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.
A5614 DANIELSEN

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

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

1. Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read
as follows:
7. A person who is denied access to a government record by
the custodian of the record, at the option of the requestor, may:

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

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

The right to institute any proceeding under this section shall be
solely that of the requestor. Any such proceeding before the
council shall proceed in a summary or expedited manner. The
public agency shall have the burden of proving that the denial of
access is authorized by law. If it is determined that access has been
improperly denied, the council or agency head shall order
that access be allowed. A requestor who prevails in any proceeding
shall be entitled to a reasonable attorney's fee. The fee shall
not be more than the total amount calculated using the hourly rate
set forth in a contract awarded by the public agency, and in effect at
the time of the calculation, for the provision of general legal
services to the agency.
(cf: P.L.2001, c.404, s.7)

2. Section 8 of P.L.2001, c.404 (C.47:1A-7) is amended to read
as follows:
8. a. There is established in the Department of Community
Affairs a Government Records Council. The council shall consist
of the Commissioner of Community Affairs or the commissioner's
designee, the Commissioner of Education or the commissioner's
designee, and three public members appointed as follows:
three public members shall be appointed by the Governor, with the
advice and consent of the Senate, not more than two of whom shall
be of the same political party, and one of whom shall be a
municipal clerk, or a designee; two public members shall be
appointed by the President of the Senate, each of whom shall be of
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.
appointed by the Speaker of the General Assembly, each of whom shall be of a different political party. The [three] seven public members shall serve during the term of the Governor, the Senate President as President, or the Speaker of the General Assembly as Speaker, as appropriate, making the appointment and until the appointment of a successor. [A public member shall not hold any other State or local elected or appointed office or employment while serving as a member of the council.] A public member shall not receive a salary for service on the council but shall be reimbursed for reasonable and necessary expenses associated with serving on the council and may receive such per diem payment as may be provided in the annual appropriations act. A member may be removed by the Governor for cause. Vacancies among the public members shall be filled in the same manner in which the original appointment was made. The members of the council shall choose one of the public members to serve as the council's chair. The council may employ an executive director and such professional and clerical staff as it deems necessary and may call upon the Department of Community Affairs for such assistance as it deems necessary and may be available to it.

b. The Government Records Council shall:

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

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

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

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

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

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

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

make training opportunities available for records custodians and other public officers and employees which explain the law governing access to public records; and
operate an informational website and a toll-free helpline staffed
by knowledgeable employees of the council during regular business
hours which shall enable any person, including records custodians,
to call for information regarding the law governing access to public
records and allow any person to request mediation or to file a
complaint with the council when access has been denied;

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

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

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

e. If any party declines mediation or if mediation fails to
resolve the matter to the satisfaction of all parties, the council shall
initiate an investigation concerning the facts and circumstances set
forth in the complaint. The council shall make a determination as
to whether the complaint is within its jurisdiction or frivolous or
without any reasonable factual basis. If the council shall conclude
that the complaint is outside its jurisdiction, frivolous or without
factual basis, it shall reduce that conclusion to writing and transmit
a copy thereof to the complainant and to the records custodian
against whom the complaint was filed. Otherwise, the council shall
notify the records custodian against whom the complaint was filed
of the nature of the complaint and the facts and circumstances set
forth therein. The custodian shall have the opportunity to present
the board with any statement or information concerning the
complaint which the custodian wishes. If the council is able to
make a determination as to a record’s accessibility based upon the
complaint and the custodian’s response thereto, it shall reduce that
conclusion to writing and transmit a copy thereof to the
complainant and to the records custodian against whom the complaint was filed. If the council is unable to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, the council shall conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a State agency in contested cases under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), insofar as they may be applicable and practicable. The council shall, by a majority vote of its members, render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented. If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in section 12 of P.L.2001, c.404 (C.47:1A-11). A decision of the council may be appealed to the Appellate Division of the Superior Court. [A decision of the council shall not have value as a precedent for any case initiated in Superior Court pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6).] All proceedings of the council pursuant to this subsection shall be conducted as expeditiously as possible.

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

g. The council shall not have jurisdiction over the Judicial or Legislative Branches of State Government or any agency, officer, or employee of those branches.

(cf: P.L.2001, c.404, s.8)

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

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

STATEMENT

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

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

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

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

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