

ASSEMBLY, No. 129

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 24 (Morris, Sussex and Warren)

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SYNOPSIS

Requires access to law enforcement guidelines for processing firearms permit applications upon public records request.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning public access to law enforcement guidelines for
 2 processing firearms permit applications and amending P.L.1995,
 3 c.23.

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

7
 8 1. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to
 9 read as follows:

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

12 "Biotechnology" means any technique that uses living
 13 organisms, or parts of living organisms, to make or modify
 14 products, to improve plants or animals, or to develop micro-
 15 organisms for specific uses; including the industrial use of
 16 recombinant DNA, cell fusion, and novel bioprocessing techniques.

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

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

36 A government record shall include, but not be limited to, the
 37 following records for the purposes of P.L.1963, c.73 (C.47:1A-1 et
 38 seq.):

39 Guidelines, standard operating procedures, and practices used by
 40 a law enforcement agency in the investigation, review, and
 41 disposition of applications for permits and identification cards to
 42 purchase or carry firearms.

43 A government record shall not include the following information
 44 which is deemed to be confidential for the purposes of P.L.1963,
 45 c.73 (C.47:1A-1 et seq.) as amended 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 information received by a member of the Legislature from a
2 constituent or information held by a member of the Legislature
3 concerning a constituent, including but not limited to information in
4 written form or contained in any e-mail or computer data base, or in
5 any telephone record whatsoever, unless it is information the
6 constituent is required by law to transmit;

7 any memorandum, correspondence, notes, report or other
8 communication prepared by, or for, the specific use of a member of
9 the Legislature in the course of the member's official duties, except
10 that this provision shall not apply to an otherwise publicly-
11 accessible report which is required by law to be submitted to the
12 Legislature or its members;

13 any copy, reproduction or facsimile of any photograph, negative
14 or print, including instant photographs and videotapes of the body,
15 or any portion of the body, of a deceased person, taken by or for the
16 medical examiner at the scene of death or in the course of a post
17 mortem examination or autopsy made by or caused to be made by
18 the medical examiner except:

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

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

26 for use in the field of forensic pathology or for use in medical or
27 scientific education or research, or

28 for use by any law enforcement agency in this State or any other
29 state or federal law enforcement agency;

30 criminal investigatory records;

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

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

37 any record within the attorney-client privilege. This paragraph
38 shall not be construed as exempting from access attorney or
39 consultant bills or invoices except that such bills or invoices may be
40 redacted to remove any information protected by the attorney-client
41 privilege;

42 administrative or technical information regarding computer
43 hardware, software and networks which, if disclosed, would
44 jeopardize computer security;

45 emergency or security information or procedures for any
46 buildings or facility which, if disclosed, would jeopardize security
47 of the building or facility or persons therein;

1 security measures and surveillance techniques which, if
2 disclosed, would create a risk to the safety of persons, property,
3 electronic data or software;
4 information which, if disclosed, would give an advantage to
5 competitors or bidders;
6 information generated by or on behalf of public employers or
7 public employees in connection with any sexual harassment
8 complaint filed with a public employer or with any grievance filed
9 by or against an individual or in connection with collective
10 negotiations, including documents and statements of strategy or
11 negotiating position;
12 information which is a communication between a public agency
13 and its insurance carrier, administrative service organization or risk
14 management office;
15 information which is to be kept confidential pursuant to court
16 order;
17 any copy of form DD-214, or that form, issued by the United
18 States Government, or any other certificate of honorable discharge,
19 or copy thereof, from active service or the reserves of a branch of
20 the Armed Forces of the United States, or from service in the
21 organized militia of the State, that has been filed by an individual
22 with a public agency, except that a veteran or the veteran's spouse
23 or surviving spouse shall have access to the veteran's own records;
24 and
25 that portion of any document which discloses the social security
26 number, credit card number, unlisted telephone number or driver
27 license number of any person; except for use by any government
28 agency, including any court or law enforcement agency, in carrying
29 out its functions, or any private person or entity acting on behalf
30 thereof, or any private person or entity seeking to enforce payment
31 of court-ordered child support; except with respect to the disclosure
32 of driver information by the New Jersey Motor Vehicle
33 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-
34 3.4); and except that a social security number contained in a record
35 required by law to be made, maintained or kept on file by a public
36 agency shall be disclosed when access to the document or
37 disclosure of that information is not otherwise prohibited by State
38 or federal law, regulation or order or by State statute, resolution of
39 either or both houses of the Legislature, Executive Order of the
40 Governor, rule of court or regulation promulgated under the
41 authority of any statute or executive order of the Governor.
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,

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 "Public agency" or "agency" means any of the principal
25 departments in the Executive Branch of State Government, and any
26 division, board, bureau, office, commission or other instrumentality
27 within or created by such department; the Legislature of the State
28 and any office, board, bureau or commission within or created by
29 the Legislative Branch; and any independent State authority,
30 commission, instrumentality or agency. The terms also mean any
31 political subdivision of the State or combination of political
32 subdivisions, and any division, board, bureau, office, commission or
33 other instrumentality within or created by a political subdivision of
34 the State or combination of political subdivisions, and any
35 independent authority, commission, instrumentality or agency
36 created by a political subdivision or combination of political
37 subdivisions.

38 "Law enforcement agency" means a public agency, or part
39 thereof, determined by the Attorney General to have law
40 enforcement responsibilities.

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

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

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

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

5 "Victim of a crime" means a person who has suffered personal or
6 psychological injury or death or incurs loss of or injury to personal
7 or real property as a result of a crime, or if such a person is
8 deceased or incapacitated, a member of that person's immediate
9 family.

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

20
21 2. This act shall take effect immediately.
22
23

24 STATEMENT 25

26 This bill would clarify that written guidelines, standard operating
27 procedures, and practices used by law enforcement agencies in the
28 investigation, review, and disposition of firearms-related permit
29 applications are to be available to the public under the State's open
30 public records statute. Currently, that law does not specifically
31 address public accessibility to these documents.

32 In a recent decision of the Superior Court, Law Division,
33 currently on appeal, the court held that the New Jersey State Police
34 Firearms Investigation Guidebook is exempt from public access
35 because it is a standard operating procedure, a category of records
36 that is confidential under an administrative regulation, which was
37 made effective in its proposed form by executive order, but is now
38 formally adopted. The public release of these records can shed light
39 on whether firearms permitting laws are enforced uniformly across
40 the State and in accordance with the law. This bill would clarify
41 that such guidelines are public records and would help ensure that
42 the firearms permitting process, which regulates the exercise of the
43 constitutional right to bear arms, is being implemented in
44 accordance with all legal requirements.