

ASSEMBLY, No. 1880

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Exempts personal identifying information of minor from disclosure in public record; requires information to be redacted.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the disclosure of certain information in public
2 records and amending P.L.1995, c.23 and P.L.2001, c.404.

3

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

6

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

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

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

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
19 action of that agency's director or governing body, as the case may
20 be.

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

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

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

44 any memorandum, correspondence, notes, report or other
45 communication prepared by, or for, the specific use of a member of

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 the Legislature in the course of the member's official duties, except
2 that this provision shall not apply to an otherwise publicly-
3 accessible report which is required by law to be submitted to the
4 Legislature or its members;

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

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

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

18 for use in the field of forensic pathology or for use in medical or
19 scientific education or research, or

20 for use by any law enforcement agency in this State or any other
21 state or federal law enforcement agency;

22 criminal investigatory records;

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

25 any written request by a crime victim for a record to which the
26 victim is entitled to access as provided in this section, including,
27 but not limited to, any law enforcement agency report, domestic
28 violence offense report, and temporary or permanent restraining
29 order;

30 personal firearms records, except for use by any person
31 authorized by law to have access to these records or for use by any
32 government agency, including any court or law enforcement
33 agency, for purposes of the administration of justice;

34 personal identifying information received by the Division of Fish
35 and Wildlife in the Department of Environmental Protection in
36 connection with the issuance of any license authorizing hunting
37 with a firearm. For the purposes of this paragraph, personal
38 identifying information shall include, but not be limited to, identity,
39 name, address, social security number, telephone number, fax
40 number, driver's license number, email address, or social media
41 address of any applicant or licensee;

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

46 any record within the attorney-client privilege. This paragraph
47 shall not be construed as exempting from access attorney or
48 consultant bills or invoices except that such bills or invoices may be

1 redacted to remove any information protected by the attorney-client
2 privilege;
3 administrative or technical information regarding computer
4 hardware, software and networks which, if disclosed, would
5 jeopardize computer security;
6 emergency or security information or procedures for any
7 buildings or facility which, if disclosed, would jeopardize security
8 of the building or facility or persons therein;
9 security measures and surveillance techniques which, if
10 disclosed, would create a risk to the safety of persons, property,
11 electronic data or software;
12 information which, if disclosed, would give an advantage to
13 competitors or bidders;
14 information generated by or on behalf of public employers or
15 public employees in connection with any sexual harassment
16 complaint filed with a public employer or with any grievance filed
17 by or against an individual or in connection with collective
18 negotiations, including documents and statements of strategy or
19 negotiating position;
20 information which is a communication between a public agency
21 and its insurance carrier, administrative service organization or risk
22 management office;
23 information which is to be kept confidential pursuant to court
24 order;
25 any copy of form DD-214, or that form, issued by the United
26 States Government, or any other certificate of honorable discharge,
27 or copy thereof, from active service or the reserves of a branch of
28 the Armed Forces of the United States, or from service in the
29 organized militia of the State, that has been filed by an individual
30 with a public agency, except that a veteran or the veteran's spouse
31 or surviving spouse shall have access to the veteran's own records;
32 any copy of an oath of allegiance, oath of office or any
33 affirmation taken upon assuming the duties of any public office, or
34 that oath or affirmation, taken by a current or former officer or
35 employee in any public office or position in this State or in any
36 county or municipality of this State, including members of the
37 Legislative Branch, Executive Branch, Judicial Branch, and all law
38 enforcement entities, except that the full name, title, and oath date
39 of that person contained therein shall not be deemed confidential;
40 that portion of any document which discloses the social security
41 number, credit card number, unlisted telephone number or driver
42 license number of any person; except for use by any government
43 agency, including any court or law enforcement agency, in carrying
44 out its functions, or any private person or entity acting on behalf
45 thereof, or any private person or entity seeking to enforce payment
46 of court-ordered child support; except with respect to the disclosure
47 of driver information by the New Jersey Motor Vehicle
48 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-

1 3.4); 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;

9 **【A】** a list of persons identifying themselves as being in need of
10 special assistance in the event of an emergency maintained by a
11 municipality for public safety purposes pursuant to section 1 of
12 P.L.2017, c.266 (C.40:48-2.67); **【and】**

13 **【A】** a list of persons identifying themselves as being in need of
14 special assistance in the event of an emergency maintained by a
15 county for public safety purposes pursuant to section 6 of P.L.2011,
16 c.178 (C.App.A:9-43.13); and

17 that portion of any document that discloses personal identifying
18 information of persons under the age of 18 years, except with
19 respect to the disclosure of driver information by the New Jersey
20 Motor Vehicle Commission as permitted by section 2 of P.L.1997,
21 c.188 (C.39:2-3.4).

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

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

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

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

45 valuable or rare collections of books and/or documents obtained
46 by gift, grant, bequest or devise conditioned upon limited public
47 access; information contained on individual admission applications;
48 and

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

4 "Personal firearms record" means any information contained in a
5 background investigation conducted by the chief of police, the
6 county prosecutor, or the Superintendent of State Police, of any
7 applicant for a permit to purchase a handgun, firearms identification
8 card license, or firearms registration; any application for a permit to
9 purchase a handgun, firearms identification card license, or firearms
10 registration; any document reflecting the issuance or denial of a
11 permit to purchase a handgun, firearms identification card license,
12 or firearms registration; and any permit to purchase a handgun,
13 firearms identification card license, or any firearms license,
14 certification, certificate, form of register, or registration statement.
15 For the purposes of this paragraph, information contained in a
16 background investigation shall include, but not be limited to,
17 identity, name, address, social security number, phone number, fax
18 number, driver's license number, email address, social media
19 address of any applicant, licensee, registrant or permit holder.

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

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

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

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

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

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

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

6 "Victims' rights agency" means a public agency, or part thereof,
7 the primary responsibility of which is providing services, including
8 but not limited to food, shelter, or clothing, medical, psychiatric,
9 psychological or legal services or referrals, information and referral
10 services, counseling and support services, or financial services to
11 victims of crimes, including victims of sexual assault, domestic
12 violence, violent crime, child endangerment, child abuse or child
13 neglect, and the Victims of Crime Compensation Board, established
14 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
15 the Victims of Crime Compensation Office pursuant to P.L.2007,
16 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
17 (cf: P.L.2017, c.266, s.4)

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 social security number, credit card number, unlisted
39 telephone number, or driver license number of any person, and any
40 personal identifying information of a person under the age of 18
41 years; except for use by any government agency, including any
42 court or law enforcement agency, in carrying out its functions, or
43 any private person or entity acting on behalf thereof, or any private
44 person or entity seeking to enforce payment of court-ordered child
45 support; except with respect to the disclosure of driver information
46 by the New Jersey Motor Vehicle Commission as permitted by
47 section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social
48 security number contained in a record required by law to be made,

1 maintained or kept on file by a public agency shall be disclosed
2 when access to the document or disclosure of that information is not
3 otherwise prohibited by State or federal law, regulation or order or
4 by State statute, resolution of either or both houses of the
5 Legislature, Executive Order of the Governor, rule of court or
6 regulation promulgated under the authority of any statute or
7 executive order of the Governor.

8 Except where an agency can demonstrate an emergent need, a
9 regulation that limits access to government records shall not be
10 retroactive in effect or applied to deny a request for access to a
11 government record that is pending before the agency, the council or
12 a court at the time of the adoption of the regulation.

13 b. (1) A copy or copies of a government record may be
14 purchased by any person upon payment of the fee prescribed by law
15 or regulation. Except as otherwise provided by law or regulation
16 and except as provided in paragraph (2) of this subsection, the fee
17 assessed for the duplication of a government record embodied in the
18 form of printed matter shall be \$0.05 per letter size page or smaller,
19 and \$0.07 per legal size page or larger. If a public agency can
20 demonstrate that its actual costs for duplication of a government
21 record exceed the foregoing rates, the public agency shall be
22 permitted to charge the actual cost of duplicating the record. The
23 actual cost of duplicating the record, upon which all copy fees are
24 based, shall be the cost of materials and supplies used to make a
25 copy of the record, but shall not include the cost of labor or other
26 overhead expenses associated with making the copy except as
27 provided for in subsection c. of this section. Access to electronic
28 records and non-printed materials shall be provided free of charge,
29 but the public agency may charge for the actual costs of any needed
30 supplies such as computer discs.

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

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; provided, however, that in the case of
44 a municipality, rates for the duplication of particular records when
45 the actual cost of copying exceeds the foregoing rates shall be
46 established in advance by ordinance. The requestor shall have the
47 opportunity to review and object to the charge prior to it being
48 incurred.

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

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

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

42 g. A request for access to a government record shall be in
43 writing and hand-delivered, mailed, transmitted electronically, or
44 otherwise conveyed to the appropriate custodian. A custodian shall
45 promptly comply with a request to inspect, examine, copy, or
46 provide a copy of a government record. If the custodian is unable to
47 comply with a request for access, the custodian shall indicate the
48 specific basis therefor on the request form and promptly return it to

1 the requestor. The custodian shall sign and date the form and
2 provide the requestor with a copy thereof. If the custodian of a
3 government record asserts that part of a particular record is exempt
4 from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)
5 as amended and supplemented, the custodian shall delete or excise
6 from a copy of the record that portion which the custodian asserts is
7 exempt from access and shall promptly permit access to the
8 remainder of the record. If the government record requested is
9 temporarily unavailable because it is in use or in storage, the
10 custodian shall so advise the requestor and shall make arrangements
11 to promptly make available a copy of the record. If a request for
12 access to a government record would substantially disrupt agency
13 operations, the custodian may deny access to the record after
14 attempting to reach a reasonable solution with the requestor that
15 accommodates the interests of the requestor and the agency.

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

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

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

47 k. The files maintained by the Office of the Public Defender
48 that relate to the handling of any case shall be considered

1 confidential and shall not be open to inspection by any person
2 unless authorized by law, court order, or the State Public Defender.
3 (cf: P.L. 2014, c.19, s.3)

4
5 3. Section 11 of P.L.2001, c.404 (C.47:1A-10) is amended to
6 read as follows:

7 11. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-
8 1 et seq.) or any other law to the contrary, the personnel or pension
9 records of any individual in the possession of a public agency,
10 including but not limited to records relating to any grievance filed
11 by or against an individual, shall not be considered a government
12 record and shall not be made available for public access, except
13 that:

14 an individual's name, excluding the name of an individual under
15 the age of 18 years, title, position, salary, payroll record, length of
16 service, date of separation and the reason therefor, and the amount
17 and type of any pension received shall be a government record;

18 personnel or pension records of any individual shall be
19 accessible when required to be disclosed by another law, when
20 disclosure is essential to the performance of official duties of a
21 person duly authorized by this State or the United States, or when
22 authorized by an individual in interest; and

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

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

29
30 4. This act shall take effect immediately.

31
32
33 STATEMENT

34
35 This bill requires a records custodian to redact any personal
36 identifying information of a person under the age of 18 years prior
37 to allowing access to any government record, subject to certain
38 exceptions in statutory law. The bill excludes that information from
39 the definition of a "government record," and excludes the name of
40 persons under the age of 18 years from disclosure in certain
41 personnel and pension records.

42 The information would still be subject to disclosure when used
43 by a government agency, court, or law enforcement agency in
44 carrying out its functions; when used by a private person or entity
45 seeking to enforce payment of court-ordered child support; when
46 circumstances involve the disclosure of driver information by the
47 New Jersey Motor Vehicle Commission under N.J.S.A.39:2-3.4;

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- 1 and when the information involves a social security number
- 2 contained in a record required by law to be made, maintained or
- 3 kept on file, if disclosure is not otherwise prohibited by law.