

ASSEMBLY, No. 1513

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman GERRY SCHARFENBERGER

District 13 (Monmouth)

SYNOPSIS

Permits special service charge for commercial purpose public records requests; increases time to respond to commercial requests; provides penalty for failure to certify commercial purpose request.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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2

1 AN ACT concerning open public records requests for commercial
2 purposes, and 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
8 read as follows:

9 1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended
10 and 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 "Commercial purpose" means the direct or indirect use of any
17 part of a government record for sale, resale, solicitation, rent, or
18 lease of a service, or any use by which the user expects a profit
19 either through commission, salary, or fee. "Commercial purpose"
20 shall not include using, distributing, gathering, procuring,
21 transmitting, compiling, editing, disseminating, or publishing of
22 information or data by the news media, or any parent, subsidiary, or
23 affiliate of any news media, as defined by section 2 of P.L.1977,
24 c.253 (C.2A:84A-21a), or by any news, journalistic, educational,
25 scientific, scholarly, or governmental organization.

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

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

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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 in
7 written form or contained in any e-mail or computer data base, or in
8 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
45 with 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

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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

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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 that portion of any document
28 which discloses the home address, whether a primary or secondary
29 residence, or any active, formerly active, or retired judicial officer
30 or prosecutor, and beginning 18 months after the effective date of
31 P.L.2020, c.125 (C.56:8-166.2 et al.), any active, formerly active, or
32 retired law enforcement officer; except for use by any government
33 agency, including any court or law enforcement agency, in carrying
34 out its functions, or any private person or entity acting on behalf
35 thereof, or any private person or entity seeking to enforce payment
36 of court-ordered child support; except with respect to the disclosure
37 of driver information by the New Jersey Motor Vehicle
38 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-
39 3.4); and except that a social security number contained in a record
40 required by law to be made, maintained or kept on file by a public
41 agency shall be disclosed when access to the document or
42 disclosure of that information is not otherwise prohibited by State
43 or federal law, regulation or order or by State statute, resolution of
44 either or both houses of the Legislature, Executive Order of the
45 Governor, rule of court or regulation promulgated under the
46 authority of any statute or executive order of the Governor;
47 a list of persons identifying themselves as being in need of
48 special assistance in the event of an emergency maintained by a

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1 municipality for public safety purposes pursuant to section 1 of
2 P.L.2017, c.266 (C.40:48-2.67); and

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

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

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

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

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

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

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

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

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1 background investigation shall include, but not be limited to,
2 identity, name, address, social security number, phone number, fax
3 number, driver's license number, email address, social media
4 address of any applicant, licensee, registrant or permit holder.

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

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

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

24 "Judicial officer" means any active, formerly active, or retired
25 federal, state, county or municipal judge, including a judge of the
26 Tax Court and any other court of limited jurisdiction established,
27 altered, or abolished by law, a judge of the Office of Administrative
28 Law, a judge of the Division of Workers' Compensation, and any
29 other judge established by law who serves in the executive branch.

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

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

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

40 "Victim of a crime" means a person who has suffered personal or
41 psychological injury or death or incurs loss of or injury to personal
42 or real property as a result of a crime, or if such a person is
43 deceased or incapacitated, a member of that person's immediate
44 family.

45 "Victims' rights agency" means a public agency, or part thereof,
46 the primary responsibility of which is providing services, including
47 but not limited to food, shelter, or clothing, medical, psychiatric,
48 psychological or legal services or referrals, information and referral

1 services, counseling and support services, or financial services to
2 victims of crimes, including victims of sexual assault, domestic
3 violence, violent crime, child endangerment, child abuse or child
4 neglect, and the Victims of Crime Compensation Board, established
5 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
6 the Victims of Crime Compensation Office pursuant to P.L.2007,
7 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
8 (cf: P.L.2021, c.19, s.18)

9
10 2. Section 6 of P.L.2001, c.404 (C.47:1A-5) is amended to read
11 as follows:

12 6. a. The custodian of a government record shall permit the
13 record to be inspected, examined, and copied by any person during
14 regular business hours; or in the case of a municipality having a
15 population of 5,000 or fewer according to the most recent federal
16 decennial census, a board of education having a total district
17 enrollment of 500 or fewer, or a public authority having less than
18 \$10 million in assets, during not less than six regular business hours
19 over not less than three business days per week or the entity's
20 regularly-scheduled business hours, whichever is less; unless a
21 government record is exempt from public access by: P.L.1963, c.73
22 (C.47:1A-1 et seq.) as amended and supplemented; any other
23 statute; resolution of either or both houses of the Legislature;
24 regulation promulgated under the authority of any statute or
25 Executive Order of the Governor; Executive Order of the Governor;
26 Rules of Court; any federal law; federal regulation; or federal order.
27 Prior to allowing access to any government record, the custodian
28 thereof shall redact from that record any information which
29 discloses the social security number, credit card number, unlisted
30 telephone number, or driver license number of any person, or the
31 home address, whether a primary or secondary residence, of any
32 active, formerly active, or retired judicial officer or prosecutor, and
33 beginning 18 months after the effective date of P.L.2020, c.125
34 (C.56:8-166.2 et al.), any active, formerly active, or retired law
35 enforcement officer; except for use by any government agency,
36 including any court or law enforcement agency, in carrying out its
37 functions, or any private person or entity acting on behalf thereof,
38 or any private person or entity seeking to enforce payment of court-
39 ordered child support; except with respect to the disclosure of driver
40 information by the New Jersey Motor Vehicle Commission as
41 permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except
42 that a social security number contained in a record required by law
43 to be made, maintained or kept on file by a public agency shall be
44 disclosed when access to the document or disclosure of that
45 information is not otherwise prohibited by State or federal law,
46 regulation or order or by State statute, resolution of either or both
47 houses of the Legislature, Executive Order of the Governor, rule of
48 court or regulation promulgated under the authority of any statute or

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1 executive order of the Governor. Except where an agency can
2 demonstrate an emergent need, a regulation that limits access to
3 government records shall not be retroactive in effect or applied to
4 deny a request for access to a government record that is pending
5 before the agency, the council or a court at the time of the adoption
6 of the regulation.

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

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

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

44 d. A custodian shall permit access to a government record and
45 provide a copy thereof in the medium or format requested if the
46 public agency maintains the record in that medium or format. If the
47 public agency does not maintain the record in the medium or format
48 requested, the custodian shall either convert the record to the

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

12 e. Immediate access ordinarily shall be granted to budgets,
13 bills, vouchers, contracts, including collective negotiations
14 agreements and individual employment contracts, and public
15 employee salary and overtime information.

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

40 g. A request for access to a government record shall be in
41 writing and hand-delivered, mailed, transmitted electronically, or
42 otherwise conveyed to the appropriate custodian. A requestor who
43 intends to use the record for a commercial purpose shall certify to
44 that fact in the request. The public agency shall require a requestor
45 to state whether the requestor intends to use the record for a
46 commercial purpose, but the agency shall not require the requestor
47 to provide the exact purpose of the commercial use. A custodian
48 shall promptly comply with a request to inspect, examine, copy, or

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

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

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

45 (2) During a period declared pursuant to the laws of this State as
46 a state of emergency, public health emergency, or state of local
47 disaster emergency, the deadlines by which to respond to a request
48 for, or grant or deny access to, a government record under

1 paragraph (1) of this subsection or subsection e. of this section shall
2 not apply, provided, however, that the custodian of a government
3 record shall make a reasonable effort, as the circumstances permit,
4 to respond to a request for access to a government record within
5 seven business days or fourteen business days, as appropriate, or as
6 soon as possible thereafter.

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

14 k. The files maintained by the Office of the Public Defender
15 that relate to the handling of any case shall be considered
16 confidential and shall not be open to inspection by any person
17 unless authorized by law, court order, or the State Public Defender.
18 (cf: P.L.2020, c.125, s.2)

19

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

22 12. a. A public official, officer, employee or custodian who
23 knowingly and willfully violates P.L.1963, c.73 (C.47:1A-1 et seq.),
24 as amended and supplemented, and is found to have unreasonably
25 denied access under the totality of the circumstances, shall be
26 subject to a civil penalty of \$1,000 for an initial violation, \$2,500
27 for a second violation that occurs within 10 years of an initial
28 violation, and \$5,000 for a third violation that occurs within 10
29 years of an initial violation.

30 A requestor who is found to have intentionally failed to certify
31 that a record request is for a commercial purpose shall be subject to
32 a civil penalty of \$500.

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

39 Appropriate disciplinary proceedings may be initiated against a
40 public official, officer, employee or custodian against whom a
41 penalty has been imposed.

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

43

44 4. This act shall take effect immediately.

1 STATEMENT

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Under current law, an open public record request for commercial purposes is treated the same as a request for personal purposes. Commercial requests, however, often take more time and utilize more resources than traditional requests.

This bill permits a special service charge for record requests for commercial purposes. The special service charge must be reasonable and based upon the actual, direct cost of providing the records. The bill also extends the time for a records custodian to respond to a public records request for commercial purposes from seven business days to fourteen business days.

Under the bill, the records custodian can require a requestor to state whether the requestor intends to use the records for a commercial purpose, but cannot require the requestor to provide the exact use for the commercial purpose. A requestor who intends to use the record for a commercial purpose must certify to that fact on the request form. A requestor who is found to have intentionally failed to certify that a records request is for a commercial purpose will be subject to a civil penalty of \$500.

Commercial purposes mean the direct or indirect use of any part of a government record for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee. It does not include the use of information or data by the news media, or by any scholarly or governmental organization.