

ASSEMBLY, No. 5614

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 15, 2023

Sponsored by:

Assemblyman JOE DANIELSEN

District 17 (Middlesex and Somerset)

SYNOPSIS

Increases membership of Government Records Council; provides for advisory opinions; requires complaints to be initiated with council; limits attorney's fees; appropriates \$250,000.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the Government Records Council, amending
2 P.L.2001, c.404 and making an appropriation.

3

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

6

7 1. Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read
8 as follows:

9 7. A person who is denied access to a government record by
10 the custodian of the record, at the option of the requestor, may **["**:

11 institute a proceeding to challenge the custodian's decision by
12 filing an action in Superior Court which shall be heard in the
13 vicinage where it is filed by a Superior Court Judge who has been
14 designated to hear such cases because of that judge's knowledge and
15 expertise in matters relating to access to government records; or

16 in lieu of filing an action in Superior Court, **"]** file a complaint
17 with the Government Records Council established pursuant to
18 section 8 of P.L.2001, c.404 (C.47:1A-7).

19 The right to institute any proceeding under this section shall be
20 solely that of the requestor. Any such proceeding before the
21 council shall proceed in a summary or expedited manner. The
22 public agency shall have the burden of proving that the denial of
23 access is authorized by law. If it is determined that access has been
24 improperly denied, the **["**court**"]** council or agency head shall order
25 that access be allowed. A requestor who prevails in any proceeding
26 **["**shall**"]** may be entitled to a reasonable attorney's fee. The fee shall
27 not be more than the total amount calculated using the hourly rate
28 set forth in a contract awarded by the public agency, and in effect at
29 the time of the calculation, for the provision of general legal
30 services to the agency.

31 (cf: P.L.2001, c.404, s.7)

32

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

35 8. a. There is established in the Department of Community
36 Affairs a Government Records Council. The council shall consist
37 of the Commissioner of Community Affairs or the commissioner's
38 designee, the Commissioner of Education or the commissioner's
39 designee, and **["**three**"]** seven public members appointed as follows:
40 three public members shall be appointed by the Governor, ["with the
41 advice and consent of the Senate, "] not more than two of whom shall
42 be of the same political party, and one of whom shall be a
43 municipal clerk, or a designee; two public members shall be
44 appointed by the President of the Senate, each of whom shall be of
45 a different political party; and two public members shall be

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 appointed by the Speaker of the General Assembly, each of whom
2 shall be of a different political party. The **【three】** seven public
3 members shall serve during the term of the Governor, the Senate
4 President as President, or the Speaker of the General Assembly as
5 Speaker, as appropriate, making the appointment and until the
6 appointment of a successor. **【A public member shall not hold any**
7 **other State or local elected or appointed office or employment while**
8 **-serving as a member of the council.】** A public member shall not
9 receive a salary for service on the council but shall be reimbursed
10 for reasonable and necessary expenses associated with serving on
11 the council and may receive such per diem payment as may be
12 provided in the annual appropriations act. A member may be
13 removed by the Governor for cause. Vacancies among the public
14 members shall be filled in the same manner in which the original
15 appointment was made. The members of the council shall choose
16 one of the public members to serve as the council's chair. The
17 council may employ an executive director and such professional
18 and clerical staff as it deems necessary and may call upon the
19 Department of Community Affairs for such assistance as it deems
20 necessary and may be available to it.

21 b. The Government Records Council shall:

22 establish an informal mediation program to facilitate the
23 resolution of disputes regarding access to government records;

24 receive, hear, review and adjudicate a complaint filed by any
25 person concerning a denial of access to a government record by a
26 records custodian;

27 issue advisory opinions, on its own initiative or upon the request
28 of a custodian, as to whether a particular type of record is a
29 government record which is accessible to the public;

30 commencing on the first day of the 25th month next following the
31 date of enactment of P.L. , c. (pending before the Legislature as
32 this bill), issue advisory opinions, on its own initiative or upon the
33 request of a custodian, as to the manner and extent of compliance
34 by a custodian for requests of particular types or categories of
35 government records;

36 prepare guidelines and an informational pamphlet for use by
37 records custodians in complying with the law governing access to
38 public records;

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

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

45 make training opportunities available for records custodians and
46 other public officers and employees which explain the law
47 governing access to public records; and

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

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

13 c. At the request of the council, a public agency shall produce
14 documents and ensure the attendance of witnesses with respect to
15 the council's investigation of any complaint or the holding of any
16 hearing.

17 d. Upon receipt of a written complaint signed by any person
18 alleging that a custodian of a government record has improperly
19 denied that person access to a government record, the council shall
20 offer the parties the opportunity to resolve the dispute through
21 mediation. Mediation shall enable a person who has been denied
22 access to a government record and the custodian who denied or
23 failed to provide access thereto to attempt to mediate the dispute
24 through a process whereby a neutral mediator, who shall be trained
25 in mediation selected by the council, acts to encourage and facilitate
26 the resolution of the dispute. Mediation shall be an informal,
27 nonadversarial process having the objective of helping the parties
28 reach a mutually acceptable, voluntary agreement. The mediator
29 shall assist the parties in identifying issues, foster joint problem
30 solving, and explore settlement alternatives.

31 e. If any party declines mediation or if mediation fails to
32 resolve the matter to the satisfaction of all parties, the council shall
33 initiate an investigation concerning the facts and circumstances set
34 forth in the complaint. The council shall make a determination as
35 to whether the complaint is within its jurisdiction or frivolous or
36 without any reasonable factual basis. If the council shall conclude
37 that the complaint is outside its jurisdiction, frivolous or without
38 factual basis, it shall reduce that conclusion to writing and transmit
39 a copy thereof to the complainant and to the records custodian
40 against whom the complaint was filed. Otherwise, the council shall
41 notify the records custodian against whom the complaint was filed
42 of the nature of the complaint and the facts and circumstances set
43 forth therein. The custodian shall have the opportunity to present
44 the board with any statement or information concerning the
45 complaint which the custodian wishes. If the council is able to
46 make a determination as to a record's accessibility based upon the
47 complaint and the custodian's response thereto, it shall reduce that
48 conclusion to writing and transmit a copy thereof to the

1 complainant and to the records custodian against whom the
2 complaint was filed. If the council is unable to make a
3 determination as to a record's accessibility based upon the
4 complaint and the custodian's response thereto, the council shall
5 conduct a hearing on the matter in conformity with the rules and
6 regulations provided for hearings by a State agency in contested
7 cases under the "Administrative Procedure Act," P.L.1968, c.410
8 (C.52:14B-1 et seq.), insofar as they may be applicable and
9 practicable. The council shall, by a majority vote of its members,
10 render a decision as to whether the record which is the subject of
11 the complaint is a government record which must be made available
12 for public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as
13 amended and supplemented. If the council determines, by a
14 majority vote of its members, that a custodian has knowingly and
15 willfully violated P.L.1963, c.73 (C.47:1A-1 et seq.), as amended
16 and supplemented, and is found to have unreasonably denied access
17 under the totality of the circumstances, the council may impose the
18 penalties provided for in section 12 of P.L.2001, c.404 (C.47:1A-
19 11). A decision of the council may be appealed to the Appellate
20 Division of the Superior Court. **【A decision of the council shall not**
21 **have value as a precedent for any case initiated in Superior Court**
22 **pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6).】** All
23 proceedings of the council pursuant to this subsection shall be
24 conducted as expeditiously as possible.

25 f. The council shall not charge any party a fee in regard to
26 actions filed with the council. The council shall be subject to the
27 provisions of the "Open Public Meetings Act," P.L.1975, c.231
28 (C.10:4-6), except that the council may go into closed session
29 during that portion of any proceeding during which the contents of a
30 contested record would be disclosed. A requestor who prevails in
31 any proceeding **【shall】** may be entitled to a reasonable attorney's
32 fee. The fee shall not be more than the total amount calculated
33 using the hourly rate set forth in a contract awarded by the public
34 agency, and in effect at the time of the calculation, for the provision
35 of general legal services to the agency.

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

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41 3. There is appropriated \$250,000 from the State General Fund
42 to the Department of Community Affairs for the Government
43 Records Council to effectuate the purposes of this act, P.L. , c.
44 (pending before the Legislature as this bill), regarding the council's
45 duties and responsibilities for the receipt and processing of
46 complaints filed by requestors pursuant to section 7 of P.L.2001,
47 c.404 (C.47:1A-6) as amended, alleging that a custodian of a

1 government record has improperly denied that person's access to a
2 government record.

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

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STATEMENT

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10 This bill increases the membership of the Government Records
11 Council from five to nine members by increasing the number of
12 public members from three to seven public members..

13 The bill requires the council to issue advisory opinions upon the
14 request of a custodian as to whether a particular type of record is a
15 government record which is accessible to the public. Also,
16 commencing two years after the bill's enactment date, the council
17 will be required to issue advisory opinions, on its own initiative or
18 upon the request of a custodian, as to the manner and extent of
19 compliance by a custodian for requests of particular types or
20 categories of government records.

21 The bill requires all complaints for a denial of a request for
22 access to a government record to be filed with the Government
23 Records Council, with appeals from the council's decision taken to
24 the Appellate Division of the Superior Court.

25 The bill makes the awarding of attorney's fees to a requestor
26 who prevails in any proceeding optional. If attorney's fees are
27 awarded, the bill limits them to not be more than the total amount
28 calculated using the hourly rate set forth in a contract awarded by
29 the public agency, and in effect at the time of the calculation, for
30 the provision of general legal services to the agency.

31 The bill appropriates \$250,000 from the State General Fund to
32 the Department of Community Affairs for the Government Records
33 Council to effectuate the purposes of this bill regarding the
34 council's duties and responsibilities for the receipt and processing
35 of complaints filed by requestors pursuant to current law, as
36 amended by the bill, alleging that a custodian of a government
37 record has improperly denied that person's access to a government
38 record.