

P.L. 2005, CHAPTER 170, *approved August 5, 2005*
Assembly, No. 1350

1 **AN ACT** concerning certain public records and amending P.L.1995,
2 c.23.

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 organisms,
12 or parts of living organisms, to make or modify products, to improve
13 plants or animals, or to develop micro-organisms for specific uses;
14 including the industrial use of recombinant DNA, cell fusion, and novel
15 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 other
18 public agency, the officer officially designated by formal action of that
19 agency's director or governing body, as the case may be.

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

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

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

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 any memorandum, correspondence, notes, report or other
2 communication prepared by, or for, the specific use of a member of the
3 Legislature in the course of the member's official duties, except that
4 this provision shall not apply to an otherwise publicly-accessible report
5 which is required by law to be submitted to the Legislature or its
6 members;

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

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

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

20 for use in the field of forensic pathology or for use in medical or
21 scientific education or research, or

22 for use by any law enforcement agency in this State or any other
23 state or federal law enforcement agency;

24 criminal investigatory records;

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

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

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

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

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

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

1 employees in connection with any sexual harassment complaint filed
2 with a public employer or with any grievance filed by or against an
3 individual or in connection with collective negotiations, including
4 documents and statements of strategy or negotiating position;
5 information which is a communication between a public agency and
6 its insurance carrier, administrative service organization or risk
7 management office;
8 information which is to be kept confidential pursuant to court
9 order;
10 any copy of form DD-214, or that form, issued by the United States
11 Government, or any other certificate of honorable discharge, or copy
12 thereof, from active service or the reserves of a branch of the Armed
13 Forces of the United States, or from service in the organized militia of
14 the State, that has been filed by an individual with a public agency,
15 except that a veteran or the veteran's spouse or surviving spouse shall
16 have access to the veteran's own records; and
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; except for use by any government
20 agency, including any court or law enforcement agency, in carrying out
21 its functions, or any private person or entity acting on behalf thereof,
22 or any private person or entity seeking to enforce payment of
23 court-ordered child support; except with respect to the disclosure of
24 driver information by the Division of Motor Vehicles as permitted by
25 section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social
26 security number contained in a record required by law to be made,
27 maintained or kept on file by a public agency shall be disclosed when
28 access to the document or disclosure of that information is not
29 otherwise prohibited by State or federal law, regulation or order or by
30 State statute, resolution of either or both houses of the Legislature,
31 Executive Order of the Governor, rule of court or regulation
32 promulgated under the authority of any statute or executive order of
33 the Governor.
34 A government record shall not include, with regard to any public
35 institution of higher education, the following information which is
36 deemed to be privileged and confidential:
37 pedagogical, scholarly and/or academic research records and/or the
38 specific details of any research project conducted under the auspices
39 of a public higher education institution in New Jersey, including, but
40 not limited to research, development information, testing procedures,
41 or information regarding test participants, related to the development
42 or testing of any pharmaceutical or pharmaceutical delivery system,
43 except that a custodian may not deny inspection of a government
44 record or part thereof that gives the name, title, expenditures, source
45 and amounts of funding and date when the final project summary of
46 any research will be available;
47 test questions, scoring keys and other examination data pertaining

1 to the administration of an examination for employment or academic
2 examination;

3 records of pursuit of charitable contributions or records containing
4 the identity of a donor of a gift if the donor requires non-disclosure of
5 the donor's identity as a condition of making the gift provided that the
6 donor has not received any benefits of or from the institution of higher
7 education in connection with such gift other than a request for
8 memorialization or dedication;

9 valuable or rare collections of books and/or documents obtained by
10 gift, grant, bequest or devise conditioned upon limited public access;

11 information contained on individual admission applications; and
12 information concerning student records or grievance or disciplinary
13 proceedings against a student to the extent disclosure would reveal the
14 identity of the student.

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

28 "Law enforcement agency" means a public agency, or part thereof,
29 determined by the Attorney General to have law enforcement
30 responsibilities.

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

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

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

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

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

1 "Victims' rights agency" means a public agency, or part thereof, the
2 primary responsibility of which is providing services, including but not
3 limited to food, shelter, or clothing, medical, psychiatric, psychological
4 or legal services or referrals, information and referral services,
5 counseling and support services, or financial services to victims of
6 crimes, including victims of sexual assault, domestic violence, violent
7 crime, child endangerment, child abuse or child neglect, and the
8 Victims of Crime Compensation Board, established pursuant to
9 P.L.1971, c.317 (C.52:4B-1 et seq.).
10 (cf: P.L.2001, c.404, s.2)

11

12 2. This act shall take effect immediately.

13

14

15

16

17 Exempts veteran's discharge certificate from State's open public
18 records law; permits veteran and veteran's spouse to access discharge
19 certificate.