

SENATE, No. 107

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

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

Introduced Pending Technical Review by Legislative Counsel.



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2

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
43 read 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. In the case of a volunteer fire company or a volunteer
21 fire department established pursuant to N.J.S.40A:14-68, a
22 volunteer fire company or department may enter into a contract with
23 the governing body of the municipality it serves wherein the
24 municipal clerk shall serve as the custodian for government record
25 request purposes.

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

1 “Advisory, consultative or deliberative material” means material
2 that is used and relied upon during the consultative process prior to
3 the completion of a competitive application, the award of any
4 contract, or the adoption of an ordinance, rule, regulation, or policy
5 by any public agency and that reflects personal opinions,
6 recommendations, and deliberations comprising part of a process by
7 which public agency decisions and policies are formulated, rather
8 than factual or statistical data, information or the official policy of
9 that body, and the release of which would be injurious to the
10 consultative function of government.

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

14 information received by a member of the Legislature from a
15 constituent or information held by a member of the Legislature
16 concerning a constituent, including but not limited to information in
17 written form or contained in any e-mail or computer data base, or in
18 any telephone record whatsoever, unless it is information the
19 constituent is required by law to transmit;

20 any memorandum, correspondence, notes, report or other
21 communication prepared by, or for, the specific use of a member of
22 the Legislature in the course of the member's official duties, except
23 that this provision shall not apply to an otherwise publicly-
24 accessible report which is required by law to be submitted to the
25 Legislature or its members;

26 any copy, reproduction or facsimile of any photograph, negative
27 or print, including instant photographs and videotapes of the body,
28 or any portion of the body, of a deceased person, taken by or for the
29 medical examiner at the scene of death or in the course of a post
30 mortem examination or autopsy made by or caused to be made by
31 the medical examiner except:

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

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

39 for use in the field of forensic pathology or for use in medical or
40 scientific education or research, or

41 for use by any law enforcement agency in this State or any other
42 state or federal law enforcement agency;

43 criminal investigatory records;

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

46 any written request by a crime victim for a record to which the
47 victim is entitled to access as provided in this section, including,
48 but not limited to, any law enforcement agency report, domestic

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1 violence offense report, and temporary or permanent restraining
2 order;

3 personal firearms records, except for use by any person
4 authorized by law to have access to these records or for use by any
5 government agency, including any court or law enforcement
6 agency, for purposes of the administration of justice;

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

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

19 any record within the attorney-client privilege. This paragraph
20 shall not be construed as exempting from access attorney or
21 consultant bills or invoices except that such bills or invoices may be
22 redacted to remove any information protected by the attorney-client
23 privilege;

24 administrative or technical information regarding computer
25 hardware, software and networks which, if disclosed, would
26 jeopardize computer security;

27 emergency or security information or procedures for any
28 buildings or facility which, if disclosed, would jeopardize security
29 of the building or facility or persons therein;

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

33 information, including location, of private alarm systems and
34 surveillance cameras;

35 information which, if disclosed, would give an advantage to
36 competitors or bidders;

37 information generated by or on behalf of public employers or
38 public employees in connection with any sexual harassment
39 complaint filed with a public employer or with any grievance filed
40 by or against an individual or in connection with collective
41 negotiations, including documents and statements of strategy or
42 negotiating position;

43 information which is a communication between a public agency
44 and its insurance carrier, administrative service organization or risk
45 management office;

46 information which is to be kept confidential pursuant to court
47 order;

1 any copy of form DD-214, or that form, issued by the United
2 States Government, or any other certificate of honorable discharge,
3 or copy thereof, from active service or the reserves of a branch of
4 the Armed Forces of the United States, or from service in the
5 organized militia of the State, that has been filed by an individual
6 with a public agency, except that a veteran or the veteran's spouse
7 or surviving spouse shall have access to the veteran's own records;

8 any copy of an oath of allegiance, oath of office or any
9 affirmation taken upon assuming the duties of any public office, or
10 that oath or affirmation, taken by a current or former officer or
11 employee in any public office or position in this State or in any
12 county or municipality of this State, including members of the
13 Legislative Branch, Executive Branch, Judicial Branch, and all law
14 enforcement entities, except that the full name, title, and oath date
15 of that person contained therein shall not be deemed confidential;

16 **[and]**

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

35 cell phone numbers, unless the cell phone number is listed as a
36 home telephone number;

37 electronic-mail addresses provided to the public agency as
38 contact information for the purpose of receiving official public
39 notifications; and

40 electronic-mail addresses provided to the public agency as
41 contact information on any official government form.

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

45 pedagogical, scholarly and/or academic research records and/or
46 the specific details of any research project conducted under the
47 auspices of a public higher education institution in New Jersey,
48 including, but not limited to research, development information,

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

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

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

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

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

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

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

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

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

30 "Quasi-governmental agency" means any association,
31 commission, agency, authority, organization, public-private entity,
32 or any other entity, in which one or more public agencies exercise
33 substantial control, or as determined by the Government Records
34 Council or a court of law, by considering factors including but not
35 limited to: whether a public agency exercises control over the quasi-
36 government agency or the public agency maintains the ability to
37 review, approve, or reject the quasi-governmental agency's
38 proposals or plans, holds a beneficial interest in the quasi-
39 governmental agency's assets, is the primary source of funding of,
40 or is indebted to, or is a creditor of, or guarantor of the debts of, the
41 quasi-governmental agency. The term shall not include any entity
42 involving the Legislature or any organization organized under
43 paragraph (3) of subsection c. of section 501 of the federal Internal
44 Revenue Code (26 U.S.C.s.501) that was not created by, or with the
45 approval of, a public agency primarily for the purpose of assisting
46 that public agency or any labor organization or any contractor
47 providing goods or services to a public agency except as otherwise
48 provided by this subsection. However, nothing contained herein

1 shall affect the application of P.L.1963, c.73 (C.47:1A-1 et seq.) to
2 entities that otherwise fall within the definition of "public agency."

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

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

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

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

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

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

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

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

40
41 4. Section 3 of P.L.1963, c.73 (C.47:1A-3) is amended to read
42 as follows:

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

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

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

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

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

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

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

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

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

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

45 Notwithstanding any other provision of this subsection, if the
46 custodian of a government record asserts that part of a particular
47 record is exempt from public access pursuant to P.L.1963, c.73
48 (C.47:1A-1 et seq.), as amended and supplemented, the custodian

1 shall redact from a copy of the record that portion which the
2 custodian asserts is exempt from access and shall promptly permit
3 access to the remainder of the record. If the custodian of a
4 government record redacts information from a copy of the record,
5 the custodian shall provide the requestor with a redacted version of
6 the document and one affidavit or certified statement for the entire
7 request that states the date of the record, the originator or author of
8 the record, the subject matter or title of the record, the number of
9 pages with redactions, and the specific statutory provision or other
10 lawful basis for each such redaction. The custodian shall redact any
11 such information by deleting or obscuring only that information and
12 shall not alter in any manner the space in the government record
13 formerly occupied by such redacted information. This provision
14 shall only apply to documents redacted on or after the effective date
15 of P.L. , c. (pending before the Legislature as this bill).

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

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

27

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

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

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

25 If the custodian of a government record redacts information from
26 a copy of the record, the custodian shall provide the requestor with
27 a redacted version of the document and one affidavit or certified
28 statement for the entire request that states the date of the record, the
29 originator or author of the record, the subject matter or title of the
30 record, the number of pages with redactions, and the specific
31 statutory provision or other lawful basis for each such redaction.
32 The custodian shall redact any such information by deleting or
33 obscuring only that information and shall not alter in any manner
34 the space in the government record formerly occupied by such
35 redacted information. This provision shall only apply to documents
36 redacted on or after the effective date of P.L. , c. (pending before
37 the Legislature as this bill).

38 b. (1) A copy or copies of a government record may be
39 purchased by any person upon payment of the fee prescribed by law
40 or regulation. Except as otherwise provided by law or regulation
41 and except as provided in paragraph (2) of this subsection, the fee
42 assessed for the duplication of a government record embodied in the
43 form of printed matter shall be \$0.05 per letter size page or smaller,
44 and \$0.07 per legal size page or larger. If a public agency can
45 demonstrate that its actual costs for duplication of a government
46 record exceed the foregoing rates, the public agency shall be
47 permitted to charge the actual cost of duplicating the record. The
48 actual cost of duplicating the record, upon which all copy fees are

1 based, shall be the cost of materials and supplies used to make a
2 copy of the record, but shall not include the cost of labor or other
3 overhead expenses associated with making the copy except as
4 provided for in subsection c. of this section. A public agency may
5 charge the fee for each copy made in the process of responding to a
6 government record request made during the redaction process.

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

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

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

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

32 If a public agency maintains a government record in a format or
33 medium that can be inspected without charge to the requestor, it
34 shall inform the requestor of the place and time that the record will
35 be available for inspection in such format or medium. If the
36 requestor prefers to purchase copies from the public agency, the
37 requester shall be permitted to purchase such copies from the
38 records custodian, in accordance with the provisions of this act,
39 P.L.1963, c.73 (C.47:1A-1 et seq.). The requestor shall have seven
40 business days to respond to the custodian specifying that he or she
41 prefers to purchase the copies, otherwise the request may be
42 deemed fulfilled.

43 c. Whenever the nature, format, medium, manner of collation,
44 or volume of a government record embodied in the form of printed
45 matter to be inspected, examined, or copied pursuant to this section
46 is such that the record cannot be reproduced by ordinary document
47 copying equipment in ordinary business size or involves an
48 extraordinary expenditure of time and effort to accommodate the

1 request, the public agency may charge, in addition to the actual cost
2 of duplicating the record, a special service charge **[that]** . A
3 special service charge shall be reasonable and shall be based upon
4 the actual, direct cost of providing the copy or copies **];** provided,
5 however, that **]** . Special service charge rates, in the case of a
6 municipality, **[rates]** for the duplication of particular records when
7 the actual cost of copying exceeds the foregoing rates shall be
8 established in advance by ordinance. When a request is for a
9 commercial purpose, the public agency may charge, in addition to
10 the actual cost of duplicating the record, a special administrative
11 charge. A special administrative charge shall be reasonable and
12 related to ongoing operational expenses, and shall be for
13 expenditures eligible for inclusion in the special administrative
14 charge based upon the criteria and parameters set forth by the
15 Government Records Council.

16 For purposes hereof, the actual, direct costs shall mean those
17 expenditures that an agency actually incurs in searching for and
18 duplicating documents to respond to a request, which includes basic
19 rate of pay for the employee. Direct costs shall not include
20 overhead expenses such as costs of space and heating or lighting the
21 facility in which the records are stored. The requestor shall have
22 the opportunity to review and object to the charge prior to it being
23 incurred. During such review, the public agency shall provide the
24 requestor, without charge, a detailed breakdown of how the special
25 service charge was assessed including, at a minimum, reasonable
26 estimates categorizing the hours needed to identify, copy or prepare
27 for inspection, and to produce and return the requested documents,
28 and the number of pages to be produced. Special service charges
29 shall not be assessed for requests for budgets, bills, vouchers,
30 contracts and public employee salary and overtime information
31 unless the request is deemed voluminous.

32 d. A custodian shall permit access to a government record and
33 provide a copy thereof in the medium or format requested if the
34 public agency maintains the record in that medium or format. If the
35 public agency does not maintain the record in the medium or format
36 requested, the custodian shall either convert the record to the
37 medium or format requested or provide a copy in some other
38 meaningful medium or format. If a request is for a record: (1) in a
39 medium or format not routinely used by the agency; (2) not
40 routinely developed or maintained by an agency; or (3) requiring a
41 substantial amount of manipulation or programming of information
42 technology, the agency may charge, in addition to the actual cost of
43 duplication, a special charge that shall be reasonable and shall be
44 based on the cost for any extensive use of information technology,
45 or for the labor cost of personnel providing the service, that is
46 actually incurred by the agency or attributable to the agency for the
47 programming, clerical, and supervisory assistance required, or both.

1 e. Immediate access ordinarily shall be granted to budgets,
2 bills, vouchers, contracts, including collective negotiations
3 agreements and individual employment contracts, and public
4 employee salary and overtime information for the current, prior, and
5 upcoming fiscal year. Immediate access shall mean by the close of
6 business or 5 P.M., whichever is earlier, unless otherwise provided
7 by law or regulation. If the request is received at noon or if
8 received after noon, the request shall be fulfilled by noon the
9 following day, unless otherwise provided by law or regulation.

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

34 If a request for information is made in writing on a document
35 other than the form adopted by the public agency and the request
36 contains the requisite information prescribed in this subsection, the
37 custodian shall treat the request as if made on the form adopted by
38 the public agency. The document shall also indicate and provide
39 criminal background information, similar to what is required on an
40 adopted government record request form.

41 A response on any form providing criminal background
42 information on the requestor, whether in the affirmative or negative,
43 shall be confidential and shall be redacted prior to disclosure of any
44 such request. If a requestor does not provide criminal background
45 information, the custodian shall attempt to contact the requestor to
46 obtain such information, and shall not deny the request for failure to
47 provide such information unless attempts are made by the custodian

1 to obtain such information and the requestor refuses or cannot be
2 contacted.

3 g. A request for access to a government record shall be in
4 writing and hand-delivered, mailed, transmitted electronically,
5 including by electronic mail, transmitted by facsimile when no more
6 than four pages in length, or otherwise conveyed to the appropriate
7 custodian. A request that is intended for a commercial purpose shall
8 be certified to that fact in the request. The public agency may
9 require a requestor to state whether the requested records are for a
10 commercial purpose, but the agency shall not require the requestor
11 to provide the exact purpose of the commercial use. A custodian
12 shall promptly comply with a request to inspect, examine, copy, or
13 provide a copy of a government record. If a record is missing or
14 damaged, or the custodian is unable to comply with or denies a
15 request for access, the custodian shall indicate the specific basis
16 therefor on the request form and promptly return it to the requestor.
17 The custodian shall sign and date the form and provide the
18 requestor with a copy thereof. If the custodian of a government
19 record asserts that part of a particular record is exempt from public
20 access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended
21 and supplemented, the custodian shall delete or excise from a copy
22 of the record that portion which the custodian asserts is exempt
23 from access and shall promptly permit access to the remainder of
24 the record.

25 If the custodian of a government record redacts information from
26 a copy of the record, the custodian shall provide the requestor with
27 a redacted version of the document and one affidavit or certified
28 statement for the entire request that states the date of the record, the
29 originator or author of the record, the subject matter or title of the
30 record, the number of pages with redactions, and the specific
31 statutory provision or other lawful basis for each such redaction.
32 The custodian shall redact any such information by deleting or
33 obscuring only that information and shall not alter in any manner
34 the space in the government record formerly occupied by such
35 redacted information. This provision shall only apply to documents
36 redacted on or after the effective date of P.L. , c. (pending before
37 the Legislature as this bill).

38 If the government record requested is temporarily unavailable
39 because it is in use or in storage, the custodian shall so advise the
40 requestor and shall make arrangements to promptly make available
41 a copy of the record. If a request for access to a government record
42 would substantially disrupt agency operations, the custodian may
43 deny access to the record after attempting to reach a reasonable
44 solution with the requestor that accommodates the interests of the
45 requestor and the agency.

46 h. Any officer or employee of a public agency who receives a
47 request for access to a government record shall forward the request

1 to the custodian of the record or direct the requestor to the
2 custodian of the record.

3 In the case of a municipality, a custodian, in response to a
4 request for access forwarded by another officer or employee or
5 received directly by the custodian, may direct any officer or
6 employee of that municipality having custody of a record to act on
7 the custodian's behalf and make the record available for inspection,
8 examination, copying, or the purchase of copies. Such direction
9 shall not relieve the custodian of any responsibility under P.L.1963,
10 c.73 (C.47:1A-1 et seq.), as amended and supplemented.

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

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

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

42 The custodian of a public agency that has a website shall, at a
43 minimum, prominently post on the website the name, mailing
44 address, electronic mailing address, telephone number, and
45 facsimile number for the custodian of records as well as a statement
46 that information submitted to the agency, including home addresses,
47 may be considered a government record and available for public
48 review.

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

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

8 A public agency shall adopt procedures to have computer
9 systems and computer applications collect, but not disclose,
10 information exempt from access but maintained as electronic
11 records.

12 Public agencies shall notify the public that the information
13 provided on official forms may be disclosed, unless otherwise
14 exempt by law.

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

16
17 6. Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read
18 as follows:

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

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

27 in lieu of filing an action in Superior Court, file a complaint with
28 the Government Records Council established pursuant to section 8
29 of P.L.2001, c.404 (C.47:1A-7). If the Government Records
30 Council does not render a decision within the time period
31 established pursuant to subsection b. of section 8 of P.L.2001, c.404
32 (C.47:1A-7), the requestor may institute a proceeding to challenge
33 the custodian's decision by filing an action in Superior Court. That
34 court proceeding shall be deemed filed as of the date of filing of the
35 proceeding before the Government Records Council and shall
36 render the proceedings pending before the Government Records
37 Council withdrawn.

38 The right to institute any proceeding under this section shall be
39 solely that of the requestor. Any such proceeding shall proceed in a
40 summary or expedited manner. The public agency shall have the
41 burden of proving that the denial of access is authorized by law. If
42 it is determined that access has been improperly denied, the court or
43 agency head shall order that access be allowed. A requestor who
44 prevails in any proceeding shall be entitled to a reasonable
45 attorney's fee award. However, in actions involving a record
46 required by law to be made, maintained or kept on file and that does
47 not exist at the time of the request, the prevailing requestor shall not
48 be entitled to an attorney's fee award if both: (1) the failure to

1 make, maintain, or keep the record is due to mere negligence or no
2 fault on the part of the public entity; and (2) the requestor was
3 informed in writing by formal certification or affidavit by the
4 records custodian prior to the filing of the complaint that the record
5 does not exist or no longer exists, the specific efforts taken to obtain
6 the record and why the record could not be produced. Under
7 appropriate circumstances, the rules of court and section 1 of
8 P.L.1988, c.46 (C. 2A:15-59.1), shall apply for frivolous causes of
9 action.

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

11

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

14 8. a. There is established in, but not of, the Department of
15 Community Affairs a Government Records Council. The council
16 shall consist of **【**the Commissioner of Community Affairs or the
17 commissioner's designee, the Commissioner of Education or the
18 commissioner's designee, and three**】** four public members appointed
19 by the Governor, with the advice and consent of the Senate, not
20 more than two of whom shall be of the same political party, one of
21 whom shall have experience with the news media, one of whom
22 shall be a member of the Municipal Clerks' Association of New
23 Jersey, one of whom shall be a member of the New Jersey Press
24 Association, and one of whom shall have experience with State
25 government as a public records custodian; and three members
26 appointed by the Governor, one upon the recommendation of the
27 Senate President, one upon the recommendation of the Speaker of
28 the General Assembly, and one upon the joint recommendation of
29 the Senate President and Speaker of the General Assembly, no more
30 than two of whom shall be of the same political party. The **【**three
31 public**】** members appointed by the Governor shall serve **【**during the
32 term of the Governor making the appointment and**】** until the
33 appointment of a successor. **【**A public member shall not hold any
34 other**】** Upon the effective date of P.L. , c. (C.) (pending before
35 the Legislature as this bill), two members shall serve for a term of
36 four years, two members shall serve for a term of three years, three
37 members shall serve for a term of two years. No member while
38 -serving shall be an officer with the New Jersey Press Association,
39 the New Jersey State League of Municipalities, the Municipal
40 Clerks' Association of New Jersey, or a substantially similar
41 organization.

42 No member while serving as a member of the council shall be
43 able to hold a State or local elected or appointed office or
44 employment **【**while serving as a member of the council**】** unless it
45 relates to the experience required for serving as a member of the
46 council. A **【**public**】** member shall not receive a salary for service
47 on the council but shall be reimbursed for reasonable and necessary

1 expenses associated with serving on the council and may receive
2 such per diem payment as may be provided in the annual
3 appropriations act. A member may be removed by the Governor
4 only for cause upon notice and opportunity to be heard. Vacancies
5 among the **【public】** members shall be filled in the same manner in
6 which the original appointment was made. **【The members of the**
7 **council shall choose one of the public members to serve as the**
8 **council's chair】** The Governor shall appoint one of the seven
9 members to serve as the chair of the council, and, once appointed,
10 that member shall serve on the council and be chair of the council
11 from the date of appointment until the end of the term of office of
12 the member or until a successor is appointed and qualified. The
13 chair may be removed by the Governor only for cause upon notice
14 and opportunity to be heard. The council may employ an executive
15 director and such professional and clerical staff as it deems
16 necessary and may call upon the Department of Community Affairs
17 for such assistance as it deems necessary and may be available to it.
18 The terms of the members serving on the effective date of
19 P.L. , c. (C.) (pending before the Legislature as this bill) are
20 terminated as of that effective date.

21 b. The Government Records Council shall:

22 **【establish an informal mediation program to facilitate the**
23 **resolution of disputes regarding access to government records;】**

24 receive, hear, review and adjudicate a complaint filed by any
25 person concerning a denial of access to a government record by a
26 records custodian;

27 render a decision on all disputes and complaints within 150
28 calendar days of the filing of the complaint;

29 issue advisory opinions, on its own initiative, as to whether a
30 particular type of record is a government record which is accessible
31 to the public;

32 prepare guidelines and an informational pamphlet for use by
33 records custodians in complying with the law governing access to
34 public records;

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

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

41 make training opportunities available for records custodians and
42 other public officers and employees which explain the law
43 governing access to public records; **【and】**

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

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

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

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

16 c. At the request of the council, a public agency shall produce
17 documents and ensure the attendance of witnesses with respect to
18 the council's investigation of any complaint or the holding of any
19 hearing. Each party shall have the opportunity to provide to the
20 council any documents or information necessary for the
21 adjudication of the case.

22 d. Upon receipt of a written complaint signed by any person
23 alleging that a custodian of a government record has improperly
24 denied that person access to a government record, the council shall
25 offer the parties the opportunity to resolve the dispute through
26 mediation pursuant to section 13 of P.L. , c. (C.) (pending
27 before the Legislature as this bill). Mediation shall enable a person
28 who has been denied access to a government record and the
29 custodian who denied or failed to provide access thereto to attempt
30 to mediate the dispute through a process whereby a neutral
31 mediator¹, who shall be trained in mediation selected by the
32 council,² acts to encourage and facilitate the resolution of the
33 dispute. ³Mediation shall be an informal, nonadversarial process
34 having the objective of helping the parties reach a mutually
35 acceptable, voluntary agreement. The mediator shall assist the
36 parties in identifying issues, foster joint problem solving, and
37 explore settlement alternatives.⁴

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

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

43 f. The council shall not charge any party a fee in regard to
44 actions filed with the council. The council shall be subject to the
45 provisions of the "Open Public Meetings Act," P.L.1975, c.231
46 (C.10:4-6), except that the council may go into closed session
47 during that portion of any proceeding during which the contents of a

1 contested record would be disclosed. A requestor who prevails in
2 any proceeding shall be entitled to a reasonable attorney's fee.

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

6 h. The council shall make available on its website a searchable
7 index of its opinions.

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

9

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

12 11. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-
13 1 et seq.) or any other law to the contrary, the personnel or pension
14 records of any individual in the possession of a public agency,
15 including but not limited to records relating to any grievance filed
16 by or against an individual, shall not be considered a government
17 record and shall not be made available for public access, except
18 that:

19 an individual's name, title, position, educational and training
20 background, salary, payroll record, length of service, date of
21 separation and the reason therefor, work address and work
22 telephone number, job description, and the amount and type of any
23 pension received shall be a government record;

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

29 records pertaining to the factual basis for the final administrative
30 determination of a disciplinary action, including a disciplinary
31 action that is the result of an internal affairs investigation by a
32 public safety agency, in which an employee is suspended, demoted,
33 discharged, or resigned not in good standing, if it was due to the
34 conviction of a crime, shall be a government record, except that
35 specific factual details of incidents involving sexual harassment,
36 sexual assault, domestic violence or rape by or against a public
37 employee, and the identity of the victim of the misconduct alleged,
38 may be deleted or excised if disclosure would violate any
39 individual's reasonable expectation of privacy so long as the agency
40 provides a statement that such information is being deleted or
41 excised pursuant to this particular exception;

42 records pertaining to settlements of lawsuits or claims involving
43 public agencies, public officials or employees shall be a
44 government record, except that specific factual details of incidents
45 involving sexual harassment, sexual assault, domestic violence or
46 rape by or against a public employee, and the identity of the victim
47 of the misconduct alleged, may be deleted or excised if disclosure
48 would violate any individual's reasonable expectation of privacy so

1 long as the agency provides a statement that such information is
2 being deleted or excised pursuant to this particular exception. No
3 public agency shall be liable for damages, pursuant to this
4 subsection, for releasing settlements of lawsuits or claims involving
5 public agencies, public officials or employees, entered into before
6 the effective date of P.L. , c. (pending before the Legislature as
7 this bill). The public agency shall make reasonable efforts to notify
8 the affected parties of the release of the documents; and

9 factual or statistical data [contained in information] which
10 disclose conformity with specific experiential, educational or
11 medical qualifications required for government employment or for
12 receipt of a public pension, but not including any detailed medical
13 or psychological information, shall be a government record.

14 Nothing in this section exempts disclosure of disciplinary
15 records otherwise required by law to be disclosed or made public.

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

17
18 9. Section 12 of P.L.2001, c.404 (C.47:1A-11) is amended to
19 read as follows:

20 12. a. A public official, officer, employee or custodian who
21 **[knowingly and willfully]** violates P.L.1963, c.73 (C.47:1A-1 et
22 seq.), as amended and supplemented, and is found **[to have**
23 **unreasonably]** grossly negligent by having denied access or is
24 found to have willfully denied access under the totality of the
25 circumstances, shall be subject to a civil penalty of \$1,000 for an
26 initial violation, \$2,500 for a second violation that occurs within 10
27 years of an initial violation, and \$5,000 for a third violation that
28 occurs within 10 years of an initial violation. No public official,
29 officer, employee or custodian shall be subject to a civil penalty for
30 any unavailable record that is required by law to be made,
31 maintained or kept on file unless the unavailability of the record is a
32 result of the willful actions or gross negligence of such person.

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

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

45 **[This penalty]** These penalties shall be collected and enforced in
46 proceedings in accordance with the "Penalty Enforcement Law of
47 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court

1 governing actions for the collection of civil penalties. The Superior
2 Court shall have jurisdiction of proceedings for the collection and
3 enforcement of the penalty imposed by this section.

4 Appropriate disciplinary proceedings may be initiated against a
5 public official, officer, employee or custodian against whom a
6 penalty has been imposed.

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

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

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

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

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

22
23 11. (New section) Any authority contained herein to exempt
24 records from public access by regulation or Executive Order of the
25 Governor shall be expressly limited to the designation of specific
26 records that are exempt from access pursuant to any exemptions set
27 forth in this act, P.L.1963, c.73 (C.47:1A-1 et seq.), and shall not be
28 construed as a grant or delegation of authority to exempt records
29 from public access not otherwise exempt by the provisions this act.

30
31 12. (New section) a. In exceptional circumstances, and
32 notwithstanding any other law or rule or regulation to the contrary,
33 whenever there is filed a verified petition to the Superior Court of
34 the county in which the request for government records was made
35 under P.L.1963, c.73 (C.47:1A-1 et seq.) alleging that a requestor
36 has sought records thereunder for the sole purpose to harass a
37 public agency, the court may issue a protective order limiting the
38 number and scope of requests the requestor may make or such other
39 relief as it deems appropriate, including referral of the matter to
40 mediation. The court may issue the protective order if it finds that
41 the requestor has sought records under P.L.1963, c.73 (C.47:1A-1 et
42 seq.) for the sole purpose to harass the public agency as the term
43 harass is defined in N.J.S.2C:33-4. The petition shall be
44 accompanied by a declaration of facts by the public agency
45 withholding the records demonstrating that it has complied with
46 P.L.1963, c.73 (C.47:1A-1 et seq.) and has made a good faith effort
47 to reach an informal resolution of the issues relating to the records
48 request. The requestor shall have notice and an opportunity to

1 answer the allegations set forth in the petition submitted by the
2 public agency. The public agency shall have the burden of proof by
3 clear and convincing evidence. The court's consideration of a
4 public agency's petition for relief shall proceed in a summary or
5 expedited manner and shall include a formal hearing whenever the
6 interest of justice so requires. If the custodian of a public agency
7 determines that responding to a record request will substantially
8 disrupt agency operations, the custodian may deny access to the
9 record after attempting to reach a reasonable solution with the
10 requestor that accommodates the interests of the requestor and the
11 agency, as set forth in subsection g. of section 6 of P.L.2001, c.404
12 (C.47:1A-5).

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

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

30

31 13. (New section) The Office of Dispute Settlement, in the
32 Office of The Public Defender, shall be available to mediate a
33 dispute over records requests when both requestor and public
34 agency consent thereto. However, mediation shall not alter the
35 responsibility of the custodian to respond and provide documents
36 within the timeframes set forth in this act, P.L.1963, c.73 (C.47:1A-
37 1 et seq.).

38

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

45 annual State agency expenditures, as determined by the State
46 Treasurer and as may be available within the central accounting
47 system and State payroll system, which shall include but not be
48 limited to: disbursements by a State agency from funds established

1 within the State treasury; bond debt services, including amounts of
2 bond debt or interest paid and sources of funds for bond issues;
3 salaries and wages including, compensation paid to employees of
4 State agencies, including current contracts under which
5 compensation is determined; contractual service purchases,
6 including amounts paid to vendors; commodity purchases, including
7 amounts paid to vendors; capital outlay and improvements,
8 including amounts paid to vendors; aid to local units of government,
9 including amounts paid to individual units of local government for
10 aid programs; additional forms of assistance and benefits as
11 determined by the State Treasurer; and the exact amount of each
12 such expenditure and the name and address of each individual,
13 organization, business or other entity receiving such monies;

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

30 annual State bonded indebtedness, as determined by the State
31 Treasurer and as may be available within the central accounting
32 system, which shall include but not be limited to: the amount of the
33 total original obligation stated in terms of principal and interest; the
34 term of the obligation; the source of funding for repayment of the
35 obligation; the amount of principal and interest previously paid to
36 reduce the obligation; the remaining balance of the obligation; data
37 or information related to refinancing of the obligation; the cited
38 statutory or constitutional authority to issue such bonds; the specific
39 names of firms or individuals serving as bond counsel; and the
40 names of the banks assisting in the sale of bonds;

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

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

46 b. The Internet website designed and developed, maintained
47 and operated by the State Treasurer in accordance with this section
48 shall include all data and information enumerated in subsection a.

1 of this section for State fiscal year 2013 and each State fiscal year
2 thereafter. The data and information posted on the Internet website
3 may be periodically updated, but shall not be subject to removal.

4 The data and information required to be posted on the Internet
5 website that is based on or otherwise derived from data or
6 information made available from the central accounting system or
7 the State payroll system shall be made available on the Internet
8 website as soon as practicable, but not later than 45 days after the
9 last day of the preceding State fiscal year.

10 The State Treasurer shall not be required to provide data or
11 information on the Internet website of the kind that is not available
12 in the central accounting system or the State payroll system on the
13 date the Internet website is first made available to the public.

14 The State Treasurer shall be entitled to receive from each State
15 agency any assistance and information the State Treasurer
16 determines to be necessary and appropriate to compile the data and
17 information necessary to design and develop, maintain and operate
18 the Internet website.

19 The State Treasurer shall not be required to disclose or otherwise
20 make available on the Internet website data or information that is
21 determined by the State Treasurer to be private, personal, or
22 confidential in accordance with State or federal law, rules, or
23 regulations.

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

36 d. As used in this section:

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

41 "State agency" means any of the principal departments in the
42 Executive Branch of State Government, and any division, board,
43 bureau, office, commission, or other instrumentality within or
44 created by such principal department; the Legislature of the State
45 and any office, board, bureau, or commission within or created by
46 the Legislative Branch of State Government; the Judiciary of the
47 State and any office, board, bureau, or commission within or
48 created by the Judicial Branch of State Government; and any

1 independent State authority, commission, instrumentality, or
2 agency.

3

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

6 b. The program shall be under the jurisdiction of the
7 Department of the Treasury, and shall be administered by the State
8 Treasurer, the Chief Technology Officer, and any clerical,
9 technical, and other professional staff or assistants as may be
10 designated by the State Treasurer from among the personnel
11 appointed and employed by the department.

12 c. The purpose of the program shall be to provide advice and
13 technical assistance to units of local government that elect to design
14 and develop, maintain and operate a single, searchable local public
15 finance Internet website that has the capacity to display and retain
16 data and information concerning the unit of local government's (1)
17 annual expenditures, including, bond debt services and interest,
18 salaries and wages paid to employees, contractual service purchases
19 including amounts paid to vendors, commodity purchases including
20 amounts paid to vendors, capital outlays and improvements
21 including amounts paid to vendors, and aid paid to subunits of the
22 entity; (2) annual revenues, including, revenue derived from the
23 receipts and deposits from any State agency, taxes including
24 compulsory tolls or fees imposed by the public entity for the
25 purpose of financing services, the amounts received as
26 compensation for the use of property owned or used by the public
27 entity, and gifts, donations and federal grants and other sources of
28 revenue not classified elsewhere; (3) total bonded indebtedness,
29 including the amount of the original obligation stated in terms of
30 principal and interest, the terms of the obligation and the source of
31 funding for the repayment thereof, the amounts of principal and
32 interest previously paid to reduce the obligation and the remaining
33 balance of the obligation, the data and information related to
34 refinancing of the obligation, if such refinancing occurred, the
35 statutory or constitutional authority to issue such bonds, the name
36 of the firms or individuals serving as bond counsel, and the name of
37 the banks assisting in the sale of bonds; and (4) outstanding
38 liabilities for pension and post-retirement medical benefits; and has
39 the capacity to display and retain public notices, agendas,
40 schedules, minutes, and other electronic documents required to be
41 made available in accordance with P.L.1963, c.73 (C.47:1A-1 et
42 seq.).

43 d. To effectuate the purposes of the program, the State
44 Treasurer shall:

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

1 procure and make available to local units of government a
2 template and any prewritten or custom computer software that the
3 State Treasurer determines to be necessary and appropriate to
4 develop a single, searchable local public finance Internet website;
5 and

6 direct the Chief Technology Officer to provide information
7 technology support and services that may be determined by the
8 Chief Technology Officer to be necessary and appropriate for a
9 local unit of government to maintain and operate a single,
10 searchable local public finance Internet website following its initial
11 design and development.

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

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

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

22 The report shall identify the information technology support and
23 services provided by the Chief Technology Officer and any other
24 clerical, technical, and other professional staff or assistants to each
25 unit of local government that maintains and operates a single,
26 searchable local public finance Internet website during the year
27 immediately preceding the year in which the report is required to be
28 made.

29 The report shall identify each local unit of government that used
30 the guidelines, templates and software, or the information
31 technology support and services made available through the
32 program to design and develop, maintain and operate a single,
33 searchable local public finance Internet website during the year
34 immediately preceding the year in which the report is required to be
35 made.

36 The report shall include any findings or recommendations that
37 may be made by the State to improve the effectiveness of the
38 program during the year immediately preceding the year in which
39 the report is required to be made.

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

45 f. Notwithstanding the provisions of the "Administrative
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
47 contrary, the State Treasurer may adopt immediately upon filing
48 with the Office of Administrative Law such rules and regulations as

1 the State Treasurer determines to be necessary and appropriate to
2 effectuate the purposes of the program established in accordance
3 with this section, which rules and regulations shall be effective for a
4 period not to exceed 360 days following the effective date of
5 P.L. , c. (pending before the Legislature as this bill) and may
6 thereafter be amended, adopted, or readopted by the State Treasurer
7 in accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).

8 g. As used in this section:

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

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

17
18 16. (New section) The Office of Information Technology, the
19 Division of Local Government Services in the Department of
20 Community Affairs, and the Government Records Council shall
21 conduct a data practices survey every five years. The purpose of
22 the survey shall be to review the collection, processing, use and
23 dissemination of information by public agencies, in light of the
24 recognized need for open government, with a focus on indentifying
25 identifying privacy related issues. The survey results shall include
26 any recommended specific measures, including boundaries for
27 access to government records and legislation, to deal with the issues
28 and safeguard the privacy rights of individuals.

29 The Office of Information Technology shall establish an Office
30 of Privacy in, but not of, the Office of Information of Technology,
31 to assist in identification of privacy related issues and to bring those
32 issues to the attention of those charged with determining the
33 appropriate boundaries for access to government records, including
34 records custodians, the Government Records Council, and the
35 courts.

36
37 17. (New section) There is appropriated from the General Fund
38 to the Department of the Treasury such sums as may be necessary,
39 but not to exceed \$100,000, as shall be determined by the Director
40 of the Division of Budget and Accounting in the Department of the
41 Treasury, to effectuate the purposes of the program established in
42 accordance with section 15 of P.L. , c. (C.) (pending before
43 the Legislature as this bill).

44
45 18. This bill shall take effect 120 days following enactment.

1 STATEMENT

2
3 This bill revises the open public records act (OPRA). The bill
4 formally names OPRA as the “Martin O’Shea Open Public Records
5 Act” in honor of Martin O’Shea, a tireless advocate for broad public
6 access to government records. The bill expands and clarifies various
7 definitions and makes changes to the duties of record custodians and
8 the Government Records Council. It also revises the composition of
9 the Government Records Council and changes the council from being
10 in the Department of Community Affairs to being in, but not of, the
11 Department of Community Affairs. It modifies the mediation process
12 making the Office of Dispute Settlement in the Office of the Public
13 Defender available to mediate disputes, changes the penalty
14 provisions, and modifies access to the courts. It specifies that the fines
15 imposed pursuant to OPRA cannot be paid out of public funds. The
16 bill changes the membership of the Government Records Council to
17 seven members.

18 In addition, the bill requires the State to create a public finance
19 website and establish the New Jersey Local Public Finance Internet
20 Website Development Program to provide advice and technical
21 assistance to units of local government that elect to create a searchable
22 local public finance Internet website.