

ASSEMBLY, No. 2176

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman CLINTON CALABRESE

District 36 (Bergen and Passaic)

Co-Sponsored by:

Assemblywoman Chaparro, Assemblymen Coughlin and Webber

SYNOPSIS

Exempts certain health information contained in 9-1-1 calls from definition of government record.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning 9-1-1 calls and amending P.L.1995, c.23.

2

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

5

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

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

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

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

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

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

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

41 any memorandum, correspondence, notes, report or other
42 communication prepared by, or for, the specific use of a member of the
43 Legislature in the course of the member's official duties, except that
44 this provision shall not apply to an otherwise publicly-accessible

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 report which is required by law to be submitted to the Legislature or its
2 members;

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

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

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

16 for use in the field of forensic pathology or for use in medical or
17 scientific education or research, or

18 for use by any law enforcement agency in this State or any other
19 state or federal law enforcement agency;

20 criminal investigatory records;

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

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

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

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

39 any part of a 9-1-1 audio recording or transcript of a 9-1-1 call that
40 discloses a person's health status; medical conditions including
41 diseases, illnesses, disorders, diagnoses, disabilities, or injuries; receipt
42 of health care services or treatments; medical history; genetic
43 information; or current health insurance contract, policy, or plan
44 information;

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

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

1 permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that
2 a social security number contained in a record required by law to be
3 made, maintained or kept on file by a public agency shall be disclosed
4 when access to the document or disclosure of that information is not
5 otherwise prohibited by State or federal law, regulation or order or by
6 State statute, resolution of either or both houses of the Legislature,
7 Executive Order of the Governor, rule of court or regulation
8 promulgated under the authority of any statute or executive order of
9 the Governor;

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

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

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

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

31 test questions, scoring keys and other examination data pertaining
32 to the administration of an examination for employment or academic
33 examination;

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

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

42 information contained on individual admission applications; and

43 information concerning student records or grievance or
44 disciplinary proceedings against a student to the extent disclosure
45 would reveal the identity of the student.

46 "Personal firearms record" means any information contained in a
47 background investigation conducted by the chief of police, the county
48 prosecutor, or the Superintendent of State Police, of any applicant for a

1 permit to purchase a handgun, firearms identification card license, or
2 firearms registration; any application for a permit to purchase a
3 handgun, firearms identification card license, or firearms registration;
4 any document reflecting the issuance or denial of a permit to purchase
5 a handgun, firearms identification card license, or firearms
6 registration; and any permit to purchase a handgun, firearms
7 identification card license, or any firearms license, certification,
8 certificate, form of register, or registration statement. For the purposes
9 of this paragraph, information contained in a background investigation
10 shall include, but not be limited to, identity, name, address, social
11 security number, phone number, fax number, driver's license number,
12 email address, social media address of any applicant, licensee,
13 registrant or permit holder.

14 "Public agency" or "agency" means any of the principal
15 departments in the Executive Branch of State Government, and any
16 division, board, bureau, office, commission or other instrumentality
17 within or created by such department; the Legislature of the State and
18 any office, board, bureau or commission within or created by the
19 Legislative Branch; and any independent State authority, commission,
20 instrumentality or agency. The terms also mean any political
21 subdivision of the State or combination of political subdivisions, and
22 any division, board, bureau, office, commission or other
23 instrumentality within or created by a political subdivision of the State
24 or combination of political subdivisions, and any independent
25 authority, commission, instrumentality or agency created by a political
26 subdivision or combination of political subdivisions.

27 "Law enforcement agency" means a public agency, or part thereof,
28 determined by the Attorney General to have law enforcement
29 responsibilities.

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

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

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

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

42 "Victim of a crime" means a person who has suffered personal or
43 psychological injury or death or incurs loss of or injury to personal or
44 real property as a result of a crime, or if such a person is deceased or
45 incapacitated, a member of that person's immediate family.

46 "Victims' rights agency" means a public agency, or part thereof,
47 the primary responsibility of which is providing services, including but
48 not limited to food, shelter, or clothing, medical, psychiatric,

1 psychological or legal services or referrals, information and referral
2 services, counseling and support services, or financial services to
3 victims of crimes, including victims of sexual assault, domestic
4 violence, violent crime, child endangerment, child abuse or child
5 neglect, and the Victims of Crime Compensation Board, established
6 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as the
7 Victims of Crime Compensation Office pursuant to P.L.2007, c.95
8 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
9 (cf: P.L.2017, c.266, s.4)

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11 2. This act shall take effect immediately.

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14 STATEMENT

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16 Under current law, 9-1-1 audio recordings and transcripts are
17 generally considered government records which are available for
18 inspection, copying, and examination by the public under New
19 Jersey's "Open Public Records Act," commonly referred to as
20 OPRA.

21 This bill would make confidential any part of a 9-1-1 audio
22 recording or transcript that disclosed a person's health status,
23 medical conditions, health care services or treatments, medical
24 history, genetic information, or current health insurance plan
25 information by excluding it from the definition of a government
26 record.