

SENATE, No. 1452

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 6, 2012

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator BARBARA BUONO

District 18 (Middlesex)

Co-Sponsored by:

Senator Gill

SYNOPSIS

Makes certain access changes to open public records act; formally names open public records act "Martin O'Shea Open Public Records Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/6/2012)

1 AN ACT concerning access to government records, amending and
2 supplementing P.L.1963, c.73, and amending P.L.1995, c.23 and
3 P.L.2001, c.404.

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

7
8 1. (New section) This act, P.L.1963, c.73 (C.47:1A-1 et seq.)
9 shall be known and may be cited as the "Martin O'Shea Open
10 Public Records Act."

11
12 2. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read
13 as follows:

14 1. The Legislature finds and declares it to be the public policy
15 of this State that:

16 government records shall be readily accessible for inspection,
17 copying, or examination **[by the citizens of this State]**, with certain
18 exceptions, for the protection of the public interest, and any
19 limitations on the right of access accorded by P.L.1963, c.73
20 (C.47:1A-1 et seq.) as amended and supplemented, shall be
21 construed in favor of the public's right of access;

22 all government records shall be subject to public access unless
23 exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as
24 amended and supplemented; any other statute; resolution of either
25 or both houses of the Legislature; regulation promulgated under the
26 authority of any statute or Executive Order of the Governor;
27 Executive Order of the Governor; Rules of Court; any federal law,
28 federal regulation, or federal order;

29 a public agency has a responsibility and an obligation to
30 safeguard from public access a **[citizen's]** person's personal
31 information with which it has been entrusted when disclosure
32 thereof would violate the **[citizen's]** person's reasonable
33 expectation of privacy; and nothing contained in P.L.1963, c.73
34 (C.47:1A-1 et seq.), as amended and supplemented, shall be
35 construed as affecting in any way the common law right of access to
36 any record, including but not limited to criminal investigatory
37 records of a law enforcement agency.

38 (cf: P.L.2001, c.404, s.1)

39
40 3. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to
41 read as follows:

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

44 "Biotechnology" means any technique that uses living

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 organisms, or parts of living organisms, to make or modify
2 products, to improve plants or animals, or to develop micro-
3 organisms for specific uses; including the industrial use of
4 recombinant DNA, cell fusion, and novel bioprocessing techniques.

5 "Custodian of a government record" or "custodian" means in the
6 case of a municipality, the municipal clerk and in the case of any
7 other public agency, the officer officially designated by formal or
8 written action of that agency's director or governing body, as the
9 case may be.

10 "Government record" or "record" means any paper, written or
11 printed book, document, drawing, map, plan, photograph,
12 microfilm, data processed or image processed document,
13 information stored or maintained electronically or by sound-
14 recording or in a similar device, or any copy thereof, that has been
15 made, maintained or kept on file, or is required by law to be made,
16 maintained or kept on file, in the course of his or its official
17 business by any [officer, commission, agency or authority of the
18 State or of any political subdivision thereof, including subordinate
19 boards thereof,] public agency, or that has been received in the
20 course of his or its official business by any such [officer,
21 commission, agency, or authority of the State or of any political
22 subdivision thereof, including subordinate boards thereof] public
23 agency. The terms shall not include inter-agency or intra-agency
24 advisory, consultative, or deliberative material.

25 "Advisory, consultative or deliberative material" means material
26 that is used and relied upon during the consultative process prior to
27 the completion of a competitive application or the adoption of an
28 ordinance, rule, regulation, or policy by any public agency and that
29 reflects personal opinions, recommendations, and deliberations
30 comprising part of a process by which public agency decisions and
31 policies are formulated, rather than factual or statistical data,
32 information or the official policy of that body, and the release of
33 which would be injurious to the consultative function of
34 government.

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 in
41 written form or contained in any e-mail or computer data base, or in
42 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
46 the Legislature in the course of the member's official duties, except
47 that this provision shall not apply to an otherwise publicly-

1 accessible report which is required by law to be submitted to the
2 Legislature or its members;
3 any copy, reproduction or facsimile of any photograph, negative
4 or print, including instant photographs and videotapes of the body,
5 or any portion of the body, of a deceased person, taken by or for the
6 medical examiner at the scene of death or in the course of a post
7 mortem examination or autopsy made by or caused to be made by
8 the medical examiner except:
9 when used in a criminal action or proceeding in this State which
10 relates to the death of that person,
11 for the use as a court of this State permits, by order after good
12 cause has been shown and after written notification of the request
13 for the court order has been served at least five days before the
14 order is made upon the county prosecutor for the county in which
15 the post mortem examination or autopsy occurred,
16 for use in the field of forensic pathology or for use in medical or
17 scientific education or research, or
18 for use by any law enforcement agency in this State or any other
19 state or federal law enforcement agency;
20 criminal investigatory records;
21 victims' records, except that a victim of a crime shall have access
22 to the victim's own records;
23 trade secrets and proprietary commercial or financial information
24 obtained from any source. For the purposes of this paragraph, trade
25 secrets shall include data processing software obtained by a public
26 body under a licensing agreement which prohibits its disclosure;
27 any record within the attorney-client privilege. This paragraph
28 shall not be construed as exempting from access attorney or
29 consultant bills or invoices except that such bills or invoices may be
30 redacted to remove any information protected by the attorney-client
31 privilege;
32 administrative or technical information regarding computer
33 hardware, software and networks which, if disclosed, would
34 jeopardize computer security;
35 emergency or security information or procedures for any
36 buildings or facility which, if disclosed, would jeopardize security
37 of the building or facility or persons therein;
38 security measures and surveillance techniques which, if
39 disclosed, would create a risk to the safety of persons, property,
40 electronic data or software;
41 information which, if disclosed, would give an advantage to
42 competitors or bidders;
43 information generated by or on behalf of public employers or
44 public employees in connection with any sexual harassment
45 complaint filed with a public employer or with any grievance filed
46 by or against an individual, unless the individual who the grievance
47 is filed against allows it and the issue does not involve sexual

1 matters, or in connection with collective negotiations, including
2 documents and statements of strategy or negotiating position;

3 information which is a communication between a public agency
4 and its insurance carrier, administrative service organization or risk
5 management office;

6 information which is to be kept confidential pursuant to court
7 order;

8 any copy of form DD-214, or that form, issued by the United
9 States Government, or any other certificate of honorable discharge,
10 or copy thereof, from active service or the reserves of a branch of
11 the Armed Forces of the United States, or from service in the
12 organized militia of the State, that has been filed by an individual
13 with a public agency, except that a veteran or the veteran's spouse
14 or surviving spouse shall have access to the veteran's own records;
15 and

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

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

36 pedagogical, scholarly and/or academic research records and/or
37 the specific details of any research project conducted under the
38 auspices of a public higher education institution in New Jersey,
39 including, but not limited to research, development information,
40 testing procedures, or information regarding test participants,
41 related to the development or testing of any pharmaceutical or
42 pharmaceutical delivery system, except that a custodian may not
43 deny inspection of a government record or part thereof that gives
44 the name, title, expenditures, source and amounts of funding and
45 date when the final project summary of any research will be
46 available;

1 test questions, scoring keys and other examination data
2 pertaining to the administration of an examination for employment
3 or academic examination;

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

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

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

17 The term "government record" shall include allowances sold at
18 auction pursuant to P.L.2007, c.340 (C.26:2C-45 et seq.) or any
19 similar greenhouse gas initiative, together with the auction clearing
20 price for each allowance, the identity of the winning bidder, and the
21 quantity of allowances obtained by each bidder, and of which none
22 shall be considered to be a trade secret within the scope of this act,
23 P.L.1963, c.73 (C.47:1A-1 et seq.). The term shall also include all
24 forms of electronic mail communication among members of a
25 public body, excluding the Legislature, constituting an effective
26 majority thereof, and which communication is otherwise consistent
27 with the definition of "meeting" in section 3 of P.L.1975, c.231
28 (C.10:4-8); and the names of reviewers of grants, donations, gifts or
29 applications made to a public agency including the names of
30 reviewers of charter school applications.

31 "Public agency" or "agency" means any of the principal
32 departments in the Executive Branch of State Government, and any
33 division, agency, authority, board, bureau, office, commission or
34 other instrumentality within or created by such department; the
35 Legislature of the State and any office, board, bureau or
36 commission within or created by the Legislative Branch; and any
37 independent State authority, commission, instrumentality or agency.
38 The terms shall also mean any political subdivision of the State or
39 combination of political subdivisions, and any division, board,
40 bureau, office, commission or other instrumentality within or
41 created by a political subdivision of the State or combination of
42 political subdivisions, and any independent authority, commission,
43 instrumentality or agency created by a political subdivision or
44 combination of political subdivisions. The term shall also include a
45 school district, special district, or charter school, quasi-
46 governmental agency, or public employee. The term shall also
47 mean and include the New Jersey State League of Municipalities,
48 the New Jersey Association of Counties, the New Jersey School

1 Boards Association, and the New Jersey State Interscholastic
2 Athletic Association, and a substantially similar successor
3 organization or association, and a joint insurance group or fund for
4 political subdivisions of this State.

5 “Quasi-governmental agency” means any association,
6 commission, agency, authority, organization, public-private entity,
7 or any other entity, in which one or more public agencies exercise
8 substantial control, or as determined by the Government Records
9 Council or a court of law, by considering factors including but not
10 limited to: whether a public agency exercises control over the quasi-
11 government agency or the public agency maintains the ability to
12 review, approve, or reject the quasi-governmental agency’s
13 proposals or plans, holds a beneficial interest in the quasi-
14 governmental agency’s assets, is the primary source of funding of,
15 or is indebted to, or is a creditor of, or guarantor of the debts of, the
16 quasi-governmental agency. The term shall not include any entity
17 involving the Legislature.

18 “Public employee” means any person who occupies any office,
19 position or employment in the government of the State of New
20 Jersey, except the Legislature, or any political subdivision of the
21 State, or a school district, or any special district, or any authority,
22 commission, board, or any instrumentality or agency performing a
23 public function or public service. This term shall also include, but
24 shall not be limited to, an elected and appointed person.

25 “Privacy” means the confidentiality and privilege protections to
26 information and materials.

27 “Reasonable” means that which the average person would
28 believe to be fair and just.

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

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

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

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

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

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

1 "Victims' rights agency" means a public agency, or part thereof,
2 the primary responsibility of which is providing services, including
3 but not limited to food, shelter, or clothing, medical, psychiatric,
4 psychological or legal services or referrals, information and referral
5 services, counseling and support services, or financial services to
6 victims of crimes, including victims of sexual assault, domestic
7 violence, violent crime, child endangerment, child abuse or child
8 neglect, and the Victims of Crime Compensation Board, established
9 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.).
10 (cf: P.L.2005, c.170, s.1)

11
12 4. Section 3 of P.L.1963, c.73 (C.47:1A-3) is amended to read
13 as follows:

14 3. a. Notwithstanding the provisions of P.L.1963, c.73
15 (C.47:1A-1 et seq.) as amended and supplemented, where it shall
16 appear that the record or records which are sought to be inspected,
17 copied, or examined shall pertain to an investigation in progress by
18 any public agency, the right of access provided for in P.L.1963,
19 c.73 (C.47:1A-1 et seq.) as amended and supplemented may be
20 denied if the inspection, copying or examination of such record or
21 records shall be inimical to the public interest; provided, however,
22 that this provision shall not be construed to allow any public agency
23 to prohibit access to a record of that agency that was open for
24 public inspection, examination, or copying before the investigation
25 commenced. Whenever a public agency, during the course of an
26 investigation, obtains from another public agency a government
27 record that was open for public inspection, examination or copying
28 before the investigation commenced, the investigating agency shall
29 provide the other agency with sufficient access to the record to
30 allow the other agency to comply with requests made pursuant to
31 P.L.1963, c.73 (C.47:1A-1 et seq.).

32 b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-
33 1 et seq.), as amended and supplemented, records containing the
34 following information concerning a criminal investigation shall be
35 available to the public within 24 hours or as soon as practicable, of
36 a request for such information:

37 where a crime has been reported but no arrest yet made,
38 information as to the type of crime, time, location and type of
39 weapon, if any;

40 if an arrest has been made, information as to the name, address
41 and age of any victims unless there has not been sufficient
42 opportunity for notification of next of kin of any victims of injury
43 and/or death to any such victim or where the release of the names of
44 any victim would be contrary to existing law or court rule. In
45 deciding on the release of information as to the identity of a victim,
46 the safety of the victim and the victim's family, and the integrity of
47 any ongoing investigation, shall be considered;

1 if an arrest has been made, information as to the defendant's
2 name, age, residence, occupation, marital status and similar
3 background information and, the identity of the complaining party
4 unless the release of such information is contrary to existing law or
5 court rule;

6 information as to the text of any charges such as the complaint,
7 accusation and indictment unless sealed by the court or unless the
8 release of such information is contrary to existing law or court rule;

9 information as to the identity of the investigating and arresting
10 personnel and agency and the length of the investigation;

11 information of the circumstances immediately surrounding the
12 arrest, including but not limited to the time and place of the arrest,
13 resistance, if any, pursuit, possession and nature and use of
14 weapons and ammunition by the suspect and by the police; and

15 information as to circumstances surrounding bail, whether it was
16 posted and the amount thereof.

17 Notwithstanding any other provision of this subsection, if the
18 custodian of a government record asserts that part of a particular
19 record is exempt from public access pursuant to P.L.1963, c.73
20 (C.47:1A-1 et seq.), as amended and supplemented, the custodian
21 shall redact from a copy of the record that portion which the
22 custodian asserts is exempt from access and shall promptly permit
23 access to the remainder of the record. If the custodian of a
24 government record redacts information from a copy of the record,
25 the custodian shall inform the requestor of the deletion or excise,
26 why the information was deleted or excised, and shall specify the
27 total number of pages deleted or excised. The custodian shall note
28 in writing specifically why the record was redacted. This provision
29 shall only apply to information redacted on or after the effective
30 date of P.L. , c. (pending before the Legislature as this bill). If a
31 document was redacted prior to the effective date of P.L. , c.
32 (pending before the Legislature as this bill), a service charge for
33 time may be assessed to the requestor for information as to why a
34 document was redacted.

35 Notwithstanding any other provision of this subsection, where it
36 shall appear that the information and documents requested or to be
37 examined will jeopardize the safety of any person or jeopardize any
38 investigation in progress or may be otherwise inappropriate to
39 release, such information and documents may be withheld. This
40 exception shall be narrowly construed to prevent disclosure of
41 information that would be harmful to a bona fide law enforcement
42 purpose or the public safety. Whenever a law enforcement official
43 determines that it is necessary to withhold information and
44 documents, the official shall issue a brief statement explaining the
45 decision.

46 (cf: P.L.2001, c.404, s.5)

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

3 6. a. The custodian of a government record shall permit the
4 record to be inspected, examined, and copied by any person during
5 regular business hours; or in the case of a municipality having a
6 population of 5,000 or fewer according to the most recent federal
7 decennial census, a board of education having a total district
8 enrollment of 500 or fewer, or a public authority having less than
9 \$10 million in assets, during not less than six regular business hours
10 over not less than three business days per week or the entity's
11 regularly-scheduled business hours, whichever is less; unless a
12 government record is exempt from public access by: P.L.1963, c.73
13 (C.47:1A-1 et seq.) as amended and supplemented; any other
14 statute; resolution of either or both houses of the Legislature;
15 regulation promulgated under the authority of any statute or
16 Executive Order of the Governor; Executive Order of the Governor;
17 Rules of Court; any federal law; federal regulation; or federal order.
18 Prior to allowing access to any government record, the custodian
19 thereof shall redact from that record any information which
20 discloses the social security number, credit card number, unlisted
21 telephone number, or driver license number of any person; except
22 for use by any government agency, including any court or law
23 enforcement agency, in carrying out its functions, or any private
24 person or entity acting on behalf thereof, or any private person or
25 entity seeking to enforce payment of court-ordered child support;
26 except with respect to the disclosure of driver information by the
27 New Jersey Motor Vehicle Commission as permitted by section 2 of
28 P.L.1997, c.188 (C.39:2-3.4); and except that a social security
29 number contained in a record required by law to be made,
30 maintained or kept on file by a public agency shall be disclosed
31 when access to the document or disclosure of that information is not
32 otherwise prohibited by State or federal law, regulation or order or
33 by State statute, resolution of either or both houses of the
34 Legislature, Executive Order of the Governor, rule of court or
35 regulation promulgated under the authority of any statute or
36 executive order of the Governor. Except where an agency can
37 demonstrate an emergent need, a regulation that limits access to
38 government records shall not be retroactive in effect or applied to
39 deny a request for access to a government record that is pending
40 before the agency, the council or a court at the time of the adoption
41 of the regulation.

42 If a custodian of a government record redacts information from
43 any record, the custodian shall inform the requestor of the
44 redaction, why the information was deleted or excised, and shall
45 specify the total number of pages deleted or excised. The custodian
46 shall note in writing specifically why the record was redacted. This
47 provision shall only apply to information redacted on or after the
48 effective date of P.L. , c. (pending before the Legislature as this

1 bill). If a document was redacted prior to the effective date of
2 P.L. , c. (pending before the Legislature as this bill), a service
3 charge for time may be assessed to the requestor for information as
4 to why a document was redacted.

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

22 If a public agency maintains the record in an electronic format or
23 medium and can demonstrate that the record can be electronically
24 mailed without charge to the requestor, it shall make the requestor
25 aware and allow for delivery of the record in such format or
26 medium.

27 If the government record is readily available on the public
28 agency website, the custodian may require the requestor to obtain
29 the record from the agency website. If the requestor is unable to
30 access the Internet or prefers to purchase copies from the public
31 agency, he or she shall be permitted to purchase such copies from
32 the record custodian.

33 c. Whenever the nature, format, medium, manner of collation,
34 or volume of a government record embodied in the form of printed
35 matter to be inspected, examined, or copied pursuant to this section
36 is such that the record cannot be reproduced by ordinary document
37 copying equipment in ordinary business size or involves an
38 extraordinary expenditure of time and effort to accommodate the
39 request, the public agency may charge, in addition to the actual cost
40 of duplicating the record, a special service charge that shall be
41 reasonable and shall be based upon the actual direct cost of
42 providing the copy or copies; provided, however, that [in the case
43 of a municipality, rates for the duplication of particular records
44 when the actual cost of copying exceeds the foregoing rates shall be
45 established in advance by ordinance. The] the requestor shall have
46 the opportunity to review and object to the charge prior to it being
47 incurred. During such review, the public agency shall provide the
48 requestor, without charge, an index generally describing the

1 responsive government records to be provided. To the greatest
2 extent possible, the index shall include the name of each record or
3 brief description of each record or general categories of the records
4 to be provided, the approximate number of pages of each record or
5 categories of records; and a detailed breakdown of how the special
6 service charge was assessed. If there are responsive government
7 records known to be exempt in whole or in part, the agency shall
8 also provide a description of the documents or the portions deemed
9 exempt. Special service charges shall not be assessed for requests
10 for budgets, bills, vouchers, contracts and public employee salary
11 and overtime information unless the request is deemed voluminous.

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

28 e. Immediate access ordinarily shall be granted to budgets,
29 bills, vouchers, contracts, including collective negotiations
30 agreements and individual employment contracts, and public
31 employee salary and overtime information and any other document
32 that is readily available. When possible, immediate access shall
33 mean by 5 p.m., or close of the entity's business day whichever
34 occurs first, if the appropriate records custodian has received the
35 request by noon. Otherwise, if the request was received after noon,
36 the records shall be made available to the requestor by noon the
37 following business day.

38 f. The custodian of a public agency shall adopt a form for the
39 use of any person who requests access to a government record held
40 or controlled by the public agency. The form shall provide space
41 for the name, address, and phone number of the requestor and a
42 brief description of the government record sought. The form shall
43 include space for the custodian to indicate which record will be
44 made available, when the record will be available, and the fees to be
45 charged. The form shall also include the following: (1) specific
46 directions and procedures for requesting a record; (2) a statement as
47 to whether prepayment of fees or a deposit is required; (3) the time
48 period within which the public agency is required by P.L.1963, c.73

1 (C.47:1A-1 et seq.) as amended and supplemented, to make the
2 record available; (4) a statement of the requestor's right to challenge
3 a decision by the public agency to deny access and the procedure
4 for filing an appeal; (5) space for the custodian to list reasons if a
5 request is denied in whole or in part; (6) space for the requestor to
6 sign and date the form; (7) space for the custodian to sign and date
7 the form if the request is fulfilled or denied. The custodian may
8 require a deposit against costs for reproducing documents sought
9 through an anonymous request whenever the custodian anticipates
10 that the information thus requested will cost in excess of \$5 to
11 reproduce.

12 If a request for information is made in writing on a document
13 other than the form adopted by the public agency and the request
14 contains the requisite information prescribed in this subsection, the
15 custodian shall treat the request as if made on the form adopted by
16 the public agency.

17 g. A request for access to a government record shall be in
18 writing and hand-delivered, mailed, transmitted electronically,
19 including by electronic mail, transmitted by facsimile when no more
20 than four pages in length, or otherwise conveyed to the appropriate
21 custodian. A custodian shall promptly comply with a request to
22 inspect, examine, copy, or provide a copy of a government record.
23 If the custodian is unable to comply with a request for access, the
24 custodian shall indicate the specific basis therefor on the request
25 form and promptly return it to the requestor. The custodian shall
26 sign and date the form and provide the requestor with a copy
27 thereof. If the custodian of a government record asserts that part of
28 a particular record is exempt from public access pursuant to
29 P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented,
30 the custodian shall delete or excise from a copy of the record that
31 portion which the custodian asserts is exempt from access and shall
32 promptly permit access to the remainder of the record.

33 If the custodian of a government record redacts information from
34 a copy of the record, the custodian shall inform the requestor of the
35 deletion or excision, why the information was deleted or excised,
36 and shall specify the total number of pages deleted or excised. The
37 custodian shall note in writing specifically why the record was
38 redacted. This provision shall only apply to information redacted
39 on or after the effective date of P.L. , c. (pending before the
40 Legislature as this bill). If a document was redacted prior to the
41 effective date of P.L. , c. (pending before the Legislature as this
42 bill), a service charge for time may be assessed to the requestor for
43 information as to why a document was redacted.

44 If the government record requested is temporarily unavailable
45 because it is in use or in storage, the custodian shall so advise the
46 requestor and shall make arrangements to promptly make available
47 a copy of the record. If a request for access to a government record
48 would substantially disrupt agency operations, the custodian may

1 deny access to the record after attempting to reach a reasonable
2 solution with the requestor that accommodates the interests of the
3 requestor and the agency.

4 h. Any officer or employee of a public agency who receives a
5 request for access to a government record shall forward the request
6 to the custodian of the record or direct the requestor to the
7 custodian of the record.

8 i. Unless a shorter time period is otherwise provided by
9 statute, regulation, or executive order, a custodian of a government
10 record shall grant access to a government record or deny a request
11 for access to a government record as soon as possible, but not later
12 than seven business days after receiving the request, including the
13 business day on which the request was received by the records
14 custodian, if received by noon, provided that the record is currently
15 available and not in storage or archived. In the event a custodian
16 fails to respond within seven business days after receiving a
17 request, the failure to respond shall be deemed a denial of the
18 request, unless the requestor has elected not to provide a name,
19 address or telephone number, or other means of contacting the
20 requestor. If the requestor has elected not to provide a name,
21 address, or telephone number, or other means of contacting the
22 requestor, the custodian shall not be required to respond until the
23 requestor reappears before the custodian seeking a response to the
24 original request. If the government record is in storage or archived,
25 the requestor shall be so advised within seven business days after
26 the custodian receives the request. The requestor shall be advised
27 by the custodian when the record can be made available. If the
28 record is not made available by that time, access shall be deemed
29 denied.

30 A request received after 12 p.m. shall be deemed as received on
31 the next business day.

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

39 The custodian of a public agency that has a website shall, at a
40 minimum, prominently post on the website the name, mailing
41 address, electronic mailing address, phone number, and facsimile
42 number for the custodian of records as well as a statement that
43 information submitted to the agency may be a public record and
44 available for public review.

45 k. The files maintained by the Office of the Public Defender
46 that relate to the handling of any case shall be considered
47 confidential and shall not be open to inspection by any person

1 unless authorized by law, court order, or the State Public Defender.
2 (cf: P.L.2010, c.75, s.5)

3

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

6 7. A person who is denied access to a government record by
7 the custodian of the record, at the option of the requestor, may:

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

14 in lieu of filing an action in Superior Court, file a complaint with
15 the Government Records Council established pursuant to section 8
16 of P.L.2001, c.404 (C.47:1A-7). If the Government Records
17 Council does not render a decision within the time period
18 established pursuant to subsection b. of section 8 of P.L.2001, c.404
19 (C.47:1A-7), the requestor may institute a proceeding to challenge
20 the custodian's decision by filing an action in Superior Court.

21 The right to institute any proceeding under this section shall be
22 solely that of the requestor. Any such proceeding shall proceed in a
23 summary or expedited manner. The public agency shall have the
24 burden of proving that the denial of access is authorized by law. If
25 it is determined that access has been improperly denied, the court or
26 agency head shall order that access be allowed. A requestor who
27 prevails in any proceeding shall be entitled to a reasonable
28 attorney's fee award. A requestor who prevails in any proceeding
29 shall be entitled to a reasonable attorney's fee award. However, in
30 actions involving a record required by law to be made, maintained
31 or kept on file and that does not exist or no longer exists, the
32 prevailing requestor shall not be entitled to an attorney's fee award
33 if both: (1) the failure to make, maintain, or keep the record is due
34 to mere negligence or no fault on the part of the government entity;
35 and (2) the requestor was informed in writing by formal
36 certification or affidavit by the records custodian prior to the filing
37 of the complaint that the record does not exist or no longer exists,
38 the efforts taken to obtain the record and why the record could not
39 be produced.

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

41

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

44 8. a. There is established in, but not of, the Department of
45 Community Affairs a Government Records Council. The council
46 shall consist of the Commissioner of Community Affairs or the
47 commissioner's designee, the Commissioner of Education or the
48 commissioner's designee, the Attorney General or the Attorney

1 General's designee, the president of the Municipal Clerks'
2 Association or the president's designee, [and] three public
3 members appointed by the Governor, with the advice and consent of
4 the Senate, not more than two of whom shall be of the same
5 political party, and four public members appointed by the Governor,
6 one upon the recommendation of the Senate President, one upon the
7 recommendation of the Senate Minority Leader, one upon the
8 recommendation of the Speaker of the General Assembly, and one
9 upon the recommendation of the General Assembly Minority
10 Leader. The [three] seven public members appointed by the
11 Governor shall serve during the term of the Governor making the
12 appointment and until the appointment of a successor. The two
13 public members appointed by the Governor from among the
14 recommendations of the Senate President and the General Assembly
15 Minority Leader shall be representative of local government. The
16 two public members appointed by the Governor from among the
17 recommendations of the Speaker of the General Assembly and the
18 Senate Minority Leader shall be persons with knowledge of or
19 experience with news media. [A public member shall not hold any
20 other] Only the public members who are representative of local
21 government shall be able to hold a State or local elected or
22 appointed office or employment while serving as a member of the
23 council. A public member shall not receive a salary for service on
24 the council but shall be reimbursed for reasonable and necessary
25 expenses associated with serving on the council and may receive
26 such per diem payment as may be provided in the annual
27 appropriations act. A member may be removed by the Governor for
28 cause. Vacancies among the public members shall be filled in the
29 same manner in which the original appointment was made. The
30 members of the council shall choose one of the public members to
31 serve as the council's chair. The council may employ an executive
32 director and such professional and clerical staff as it deems
33 necessary and may call upon the Department of Community Affairs
34 for such assistance as it deems necessary and may be available to it.

35 b. The Government Records Council shall:
36 establish an informal mediation program to facilitate the
37 resolution of disputes regarding access to government records;
38 receive, hear, review and adjudicate a complaint filed by any
39 person concerning a denial of access to a government record by a
40 records custodian;
41 render a decision on all disputes and complaints within 150
42 calendar days of the filing of the complaint;
43 issue advisory opinions, on its own initiative, as to whether a
44 particular type of record is a government record which is accessible
45 to the public;
46 prepare guidelines and an informational pamphlet for use by
47 records custodians in complying with the law governing access to
48 public records;

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

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

7 make training opportunities available for records custodians and
8 other public officers and employees which explain the law
9 governing access to public records; and

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

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

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

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

40 e. If any party declines mediation or if mediation fails to
41 resolve the matter to the satisfaction of all parties, the council shall
42 initiate an investigation concerning the facts and circumstances set
43 forth in the complaint. The council shall make a determination as
44 to whether the complaint is within its jurisdiction or frivolous or
45 without any reasonable factual basis. If the council shall conclude
46 that the complaint is outside its jurisdiction, frivolous or without
47 factual basis, it shall reduce that conclusion to writing and transmit
48 a copy thereof to the complainant and to the records custodian

1 against whom the complaint was filed. Otherwise, the council shall
2 notify the records custodian against whom the complaint was filed
3 of the nature of the complaint and the facts and circumstances set
4 forth therein. The custodian shall have the opportunity to present
5 the board with any statement or information concerning the
6 complaint which the custodian wishes. If the council is able to
7 make a determination as to a record's accessibility based upon the
8 complaint and the custodian's response thereto, it shall reduce that
9 conclusion to writing and transmit a copy thereof to the
10 complainant and to the records custodian against whom the
11 complaint was filed. If the council is unable to make a
12 determination as to a record's accessibility based upon the
13 complaint and the custodian's response thereto, the council shall
14 conduct a hearing on the matter in conformity with the rules and
15 regulations provided for hearings by a State agency in contested
16 cases under the "Administrative Procedure Act," P.L.1968, c.410
17 (C.52:14B-1 et seq.), insofar as they may be applicable and
18 practicable. The council shall, by a majority vote of its members,
19 render a decision as to whether the record which is the subject of
20 the complaint is a government record which must be made available
21 for public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as
22 amended and supplemented. If the council determines, by a
23 majority vote of its members, that a custodian has **[knowingly and**
24 **willfully]** been grossly negligent, as defined by Section 12 of
25 P.L.2001, c.404 (C.47:1A-11), and violated P.L.1963, c.73
26 (C.47:1A-1 et seq.), as amended and supplemented, and is found to
27 have unreasonably denied access under the totality of the
28 circumstances, the council may impose the penalties provided for in
29 section 12 of P.L.2001, c.404 (C.47:1A-11). A decision of the
30 council may be appealed to the **[Appellate Division of the]**
31 **Superior Court**. A decision of the council shall not have value as a
32 precedent for any case initiated **[in Superior Court]** pursuant to
33 section 7 of P.L.2001, c.404 (C.47:1A-6). All proceedings of the
34 council pursuant to this subsection shall be conducted as
35 expeditiously as possible.

36 f. The council shall not charge any party a fee in regard to
37 actions filed with the council. The council shall be subject to the
38 provisions of the "Open Public Meetings Act," P.L.1975, c.231
39 (C.10:4-6), except that the council may go into closed session
40 during that portion of any proceeding during which the contents of a
41 contested record would be disclosed. A requestor who prevails in
42 any proceeding shall be entitled to a reasonable attorney's fee.

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

46 h. The council shall make available on its website a searchable
47 index of its opinions.

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

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

3 11. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-
4 1 et seq.) or any other law to the contrary, the personnel or pension
5 records of any individual in the possession of a public agency,
6 including but not limited to records relating to any grievance filed
7 by or against an individual, shall not be considered a government
8 record and shall not be made available for public access, except
9 that:

10 an individual's name, title, position, educational and training
11 background, salary, payroll record, length of service, date of
12 separation and the reason therefor, work address and work
13 telephone number, job description, and the amount and type of any
14 pension received shall be a government record;

15 personnel or pension records of any individual shall be
16 accessible when required to be disclosed by another law, when
17 disclosure is essential to the performance of official duties of a
18 person duly authorized by this State or the United States, or when
19 authorized by an individual in interest; **[and]**

20 grievances shall be a government record when the individual
21 who the grievance is filed against allows it and the issue does not
22 involve sexual matters;

23 records pertaining to the factual basis for disciplinary action in
24 which an employee is suspended, demoted, discharged, or resigned
25 not in good standing, if it was due to the conviction of a crime, shall
26 be a government record;

27 records pertaining to settlements of lawsuits or claims involving
28 public agencies, public officials or employees shall be a
29 government record; and

30 data contained in information which disclose conformity with
31 specific experiential, educational or medical qualifications required
32 for government employment or for receipt of a public pension, but
33 not including any detailed medical or psychological information,
34 shall be a government record.

35 (cf: P.L.2001, c.404, s.11)

36

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

39 12. a. A public official, officer, employee or custodian who
40 **[knowingly and willfully]** violates P.L.1963, c.73 (C.47:1A-1 et
41 seq.), as amended and supplemented, and is found **[to have**
42 **unreasonably]** grossly negligent by having denied access under the
43 totality of the circumstances, shall be subject to a civil penalty of
44 \$1,000 for an initial violation, \$2,500 for a second violation that
45 occurs within 10 years of an initial violation, and \$5,000 for a third
46 violation that occurs within 10 years of an initial violation. No
47 public official, officer, employee or custodian shall be subject to a
48 civil penalty for any unavailable record that is required by law to be

1 made, maintained or kept on file unless the unavailability of the
2 record is a result of the willful actions or gross negligence of such
3 person.

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

10 Appropriate disciplinary proceedings may be initiated against a
11 public official, officer, employee or custodian against whom a
12 penalty has been imposed.

13 For the purposes of this act, P.L.1963, c.73 (C.47:1A-1 et seq.),
14 “grossly negligent” shall mean engaging in conduct involving a
15 gross deviation from the acceptable standards of conduct from the
16 duties and responsibilities imposed by this act that a reasonable
17 person would have observed in the actor’s situation.

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

19

20 10. Section 14 of P.L.2001, c.404 (C.47:1A-13) is amended to
21 read as follows:

22 14. The Commissioner of Community Affairs shall include in
23 the annual budget request of the Department of Community Affairs
24 **[a]** the request submitted by the Government Records Council for
25 sufficient funds to effectuate the purposes of section 8 of P.L.2001,
26 c.404 (C.47:1A-7).

27 (cf: P.L.2001, c.404, s.14)

28

29 11. (New section) Any authority contained herein to exempt
30 records from public access by regulation or Executive Order of the
31 Governor shall be expressly limited to the designation of specific
32 records that are exempt from access pursuant to any exemptions set
33 forth in this act, P.L.1963, c.73 (C.47:1A-1 et seq.), and shall not be
34 construed as a grant or delegation of authority to exempt records
35 from public access not otherwise exempt by the provisions this act.

36

37 12. This act shall take effect in 120 days following enactment.

38

39

40 STATEMENT

41

42 This bill makes changes to the open public records act (OPRA).

43 The bill:

- 44 • formally names OPRA as the “Martin O’Shea Open
45 Public Records Act” in honor of Martin O’Shea, a tireless
46 advocate for broad public access to government records;
- 47 • allows an OPRA request to be made by anyone, not only
48 residents of New Jersey;

- 1 • includes the names of reviewers of grants, donations, gifts
2 or applications made to a public agency, including the
3 names of reviewers of charter school applications within
4 the definition of a government record;
- 5 • defines “reasonable” to mean that which the average
6 person would believe to be fair and just;
- 7 • defines “privacy” to mean the confidentiality and
8 privilege protections to information and materials;
- 9 • clarifies that “advisory, consultative, or deliberative
10 material” means the recommendations, and deliberations
11 comprising part of a process by which public agency
12 decisions and policies are formulated;
- 13 • provides that a government record will include documents
14 concerning certain allowances sold at auction and certain
15 electronic mail discussions of public agencies relating to
16 public business;
- 17 • includes associations and organizations engaged in
18 service to the public for one or more municipalities,
19 counties, or local school districts, such as the New Jersey
20 State League of Municipalities, the New Jersey
21 Association of Counties, the New Jersey School Boards
22 Association and the New Jersey State Interscholastic
23 Athletic Association, and joint insurance groups or funds
24 for political subdivisions of the State within the definition
25 of public agency;
- 26 • defines public employee, and adds quasi-governmental
27 agency to those entities covered by the open public
28 records act;
- 29 • requires that documents containing certain information
30 concerning criminal investigations be made available to
31 the public within 24 hours, or as soon as practicable;
- 32 • provides that the custodian may require the requestor to
33 obtain the record from the agency website if it is readily
34 available online, unless the requestor does not have
35 access to the Internet or specifically requests copies of the
36 documents;
- 37 • provides that special service charges will not be assessed
38 for requests for budgets, bills, vouchers, contracts and
39 public employee salary and overtime information unless
40 the request is deemed voluminous;
- 41 • requires the public agency to provide the requestor with a
42 breakdown of how the special charges were assessed;
- 43 • allows the option of e-mailing the requested records
44 without charge to the requestor when possible and the
45 requestor agrees;
- 46 • allows the OPRA request to be e-mailed, or faxed when
47 no more than four pages in length;

- 1 • requires the record custodian to accept a record request
- 2 made on a document other than the adopted form if it
- 3 contains a notice that it is an OPRA request and contains
- 4 the information required on the adopted form;
- 5 • provides that if information is redacted from a record that
- 6 the record custodian will notify the requestor why the
- 7 information is redacted and to indicate the total number of
- 8 records redacted;
- 9 • clarifies that the seven day response period includes the
- 10 day the OPRA request is received;
- 11 • clarifies that if a request is received after 12 noon, it shall
- 12 be deemed received on the next business day;
- 13 • provides definition of immediate access with regard to
- 14 certain specified information;
- 15 • provides that only the public members who are
- 16 representative of local government will be able to hold
- 17 elected or appointed office;
- 18 • requires the Government Records Council to render
- 19 decisions on all disputes and complaints within 150
- 20 calendar days;
- 21 • provides that if the Government Records Council does not
- 22 render a decision within the time period, the requestor
- 23 may file an action in Superior Court to challenge the
- 24 denial of access to government records;
- 25 • requires the Government Records Council to post an
- 26 index of searchable opinions on its website;
- 27 • requires contact information for the custodian of a public
- 28 agency to be included on the agency website;
- 29 • requires a statement on an agency website that documents
- 30 submitted to the agency may be a government record
- 31 accessible by the public;
- 32 • provides that the work address and telephone number, job
- 33 description and education and training background of a
- 34 public employee is a government record;
- 35 • provides that grievances not relating to sexual matters are
- 36 not exempt from OPRA requests when the individual the
- 37 grievance is filed against allows it;
- 38 • provides that a personnel record containing certain
- 39 disciplinary actions is not exempt from OPRA requests;
- 40 • provides that records pertaining to the factual basis for
- 41 disciplinary action in which an employee is demoted, is
- 42 discharged, or resigned not in good standing, if it was due
- 43 to the conviction of a crime, is not exempt from OPRA
- 44 requests;
- 45 • provides that records pertaining to settlements of lawsuits
- 46 or claims involving public agencies, public officials or
- 47 employees are not exempt form OPRA request;

- 1 • changes the knowingly and willfully standard for
2 violations of the OPRA to a grossly negligent standard
3 and defines it to mean conduct marked by a defiant
4 disregard for the law or duties imposed by the position of
5 custodian of a government record;
- 6 • adds the Attorney General and the president of the
7 Municipal Clerks' Association as members of the
8 Government Records Council;
- 9 • adds four additional public members to the Government
10 Records Council, all appointed by the Governor, but one
11 appointed upon the recommendation of the Senate
12 President and one appointed upon the recommendation of
13 the General Assembly Minority Leader, who are
14 representative of local government, and one appointed
15 upon the recommendation of the Speaker of the General
16 Assembly and one appointed upon the recommendation of
17 the Senate Minority Leader, who have knowledge of or
18 experience with news media;
- 19 • permits public members of the Government Records
20 Council to hold other State or local elected or appointed
21 office or employment while serving on the council;
- 22 • changes the Government Records Council from being in
23 the Department of Community Affairs to being in, but not
24 of, the Department of Community Affairs;
- 25 • requires the Government Records Council to submit an
26 annual budget request to the Commissioner of
27 Community Affairs; and
- 28 • provides limitations to the Governor's ability to make
29 certain records exempt from public access.