

**ASSEMBLY, No. 2697**

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**STATE OF NEW JERSEY**

**217th LEGISLATURE**

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INTRODUCED FEBRUARY 8, 2016

**Sponsored by:**

**Assemblyman GORDON M. JOHNSON**  
**District 37 (Bergen)**

**Co-Sponsored by:**

**Assemblyman Peterson**

**SYNOPSIS**

Makes certain access changes to open public records act; establishes State public finance website and creates program for development of local websites; makes appropriation.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/15/2017)**

1 AN ACT concerning access to certain government records and  
 2 establishment of a program for developing public websites,  
 3 amending and supplementing P.L.1963, c.73, supplementing  
 4 Title 52 of the Revised Statutes, amending P.L.1995, c.23 and  
 5 P.L.2001, c.404, and making an appropriation.

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

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

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

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

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

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

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

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

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

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

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

6 "Commercial purpose" means the direct or indirect use of any  
7 part of a government record for sale, resale, solicitation, rent or  
8 lease of a service, or any use by which the user expects a profit  
9 either through commission, salary, or fee. "Commercial purpose"  
10 shall not include using, distributing, gathering, procuring,  
11 transmitting, compiling, editing, disseminating, or publishing of  
12 information or data by the news media, or any parent, subsidiary, or  
13 affiliate of any news media, as defined by section 2 of P.L.1977,  
14 c.253 (C.2A:84A-21a), or by any news, journalistic, educational,  
15 scientific, scholarly, or governmental organization.

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

21 "Government record" or "record" means any paper, written,  
22 electronic, or printed book, document, drawing, map, plan,  
23 photograph, microfilm, data processed or image processed  
24 document, information stored or maintained electronically or by  
25 **【sound-recording】** video or audio recording or in a similar device,  
26 or any copy thereof, that has been made, maintained or kept on file,  
27 or is required by law to be made, maintained or kept on file, in the  
28 course of his or its official business by any **【officer, commission,**  
29 **agency or authority of the State or of any political subdivision**  
30 **thereof, including subordinate boards thereof】** public employee or  
31 public agency, or that has been received in the course of his or its  
32 official business by any such **【officer, commission, agency, or**  
33 **authority of the State or of any political subdivision thereof,**  
34 **including subordinate boards thereof】** public employee or public  
35 agency. Any video or audio recordings made of those portions of  
36 meetings from which the public was not excluded pursuant to  
37 subsection b. of section 7 of P.L.1975, c.231 (C.10:4-12), including  
38 emergency meetings held pursuant to subsection b. of section 4 of  
39 P.L.1975, c.231 (C.10:4-9), shall be available in unedited form.  
40 The terms shall not include inter-agency or intra-agency advisory,  
41 consultative, or deliberative material.

42 "Advisory, consultative or deliberative material" means material  
43 that is used and relied upon during the consultative process prior to  
44 the completion of a competitive application or the adoption of an  
45 ordinance, rule, regulation, or policy by any public agency and that  
46 reflects personal opinions, recommendations, and deliberations  
47 comprising part of a process by which public agency decisions and  
48 policies are formulated, rather than factual or statistical data,

1 information or the official policy of that body, and the release of  
2 which would be injurious to the consultative function of  
3 government.

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

7 information received by a member of the Legislature from a  
8 constituent or information held by a member of the Legislature  
9 concerning a constituent, including but not limited to information in  
10 written form or contained in any e-mail or computer data base, or in  
11 any telephone record whatsoever, unless it is information the  
12 constituent is required by law to transmit;

13 any memorandum, correspondence, notes, report or other  
14 communication prepared by, or for, the specific use of a member of  
15 the Legislature in the course of the member's official duties, except  
16 that this provision shall not apply to an otherwise publicly-  
17 accessible report which is required by law to be submitted to the  
18 Legislature or its members;

19 any copy, reproduction or facsimile of any photograph, negative  
20 or print, including instant photographs and videotapes of the body,  
21 or any portion of the body, of a deceased person, taken by or for the  
22 medical examiner at the scene of death or in the course of a post  
23 mortem examination or autopsy made by or caused to be made by  
24 the medical examiner except:

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

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

32 for use in the field of forensic pathology or for use in medical or  
33 scientific education or research, or

34 for use by any law enforcement agency in this State or any other  
35 state or federal law enforcement agency;

36 criminal investigatory records;

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

39 any written request by a crime victim for a record to which the  
40 victim is entitled to access as provided in this section, including,  
41 but not limited to, any law enforcement agency report, domestic  
42 violence offense report, and temporary or permanent restraining  
43 order;

44 personal firearms records, except for use by any person  
45 authorized by law to have access to these records or for use by any  
46 government agency, including any court or law enforcement  
47 agency, for purposes of the administration of justice;

1       personal identifying information received by the Division of Fish  
2       and Wildlife in the Department of Environmental Protection in  
3       connection with the issuance of any license authorizing hunting  
4       with a firearm. For the purposes of this paragraph, personal  
5       identifying information shall include, but not be limited to, identity,  
6       name, address, social security number, telephone number, fax  
7       number, driver's license number, email address, or social media  
8       address of any applicant or licensee;

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

13      any record within the attorney-client privilege. This paragraph  
14      shall not be construed as exempting from access attorney or  
15      consultant bills or invoices except that such bills or invoices may be  
16      redacted to remove any information protected by the attorney-client  
17      privilege;

18      administrative or technical information regarding computer  
19      hardware, software and networks which, if disclosed, would  
20      jeopardize computer security;

21      emergency or security information or procedures for any  
22      buildings or facility which, if disclosed, would jeopardize security  
23      of the building or facility or persons therein;

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

27      information, including location, on alarm systems and  
28      surveillance cameras;

29      information which, if disclosed, would give an advantage to  
30      competitors or bidders;

31      information generated by or on behalf of public employers or  
32      public employees in connection with any sexual harassment  
33      complaint filed with a public employer or with any grievance filed  
34      by or against an individual or in connection with collective  
35      negotiations, including documents and statements of strategy or  
36      negotiating position;

37      information which is a communication between a public agency  
38      and its insurance carrier, administrative service organization or risk  
39      management office;

40      information which is to be kept confidential pursuant to court  
41      order;

42      any copy of form DD-214, or that form, issued by the United  
43      States Government, or any other certificate of honorable discharge,  
44      or copy thereof, from active service or the reserves of a branch of  
45      the Armed Forces of the United States, or from service in the  
46      organized militia of the State, that has been filed by an individual  
47      with a public agency, except that a veteran or the veteran's spouse  
48      or surviving spouse shall have access to the veteran's own records;

1 any copy of an oath of allegiance, oath of office or any  
2 affirmation taken upon assuming the duties of any public office, or  
3 that oath or affirmation, taken by a current or former officer or  
4 employee in any public office or position in this State or in any  
5 county or municipality of this State, including members of the  
6 Legislative Branch, Executive Branch, Judicial Branch, and all law  
7 enforcement entities, except that the full name, title, and oath date  
8 of that person contained therein shall not be deemed confidential;

9 **[and]**

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

28 cell phone numbers, unless the cell phone number is listed as a  
29 home telephone number;

30 electronic-mail addresses provided to the public agency as  
31 contact information for the purpose of receiving official public  
32 notifications;

33 electronic-mail addresses provided to the public agency as  
34 contact information on any official government form; and

35 that portion of any document that requires and would disclose  
36 personal identifying information of persons under the age of 18  
37 years, except with respect to the disclosure of driver information by  
38 the New Jersey Motor Vehicle Commission as permitted by section  
39 2 of P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver  
40 information to any insurer or insurance support organization, or a  
41 self-insured entity, or its agents, employees, or contractors, for use  
42 in connection with claims investigation activities, antifraud  
43 activities, rating or underwriting.

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

47 pedagogical, scholarly and/or academic research records and/or  
48 the specific details of any research project conducted under the

1 auspices of a public higher education institution in New Jersey,  
2 including, but not limited to research, development information,  
3 testing procedures, or information regarding test participants,  
4 related to the development or testing of any pharmaceutical or  
5 pharmaceutical delivery system, except that a custodian may not  
6 deny inspection of a government record or part thereof that gives  
7 the name, title, expenditures, source and amounts of funding and  
8 date when the final project summary of any research will be  
9 available;

10 test questions, scoring keys and other examination data  
11 pertaining to the administration of an examination for employment  
12 or academic examination;

13 records of pursuit of charitable contributions or records  
14 containing the identity of a donor of a gift if the donor requires non-  
15 disclosure of the donor's identity as a condition of making the gift  
16 provided that the donor has not received any benefits of or from the  
17 institution of higher education in connection with such gift other  
18 than a request for memorialization or dedication;

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

22 information contained on individual admission applications; and  
23 information concerning student records or grievance or  
24 disciplinary proceedings against a student to the extent disclosure  
25 would reveal the identity of the student.

26 "Personal firearms record" means any information contained in a  
27 background investigation conducted by the chief of police, the  
28 county prosecutor, or the Superintendent of State Police, of any  
29 applicant for a permit to purchase a handgun, firearms identification  
30 card license, or firearms registration; any application for a permit to  
31 purchase a handgun, firearms identification card license, or firearms  
32 registration; any document reflecting the issuance or denial of a  
33 permit to purchase a handgun, firearms identification card license,  
34 or firearms registration; and any permit to purchase a handgun,  
35 firearms identification card license, or any firearms license,  
36 certification, certificate, form of register, or registration statement.  
37 For the purposes of this paragraph, information contained in a  
38 background investigation shall include, but not be limited to,  
39 identity, name, address, social security number, phone number, fax  
40 number, driver's license number, email address, social media  
41 address of any applicant, licensee, registrant or permit holder.

42 The term "government record" shall include allowances sold at  
43 auction pursuant to P.L.2007, c.340 (C.26:2C-45 et seq.) or any  
44 similar greenhouse gas initiative, together with the auction clearing  
45 price for each allowance, the identity of the winning bidder, and the  
46 quantity of allowances obtained by each bidder, and of which none  
47 shall be considered to be a trade secret within the scope of this act,  
48 P.L.1963, c.73 (C.47:1A-1 et seq.). The term shall also include

1 records containing the names of reviewers of grants, donations,  
2 gifts or applications made to a public agency including the names of  
3 reviewers of charter school applications, which names shall not be  
4 redacted, and EZ pass records, or substantially similar records, for  
5 vehicles owned by the State, other than those reflecting law  
6 enforcement usage notwithstanding any other law to the contrary.

7 "Public agency" or "agency" means any of the principal  
8 departments in the Executive Branch of State Government, and any  
9 division, agency, authority, board, bureau, office, commission or  
10 other instrumentality within or created by such department; the  
11 Legislature of the State and any office, board, bureau or  
12 commission within or created by the Legislative Branch; and any  
13 independent State authority, commission, instrumentality or agency.  
14 The terms shall also mean any political subdivision of the State or  
15 combination of political subdivisions, and any division, board,  
16 bureau, office, commission or other instrumentality within or  
17 created by a political subdivision of the State or combination of  
18 political subdivisions, and any independent authority, commission,  
19 instrumentality or agency created by a political subdivision or  
20 combination of political subdivisions. The term shall also include a  
21 school district, special district, an educational information resource  
22 center established pursuant to P.L.1983, c.186 (C.18A:6-95.1 et  
23 seq.), or charter school, quasi-governmental agency, or public  
24 employee. The term shall also mean and include, by way of  
25 example but not limitation, the New Jersey State League of  
26 Municipalities, the New Jersey Association of Counties, the New  
27 Jersey School Boards Association, and the New Jersey State  
28 Interscholastic Athletic Association, and a substantially similar  
29 successor organization or association, a joint insurance group or  
30 fund for political subdivisions of this State, and bi-State agencies.

31 "Quasi-governmental agency" means any association,  
32 commission, agency, authority, organization, public-private entity,  
33 or any other entity, in which one or more public agencies exercise  
34 substantial control, or as determined by the Government Records  
35 Council or a court of law, by considering factors including but not  
36 limited to: whether a public agency exercises control over the quasi-  
37 government agency or the public agency maintains the ability to  
38 review, approve, or reject the quasi-governmental agency's  
39 proposals or plans, holds a beneficial interest in the quasi-  
40 governmental agency's assets, is the primary source of funding of,  
41 or is indebted to, or is a creditor of, or guarantor of the debts of, the  
42 quasi-governmental agency. The term shall not include any entity  
43 involving the Legislature or any organization organized under  
44 paragraph (3) of subsection c. of section 501 of the federal Internal  
45 Revenue Code (26 U.S.C.s.501) that was not created by, or with the  
46 approval of, a public agency primarily for the purpose of assisting  
47 that public agency or any labor organization or any contractor  
48 providing goods or services to a public agency except as otherwise



1 provided by this subsection. However, nothing contained herein  
2 shall affect the application of P.L.1963, c.73 (C.47:1A-1 et seq.) to  
3 entities that otherwise fall within the definition of “public agency.”

4 “Public employee” means any person who occupies any office,  
5 position or employment in a public agency, as defined in this  
6 section, but only to the extent that he or she acts in an official  
7 capacity. This term shall also include, but shall not be limited to,  
8 an elected and appointed person.

9 "Law enforcement agency" means a public agency, or part  
10 thereof, determined by the Attorney General to have law  
11 enforcement responsibilities.

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

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

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

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

24 "Victim of a crime" means a person who has suffered personal or  
25 psychological injury or death or incurs loss of or injury to personal  
26 or real property as a result of a crime, or if such a person is  
27 deceased or incapacitated, a member of that person's immediate  
28 family.

29 "Victims' rights agency" means a public agency, or part thereof,  
30 the primary responsibility of which is providing services, including  
31 but not limited to food, shelter, or clothing, medical, psychiatric,  
32 psychological or legal services or referrals, information and referral  
33 services, counseling and support services, or financial services to  
34 victims of crimes, including victims of sexual assault, domestic  
35 violence, violent crime, child endangerment, child abuse or child  
36 neglect, and the Victims of Crime Compensation Board, established  
37 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as  
38 the Victims of Crime Compensation Office pursuant to P.L.2007,  
39 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.  
40 (cf: P.L.2015, c.59, s.1)

41

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

44 3. a. Notwithstanding the provisions of P.L.1963, c.73  
45 (C.47:1A-1 et seq.) as amended and supplemented, where it shall  
46 appear that the record or records which are sought to be inspected,  
47 copied, or examined shall pertain to an investigation in progress by  
48 any public agency, the right of access provided for in P.L.1963,

1 c.73 (C.47:1A-1 et seq.) as amended and supplemented may be  
2 denied if the inspection, copying or examination of such record or  
3 records shall be inimical to the public interest; provided, however,  
4 that this provision shall not be construed to allow any public agency  
5 to prohibit access to a record of that agency that was open for  
6 public inspection, examination, or copying before the investigation  
7 commenced. Whenever a public agency, during the course of an  
8 investigation, obtains from another public agency a government  
9 record that was open for public inspection, examination or copying  
10 before the investigation commenced, the investigating agency shall  
11 provide the other agency with sufficient access to the record to  
12 allow the other agency to comply with requests made pursuant to  
13 P.L.1963, c.73 (C.47:1A-1 et seq.).

14 b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-  
15 1 et seq.), as amended and supplemented, records containing the  
16 following information concerning a criminal investigation shall be  
17 available to the public within 24 hours or as soon as practicable, of  
18 a request for such information:

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

22 if an arrest has been made, information as to the name, address  
23 and age of any victims unless there has not been sufficient  
24 opportunity for notification of next of kin of any victims of injury  
25 and/or death to any such victim or where the release of the names of  
26 any victim would be contrary to existing law or court rule. In  
27 deciding on the release of information as to the identity of a victim,  
28 the safety of the victim and the victim's family, and the integrity of  
29 any ongoing investigation, shall be considered;

30 if an arrest has been made, information as to the defendant's  
31 name, age, residence, occupation, marital status and similar  
32 background information and, the identity of the complaining party  
33 unless the release of such information is contrary to existing law or  
34 court rule;

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

38 information as to the identity of the investigating and arresting  
39 personnel and agency and the length of the investigation;

40 information of the circumstances immediately surrounding the  
41 arrest, including but not limited to the time and place of the arrest,  
42 resistance, if any, pursuit, possession and nature and use of  
43 weapons and ammunition by the suspect and by the police; and

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

46 Notwithstanding any other provision of this subsection, if the  
47 custodian of a government record asserts that part of a particular  
48 record is exempt from public access pursuant to P.L.1963, c.73

1 (C.47:1A-1 et seq.), as amended and supplemented, the custodian  
2 shall redact from a copy of the record that portion which the  
3 custodian asserts is exempt from access and shall promptly permit  
4 access to the remainder of the record. If the custodian of a  
5 government record redacts information from a copy of the record,  
6 the custodian shall provide the requestor with a redacted version of  
7 the document and one affidavit for the entire request that states the  
8 date of the record, the originator or author of the record, the subject  
9 matter or title of the record, the number of pages with redactions,  
10 and the specific statutory provision or other lawful basis for each  
11 such redaction. This provision shall only apply to documents  
12 redacted on or after the effective date of P.L. , c. (pending before  
13 the Legislature as this bill).

14 Notwithstanding any other provision of this subsection, where it  
15 shall appear that the information requested or to be examined will  
16 jeopardize the safety of any person or jeopardize any investigation  
17 in progress or may be otherwise inappropriate to release, such  
18 information may be withheld. This exception shall be narrowly  
19 construed to prevent disclosure of information that would be  
20 harmful to a bona fide law enforcement purpose or the public  
21 safety. Whenever a law enforcement official determines that it is  
22 necessary to withhold information, the official shall issue a brief  
23 statement explaining the decision.

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

25

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

28 6. a. The custodian of a government record shall permit the  
29 record to be inspected, examined, and copied by any person during  
30 regular business hours; or in the case of a municipality having a  
31 population of 5,000 or fewer according to the most recent federal  
32 decennial census, a board of education having a total district  
33 enrollment of 500 or fewer, or a public authority having less than  
34 \$10 million in assets, during not less than six regular business hours  
35 over not less than three business days per week or the entity's  
36 regularly-scheduled business hours, whichever is less; unless a  
37 government record is exempt from public access by: P.L.1963, c.73  
38 (C.47:1A-1 et seq.) as amended and supplemented; any other  
39 statute; resolution of either or both houses of the Legislature;  
40 regulation promulgated under the authority of any statute or  
41 Executive Order of the Governor; Executive Order of the Governor;  
42 Rules of Court; any federal law; federal regulation; or federal order.  
43 Prior to allowing access to any government record, the custodian  
44 thereof shall redact from that record any information which  
45 discloses the social security number, credit card number, personal  
46 debit card number, personal bank account information, unlisted  
47 telephone number, or driver license number of any person; except  
48 for use by any government agency, including any court or law

1 enforcement agency, in carrying out its functions, or any private  
2 person or entity acting on behalf thereof, or any private person or  
3 entity seeking to enforce payment of court-ordered child support;  
4 except with respect to the disclosure of driver information by the  
5 New Jersey Motor Vehicle Commission as permitted by section 2 of  
6 P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver information  
7 to any insurer or insurance support organization, or a self-insured  
8 entity, or its agents, employees, or contractors, for use in  
9 connection with claims investigation activities, antifraud activities,  
10 rating or underwriting; and except that a social security number  
11 contained in a record required by law to be made, maintained or  
12 kept on file by a public agency shall be disclosed when access to  
13 the document or disclosure of that information is not otherwise  
14 prohibited by State or federal law, regulation or order or by State  
15 statute, resolution of either or both houses of the Legislature,  
16 Executive Order of the Governor, rule of court or regulation  
17 promulgated under the authority of any statute or executive order of  
18 the Governor. Except where an agency can demonstrate an  
19 emergent need, a regulation that limits access to government  
20 records shall not be retroactive in effect or applied to deny a request  
21 for access to a government record that is pending before the agency,  
22 the council or a court at the time of the adoption of the regulation.

23 If the custodian of a government record redacts information from  
24 a copy of the record, the custodian shall provide the requestor with  
25 a redacted version of the document and one affidavit for the entire  
26 request that states the date of the record, the originator or author of  
27 the record, the subject matter or title of the record, the number of  
28 pages with redactions, and the specific statutory provision or other  
29 lawful basis for each such redaction. This provision shall only  
30 apply to documents redacted on or after the effective date of P.L. ,  
31 c. (pending before the Legislature as this bill).

32 b. (1) A copy or copies of a government record may be  
33 purchased by any person upon payment of the fee prescribed by law  
34 or regulation. Except as otherwise provided by law or regulation  
35 and except as provided in paragraph (2) of this subsection, the fee  
36 assessed for the duplication of a government record embodied in the  
37 form of printed matter shall be \$0.05 per letter size page or smaller,  
38 and \$0.07 per legal size page or larger. If a public agency can  
39 demonstrate that its actual costs for duplication of a government  
40 record exceed the foregoing rates, the public agency shall be  
41 permitted to charge the actual cost of duplicating the record. The  
42 actual cost of duplicating the record, upon which all copy fees are  
43 based, shall be the cost of materials and supplies used to make a  
44 copy of the record, but shall not include the cost of labor or other  
45 overhead expenses associated with making the copy except as  
46 provided for in subsection c. of this section. A public agency may  
47 charge the fee for each copy made in the process of responding to a  
48 government record request made during the redaction process.

1 Access to electronic records and non-printed materials shall be  
2 provided free of charge, but the public agency may charge for the  
3 actual costs of any needed supplies such as computer discs.

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

7 (3) If a public agency maintains the record in an electronic  
8 format or medium that can be electronically mailed without charge  
9 to the requestor, it shall make the requestor aware and allow for  
10 delivery of the record in such format or medium. The requestor  
11 shall have seven business days to respond to the custodian,  
12 otherwise the request is deemed fulfilled.

13 When a requestor has not specified his or her chosen method for  
14 receipt of records and if the government record is on the public  
15 agency website, the custodian shall advise the requester to obtain  
16 the record from the agency website as long as the custodian  
17 provides the website address, identifies each responsive document  
18 and the specific location on the website of each identified  
19 responsive document. If the requester prefers to purchase copies  
20 from the public agency, he or she shall be permitted to purchase  
21 such copies from the records custodian, in accordance with the  
22 provisions of this act, P.L.1963, c.73 (C.47:1A-1 et seq.). The  
23 requestor shall have seven business days to advise the custodian  
24 that he or she prefers to purchase the copies, otherwise the request  
25 may be deemed fulfilled.

26 c. Whenever the nature, format, medium, manner of collation,  
27 or volume of a government record embodied in the form of printed  
28 matter to be inspected, examined, or copied pursuant to this section  
29 is such that the record cannot be reproduced by ordinary document  
30 copying equipment in ordinary business size or involves an  
31 extraordinary expenditure of time and effort to accommodate the  
32 request, or the request is for a commercial purpose, the public  
33 agency may charge, in addition to the actual cost of duplicating the  
34 record, a special service charge **【that】** . A special service charge  
35 shall be reasonable and shall be based upon the actual, direct cost of  
36 providing the copy or copies 【; provided, however, that】 . Special  
37 service charge rates, in the case of a municipality, **【rates】** for the  
38 duplication of particular records when the actual cost of copying  
39 exceeds the foregoing rates shall be established in advance by  
40 ordinance. For purposes hereof, the actual, direct costs shall mean  
41 those expenditures that an agency actually incurs in searching for  
42 and duplicating documents to respond to a request, which includes  
43 basic rate of pay for the employee. Direct costs shall not include  
44 overhead expenses such as costs of space and heating or lighting the  
45 facility in which the records are stored. 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, a detailed breakdown of how the special

1 service charge was assessed including, at a minimum, reasonable  
2 estimates categorizing the hours needed to identify, copy or prepare  
3 for inspection, and to produce and return the requested documents,  
4 and the number of pages to be produced. Special service charges  
5 shall not be assessed for requests for budgets, bills, vouchers,  
6 contracts and public employee salary and overtime information  
7 unless the request is deemed voluminous.

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

24 e. Immediate access ordinarily shall be granted to budgets,  
25 bills, vouchers, contracts, including collective negotiations  
26 agreements and individual employment contracts, and public  
27 employee salary and overtime information for the current, prior, and  
28 upcoming fiscal year. Immediate access shall mean by the close of  
29 business or 5 P.M., whichever is earlier, unless otherwise provided  
30 by law or regulation. If the request is received at noon or if  
31 received after noon, the request shall be fulfilled by noon the  
32 following day, unless otherwise provided by law or regulation.

33 f. The custodian of a public agency shall adopt a form for the  
34 use of any person who requests access to a government record held  
35 or controlled by the public agency. The form shall provide space  
36 for the name, address, and **[phone]** telephone number of the  
37 requestor and a brief description of the government record sought.  
38 The form shall also include space for a commercial requestor to  
39 certify that the information will be used for a commercial purpose.  
40 The form shall include space for the custodian to indicate which  
41 record will be made available, when the record will be available,  
42 and the fees to be charged. The form shall also include the  
43 following: (1) specific directions and procedures for requesting a  
44 record; (2) a statement as to whether prepayment of fees or a  
45 deposit is required; (3) the time period within which the public  
46 agency is required by P.L.1963, c.73 (C.47:1A-1 et seq.) as  
47 amended and supplemented, to make the record available; (4) a  
48 statement of the requestor's right to challenge a decision by the

1 public agency to deny access and the procedure for filing an appeal;  
2 (5) space for the custodian to list reasons if a request is denied in  
3 whole or in part; (6) space for the requestor to sign and date the  
4 form; (7) space for the custodian to sign and date the form if the  
5 request is fulfilled or denied. The custodian may require a deposit  
6 against costs for reproducing documents sought through an  
7 anonymous request whenever the custodian anticipates that the  
8 information thus requested will cost in excess of \$5 to reproduce.

9 If a request for information is made in writing on a document  
10 other than the form adopted by the public agency and the request  
11 contains the requisite information prescribed in this subsection, the  
12 custodian shall treat the request as if made on the form adopted by  
13 the public agency. The document shall also indicate and provide  
14 criminal background information, similar to what is required on an  
15 adopted government record request form.

16 A response on any form providing criminal background  
17 information on the requestor, whether in the affirmative or negative,  
18 shall be confidential and shall be redacted prior to disclosure of any  
19 such request. If a requestor does not provide criminal background  
20 information, the custodian shall attempt to contact the requestor to  
21 obtain such information, and shall not deny the request for failure to  
22 provide such information unless attempts are made by the custodian  
23 to obtain such information and the requestor refuses or cannot be  
24 contacted.

25 g. A request for access to a government record shall be in  
26 writing and hand-delivered, mailed, transmitted electronically,  
27 including by electronic mail, transmitted by facsimile when no more  
28 than four pages in length, or otherwise conveyed to the appropriate  
29 custodian. A requestor who intends to use the record for a  
30 commercial purpose shall certify to that fact in the request. The  
31 public agency may require a requestor to state whether the requestor  
32 intends to use the records for a commercial purpose, but the agency  
33 shall not require the requestor to provide the exact purpose of the  
34 commercial use. A custodian shall promptly comply with a request  
35 to inspect, examine, copy, or provide a copy of a government  
36 record. If a record is missing or damaged, or the custodian is  
37 unable to comply with or denies a request for access, the custodian  
38 shall indicate the specific basis therefor on the request form and  
39 promptly return it to the requestor. The custodian shall sign and  
40 date the form and provide the requestor with a copy thereof. If the  
41 custodian of a government record asserts that part of a particular  
42 record is exempt from public access pursuant to P.L.1963, c.73  
43 (C.47:1A-1 et seq.) as amended and supplemented, the custodian  
44 shall delete or excise from a copy of the record that portion which  
45 the custodian asserts is exempt from access and shall promptly  
46 permit access to the remainder of the record.

47 If the custodian of a government record redacts information from  
48 a copy of the record, the custodian shall provide the requestor with

1 a redacted version of the document and one affidavit for the entire  
2 request that states the date of the record, the originator or author of  
3 the record, the subject matter or title of the record, the number of  
4 pages with redactions, and the specific statutory provision or other  
5 lawful basis for each such redaction. This provision shall only  
6 apply to documents redacted on or after the effective date of P.L. ,  
7 c. (pending before the Legislature as this bill).

8 If the government record requested is temporarily unavailable  
9 because it is in use or in storage, the custodian shall so advise the  
10 requestor and shall make arrangements to promptly make available  
11 a copy of the record. If a request for access to a government record  
12 would substantially disrupt agency operations, the custodian may  
13 deny access to the record after attempting to reach a reasonable  
14 solution with the requestor that accommodates the interests of the  
15 requestor and the agency.

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

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

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

44 j. A custodian shall post prominently in public view in the part  
45 or parts of the office or offices of the custodian that are open to or  
46 frequented by the public a statement that sets forth in clear, concise  
47 and specific terms the right to appeal a denial of, or failure to  
48 provide, access to a government record by any person for



1 inspection, examination, or copying or for purchase of copies  
2 thereof and the procedure by which an appeal may be filed.

3 The custodian of a public agency that has a website shall, at a  
4 minimum, prominently post on the website the name, mailing  
5 address, electronic mailing address, telephone number, and  
6 facsimile number for the custodian of records as well as a statement  
7 that information submitted to the agency, including home addresses,  
8 may be considered a government record and available for public  
9 review.

10 The custodian may permit an individual to provide an address of  
11 record, in addition to the home address, for disclosure purposes for  
12 five years after the effective date of P.L. , c. (C. ) (pending  
13 before the Legislature as this bill). At the end of the five-year  
14 period and thereafter, the custodian shall permit an individual to  
15 provide an address of record for disclosure purposes. The Attorney  
16 General shall promulgate rules and regulations for the  
17 implementation of this provision.

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

22 l. A public agency shall adopt policies and procedures to  
23 ensure that records exempt from disclosure are not inadvertently or  
24 deliberately disclosed by the use of technology.

25 A public agency shall adopt procedures to have computer  
26 systems and computer applications collect, but not disclose,  
27 information exempt from access but maintained as electronic  
28 records.

29 Public agencies shall notify the public that the information  
30 provided on official forms may be disclosed, unless otherwise  
31 exempt by law.

32 (cf: P.L.2014, c.19, s.3)

33  
34 6. Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read  
35 as follows:

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

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

44 in lieu of filing an action in Superior Court, file a complaint with  
45 the Government Records Council established pursuant to section 8  
46 of P.L.2001, c.404 (C.47:1A-7). If the Government Records  
47 Council does not render a decision within the time period  
48 established pursuant to subsection b. of section 8 of P.L.2001, c.404

1 (C.47:1A-7), the requestor may institute a proceeding to challenge  
2 the custodian's decision by filing an action in Superior Court. That  
3 court proceeding shall be deemed filed as of the date of filing of the  
4 proceeding before the Government Records Council and shall  
5 render the proceedings pending before the Government Records  
6 Council withdrawn.

7 The right to institute any proceeding under this section shall be  
8 solely that of the requestor. Any such proceeding shall proceed in a  
9 summary or expedited manner. The public agency shall have the  
10 burden of proving that the denial of access is authorized by law. If  
11 it is determined that access has been improperly denied, the court or  
12 agency head shall order that access be allowed. A requestor who  
13 prevails in any proceeding shall be entitled to a reasonable  
14 attorney's fee award. However, in actions involving a record  
15 required by law to be made, maintained or kept on file and that does  
16 not exist at the time of the request, the prevailing requestor shall not  
17 be entitled to an attorney's fee award if both: (1) the failure to  
18 make, maintain, or keep the record is due to mere negligence or no  
19 fault on the part of the public entity; and (2) the requestor was  
20 informed in writing by formal certification or affidavit by the  
21 records custodian prior to the filing of the complaint that the record  
22 does not exist or no longer exists, the specific efforts taken to obtain  
23 the record and why the record could not be produced. Under  
24 appropriate circumstances, the rules of court and section 1 of  
25 P.L.1988, c.46 (C. 2A:15-59.1), shall apply for frivolous causes of  
26 action.

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

28  
29 7. Section 8 of P.L.2001, c.404 (C.47:1A-7) is amended to read  
30 as follows:

31 8. a. There is established in, but not of, the Department of  
32 Community Affairs a Government Records Council. The council  
33 shall consist of **【**the Commissioner of Community Affairs or the  
34 commissioner's designee, the Commissioner of Education or the  
35 commissioner's designee, and three**】** four public members appointed  
36 by the Governor, with the advice and consent of the Senate, not  
37 more than two of whom shall be of the same political party, two of  
38 whom shall have experience with the news media, one of whom  
39 shall have experience with the powers, functions or duties of a  
40 municipal clerk, and one of whom shall have experience with State  
41 government; and three members appointed by the Governor, one  
42 upon the recommendation of the Senate President, one upon the  
43 recommendation of the Speaker of the General Assembly, and one  
44 upon the joint recommendation of the Senate President and Speaker  
45 of the General Assembly, no more than two of whom shall be of the  
46 same political party. The 【three public】 members appointed by the  
47 Governor shall serve 【during the term of the Governor making the  
48 appointment and】 until the appointment of a successor. 【A public

1 member shall not hold any other】 Upon the effective date of P.L. ,  
2 c. (C. )(pending before the Legislature as this bill), two members  
3 shall serve for a term of four years, two members shall serve for a  
4 term of three years, three members shall serve for a term of two  
5 years. No member while serving shall be an officer with the New  
6 Jersey Press Association, the New Jersey State League of  
7 Municipalities, the Municipal Clerks' Association of New Jersey, or  
8 a substantially similar organization.

9 No member while serving as a member of the council shall be  
10 able to hold a State or local elected or appointed office or  
11 employment 【while serving as a member of the council】 unless it  
12 relates to the experience required for serving as a member of the  
13 council. A 【public】 member shall not receive a salary for service  
14 on the council but shall be reimbursed for reasonable and necessary  
15 expenses associated with serving on the council and may receive  
16 such per diem payment as may be provided in the annual  
17 appropriations act. A member may be removed by the Governor  
18 only for cause upon notice and opportunity to be heard. Vacancies  
19 among the 【public】 members shall be filled in the same manner in  
20 which the original appointment was made. 【The members of the  
21 council shall choose one of the public members to serve as the  
22 council's chair】 The Governor shall appoint one of the seven  
23 members to serve as the chair of the council, and, once appointed,  
24 that member shall serve on the council and be chair of the council  
25 from the date of appointment until the end of the term of office of  
26 the member or until a successor is appointed and qualified. The  
27 chair may be removed by the Governor only for cause upon notice  
28 and opportunity to be heard. The council may employ an executive  
29 director and such professional and clerical staff as it deems  
30 necessary and may call upon the Department of Community Affairs  
31 for such assistance as it deems necessary and may be available to it.  
32 The terms of the members serving on the effective date of P.L. ,  
33 c. (C. )(pending before the Legislature as this bill) are terminated  
34 as of that effective date.

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 post the recommendations that the Government Records Council  
11 will consider for each case online twenty-four hours before the  
12 meeting, to the extent known;

13 have paper copies available at the meeting at which the case will  
14 be heard, with any changes or additions that were not present when  
15 the information was posted online; and

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

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

28 c. At the request of the council, a public agency shall produce  
29 documents and ensure the attendance of witnesses with respect to  
30 the council's investigation of any complaint or the holding of any  
31 hearing. Each party shall have the opportunity to provide to the  
32 council any documents or information necessary for the  
33 adjudication of the case.

34 d. Upon receipt of a written complaint signed by any person  
35 alleging that a custodian of a government record has improperly  
36 denied that person access to a government record, the council shall  
37 offer the parties the opportunity to resolve the dispute through  
38 mediation pursuant to section 13 of P.L. , c. (C. ) (pending  
39 before the Legislature as this bill). Mediation shall enable a person  
40 who has been denied access to a government record and the  
41 custodian who denied or failed to provide access thereto to attempt  
42 to mediate the dispute through a process whereby a neutral  
43 mediator**【**, who shall be trained in mediation selected by the  
44 council,**】** acts to encourage and facilitate the resolution of the  
45 dispute. **【**Mediation shall be an informal, nonadversarial process  
46 having the objective of helping the parties reach a mutually  
47 acceptable, voluntary agreement. The mediator shall assist the

1 parties in identifying issues, foster joint problem solving, and  
2 explore settlement alternatives.】

3 e. If any party declines mediation or if mediation fails to  
4 resolve the matter to the satisfaction of all parties, the council shall  
5 initiate an investigation concerning the facts and circumstances set  
6 forth in the complaint. The council shall make a determination as  
7 to whether the complaint is within its jurisdiction or frivolous or  
8 without any reasonable factual basis. If the council shall conclude  
9 that the complaint is outside its jurisdiction, frivolous or without  
10 factual basis, it shall reduce that conclusion to writing and transmit  
11 a copy thereof to the complainant and to the records custodian  
12 against whom the complaint was filed. Otherwise, the council shall  
13 notify the records custodian against whom the complaint was filed  
14 of the nature of the complaint and the facts and circumstances set  
15 forth therein. The custodian shall have **【the】** an opportunity to  
16 **【present】** answer the complaint by presenting the board with a  
17 signed and dated affidavit containing the same information provided  
18 to the complainant pursuant to subsection a. of section 6 of  
19 P.L.2001, c.404 (C.47:1A-5), if applicable, and any other statement  
20 or information concerning the complaint which the custodian  
21 wishes. The complainant shall have an opportunity to offer a brief  
22 reply affidavit that addresses any claims or defenses in the  
23 custodian's answer. The complainant shall not set forth therein any  
24 new allegations that do not address the custodian's claims or  
25 defense. If the council is able to make a determination as to a  
26 record's accessibility based upon the complaint **【and】** , the  
27 custodian's **【response thereto】** answer, and the complainant's reply,  
28 it shall reduce that conclusion to writing and transmit a copy thereof  
29 to the complainant and to the records custodian against whom the  
30 complaint was filed. If the council is unable to make a  
31 determination as to a record's accessibility based upon the  
32 complaint **【and】** , the custodian's **【response thereto】** answer, and  
33 the complainant's reply, the council shall conduct a hearing on the  
34 matter in conformity with the rules and regulations provided for  
35 hearings by a State agency in contested cases under the  
36 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
37 seq.), insofar as they may be applicable and practicable. The  
38 council shall, by a majority vote of its members, render a decision  
39 as to whether the record which is the subject of the complaint is a  
40 government record which must be made available for public access  
41 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
42 supplemented. If the council determines, by a majority vote of its  
43 members, that a custodian has **【knowingly and willfully】** willfully  
44 denied access or been grossly negligent, as defined by section 12 of  
45 P.L.2001, c.404 (C.47:1A-11), and violated P.L.1963, c.73  
46 (C.47:1A-1 et seq.), as amended and supplemented, and is found to  
47 have unreasonably denied access under the totality of the  
48 circumstances, the council may impose the penalties provided for in

1 section 12 of P.L.2001, c.404 (C.47:1A-11). A decision of the  
2 council may be appealed to the **【Appellate Division of the】**  
3 Appellate Division of the Superior Court. A decision of the council  
4 shall not have value as a precedent for any case initiated in Superior  
5 Court pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6). All  
6 proceedings of the council pursuant to this subsection shall be  
7 conducted as expeditiously as possible.

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

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

18 h. The council shall make available on its website a searchable  
19 index of its opinions.

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

21  
22 8. Section 11 of P.L.2001, c.404 (C.47:1A-10) is amended to  
23 read as follows:

24 11. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-  
25 1 et seq.) or any other law to the contrary, the personnel or pension  
26 records of any individual in the possession of a public agency,  
27 including but not limited to records relating to any grievance filed  
28 by or against an individual, shall not be considered a government  
29 record and shall not be made available for public access, except  
30 that:

31 an individual's name, title, position, educational and training  
32 background, salary, payroll record, length of service, date of  
33 separation and the reason therefor, work address and work  
34 telephone number, job description, and the amount and type of any  
35 pension received shall be a government record;

36 personnel or pension records of any individual shall be  
37 accessible when required to be disclosed by another law, when  
38 disclosure is essential to the performance of official duties of a  
39 person duly authorized by this State or the United States, or when  
40 authorized by an individual in interest; **【and】**

41 records pertaining to the factual basis for the final administrative  
42 determination of a disciplinary action, including a disciplinary  
43 action that is the result of an internal affairs investigation by a  
44 public safety agency, in which an employee is suspended, demoted,  
45 discharged, or resigned not in good standing, if it was due to the  
46 conviction of a crime, shall be a government record, except that  
47 specific factual details of incidents involving sexual harassment,  
48 sexual assault, domestic violence or rape by or against a public

1 employee, and the identity of the victim of the misconduct alleged,  
2 may be deleted or excised if disclosure would violate any  
3 individual's reasonable expectation of privacy so long as the agency  
4 provides a statement that such information is being deleted or  
5 excised pursuant to this particular exception;

6 records pertaining to settlements of lawsuits or claims involving  
7 public agencies, public officials or employees shall be a  
8 government record, except that specific factual details of incidents  
9 involving sexual harassment, sexual assault, domestic violence or  
10 rape by or against a public employee, and the identity of the victim  
11 of the misconduct alleged, may be deleted or excised if disclosure  
12 would violate any individual's reasonable expectation of privacy so  
13 long as the agency provides a statement that such information is  
14 being deleted or excised pursuant to this particular exception. No  
15 public agency shall be liable for damages, pursuant to this  
16 subsection, for releasing settlements of lawsuits or claims involving  
17 public agencies, public officials or employees, entered into before  
18 the effective date of P.L. , c. (pending before the Legislature as  
19 this bill). The public agency shall make reasonable efforts to notify  
20 the affected parties of the release of the documents; and

21 factual or statistical data [contained in information] which  
22 disclose conformity with specific experiential, educational or  
23 medical qualifications required for government employment or for  
24 receipt of a public pension, but not including any detailed medical  
25 or psychological information, shall be a government record.

26 Nothing in this section exempts disclosure of disciplinary  
27 records otherwise required by law to be disclosed or made public.  
28 (cf: P.L.2001, c.404, s.11)  
29

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

32 12. a. A public official, officer, employee or custodian who  
33 **[knowingly and willfully]** violates P.L.1963, c.73 (C.47:1A-1 et  
34 seq.), as amended and supplemented, and is found **[to have**  
35 **unreasonably]** grossly negligent by having denied access or is  
36 found to have willfully denied access under the totality of the  
37 circumstances, shall be subject to a civil penalty of \$1,000 for an  
38 initial violation, \$2,500 for a second violation that occurs within 10  
39 years of an initial violation, and \$5,000 for a third violation that  
40 occurs within 10 years of an initial violation. No public official,  
41 officer, employee or custodian shall be subject to a civil penalty for  
42 any unavailable record that is required by law to be made,  
43 maintained or kept on file unless the unavailability of the record is a  
44 result of the willful actions or gross negligence of such person.

45 A requestor who is found to have intentionally failed to certify  
46 that a records request is for commercial purposes shall be subject to  
47 a civil penalty of \$500.

1        Penalties may be imposed by the courts or the Government  
2 Records Council. A penalty imposed pursuant to P.L.1963, c.43  
3 (C.47:1A-1 et seq.) shall be paid by the individual found to have  
4 committed the violation out of the individual's personal funds.  
5 Under no circumstances shall public funds, or contributions as  
6 defined in subsection b. of section 3 of P.L.1973, c.83 (C.19:44A-3)  
7 of "The New Jersey Campaign Contributions and Expenditures  
8 Reporting Act", be used to pay a penalty or to reimburse a person  
9 who has paid, or will pay, a penalty for the cost of that penalty.

10        **【This penalty】** These penalties shall be collected and enforced in  
11 proceedings in accordance with the "Penalty Enforcement Law of  
12 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court  
13 governing actions for the collection of civil penalties. The Superior  
14 Court shall have jurisdiction of proceedings for the collection and  
15 enforcement of the penalty imposed by this section.

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

19        For the purposes of this act, P.L.1963, c.73 (C.47:1A-1 et seq.),  
20 "grossly negligent" shall mean engaging in conduct involving a  
21 gross deviation from the acceptable standards of conduct from the  
22 duties and responsibilities imposed by this act that a reasonable  
23 person would have observed in the actor's situation.

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

25  
26        10. Section 14 of P.L.2001, c.404 (C.47:1A-13) is amended to  
27 read as follows:

28        14. The Commissioner of Community Affairs shall include in  
29 the annual budget request of the Department of Community Affairs  
30 **【a】** the request submitted by the Government Records Council for  
31 sufficient funds to effectuate the purposes of section 8 of P.L.2001,  
32 c.404 (C.47:1A-7).

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

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

42  
43        12. (New section) a. In exceptional circumstances, and  
44 notwithstanding any other law or rule or regulation to the contrary,  
45 whenever it is made to appear by verified petition to the Superior  
46 Court of the county in which the request for government records  
47 was made under P.L.1963, c.73 (C.47:1A-1 et seq.), the court may  
48 issue a protective order limiting the number and scope of requests a



1 requestor may make or such other relief as it deems appropriate,  
2 including referral of the matter to mediation. The court may issue  
3 the protective order if it finds that the requestor has sought records  
4 under P.L.1963, c.73 (C.47:1A-1 et seq.) for the sole purpose to  
5 harass the public agency as the term harass is defined in  
6 N.J.S.2C:33-4. The petition shall be accompanied by a declaration  
7 of facts by the public agency withholding the records demonstrating  
8 that it has complied with P.L.1963, c.73 (C.47:1A-1 et seq.) and has  
9 made a good faith effort to reach an informal resolution of the  
10 issues relating to the records request. The requestor shall have  
11 notice and an opportunity to answer the allegations set forth in the  
12 petition submitted by the public agency. The public agency shall  
13 have the burden of proof by clear and convincing evidence. The  
14 court's consideration of a public agency's petition for relief shall  
15 proceed in a summary or expedited manner and shall include a  
16 formal hearing whenever the interest of justice so requires. If the  
17 custodian of a public agency determines that responding to a record  
18 request will substantially disrupt agency operations, the custodian  
19 may deny access to the record after attempting to reach a reasonable  
20 solution with the requestor that accommodates the interests of the  
21 requestor and the agency, as set forth in subsection g. of section 6  
22 of P.L.2001, c.404 (C.47:1A-5).

23 b. The order specified in subsection a. of this section may limit,  
24 or in appropriate circumstances, eliminate, the public agency's duty  
25 to respond to government records requests from the requestor in the  
26 future.

27 c. Upon entry of an order pursuant to this section, the order of  
28 the court shall be immediately reviewable by petition to the  
29 Appellate Division of the Superior Court. A party shall, in order to  
30 obtain review of the order, file a petition within 20 days after  
31 service upon him or her of a written notice of entry of the order, or  
32 within further time not exceeding an additional 20 days as the court  
33 may for good cause allow. If the notice is served by mail, the  
34 period within which to file the petition shall be increased by five  
35 days. A stay of an order or judgment shall not be granted unless the  
36 petitioning party demonstrates that it will otherwise sustain  
37 irreparable damage and probable success on the merits. Any person  
38 who fails to obey the order of the court shall be cited to show cause  
39 why he or she is not in contempt of court.

40  
41 13. (New section) The Office of Dispute Settlement, in the  
42 Office of The Public Defender, shall be available to mediate a  
43 dispute over records requests when both requestor and public  
44 agency consent thereto. However, mediation shall not alter the  
45 responsibility of the custodian to respond and provide documents  
46 within the timeframes set forth in this act, P.L.1963, c.73 (C.47:1A-  
47 1 et seq.).

1       14. (New section) a. Notwithstanding the provisions of any  
2 other law to the contrary, the State Treasurer, in consultation with  
3 the Chief Technology Officer, shall design and develop, maintain  
4 and operate a single, searchable Internet website that is accessible  
5 to the general public without charge for access, and that includes  
6 data or information concerning each of the following:

7       annual State agency expenditures, as determined by the State  
8 Treasurer and as may be available within the central accounting  
9 system and State payroll system, which shall include but not be  
10 limited to: disbursements by a State agency from funds established  
11 within the State treasury; bond debt services, including amounts of  
12 bond debt or interest paid and sources of funds for bond issues;  
13 salaries and wages including, compensation paid to employees of  
14 State agencies, including current contracts under which  
15 compensation is determined; contractual service purchases,  
16 including amounts paid to vendors; commodity purchases, including  
17 amounts paid to vendors; capital outlay and improvements,  
18 including amounts paid to vendors; aid to local units of government,  
19 including amounts paid to individual units of local government for  
20 aid programs; additional forms of assistance and benefits as  
21 determined by the State Treasurer; and the exact amount of each  
22 such expenditure and the name and address of each individual,  
23 organization, business or other entity receiving such monies;

24       annual State revenues, as determined by the State Treasurer and  
25 as may be available within the central accounting system, which  
26 shall include but not be limited to: receipts and deposits by a State  
27 agency into funds established within the State treasury; taxes,  
28 including any tax which is payable to or collectible by the Director  
29 of the Division of Taxation in the Department of the Treasury; State  
30 agency earnings, including amounts collected by each State agency  
31 for merchandise sold, services performed, and licenses and permits  
32 issued; revenue derived from the use of money and property,  
33 including amounts received for compensation for the use of State-  
34 owned money and property; gifts, donations, and federal grants,  
35 including amounts received from public and private entities to aid  
36 in support of a specific function or other governmental activity;  
37 other revenue, including receipts not classified elsewhere; and non-  
38 revenue receipts, including all receipts that do not constitute  
39 revenue;

40       annual State bonded indebtedness, as determined by the State  
41 Treasurer and as may be available within the central accounting  
42 system, which shall include but not be limited to: the amount of the  
43 total original obligation stated in terms of principal and interest; the  
44 term of the obligation; the source of funding for repayment of the  
45 obligation; the amount of principal and interest previously paid to  
46 reduce the obligation; the remaining balance of the obligation; data  
47 or information related to refinancing of the obligation; the cited  
48 statutory or constitutional authority to issue such bonds; the specific

1 names of firms or individuals serving as bond counsel; and the  
2 names of the banks assisting in the sale of bonds;

3 annual State liabilities for pension and post-retirement medical  
4 benefits, as determined by the State Treasurer and as may be  
5 available within the central accounting system; and

6 any other data or information determined to be necessary and  
7 appropriated by the State Treasurer.

8 b. The Internet website designed and developed, maintained  
9 and operated by the State Treasurer in accordance with this section  
10 shall include all data and information enumerated in subsection a.  
11 of this section for State fiscal year 2013 and each State fiscal year  
12 thereafter. The data and information posted on the Internet website  
13 may be periodically updated, but shall not be subject to removal.

14 The data and information required to be posted on the Internet  
15 website that is based on or otherwise derived from data or  
16 information made available from the central accounting system or  
17 the State payroll system shall be made available on the Internet  
18 website as soon as practicable, but not later than 45 days after the  
19 last day of the preceding State fiscal year.

20 The State Treasurer shall not be required to provide data or  
21 information on the Internet website of the kind that is not available  
22 in the central accounting system or the State payroll system on the  
23 date the Internet website is first made available to the public.

24 The State Treasurer shall be entitled to receive from each State  
25 agency any assistance and information the State Treasurer  
26 determines to be necessary and appropriate to compile the data and  
27 information necessary to design and develop, maintain and operate  
28 the Internet website.

29 The State Treasurer shall not be required to disclose or otherwise  
30 make available on the Internet website data or information that is  
31 determined by the State Treasurer to be private, personal, or  
32 confidential in accordance with State or federal law, rules, or  
33 regulations.

34 c. Notwithstanding the provisions of the "Administrative  
35 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
36 contrary, the State Treasurer may adopt immediately upon filing  
37 with the Office of Administrative Law such rules and regulations as  
38 the State Treasurer determines to be necessary and appropriate to  
39 design and develop, maintain and operate the Internet website and  
40 to compile data and information in accordance with this section,  
41 which rules and regulations shall be effective for a period not to  
42 exceed 360 days following the effective date of  
43 P.L. , c. (pending before the Legislature as this bill) and may  
44 thereafter be amended, adopted, or readopted by the State Treasurer  
45 in accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).

46 d. As used in this section:

47 "Chief Technology Officer" means the person appointed by and  
48 serving at the pleasure of the Governor who is responsible for the

1 day-to-day operations of the Office of Information Technology in,  
2 but not of, the Department of the Treasury; and

3 “State agency” means any of the principal departments in the  
4 Executive Branch of State Government, and any division, board,  
5 bureau, office, commission, or other instrumentality within or  
6 created by such principal department; the Legislature of the State  
7 and any office, board, bureau, or commission within or created by  
8 the Legislative Branch of State Government; the Judiciary of the  
9 State and any office, board, bureau, or commission within or  
10 created by the Judicial Branch of State Government; and any  
11 independent State authority, commission, instrumentality, or  
12 agency.

13

14 15. (New section) a. There is established the New Jersey Local  
15 Public Finance Internet Website Development Program.

16 b. The program shall be under the jurisdiction of the  
17 Department of the Treasury, and shall be administered by the State  
18 Treasurer, the Chief Technology Officer, and any clerical,  
19 technical, and other professional staff or assistants as may be  
20 designated by the State Treasurer from among the personnel  
21 appointed and employed by the department.

22 c. The purpose of the program shall be to provide advice and  
23 technical assistance to units of local government that elect to design  
24 and develop, maintain and operate a single, searchable local public  
25 finance Internet website that has the capacity to display and retain  
26 data and information concerning the unit of local government’s (1)  
27 annual expenditures, including, bond debt services and interest,  
28 salaries and wages paid to employees, contractual service purchases  
29 including amounts paid to vendors, commodity purchases including  
30 amounts paid to vendors, capital outlays and improvements  
31 including amounts paid to vendors, and aid paid to subunits of the  
32 entity; (2) annual revenues, including, revenue derived from the  
33 receipts and deposits from any State agency, taxes including  
34 compulsory tolls or fees imposed by the public entity for the  
35 purpose of financing services, the amounts received as  
36 compensation for the use of property owned or used by the public  
37 entity, and gifts, donations and federal grants and other sources of  
38 revenue not classified elsewhere; (3) total bonded indebtedness,  
39 including the amount of the original obligation stated in terms of  
40 principal and interest, the terms of the obligation and the source of  
41 funding for the repayment thereof, the amounts of principal and  
42 interest previously paid to reduce the obligation and the remaining  
43 balance of the obligation, the data and information related to  
44 refinancing of the obligation, if such refinancing occurred, the  
45 statutory or constitutional authority to issue such bonds, the name  
46 of the firms or individuals serving as bond counsel, and the name of  
47 the banks assisting in the sale of bonds; and (4) outstanding  
48 liabilities for pension and post-retirement medical benefits; and has

1 the capacity to display and retain public notices, agendas,  
2 schedules, minutes, and other electronic documents required to be  
3 made available in accordance with P.L.1963, c.73 (C.47:1A-1 et  
4 seq.).

5 d. To effectuate the purposes of the program, the State  
6 Treasurer shall:

7 make and publish guidelines that may be used by local units of  
8 government to identify best practices in the design of a single,  
9 searchable local public finance Internet website;

10 procure and make available to local units of government a  
11 template and any prewritten or custom computer software that the  
12 State Treasurer determines to be necessary and appropriate to  
13 develop a single, searchable local public finance Internet website;  
14 and

15 direct the Chief Technology Officer to provide information  
16 technology support and services that may be determined by the  
17 Chief Technology Officer to be necessary and appropriate for a  
18 local unit of government to maintain and operate a single,  
19 searchable local public finance Internet website following its initial  
20 design and development.

21 e. The State Treasurer shall make an annual report regarding  
22 the implementation and administration of the program.

23 The report shall identify any guidelines that were made and  
24 published by the State Treasurer during the year immediately  
25 preceding the year in which the report is required to be made.

26 The report shall identify any templates and any prewritten or  
27 custom computer software that the State Treasurer determined to be  
28 necessary and appropriate to develop a single, searchable local  
29 public finance Internet website during the year immediately  
30 preceding the year in which the report is required to be made.

31 The report shall identify the information technology support and  
32 services provided by the Chief Technology Officer and any other  
33 clerical, technical, and other professional staff or assistants to each  
34 unit of local government that maintains and operates a single,  
35 searchable local public finance Internet website during the year  
36 immediately preceding the year in which the report is required to be  
37 made.

38 The report shall identify each local unit of government that used  
39 the guidelines, templates and software, or the information  
40 technology support and services made available through the  
41 program to design and develop, maintain and operate a single,  
42 searchable local public finance Internet website during the year  
43 immediately preceding the year in which the report is required to be  
44 made.

45 The report shall include any findings or recommendations that  
46 may be made by the State to improve the effectiveness of the  
47 program during the year immediately preceding the year in which  
48 the report is required to be made.

1       The State Treasurer shall file the report required to be made in  
2 accordance with this section with the Governor and the Legislature,  
3 in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), on  
4 or before October 1, 2013 and on or before October 1 each year  
5 thereafter.

6       f. Notwithstanding the provisions of the "Administrative  
7 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
8 contrary, the State Treasurer may adopt immediately upon filing  
9 with the Office of Administrative Law such rules and regulations as  
10 the State Treasurer determines to be necessary and appropriate to  
11 effectuate the purposes of the program established in accordance  
12 with this section, which rules and regulations shall be effective for a  
13 period not to exceed 360 days following the effective date of  
14 P.L. , c. (pending before the Legislature as this bill) and may  
15 thereafter be amended, adopted, or readopted by the State Treasurer  
16 in accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).

17       g. As used in this section:

18       "Chief Technology Officer" means the person appointed by and  
19 serving at the pleasure of the Governor who is responsible for the  
20 day-to-day operations of the Office of Information Technology in,  
21 but not of, the Department of the Treasury; and

22       "Local unit of government" includes a county, municipality,  
23 local authority, school board, or other local instrumentality of the  
24 State and any public agency or agency as defined by section 1 of  
25 P.L.1995, c.23 (C.47:1A-1.1).

26

27       16. (New section) The Office of Information Technology, the  
28 Division of Local Government Services in the Department of  
29 Community Affairs, and the Government Records Council shall  
30 conduct a data practices survey every five years. The purpose of  
31 the survey shall be to review the collection, processing, use and  
32 dissemination of information by public agencies, in light of the  
33 recognized need for open government, with a focus on indentifying  
34 privacy related issues. The survey results shall include any  
35 recommended specific measures, including boundaries for access to  
36 government records and legislation, to deal with the issues and  
37 safeguard the privacy rights of individuals.

38       The Office of Information Technology shall establish an Office  
39 of Privacy in, but not of, the Office of Information of Technology,  
40 to assist in identification of privacy related issues and to bring those  
41 issues to the attention of those charged with determining the  
42 appropriate boundaries for access to government records, including  
43 records custodians, the Government Records Council, and the  
44 courts.

45

46       17. (New section) There is appropriated from the General Fund  
47 to the Department of the Treasury such sums as may be necessary,  
48 but not to exceed \$100,000, as shall be determined by the Director

1 of the Division of Budget and Accounting in the Department of the  
2 Treasury, to effectuate the purposes of the program established in  
3 accordance with section 15 of P.L. , c. (C. ) (pending before  
4 the Legislature as this bill).

5  
6 18. This bill shall take effect 120 days following enactment.  
7  
8

9 STATEMENT  
10

11 This bill revises the open public records act (OPRA). The bill  
12 formally names OPRA as the “Martin O’Shea Open Public Records  
13 Act” in honor of Martin O’Shea, a tireless advocate for broad public  
14 access to government records. The bill expands and clarifies various  
15 definitions and makes changes to the duties of record custodians  
16 and the Government Records Council. It also revises the  
17 composition of the Government Records Council and changes the  
18 council from being in the Department of Community Affairs to  
19 being in, but not of, the Department of Community Affairs. It  
20 modifies the mediation process making the Office of Dispute  
21 Settlement in the Office of the Public Defender available to mediate  
22 disputes, changes the penalty provisions, and modifies access to the  
23 courts. It specifies that the fines imposed pursuant to OPRA cannot  
24 be paid out of public funds. The bill changes the membership of the  
25 Government Records Council to seven members.

26 In addition, the bill requires the State to create a public finance  
27 website and establish the New Jersey Local Public Finance Internet  
28 Website Development Program to provide advice and technical  
29 assistance to units of local government that elect to create a  
30 searchable local public finance Internet website.