

SENATE, No. 2552

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 7, 2013

Sponsored by:

Senator JEFF VAN DREW

District 1 (Atlantic, Cape May and Cumberland)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senators Beck and Doherty

SYNOPSIS

Codifies regulation exempting firearms records from State's open public records law; abolishes common law right of access to these records.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/19/2013)

1 AN ACT concerning firearms records and amending P.L.1963, c.73,
2 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.1963, c.73 (C.47:1A-1) is amended to read
8 as follows:

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

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

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

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

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

36

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

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

41 "Biotechnology" means any technique that uses living
42 organisms, or parts of living organisms, to make or modify
43 products, to improve plants or animals, or to develop micro-
44 organisms for specific uses; including the industrial use of
45 recombinant DNA, cell fusion, and novel bioprocessing techniques.

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

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

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

23 information received by a member of the Legislature from a
24 constituent or information held by a member of the Legislature
25 concerning a constituent, including but not limited to information in
26 written form or contained in any e-mail or computer data base, or in
27 any telephone record whatsoever, unless it is information the
28 constituent is required by law to transmit;

29 any memorandum, correspondence, notes, report or other
30 communication prepared by, or for, the specific use of a member of
31 the Legislature in the course of the member's official duties, except
32 that this provision shall not apply to an otherwise publicly-
33 accessible report which is required by law to be submitted to the
34 Legislature or its members;

35 any copy, reproduction or facsimile of any photograph, negative
36 or print, including instant photographs and videotapes of the body,
37 or any portion of the body, of a deceased person, taken by or for the
38 medical examiner at the scene of death or in the course of a post
39 mortem examination or autopsy made by or caused to be made by
40 the medical examiner except:

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

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

1 for use in the field of forensic pathology or for use in medical or
2 scientific education or research, or
3 for use by any law enforcement agency in this State or any other
4 state or federal law enforcement agency;
5 criminal investigatory records;
6 victims' records, except that a victim of a crime shall have access
7 to the victim's own records;
8 personal firearms records, except for use by any person
9 authorized by law to have access to these records or for use by any
10 government agency, including any court or law enforcement
11 agency, for purposes of the administration of justice;
12 trade secrets and proprietary commercial or financial information
13 obtained from any source. For the purposes of this paragraph, trade
14 secrets shall include data processing software obtained by a public
15 body under a licensing agreement which prohibits its disclosure;
16 any record within the attorney-client privilege. This paragraph
17 shall not be construed as exempting from access attorney or
18 consultant bills or invoices except that such bills or invoices may be
19 redacted to remove any information protected by the attorney-client
20 privilege;
21 administrative or technical information regarding computer
22 hardware, software and networks which, if disclosed, would
23 jeopardize computer security;
24 emergency or security information or procedures for any
25 buildings or facility which, if disclosed, would jeopardize security
26 of the building or facility or persons therein;
27 security measures and surveillance techniques which, if
28 disclosed, would create a risk to the safety of persons, property,
29 electronic data or software;
30 information which, if disclosed, would give an advantage to
31 competitors or bidders;
32 information generated by or on behalf of public employers or
33 public employees in connection with any sexual harassment
34 complaint filed with a public employer or with any grievance filed
35 by or against an individual or in connection with collective
36 negotiations, including documents and statements of strategy or
37 negotiating position;
38 information which is a communication between a public agency
39 and its insurance carrier, administrative service organization or risk
40 management office;
41 information which is to be kept confidential pursuant to court
42 order;
43 any copy of form DD-214, or that form, issued by the United
44 States Government, or any other certificate of honorable discharge,
45 or copy thereof, from active service or the reserves of a branch of
46 the Armed Forces of the United States, or from service in the
47 organized militia of the State, that has been filed by an individual
48 with a public agency, except that a veteran or the veteran's spouse

1 or surviving spouse shall have access to the veteran's own records;
2 and

3 that portion of any document which discloses the social security
4 number, credit card number, unlisted telephone number or driver
5 license number of any person; except for use by any government
6 agency, including any court or law enforcement agency, in carrying
7 out its functions, or any private person or entity acting on behalf
8 thereof, or any private person or entity seeking to enforce payment
9 of court-ordered child support; except with respect to the disclosure
10 of driver information by the New Jersey Motor Vehicle
11 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-
12 3.4); and except that a social security number contained in a record
13 required by law to be made, maintained or kept on file by a public
14 agency shall be disclosed when access to the document or
15 disclosure of that information is not otherwise prohibited by State
16 or federal law, regulation or order or by State statute, resolution of
17 either or both houses of the Legislature, Executive Order of the
18 Governor, rule of court or regulation promulgated under the
19 authority of any statute or executive order of the Governor.

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

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

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

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

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

46 information contained on individual admission applications; and

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

4 “Personal firearms record” means any background investigation
5 conducted by the chief of police, the county prosecutor, or the
6 Superintendent of State Police, of any applicant for a permit to
7 purchase a handgun, firearms identification card license, or firearms
8 registration; any application for a permit to purchase a handgun,
9 firearms identification card license, or firearms registration; any
10 document reflecting the issuance or denial of a permit to purchase a
11 handgun, firearms identification card license, or firearms
12 registration; and any permit to purchase a handgun, firearms
13 identification card license, or any firearms license, certification,
14 certificate, form of register, or registration statement.

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

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 3. Section 9 of P.L.2001, c.404 (C.47:1A-8) is amended to read
13 as follows:

14 9. Nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as
15 amended and supplemented, shall be construed as limiting the
16 common law right of access to a government record, including
17 criminal investigatory records of a law enforcement agency ;
18 provided, however, that any common law right of access to a
19 personal firearms record is abolished.
20 (cf: P.L.2001, c.404, s.9)

21
22 4. This act shall take effect immediately.
23
24

25 STATEMENT
26

27 This bill would codify the exemption to the State's open public
28 records law for records relating to the acquisition of firearms by
29 individuals established by regulation, pursuant to N.J.A.C.13:54-
30 1.15. The bill would also resolve the ambiguity in case law as to
31 the accessibility of these records under the common law right of
32 access by abolishing any such right. The bill would protect the
33 privacy of individuals with New Jersey firearms permits, licenses,
34 and registrations, and would protect public safety.

35 Recently, a newspaper in New York published an online map of
36 certain firearms permit holders in that state. The newspaper was
37 able to create the map through public records requests for the names
38 and addresses of these permit holders, which information is public
39 record under New York law. The publication of this information
40 has raised serious privacy and public safety concerns. The map has
41 put all individuals and their homes at risk, allowing them to be
42 targeted for theft or burglaries based on firearms ownership status.
43 The map has also put the safety of law enforcement officers and
44 their families at risk as inmates have used it to learn the home
45 addresses of sheriff's officers and have made threats involving their
46 homes. It has also put victims of domestic violence at risk by
47 providing their assailants with a means of finding them. This bill
48 would help prevent such publication from happening in New Jersey.

1 Under current law, personal firearms records are exempt from
2 the State's open public records law by the administrative regulation,
3 but they may be accessible under the common law right of access to
4 government records. In Southern New Jersey Newspapers v. Twp.
5 of Mt. Laurel, 141 N.J. 56, 75-76 (1995), the Supreme Court of
6 New Jersey held that these records could potentially be accessible
7 under the common law, but remanded the issue for a more complete
8 review of the competing interests to be balanced in a common law
9 right of access analysis. No subsequent published case law has
10 definitively resolved this issue. This bill would incorporate the
11 specific administrative regulation exemption language into the open
12 public records statute to give greater permanence to the exemption
13 and would abolish any common law right of access to these
14 firearms records to foreclose any potential public access through
15 that doctrine.