

ASSEMBLY, No. 1456

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

SYNOPSIS

Makes certain changes to public access of government records.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** making certain changes to the access of government
2 records, and amending P.L.1995, c.23 and P.L.2001, c.404, and
3 supplementing P.L.1963, c.73 (C.47:1A-1 et seq.).
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 not include the following information
37 which is deemed to be confidential for the purposes of P.L.1963,
38 c.73 (C.47:1A-1 et seq.) as amended and supplemented:

39 information received by a member of the Legislature from a
40 constituent or information held by a member of the Legislature
41 concerning a constituent, including but not limited to information in
42 written form or contained in any e-mail or computer data base, or in
43 any telephone record whatsoever, unless it is information the
44 constituent is required by law to transmit;

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

7 any copy, reproduction or facsimile of any photograph, negative
8 or print, including instant photographs and videotapes of the body,
9 or any portion of the body, of a deceased person, taken by or for the
10 medical examiner at the scene of death or in the course of a post
11 mortem examination or autopsy made by or caused to be made by
12 the medical examiner except:

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

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

20 for use in the field of forensic pathology or for use in medical or
21 scientific education or research, or

22 for use by any law enforcement agency in this State or any other
23 state or federal law enforcement agency;

24 criminal investigatory records;

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

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

31 any record within the attorney-client privilege. This paragraph
32 shall not be construed as exempting from access attorney or
33 consultant bills or invoices except that such bills or invoices may be
34 redacted to remove any information protected by the attorney-client
35 privilege;

36 administrative or technical information regarding computer
37 hardware, software and networks which, if disclosed, would
38 jeopardize computer security;

39 emergency or security information or procedures for any
40 buildings or facility which, if disclosed, would jeopardize security
41 of the building or facility or persons therein;

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

45 information which, if disclosed, would give an advantage to
46 competitors or bidders;

47 information generated by or on behalf of public employers or
48 public employees in connection with any sexual harassment

1 complaint filed with a public employer or with any grievance filed
2 by or against an individual or in connection with collective
3 negotiations, including documents and statements of strategy or
4 negotiating position;
5 information which is a communication between a public agency
6 and its insurance carrier, administrative service organization or risk
7 management office;
8 information which is to be kept confidential pursuant to court
9 order;
10 any copy of form DD-214, or that form, issued by the United
11 States Government, or any other certificate of honorable discharge,
12 or copy thereof, from active service or the reserves of a branch of
13 the Armed Forces of the United States, or from service in the
14 organized militia of the State, that has been filed by an individual
15 with a public agency, except that a veteran or the veteran's spouse
16 or surviving spouse shall have access to the veteran's own records;
17 and
18 that portion of any document which discloses the electronic mail
19 address, social security number, credit card number, **[unlisted]**
20 home telephone number, cellular telephone number or driver license
21 number of any person, or that portion of any document which
22 discloses the home address of any person when that person has
23 requested their home address not be subject to disclosure as a public
24 record; except for use by any government agency, including any
25 court or law enforcement agency, in carrying out its functions, or
26 any private person or entity acting on behalf thereof, or any private
27 person or entity seeking to enforce payment of court-ordered child
28 support; except with respect to the disclosure of driver information
29 by the New Jersey Motor Vehicle Commission as permitted by
30 section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social
31 security number contained in a record required by law to be made,
32 maintained or kept on file by a public agency shall be disclosed
33 when access to the document or disclosure of that information is not
34 otherwise prohibited by State or federal law, regulation or order or
35 by State statute, resolution of either or both houses of the
36 Legislature, Executive Order of the Governor, rule of court or
37 regulation promulgated under the authority of any statute or
38 executive order of the Governor.
39 A government record shall not include, with regard to any public
40 institution of higher education, the following information which is
41 deemed to be privileged and confidential:
42 pedagogical, scholarly and/or academic research records and/or
43 the specific details of any research project conducted under the
44 auspices of a public higher education institution in New Jersey,
45 including, but not limited to research, development information,
46 testing procedures, or information regarding test participants,
47 related to the development or testing of any pharmaceutical or
48 pharmaceutical delivery system, except that a custodian may not

1 deny inspection of a government record or part thereof that gives
2 the name, title, expenditures, source and amounts of funding and
3 date when the final project summary of any research will be
4 available;

5 test questions, scoring keys and other examination data
6 pertaining to the administration of an examination for employment
7 or academic examination;

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

14 valuable or rare collections of books and/or documents obtained
15 by gift, grant, bequest or devise conditioned upon limited public
16 access;

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

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

35 "Law enforcement agency" means a public agency, or part
36 thereof, determined by the Attorney General to have law
37 enforcement responsibilities.

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

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

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

46 "Victim's record" means an individually-identifiable file or
47 document held by a victims' rights agency which pertains directly to

1 a victim of a crime except that a victim of a crime shall have access
2 to the victim's own records.

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

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

17 (cf: P.L.2005, c.170, s.1)

18

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

21 6. a. The custodian of a government record shall permit the
22 record to be inspected, examined, and copied by any person during
23 regular business hours; or in the case of a municipality having a
24 population of 5,000 or fewer according to the most recent federal
25 decennial census, a board of education having a total district
26 enrollment of 500 or fewer, or a public authority having less than
27 \$10 million in assets, during not less than six regular business hours
28 over not less than three business days per week or the entity's
29 regularly-scheduled business hours, whichever is less; unless a
30 government record is exempt from public access by: P.L.1963, c.73
31 (C.47:1A-1 et seq.) as amended and supplemented; any other
32 statute; resolution of either or both houses of the Legislature;
33 regulation promulgated under the authority of any statute or
34 Executive Order of the Governor; Executive Order of the Governor;
35 Rules of Court; any federal law; federal regulation; or federal order.
36 Prior to allowing access to any government record, the custodian
37 thereof shall redact from that record any information which
38 discloses the electronic mail address, social security number, credit
39 card number, **【unlisted】** telephone number, cellular telephone
40 number, **【or】** driver license number of any person, the home
41 address of any person who has requested their home address not be
42 subject to disclosure as a public record; except for use by any
43 government agency, including any court or law enforcement
44 agency, in carrying out its functions, or any private person or entity
45 acting on behalf thereof, or any private person or entity seeking to
46 enforce payment of court-ordered child support; except with respect
47 to the disclosure of driver information by the Division of Motor
48 Vehicles as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4);

1 and except that a social security number contained in a record
2 required by law to be made, maintained or kept on file by a public
3 agency shall be disclosed when access to the document or
4 disclosure of that information is not otherwise prohibited by State
5 or federal law, regulation or order or by State statute, resolution of
6 either or both houses of the Legislature, Executive Order of the
7 Governor, rule of court or regulation promulgated under the
8 authority of any statute or executive order of the Governor. Except
9 where an agency can demonstrate an emergent need, a regulation
10 that limits access to government records shall not be retroactive in
11 effect or applied to deny a request for access to a government
12 record that is pending before the agency, the council or a court at
13 the time of the adoption of the regulation.

14 b. A copy or copies of a government record may be purchased
15 by any person upon payment of the fee prescribed by law or
16 regulation, or if a fee is not prescribed by law or regulation, upon
17 payment of the actual cost of duplicating the record. Except as
18 otherwise provided by law or regulation, the fee assessed for the
19 duplication of a government record embodied in the form of printed
20 matter shall not exceed [the following: first page to tenth page,
21 \$0.75 per page; eleventh page to twentieth page,] \$0.50 per page[;
22 all pages over twenty, \$0.25 per page]. The actual cost of
23 duplicating the record shall be the cost of materials and supplies
24 used to make a copy of the record, but shall not include the cost of
25 labor or other overhead expenses associated with making the copy
26 except as provided for in subsection c. of this section. If a public
27 agency can demonstrate that its actual costs for duplication of a
28 government record exceed the foregoing rates, the public agency
29 shall be permitted to charge the actual cost of duplicating the
30 record.

31 If the government record is readily available on the public
32 agency website, the custodian may require the requester to obtain
33 the record from the agency website.

34 c. Whenever the nature, format, manner of collation, or volume
35 of a government record embodied in the form of printed matter to
36 be inspected, examined, or copied pursuant to this section is such
37 that the record cannot be reproduced by ordinary document copying
38 equipment in ordinary business size or involves an extraordinary
39 expenditure of time and effort to accommodate the request, the
40 public agency may charge, in addition to the actual cost of
41 duplicating the record, a special service charge that shall be
42 reasonable and shall be based upon the actual direct cost of
43 providing the copy or copies, or for the labor cost of personnel
44 providing the service, that is actually incurred by the agency or
45 attributable to the agency for the programming, clerical, and
46 supervisory assistance required, or both; provided, however, that in
47 the case of a municipality, rates for the duplication of particular
48 records when the actual cost of copying exceeds the foregoing rates

1 shall be established in advance by ordinance. The requestor shall
2 have the opportunity to review and object to the charge prior to it
3 being incurred.

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

19 e. Immediate access ordinarily shall be granted to budgets,
20 bills, vouchers, contracts, including collective negotiations
21 agreements and individual employment contracts, and public
22 employee salary and overtime information.

23 f. The custodian of a public agency shall adopt a form for the
24 use of any person who requests access to a government record held
25 or controlled by the public agency. The form shall provide space
26 for the name, address, and phone number of the requestor and a
27 brief description of the government record sought. The form shall
28 include space for the custodian to indicate which record will be
29 made available, when the record will be available, and the fees to be
30 charged. The form shall also include the following: (1) specific
31 directions and procedures for requesting a record; (2) a statement as
32 to whether prepayment of fees or a deposit is required; (3) the time
33 period within which the public agency is required by P.L.1963, c.73
34 (C.47:1A-1 et seq.) as amended and supplemented, to make the
35 record available; (4) a statement of the requestor's right to challenge
36 a decision by the public agency to deny access and the procedure
37 for filing an appeal; (5) space for the custodian to list reasons if a
38 request is denied in whole or in part; (6) space for the requestor to
39 sign and date the form; (7) space for the custodian to sign and date
40 the form if the request is fulfilled or denied.

41 If a request for information is made in writing on a document
42 other than the form adopted by the public agency and the request
43 contains the requisite information prescribed in this subsection, the
44 custodian shall treat the request as if made on the form adopted by
45 the public agency. The request made on a document other than the
46 form adopted by the public agency shall clearly and conspicuously
47 state that the request is a records request made under the provisions
48 of the open public records act of this State.

1 The custodian may require a deposit against costs for
2 reproducing documents sought through an anonymous request
3 whenever the custodian anticipates that the information thus
4 requested will cost in excess of \$5 to reproduce.

5 g. A request for access to a government record shall be in
6 writing and hand-delivered, mailed, transmitted electronically, or
7 otherwise conveyed to the appropriate custodian. A custodian shall
8 promptly comply with a request to inspect, examine, copy, or
9 provide a copy of a government record. If the custodian is unable
10 to comply with a request for access, the custodian shall indicate the
11 specific basis therefor on the request form and promptly return it to
12 the requestor. The custodian shall sign and date the form and
13 provide the requestor with a copy thereof. If the custodian of a
14 government record asserts that part of a particular record is exempt
15 from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)
16 as amended and supplemented, the custodian shall delete or excise
17 from a copy of the record that portion which the custodian asserts is
18 exempt from access and shall promptly permit access to the
19 remainder of the record. If the government record requested is
20 temporarily unavailable because it is in use or in storage, the
21 custodian shall so advise the requestor and shall make arrangements
22 to promptly make available a copy of the record. If a request for
23 access to a government record would substantially disrupt agency
24 operations, the custodian may deny access to the record after
25 attempting to reach a reasonable solution with the requestor that
26 accommodates the interests of the requestor and the agency.

27 h. Any officer or employee of a public agency who receives a
28 request for access to a government record shall forward the request
29 to the custodian of the record or direct the requestor to the
30 custodian of the record.

31 i. Unless a shorter time period is otherwise provided by
32 statute, regulation, or executive order, a custodian of a government
33 record shall grant access to a government record or deny a request
34 for access to a government record as soon as possible, but not later
35 than seven business days after receiving the request, provided that
36 the record is currently available and not in storage or archived. In
37 the event that the record is not currently available or the request is
38 voluminous in nature, or involves an extraordinary expenditure of
39 time and effort to accommodate the request, the public agency shall
40 have an extension of no more than seven business days to produce
41 the record. In the event a custodian fails to respond within seven
42 business days, or fourteen business days when appropriate, after
43 receiving a request, the failure to respond shall be deemed a denial
44 of the request, unless the requestor has elected not to provide a
45 name, address or telephone number, or other means of contacting
46 the requestor. If the requestor has elected not to provide a name,
47 address, or telephone number, or other means of contacting the
48 requestor, the custodian shall not be required to respond until the

1 requestor reappears before the custodian seeking a response to the
2 original request. If the government record is in storage or archived,
3 the requestor shall be so advised within seven business days after
4 the custodian receives the request. The requestor shall be advised
5 by the custodian when the record can be made available. If the
6 record is not made available by that time, access shall be deemed
7 denied. If the requestor does not pick up the records within
8 fourteen business days of the records being available, the request
9 shall be considered fulfilled. If the requestor will not be available
10 to pick up the records within that time, the requestor shall notify the
11 custodian when the records will be picked up, but at not time, shall
12 the custodian be required to maintain the records beyond thirty
13 calendar days.

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

21 The custodian of a public agency that has a website shall, at a
22 minimum, prominently post on the website the name, electronic
23 mail address, phone number, and facsimile number for the
24 custodian of records.

25 k. The files maintained by the Office of the Public Defender
26 that relate to the handling of any case shall be considered
27 confidential and shall not be open to inspection by any person
28 unless authorized by law, court order, or the State Public Defender.
29 (cf: P.L.2001, c.404, s.6)

30

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

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

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

40 in lieu of filing an action in Superior Court, file a complaint with
41 the Government Records Council established pursuant to section 8
42 of P.L.2001, c.404 (C.47:1A-7).

43 The right to institute any proceeding under this section shall be
44 solely that of the requestor. Any such proceeding shall proceed in a
45 summary or expedited manner. The public agency shall have the
46 burden of proving that the denial of access is authorized by law. If
47 it is determined that access has been improperly denied, the court or
48 agency head shall order that access be allowed. A requestor who

1 prevails in any proceeding shall be entitled to a reasonable
2 attorney's fee.

3 When the award of attorney's fees is being considered, the award
4 shall only be made in the case of a knowing and willful violation.
5 (cf: P.L.2001, c.404, s.7)

6

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

9 8. a. There is established in the Department of Community
10 Affairs a Government Records Council. The council shall consist
11 of the Commissioner of Community Affairs or the commissioner's
12 designee, the Commissioner of Education or the commissioner's
13 designee, and three public members appointed by the Governor,
14 with the advice and consent of the Senate, not more than two of
15 whom shall be of the same political party. The three public
16 members shall serve during the term of the Governor making the
17 appointment and until the appointment of a successor. A public
18 member shall not hold any other State or local elected or appointed
19 office or employment while serving as a member of the council. A
20 public member shall not receive a salary for service on the council
21 but shall be reimbursed for reasonable and necessary expenses
22 associated with serving on the council and may receive such per
23 diem payment as may be provided in the annual appropriations act.
24 A member may be removed by the Governor for cause. Vacancies
25 among the public members shall be filled in the same manner in
26 which the original appointment was made. The members of the
27 council shall choose one of the public members to serve as the
28 council's chair. The council may employ an executive director and
29 such professional and clerical staff as it deems necessary and may
30 call upon the Department of Community Affairs for such assistance
31 as it deems necessary and may be available to it.

32 b. The Government Records Council shall:

33 establish an informal mediation program to facilitate the
34 resolution of disputes regarding access to government records;

35 receive, hear, review and adjudicate a complaint filed by any
36 person concerning a denial of access to a government record by a
37 records custodian;

38 issue advisory opinions, on its own initiative, as to whether a
39 particular type of record is a government record which is accessible
40 to the public;

41 prepare guidelines and an informational pamphlet for use by
42 records custodians in complying with the law governing access to
43 public records;

44 prepare a form for use by records custodians that allows
45 residents of the custodian's municipality the option to opt-out of
46 having their address disclosed as a public record;

47 prepare an informational pamphlet explaining the public's right
48 of access to government records and the methods for resolving

1 disputes regarding access, which records custodians shall make
2 available to persons requesting access to a government record;

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

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

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

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

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

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

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

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

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

40 g. The council shall not have jurisdiction over the Judicial or
41 Legislative Branches of State Government or any agency, officer, or
42 employee of those branches.
43 (cf: P.L.2001, c.404, s.8)

44

45 5. (New section) a. Notwithstanding any other law or rule or
46 regulation to the contrary, whenever it is made to appear by verified
47 petition to the Superior Court of the county in which a requestor for
48 government records under P.L.1963, c.73 (C.47:1A-1 et seq.)

1 resides or has a primary place of business, the court may issue a
2 protective order limiting the number and scope of requests a
3 requestor may make. The court may issue the protective order if it
4 determines that the requestor has sought records under P.L.1963,
5 c.73 (C.47:1A-1 et seq.) for an improper purpose, which includes,
6 but is not limited to, the harassment of a public agency or its
7 employees. The petition shall be accompanied by a declaration of
8 facts by the public agency withholding the records demonstrating
9 that it has complied with P.L.1963, c.73 (C.47:1A-1 et seq.) and has
10 made a good faith effort to reach an informal resolution of the
11 issues relating to the records request.

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

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

29 d. For the purposes of this section, the "county of residence"
30 shall include any address listed on the request for the government
31 records.

32

33 6. This act shall take effect immediately.

34

35

36

STATEMENT

37

38 This bill makes certain changes to the public's access to
39 government records. Specifically the bill:

40 • exempts from disclosure e-mail addresses, home telephone
41 numbers, unlisted or otherwise and cell phone numbers;

42 • provides for a uniform per page rate for copying government
43 records;

44 • requires the Government Records Council to develop a form to
45 be used by records custodians that will allow persons to opt-out of
46 having their address made public;

- 1 • permits a records custodian to require the requester to obtain
- 2 the record from the agency website when the information requested
- 3 is readily available on the website;
- 4 • clarifies special service charges includes costs of labor;
- 5 • requires the record custodian to accept a record request made
- 6 on a document other than the adopted form if it contains a notice
- 7 that it is an OPRA request and contains the information required on
- 8 the adopted form;
- 9 • provides records custodians a seven day extension to comply
- 10 with large or complicated requests;
- 11 • requires the requestor to pick up the requested documents
- 12 within fourteen business days of the records being available;
- 13 • requires contact information for the custodian of a public
- 14 agency to be included on the agency website;
- 15 • requires mediation for all complaints; and
- 16 • requires that attorney's fees be awarded only when a knowing
- 17 and willful violation is found.
- 18 Also, this bill will permit a Superior Court to issue a protective
- 19 order limiting the number and scope of requests a requestor may
- 20 make under the open public records act, N.J.S.A.47:1A-1 et seq. In
- 21 appropriate circumstances, the court may eliminate a public
- 22 agency's duty to respond to requests from the requestor in the
- 23 future. The bill will require the court, in issuing the order, to
- 24 determine that the requestor has sought records under the act for an
- 25 improper purpose, including, but not limited to, the harassment of a
- 26 public agency or its employees.