestic
9 violence, violent crime, child endangerment, child abuse or child
10 neglect, and the Victims of Crime Compensation Board, established
11 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
12 the Victims of Crime Compensation Office pursuant to P.L.2007,
13 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
14 (cf: P.L.2021, c.371, s.10)

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

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

1 a record required by law to be made, maintained or kept on file by a
2 public agency shall be disclosed when access to the document or
3 disclosure of that information is not otherwise prohibited by State
4 or federal law, regulation or order or by State statute, resolution of
5 either or both houses of the Legislature, Executive Order of the
6 Governor, rule of court or regulation promulgated under the
7 authority of any statute or executive order of the Governor. Except
8 where an agency can demonstrate an emergent need, a regulation
9 that limits access to government records shall not be retroactive in
10 effect or applied to deny a request for access to a government
11 record that is pending before the agency, the council or a court at
12 the time of the adoption of the 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 also
25 shall include space for a requestor to certify that the government
26 record will be used, or will not be used, by that requestor or another
27 person for a commercial purpose, and the requestor shall be
28 required to provide this information for the request to be fulfilled.
29 The form shall include space for the custodian to indicate which
30 record will be made available, when the record will be available,
31 and the fees to be charged. The form shall also include the
32 following: (1) specific directions and procedures for requesting a
33 record; (2) a statement as to whether prepayment of fees or a
34 deposit is required; (3) the time period within which the public
35 agency is required by P.L.1963, c.73 (C.47:1A-1 et seq.) as
36 amended and supplemented, to make the record available; (4) a
37 statement of the requestor's right to challenge a decision by the
38 public agency to deny access and the procedure for filing an appeal;
39 (5) space for the custodian to list reasons if a request is denied in
40 whole or in part; (6) space for the requestor to sign and date the
41 form; (7) space for the custodian to sign and date the form if the
42 request is fulfilled or denied. The custodian may require a deposit
43 against costs for reproducing documents sought through an
44 anonymous request whenever the custodian anticipates that the
45 information thus requested will cost in excess of \$5 to reproduce.

46 g. A request for access to a government record shall be in
47 writing and hand-delivered, mailed, transmitted electronically, or
48 otherwise conveyed to the appropriate custodian.

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

21 A requestor shall be required to use the form adopted in
22 accordance with subsection f. of this section to submit a request for
23 access to a government record. When that record will be used for a
24 commercial purpose by the requestor or another person, the
25 requestor shall not be permitted to submit more than two such
26 requests per month to any one custodian. The requestor shall be
27 required to complete the space on the form provided for the
28 requestor's name. When a requestor is found to have intentionally
29 failed to inform the custodian that the government record will be
30 used for a commercial purpose by the requestor or another person,
31 the requestor shall be reported to the Government Records Council
32 and shall be prohibited from submitting any other request for access
33 to a government record to any custodian for a period of one year.
34 The council shall maintain the names of such requestors reported to
35 it.

36 h. Any officer or employee of a public agency who receives a
37 request for access to a government record shall forward the request
38 to the custodian of the record or direct the requestor to the
39 custodian of the record.

40 i. (1) Unless a shorter time period is otherwise provided by
41 statute, regulation, or executive order, a custodian of a government
42 record shall grant access to a government record or deny a request
43 for access to a government record as soon as possible, but not later
44 than seven business days after receiving the request, provided that
45 the record is currently available and not in storage or archived.

46 In the event a custodian fails to respond within seven business
47 days after receiving a request, the failure to respond shall be
48 deemed a denial of the request, unless the requestor has elected not

1 to provide a name, address or telephone number, or other means of
2 contacting the requestor. If the requestor has elected not to provide
3 a name, address, or telephone number, or other means of contacting
4 the requestor, the custodian shall not be required to respond until
5 the requestor reappears before the custodian seeking a response to
6 the original request. If the government record is in storage or
7 archived, the requestor shall be so advised within seven business
8 days after the custodian receives the request. The requestor shall be
9 advised by the custodian when the record can be made available. If
10 the record is not made available by that time, access shall be
11 deemed denied.

12 (2) During a period declared pursuant to the laws of this State as
13 a state of emergency, public health emergency, or state of local
14 disaster emergency, the deadlines by which to respond to a request
15 for, or grant or deny access to, a government record under
16 paragraph (1) of this subsection or subsection e. of this section shall
17 not apply, provided, however, that the custodian of a government
18 record shall make a reasonable effort, as the circumstances permit,
19 to respond to a request for access to a government record within
20 seven business days or as soon as possible thereafter.

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

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

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

33

34 3. Section 12 of P.L.2001, c.404 (C.47:1A-11) is amended to
35 read as follows:

36 12. a. A public official, officer, employee or custodian who
37 knowingly and willfully violates P.L.1963, c.73 (C.47:1A-1 et seq.),
38 as amended and supplemented, and is found to have unreasonably
39 denied access under the totality of the circumstances, shall be
40 subject to a civil penalty of \$1,000 for an initial violation, \$2,500
41 for a second violation that occurs within 10 years of an initial
42 violation, and \$5,000 for a third violation that occurs within 10
43 years of an initial violation. **【This penalty】**

44 A requestor who is found to have intentionally failed to certify
45 that a records request is for a commercial purpose shall be subject
46 to a civil penalty of \$500 for the first offense, \$1,000 for the second
47 offense, and \$1,500 for each subsequent offense. Penalties may be
48 imposed by the courts or the Government Records Council.

1 These penalties shall be collected and enforced in proceedings in
2 accordance with the "Penalty Enforcement Law of 1999,"
3 P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court
4 governing actions for the collection of civil penalties. The Superior
5 Court shall have jurisdiction of proceedings for the collection and
6 enforcement of the penalty imposed by this section.

7 Appropriate disciplinary proceedings may be initiated against a
8 public official, officer, employee or custodian against whom a
9 penalty has been imposed.
10 (cf: P.L.2001, c.404, s.12)

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12 4. This act shall take effect on the first day of the fourth month
13 next following the date of enactment.

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STATEMENT

17

18 This bill makes various changes to the process for submitting a
19 request for access to a government records under the law commonly
20 referred to as the open public records act when the record will be
21 used for commercial purposes.

22 The bill:

23 requires a requestor to use the form adopted by the public agency
24 to submit a request for access to a government record;

25 requires that a written request for access to a government record
26 state that the record will be used, or will not be used, by that
27 requestor or another person for a commercial purpose.

28 limits such requests to not more than two per month to any one
29 custodian.

30 require the requestor to provide the requestor's name.

31 requires that when a requestor is found to have intentionally
32 failed to inform the custodian that the government record will be
33 used for a commercial purpose, the requestor will be reported to the
34 Government Records Council and prohibited from submitting any
35 other request for access to any custodian for a period of one year.
36 The council will maintain the names of such requestors reported to
37 it.

38 provides for a penalty for intentionally failing to certify that a
39 records request is for a commercial purpose of \$500 for the first
40 offense, \$1,000 for the second offense, and \$1,500 for each
41 subsequent offense. Penalties may be imposed by the courts or the
42 council.

43 defines "commercial purpose" to mean the direct or indirect use
44 of any part of a government record for sale, resale, solicitation, rent
45 or lease of a service, or any use by which the user expects a profit
46 either through commission, salary, or fee. "Commercial purpose"
47 shall not include using, distributing, gathering, procuring,
48 transmitting, compiling, editing, disseminating, or publishing of

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- 1 information or data by the news media, or any parent, subsidiary, or
- 2 affiliate of any news media, or by any news, journalistic,
- 3 educational, scientific, scholarly, or governmental organization.