

ASSEMBLY, No. 5616

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.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning requests for access to government records and
2 amending P.L.1995, c.23 and P.L.2001, c.404.

3

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

6

7 1. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to read
8 as follows:

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

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

16 "Custodian of a government record" or "custodian" means in the
17 case of a municipality, the municipal clerk and in the case of any
18 other public agency, the officer officially designated by formal
19 action of that agency's director or governing body, as the case may
20 be.

21 "Government record" or "record" means any paper, written or
22 printed book, document, drawing, map, plan, photograph,
23 microfilm, data processed or image processed document,
24 information stored or maintained electronically or by sound-
25 recording or in a similar device, or any copy thereof, that has been
26 made, maintained or kept on file in the course of his or its official
27 business by any officer, commission, agency or authority of the
28 State or of any political subdivision thereof, including subordinate
29 boards thereof, or that has been received in the course of his or its
30 official business by any such officer, commission, agency, or
31 authority of the State or of any political subdivision thereof,
32 including subordinate boards thereof. The terms shall not include
33 inter-agency or intra-agency advisory, consultative, or deliberative
34 material.

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

38 information received by a member of the Legislature from a
39 constituent or information held by a member of the Legislature
40 concerning a constituent, including, but not limited to, information
41 in written form or contained in any e-mail or computer data base, or
42 in any telephone record whatsoever, unless it is information the
43 constituent is required by law to transmit;

44 any memorandum, correspondence, notes, report or other
45 communication prepared by, or for, the specific use of a member of

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 the Legislature in the course of the member's official duties, except
2 that this provision shall not apply to an otherwise publicly-
3 accessible report which is required by law to be submitted to the
4 Legislature or its members;

5 any copy, reproduction or facsimile of any photograph, negative
6 or print, including instant photographs and videotapes of the body,
7 or any portion of the body, of a deceased person, taken by or for the
8 medical examiner at the scene of death or in the course of a post
9 mortem examination or autopsy made by or caused to be made by
10 the medical examiner except:

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

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

18 for use in the field of forensic pathology or for use in medical or
19 scientific education or research, or

20 for use by any law enforcement agency in this State or any other
21 state or federal law enforcement agency;

22 criminal investigatory records;

23 the portion of any criminal record concerning a person's
24 detection, apprehension, arrest, detention, trial or disposition for
25 unlawful manufacturing, distributing, or dispensing, or possessing
26 or having under control with intent to manufacture, distribute, or
27 dispense, marijuana or hashish in violation of paragraph (11) of
28 subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or
29 hashish in violation of paragraph (12) of subsection b. of that
30 section, or a violation of either of those paragraphs and a violation
31 of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or
32 subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for
33 distributing, dispensing, or possessing, or having under control with
34 intent to distribute or dispense, on or within 1,000 feet of any
35 school property, or on or within 500 feet of the real property
36 comprising a public housing facility, public park, or public
37 building, or for obtaining, possessing, using, being under the
38 influence of, or failing to make lawful disposition of marijuana or
39 hashish in violation of paragraph (3) or (4) of subsection a., or
40 subsection b., or subsection c. of N.J.S.2C:35-10, or for a violation
41 of any of those provisions and a violation of N.J.S.2C:36-2 for
42 using or possessing with intent to use drug paraphernalia with that
43 marijuana or hashish;

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

46 any written request by a crime victim for a record to which the
47 victim is entitled to access as provided in this section, including,

1 but not limited to, any law enforcement agency report, domestic
2 violence offense report, and temporary or permanent restraining
3 order;

4 personal firearms records, except for use by any person
5 authorized by law to have access to these records or for use by any
6 government agency, including any court or law enforcement
7 agency, for purposes of the administration of justice;

8 personal identifying information received by the Division of Fish
9 and Wildlife in the Department of Environmental Protection in
10 connection with the issuance of any license authorizing hunting
11 with a firearm. For the purposes of this paragraph, personal
12 identifying information shall include, but not be limited to, identity,
13 name, address, social security number, telephone number, fax
14 number, driver's license number, email address, or social media
15 address of any applicant or licensee;

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

20 any record within the attorney-client privilege. This paragraph
21 shall not be construed as exempting from access attorney or
22 consultant bills or invoices except that such bills or invoices may be
23 redacted to remove any information protected by the attorney-client
24 privilege;

25 administrative or technical information regarding computer
26 hardware, software and networks which, if disclosed, would
27 jeopardize computer security;

28 emergency or security information or procedures for any
29 buildings or facility which, if disclosed, would jeopardize security
30 of the building or facility or persons therein;

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

34 information which, if disclosed, would give an advantage to
35 competitors or bidders;

36 information generated by or on behalf of public employers or
37 public employees in connection with any sexual harassment
38 complaint filed with a public employer or with any grievance filed
39 by or against an individual or in connection with collective
40 negotiations, including documents and statements of strategy or
41 negotiating position;

42 information which is a communication between a public agency
43 and its insurance carrier, administrative service organization or risk
44 management office;

45 information which is to be kept confidential pursuant to court
46 order;

1 any copy of form DD-214, NGB-22, or that form, issued by the
2 United States Government, or any other certificate of honorable
3 discharge, or copy thereof, from active service or the reserves of a
4 branch of the Armed Forces of the United States, or from service in
5 the organized militia of the State, that has been filed by an
6 individual with a public agency, except that a veteran or the
7 veteran's spouse or surviving spouse shall have access to the
8 veteran's own records;

9 any copy of an oath of allegiance, oath of office or any
10 affirmation taken upon assuming the duties of any public office, or
11 that oath or affirmation, taken by a current or former officer or
12 employee in any public office or position in this State or in any
13 county or municipality of this State, including members of the
14 Legislative Branch, Executive Branch, Judicial Branch, and all law
15 enforcement entities, except that the full name, title, and oath date
16 of that person contained therein shall not be deemed confidential;

17 that portion of any document which discloses the social security
18 number, credit card number, unlisted telephone number or driver
19 license number of any person, or, in accordance with section 2 of
20 P.L.2021, c.371 (C.47:1B-2), that portion of any document which
21 discloses the home address, whether a primary or secondary
22 residence, of any active, formerly active, or retired judicial officer,
23 prosecutor, or law enforcement officer, or, as defined in section 1 of
24 P.L.2021, c.371 (C.47:1B-1), any immediate family member
25 thereof; except for use by any government agency, including any
26 court or law enforcement agency, in carrying out its functions, or
27 any private person or entity acting on behalf thereof, or any private
28 person or entity seeking to enforce payment of court-ordered child
29 support; except with respect to the disclosure of driver information
30 by the New Jersey Motor Vehicle Commission as permitted by
31 section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social
32 security number contained in a record required by law to be made,
33 maintained or kept on file by a public agency shall be disclosed
34 when access to the document or disclosure of that information is not
35 otherwise prohibited by State or federal law, regulation or order or
36 by State statute, resolution of either or both houses of the
37 Legislature, Executive Order of the Governor, rule of court or
38 regulation promulgated under the authority of any statute or
39 executive order of the Governor;

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

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

1 structured reference data that helps to sort and identify attributes
2 of the information it describes, referred to as metadata, or any
3 extrapolation or compilation thereof;

4 information generated by or on behalf of a public agency but
5 held solely by a third party which, if disclosed, would disclose the
6 proprietary information of that third party or would violate a written
7 agreement with the third party that prohibits its disclosure; and

8 in addition to any other exemption, the entirety of a record that
9 contains, solely or predominantly, information obtained from or
10 concerning an individual that relates to the individual's personal
11 identifying information, activities, or interactions with the public
12 agency with regard to applications for and receipt of contracts,
13 licenses, permits, and registrations, including ownership of
14 domesticated animals, except that this exemption shall not include
15 information that is a government record under section 11 of
16 P.L.2001, c.404 (C.47:1A-10), or other information that is required
17 to be disclosed by law, regulation, court order or rules of court, or
18 executive order.

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

22 pedagogical, scholarly and/or academic research records and/or
23 the specific details of any research project conducted under the
24 auspices of a public higher education institution in New Jersey,
25 including, but not limited to, research, development information,
26 testing procedures, or information regarding test participants,
27 related to the development or testing of any pharmaceutical or
28 pharmaceutical delivery system, except that a custodian may not
29 deny inspection of a government record or part thereof that gives
30 the name, title, expenditures, source and amounts of funding and
31 date when the final project summary of any research will be
32 available;

33 test questions, scoring keys and other examination data
34 pertaining to the administration of an examination for employment
35 or academic examination;

36 records of pursuit of charitable contributions or records
37 containing the identity of a donor of a gift if the donor requires non-
38 disclosure of the donor's identity as a condition of making the gift
39 provided that the donor has not received any benefits of or from the
40 institution of higher education in connection with such gift other
41 than a request for memorialization or dedication;

42 valuable or rare collections of books or documents obtained by
43 gift, grant, bequest or devise conditioned upon limited public
44 access;

45 information contained on individual admission applications; and

1 information concerning student records or grievance or
2 disciplinary proceedings against a student to the extent disclosure
3 would reveal the identity of the student.

4 "Personal firearms record" means any information contained in a
5 background investigation conducted by the chief of police, the
6 county prosecutor, or the Superintendent of State Police, of any
7 applicant for a permit to purchase a handgun, firearms identification
8 card license, or firearms registration; any application for a permit to
9 purchase a handgun, firearms identification card license, or firearms
10 registration; any document reflecting the issuance or denial of a
11 permit to purchase a handgun, firearms identification card license,
12 or firearms registration; and any permit to purchase a handgun,
13 firearms identification card license, or any firearms license,
14 certification, certificate, form of register, or registration statement.
15 For the purposes of this paragraph, information contained in a
16 background investigation shall include, but not be limited to,
17 identity, name, address, social security number, phone number, fax
18 number, driver's license number, email address, social media
19 address of any applicant, licensee, registrant or permit holder.

20 "Public agency" or "agency" means any of the principal
21 departments in the Executive Branch of State Government, and any
22 division, board, bureau, office, commission or other instrumentality
23 within or created by such department; the Legislature of the State
24 and any office, board, bureau or commission within or created by
25 the Legislative Branch; and any independent State authority,
26 commission, instrumentality or agency. The terms also mean any
27 political subdivision of the State or combination of political
28 subdivisions, and any division, board, bureau, office, commission or
29 other instrumentality within or created by a political subdivision of
30 the State or combination of political subdivisions, and any
31 independent authority, commission, instrumentality or agency
32 created by a political subdivision or combination of political
33 subdivisions.

34 "Law enforcement agency" means a public agency, or part
35 thereof, determined by the Attorney General to have law
36 enforcement responsibilities.

37 "Law enforcement officer" means a person whose public duties
38 include the power to act as an officer for the detection,
39 apprehension, arrest and conviction of offenders against the laws of
40 this State.

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

43 "Judicial officer" means any active, formerly active, or retired
44 federal, state, county, or municipal judge, including a judge of the
45 Tax Court and any other court of limited jurisdiction established,
46 altered, or abolished by law, a judge of the Office of Administrative

1 Law, a judge of the Division of Workers' Compensation, and any
2 other judge established by law who serves in the executive branch.

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

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

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

13 "Victim of a crime" means a person who has suffered personal or
14 psychological injury or death or incurs loss of or injury to personal
15 or real property as a result of a crime, or if such a person is
16 deceased or incapacitated, a member of that person's immediate
17 family.

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

30

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

33 6. a. The custodian of a government record shall permit the
34 record to be inspected, examined, and copied by any person during
35 regular business hours; or in the case of a municipality having a
36 population of 5,000 or fewer according to the most recent federal
37 decennial census, a board of education having a total district
38 enrollment of 500 or fewer, or a public authority having less than
39 \$10 million in assets, during not less than six regular business hours
40 over not less than three business days per week or the entity's
41 regularly-scheduled business hours, whichever is less; unless a
42 government record is exempt from public access by: P.L.1963, c.73
43 (C.47:1A-1 et seq.) as amended and supplemented; any other
44 statute; resolution of either or both houses of the Legislature;
45 regulation promulgated under the authority of any statute or
46 Executive Order of the Governor; Executive Order of the Governor;
47 Rules of Court; any federal law; federal regulation; or federal order.

1 Prior to allowing access to any government record, the custodian
2 thereof shall redact from that record any information which
3 discloses the social security number, credit card number, [unlisted]
4 telephone number, email address, social media address, or driver
5 license number of any person, or, in accordance with section 2 of
6 P.L.2021, c.371 (C.47:1B-2), the home address, whether a primary
7 or secondary residence, of any active, formerly active, or retired
8 judicial officer, prosecutor, or law enforcement officer, or, as
9 defined in section 1 of P.L.2021, c.371 (C.47:1B-1), any immediate
10 family member thereof; except for use by any government agency,
11 including any court or law enforcement agency, in carrying out its
12 functions, or any private person or entity acting on behalf thereof,
13 or any private person or entity seeking to enforce payment of court-
14 ordered child support; except with respect to the disclosure of driver
15 information by the New Jersey Motor Vehicle Commission as
16 permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except
17 that a social security number contained in a record required by law
18 to be made, maintained or kept on file by a public agency shall be
19 disclosed when access to the document or disclosure of that
20 information is not otherwise prohibited by State or federal law,
21 regulation or order or by State statute, resolution of either or both
22 houses of the Legislature, Executive Order of the Governor, rule of
23 court or regulation promulgated under the authority of any statute or
24 executive order of the Governor. Except where an agency can
25 demonstrate an emergent need, a regulation that limits access to
26 government records shall not be retroactive in effect or applied to
27 deny a request for access to a government record that is pending
28 before the agency, the council or a court at the time of the adoption
29 of the regulation.

30 When a requested government record is an electronic
31 communication, access to the unaltered electronic communication
32 shall be provided and the custodian shall provide to the requestor a
33 statement in writing that the record is the unaltered record. Such a
34 response by the custodian shall be a valid and proper response to a
35 request for access to a government record that is an electronic
36 communication. A document redacted pursuant to the provisions of
37 P.L.1963, c.73 (C.47:1A-1 et seq.) shall not be deemed altered for
38 the purposes of this subsection.

39 b. (1) A copy or copies of a government record may be
40 purchased by any person upon payment of the fee prescribed by law
41 or regulation. Except as otherwise provided by law or regulation
42 and except as provided in paragraph (2) of this subsection, the fee
43 assessed for the duplication of a government record embodied in the
44 form of printed matter shall be \$0.05 per letter size page or smaller,
45 and \$0.07 per legal size page or larger. If a public agency can
46 demonstrate that its actual costs for duplication of a government

1 record exceed the foregoing rates, the public agency shall be
2 permitted to charge the actual cost of duplicating the record. The
3 actual cost of duplicating the record, upon which all copy fees are
4 based, shall be the cost of materials and supplies used to make a
5 copy of the record, but shall not include the cost of labor or other
6 overhead expenses associated with making the copy except as
7 provided for in subsection c. of this section. Access to electronic
8 records and non-printed materials shall be provided free of charge,
9 but the public agency may charge for the actual costs of any needed
10 supplies such as computer discs.

11 When a requestor fails to pay or object to a special service
12 charge or actual costs of a records production within 30 days of
13 being notified of the costs, the request shall be deemed withdrawn.

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

17 c. Whenever the nature, format, manner of collation, or volume
18 of a government record embodied in the form of printed matter to
19 be inspected, examined, or copied pursuant to this section is such
20 that the record cannot be reproduced by ordinary document copying
21 equipment in ordinary business size or involves an extraordinary
22 expenditure of time and effort to accommodate the request, the
23 public agency may charge, in addition to the actual cost of
24 duplicating the record, a special service charge that shall be
25 reasonable and shall be based upon the actual direct cost of
26 providing the copy or copies; provided, however, that in the case of
27 a municipality, rates for the duplication of particular records when
28 the actual cost of copying exceeds the foregoing rates shall be
29 established in advance by ordinance. The requestor shall have the
30 opportunity to review and object to the charge prior to it being
31 incurred.

32 When government records have been placed into storage by the
33 public agency with a third party or at a location that is not property
34 owned by the public agency and the custodian needs to retrieve the
35 record from the third party or location, the public agency may
36 charge, in addition to the actual cost of providing the record, a
37 special service charge that shall be reasonable for the labor cost of
38 personnel providing the service, that is actually incurred by the
39 agency or attributable to the agency for the clerical and supervisory
40 assistance required, or both. The requestor shall have the
41 opportunity to review and object to the charge prior to it being
42 incurred. The special service charge set forth in this paragraph of
43 this subsection shall be applicable only for a period of five years
44 following the effective date of P.L. , c. (pending before the
45 Legislature as this bill.

1 When a requestor fails to pay or object to a special service
2 charge or actual costs of records production within 30 days of being
3 notified of the costs, the request shall be deemed withdrawn.

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

19 When a requestor fails to pay or object to a special service
20 charge or actual costs of a records production within 30 days of
21 being notified of the costs, the request shall be deemed withdrawn.

22 When a requestor has requested that access to a government
23 record be provided by electronic mail and the government record is
24 so substantial in scope and volume that it would require a
25 substantial amount of manipulation or programming of information
26 technology, or time and effort by personnel, the custodian may
27 elect, in the custodian's sole discretion, to provide the government
28 record on the Internet where the record can be accessed remotely in
29 accordance with the process specified by the agency.

30 e. Immediate access ordinarily shall be granted to budgets,
31 bills, vouchers, contracts, including collective negotiations
32 agreements and individual employment contracts, and public
33 employee salary and overtime information.

34 When a public agency permits the submission of requests for
35 access electronically, the custodian may respond electronically to a
36 request submitted and provide that access electronically by
37 notifying the requestor of the location of a public access computer
38 that is available without charge within the municipality in which the
39 custodian is located.

40 When a government record that is the subject of a request for
41 access is available on the website of the public agency or made
42 available by the custodian or the public agency on the Internet, the
43 custodian shall notify the requestor, within the time period required,
44 of the location on the website or on the Internet where the record
45 can be accessed remotely, provided the record can be found by any
46 requestor through a search by title or content. After notice to the
47 requestor, the request shall be considered fulfilled and no further

1 action by the custodian shall be taken on that request and the
2 custodian shall not be required to provide the government record to
3 that requestor in any other format or medium.

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

26 g. A request for access to a government record shall be in
27 writing and hand-delivered, mailed, transmitted electronically, or
28 otherwise conveyed to the appropriate custodian. When the form
29 adopted pursuant to subsection f. of this section is not used to
30 submit a request, the requestor shall clearly state on the request
31 submitted that it is a request for access to a government record, the
32 requestor's name at the option of the requestor, address and phone
33 number of the requestor, and a brief description of the government
34 record sought.

35 A custodian shall promptly comply with a request to inspect,
36 examine, copy, or provide a copy of a government record. If the
37 custodian is unable to comply with a request for access, the
38 custodian shall indicate the specific basis therefor on the request
39 form and promptly return it to the requestor. The custodian shall
40 sign and date the form and provide the requestor with a copy
41 thereof. If the custodian of a government record asserts that part of
42 a particular record is exempt from public access pursuant to
43 P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented,
44 the custodian shall delete or excise from a copy of the record that
45 portion which the custodian asserts is exempt from access and shall
46 promptly permit access to the remainder of the record. If the
47 government record requested is temporarily unavailable because it

1 is in use or in storage, the custodian shall so advise the requestor
2 and shall make arrangements to promptly make available a copy of
3 the record. If a request for access to a government record would
4 substantially disrupt agency operations, the custodian may deny
5 access to the record after attempting to reach a reasonable solution
6 with the requestor that accommodates the interests of the requestor
7 and the agency.

8 A custodian shall deny a request if the custodian or any other
9 public officer or employee of the public agency is required to
10 conduct research or review government records in order to identify,
11 analyze, collate, or sort information contained therein and set forth
12 the information that was identified, analyzed, collated, or sorted in a
13 new and separate written record in order to comply with a request
14 for access. The denial shall be a final decision, and the requestor
15 shall not be permitted to submit a complaint to the Government
16 Records Council based on that denial.

17 When a person submits a request for access to a government
18 record that is identical to or substantially similar to another such
19 request submitted by the requestor within the prior month, a
20 custodian shall deny the request. The denial shall be a final
21 decision, and the requestor shall not be permitted to submit a
22 complaint to the Government Records Council based on that denial.
23 As used in this paragraph, “substantially similar” means the
24 government records to which access is requested are identical but
25 the time periods for which the records are requested differ. This
26 paragraph shall not apply when the use, distribution, gathering,
27 procurement, transmission, compilation, editing, dissemination, or
28 publishing of information or data in a government record is by the
29 news media, or any parent, subsidiary, or affiliate of any news
30 media, as defined by section 2 of P.L.1977, c.253 (C.2A:84A-21a),
31 or by any news, journalistic, educational, scientific, scholarly, or
32 governmental organization.

33 The duty of the custodian to respond to requests for access shall
34 be limited to government records in the actual possession, custody,
35 or control of the public agency.

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 When a person submits a request for access to a government
47 record and that same person has submitted at least two other

1 requests within the preceding five business days, the custodian shall
2 grant access to the third and subsequent requests submitted by that
3 person or deny a request for access to a government record as soon
4 as possible, but not later than 20 business days after receiving the
5 third or subsequent request.

6 In the event a custodian fails to respond within seven business
7 days after receiving a request, the failure to respond shall be
8 deemed a denial of the request, unless the requestor has elected not
9 to provide a name, address or telephone number, or other means of
10 contacting the requestor. If the requestor has elected not to provide
11 a name, address, or telephone number, or other means of contacting
12 the requestor, the custodian shall not be required to respond until
13 the requestor reappears before the custodian seeking a response to
14 the original request. If the government record is in storage or
15 archived, the requestor shall be so advised within seven business
16 days after the custodian receives the request. The requestor shall be
17 advised by the custodian when the record can be made available. If
18 the record is not made available by that time, access shall be
19 deemed denied.

20 (2) During a period declared pursuant to the laws of this State as
21 a state of emergency, public health emergency, or state of local
22 disaster emergency, the deadlines by which to respond to a request
23 for, or grant or deny access to, a government record under
24 paragraph (1) of this subsection or subsection e. of this section shall
25 not apply, provided, however, that the custodian of a government
26 record shall make a reasonable effort, as the circumstances permit,
27 to respond to a request for access to a government record within
28 seven business days or as soon as possible thereafter.

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

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

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

41

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

44 12. **[a.]** A public official, officer, employee or custodian who
45 knowingly and willfully violates P.L.1963, c.73 (C.47:1A-1 et seq.),
46 as amended and supplemented, and is found to have unreasonably

1 denied access under the totality of the circumstances, or who
2 knowingly and willfully provides altered electronic communications
3 instead of unaltered electronic communication as provided in
4 subsection a. of section 6 of P.L.2001, c.404 (C.47:1A-5), shall be
5 subject to a civil penalty of \$1,000 for an initial violation, \$2,500
6 for a second violation that occurs within 10 years of an initial
7 violation, and \$5,000 for a third violation that occurs within 10
8 years of an initial violation. This penalty shall be collected and
9 enforced in proceedings in accordance with the "Penalty
10 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),
11 and the rules of court governing actions for the collection of civil
12 penalties. The Superior Court shall have jurisdiction of proceedings
13 for the collection and enforcement of the penalty imposed by this
14 section.

15 Appropriate disciplinary proceedings may be initiated against a
16 public official, officer, employee or custodian against whom a
17 penalty has been imposed.

18 (cf: P.L.2001, c.404, s.12)

19

20 4. (New section) In addition to any other responsibility
21 conferred by P.L.1963, c.73 (C.47:1A-1 et seq.), and
22 notwithstanding any other provision of law to the contrary, the
23 custodian of any government record listed as follows shall make
24 that record available to the public, in a Portable Document Format
25 (PDF) for inspection, examination, copying, and printing at no
26 charge by posting the government record on a searchable Internet
27 site, maintained by, or made available to, the custodian: minutes,
28 agendas, budgets, employee salaries, employment contracts,
29 collective bargaining agreements, resolutions, ordinances, and
30 communications from concerned residents.

31 Notwithstanding any other provision of law to the contrary, and
32 as permitted by law, a custodian may make available other
33 government records on the searchable Internet site, but shall not be
34 required do so.

35 A government record required to be posted pursuant to this
36 section, shall be posted on the site as soon as possible but not later
37 than 30 days after its creation. Once a government record is posted
38 on a website, it shall remain posted for at least five years following
39 the initial posting.

40 The Internet site posting requirements established by this section
41 for the specified categories of government records shall apply only
42 to government records created after the effective date of this act,
43 P.L. , c. (pending before the Legislature as this bill).

44

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

STATEMENT

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This bill exempts from requests for access to a government record:

any structured reference data that helps to sort and identify attributes of the information it describes, referred to as metadata, or any extrapolation or compilation thereof;

information generated by or on behalf of a public agency but held solely by a third party which, if disclosed, would disclose the proprietary information of that third party or would violate a written agreement with the third party that prohibits its disclosure; and

in addition to any other exemption, the entirety of a record that contains, solely or predominantly, information obtained from or concerning an individual that relates to the individual's personal identifying information, activities, or interactions with the public agency with regard to applications for and receipt of contracts, licenses, permits, and registrations, including ownership of domesticated animals.

The bill also:
requires a custodian of a government record to redact telephone numbers, email addresses, and social media addresses.

requires a custodian to provide to a requestor a statement in writing that an electronic communication is the unaltered government record requested, for the purposes of this section of the bill, a redacted document will not be deemed altered.

provides that when a requestor fails to pay or object to a special service charge or actual costs of records production within 30 days of being notified of the costs, the request will be deemed withdrawn.

a special reasonable service charge, for a period of five years only, for the labor cost of personnel when government records have been placed into storage by the public agency with a third party or at a location that is not property owned by the public agency and the custodian needs to retrieve the record from the third party or location.

permits a custodian to provide access to a requested government record on the Internet when a requestor has requested by electronic mail and the record is so substantial in scope and volume that it would require a substantial amount of manipulation or programming of information technology, or time and effort by personnel.

permits a custodian to respond electronically to a request submitted and provide that access electronically by notifying the requestor of the location of a public access computer that is available without charge within the municipality in which the custodian is located.

1 permits a custodian to fulfill a request for access by notifying a
2 requestor of the location on a website or on the Internet where the
3 requested record can be accessed remotely.

4 requires that any request for access to a government record must
5 clearly state that it is such a request.

6 permits a custodian to deny a request when the custodian or any
7 other public officer or employee of the public agency is required to
8 conduct research or review government records in order to identify,
9 analyze, collate, or sort information to prepare a new and separate
10 written record, and when a person has submitted an identical or
11 substantially similar request within the prior month.

12 permits a custodian to deny a request when a person submits a
13 request for access to a government record that is identical to or
14 substantially similar to another such request submitted by the
15 requestor within the prior month, but not when the request is by the
16 news media, or any parent, subsidiary, or affiliate of any news
17 media, or by any news, journalistic, educational, scientific,
18 scholarly, or governmental organization.

19 clarifies that the duty of the custodian is limited to records and
20 data in the actual possession, custody, or control of the public
21 agency.

22 changes the time frame within which a custodian must respond to
23 a request for access to a government record when the requestor has
24 submitted at least two other requests within the preceding five
25 business days; the custodian will have 20 business days, instead of
26 seven, to respond after receiving the third or subsequent request.

27 provides that a custodian will be subject to penalties for
28 knowingly and willfully providing altered government records.

29 The bill also provides that, in addition to any other responsibility
30 conferred by OPRA, the custodian must make the following
31 government records available to the public for inspection,
32 examination, copying, and printing at no charge by posting the
33 government record on a searchable website, maintained by, or made
34 available to, the custodian: minutes, agendas, budgets, employee
35 salary, employment contracts, collective bargaining agreements,
36 resolutions, and ordinances. Under the bill, a custodian may make
37 available other government records on the searchable website. A
38 government record required to be posted pursuant to the bill which
39 is created after the bill's effective date must be posted not later than
40 30 days after its creation. Once a government record is posted on
41 the website, it must remain posted for at least five years following
42 the initial posting.