

ASSEMBLY, No. 4360

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 2, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Prohibits release of information concerning minors under Open Public Records Act without written parental consent.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the Open Public Records Act and amending
2 P.L.1995, c.23.

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
8 read 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 "Commercial purpose" means the direct or indirect use of any
17 part of a government record for sale, resale, solicitation, rent or
18 lease of a service, or any use by which the user expects a profit
19 either through commission, salary, or fee. "Commercial purpose"
20 shall not include using, distributing, gathering, procuring,
21 transmitting, compiling, editing, disseminating, or publishing of
22 information or data by the news media, or any parent, subsidiary, or
23 affiliate of any news media, as defined by section 2 of P.L.1977,
24 c.253 (C.2A:84A-21a), or by any news, journalistic, educational,
25 scientific, scholarly, or governmental organization.

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

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

**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 A government record shall not include the following information
2 which is deemed to be confidential for the purposes of P.L.1963,
3 c.73 (C.47:1A-1 et seq.) as amended and supplemented:
4 information received by a member of the Legislature from a
5 constituent or information held by a member of the Legislature
6 concerning a constituent, including but not limited to information in
7 written form or contained in any e-mail or computer data base, or in
8 any telephone record whatsoever, unless it is information the
9 constituent is required by law to transmit;
10 any memorandum, correspondence, notes, report or other
11 communication prepared by, or for, the specific use of a member of
12 the Legislature in the course of the member's official duties, except
13 that this provision shall not apply to an otherwise publicly-
14 accessible report which is required by law to be submitted to the
15 Legislature or its members;
16 any copy, reproduction or facsimile of any photograph, negative
17 or print, including instant photographs and videotapes of the body,
18 or any portion of the body, of a deceased person, taken by or for the
19 medical examiner at the scene of death or in the course of a post
20 mortem examination or autopsy made by or caused to be made by
21 the medical examiner except:
22 when used in a criminal action or proceeding in this State which
23 relates to the death of that person,
24 for the use as a court of this State permits, by order after good
25 cause has been shown and after written notification of the request
26 for the court order has been served at least five days before the
27 order is made upon the county prosecutor for the county in which
28 the post mortem examination or autopsy occurred,
29 for use in the field of forensic pathology or for use in medical or
30 scientific education or research, or
31 for use by any law enforcement agency in this State or any other
32 state or federal law enforcement agency;
33 criminal investigatory records;
34 victims' records, except that a victim of a crime shall have access
35 to the victim's own records;
36 any written request by a crime victim for a record to which the
37 victim is entitled to access as provided in this section, including,
38 but not limited to, any law enforcement agency report, domestic
39 violence offense report, and temporary or permanent restraining
40 order;
41 any information about a minor without the prior written consent
42 from the minor's parent or guardian, including, but not limited to,
43 directory and personally identifiable information that could be used
44 for a commercial purpose;
45 personal firearms records, except for use by any person
46 authorized by law to have access to these records or for use by any
47 government agency, including any court or law enforcement
48 agency, for purposes of the administration of justice;

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

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

13 any record within the attorney-client privilege. This paragraph
14 shall not be construed as exempting from access attorney or
15 consultant bills or invoices except that such bills or invoices may be
16 redacted to remove any information protected by the attorney-client
17 privilege;

18 administrative or technical information regarding computer
19 hardware, software and networks which, if disclosed, would
20 jeopardize computer security;

21 emergency or security information or procedures for any
22 buildings or facility which, if disclosed, would jeopardize security
23 of the building or facility or persons therein;

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

27 information which, if disclosed, would give an advantage to
28 competitors or bidders;

29 information generated by or on behalf of public employers or
30 public employees in connection with any sexual harassment
31 complaint filed with a public employer or with any grievance filed
32 by or against an individual or in connection with collective
33 negotiations, including documents and statements of strategy or
34 negotiating position;

35 information which is a communication between a public agency
36 and its insurance carrier, administrative service organization or risk
37 management office;

38 information which is to be kept confidential pursuant to court
39 order;

40 any copy of form DD-214, NGB-22, or that form, issued by the
41 United States Government, or any other certificate of honorable
42 discharge, or copy thereof, from active service or the reserves of a
43 branch of the Armed Forces of the United States, or from service in
44 the organized militia of the State, that has been filed by an
45 individual with a public agency, except that a veteran or the
46 veteran's spouse or surviving spouse shall have access to the
47 veteran's own records;

1 any copy of an oath of allegiance, oath of office or any
2 affirmation taken upon assuming the duties of any public office, or
3 that oath or affirmation, taken by a current or former officer or
4 employee in any public office or position in this State or in any
5 county or municipality of this State, including members of the
6 Legislative Branch, Executive Branch, Judicial Branch, and all law
7 enforcement entities, except that the full name, title, and oath date
8 of that person contained therein shall not be deemed confidential;

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

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

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

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

37 pedagogical, scholarly and/or academic research records and/or
38 the specific details of any research project conducted under the
39 auspices of a public higher education institution in New Jersey,
40 including, but not limited to research, development information,
41 testing procedures, or information regarding test participants,
42 related to the development or testing of any pharmaceutical or
43 pharmaceutical delivery system, except that a custodian may not
44 deny inspection of a government record or part thereof that gives
45 the name, title, expenditures, source and amounts of funding and
46 date when the final project summary of any research will be
47 available;

1 “Personally identifiable information” means any information that
2 personally identifies, describes, or is able to be associated with a
3 person’s identity, including, but not limited to:

4 name, address, precise geolocation, telephone number, postal and
5 electronic mail address, and social security number or other
6 government-issued identification number, including driver’s license
7 number or passport number.

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

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

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

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

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

40 "Public agency" or "agency" means any of the principal
41 departments in the Executive Branch of State Government, and any
42 division, board, bureau, office, commission or other instrumentality
43 within or created by such department; the Legislature of the State
44 and any office, board, bureau or commission within or created by
45 the Legislative Branch; and any independent State authority,
46 commission, instrumentality or agency. The terms also mean any
47 political subdivision of the State or combination of political
48 subdivisions, and any division, board, bureau, office, commission or

1 other instrumentality within or created by a political subdivision of
2 the State or combination of political subdivisions, and any
3 independent authority, commission, instrumentality or agency
4 created by a political subdivision or combination of political
5 subdivisions.

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

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

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

13 "Minor" means a person who is under 18 years of age and who
14 has not been married or previously declared by a court or an
15 administrative agency to be emancipated.

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

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

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

29 "Victims' rights agency" means a public agency, or part thereof,
30 the primary responsibility of which is providing services, including
31 but not limited to food, shelter, or clothing, medical, psychiatric,
32 psychological or legal services or referrals, information and referral
33 services, counseling and support services, or financial services to
34 victims of crimes, including victims of sexual assault, domestic
35 violence, violent crime, child endangerment, child abuse or child
36 neglect, and the Victims of Crime Compensation Board, established
37 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
38 the Victims of Crime Compensation Office pursuant to P.L.2007,
39 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
40 (cf: P.L.2019, c.255, s.4)

41

42 2. This act shall take effect immediately.

43

44

45 STATEMENT

46

47 This bill provides that any information concerning a minor, a
48 person under the age of 18, is prohibited from being released under

- 1 P.L.1963, c.73, commonly known as the Open Public Records Act,
- 2 without the prior written consent of the minor's parent or guardian,
- 3 including directory and personally identifiable information that
- 4 could be used for commercial purposes.