

# ASSEMBLY, No. 5615

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 12, 2021

**Sponsored by:**

**Assemblyman GERARD SCHARFENBERGER**

**District 13 (Monmouth)**

**SYNOPSIS**

Permits special service charge for commercial purpose public records requests; increases time to respond to commercial requests; provides penalty for failure to certify commercial purpose request.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning open public records requests for commercial  
2 purposes, 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 and  
10 supplemented:

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

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

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

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

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 information received by a member of the Legislature from a  
2 constituent or information held by a member of the Legislature  
3 concerning a constituent, including but not limited to information in  
4 written form or contained in any e-mail or computer data base, or in  
5 any telephone record whatsoever, unless it is information the  
6 constituent is required by law to transmit;

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

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

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

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

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

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

30 criminal investigatory records;

31 the portion of any criminal record concerning a person's detection,  
32 apprehension, arrest, detention, trial or disposition for unlawful  
33 manufacturing, distributing, or dispensing , or possessing or having  
34 under control with intent to manufacture, distribute, or dispense,  
35 marijuana or hashish in violation of paragraph (11) of subsection b.  
36 of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in  
37 violation of paragraph (12) of subsection b. of that section, or a  
38 violation of either of those paragraphs and a violation of subsection  
39 a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of  
40 section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing,  
41 dispensing, or possessing , or having under control with intent to  
42 distribute or dispense , on or within 1,000 feet of any school property,  
43 or on or within 500 feet of the real property comprising a public  
44 housing facility, public park, or public building, or for obtaining,  
45 possessing, using, being under the influence of, or failing to make  
46 lawful disposition of marijuana or hashish in violation of paragraph  
47 (3) or (4) of subsection a., or subsection b., or subsection c. of  
48 N.J.S.2C:35-10, or for a violation of any of those provisions and a

1 violation of N.J.S.2C:36-2 for using or possessing with intent to use  
2 drug paraphernalia with that marijuana or hashish;

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

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

9 personal firearms records, except for use by any person authorized  
10 by law to have access to these records or for use by any government  
11 agency, including any court or law enforcement agency, for purposes  
12 of the administration of justice;

13 personal identifying information received by the Division of Fish  
14 and Wildlife in the Department of Environmental Protection in  
15 connection with the issuance of any license authorizing hunting with  
16 a firearm. For the purposes of this paragraph, personal identifying  
17 information shall include, but not be limited to, identity, name,  
18 address, social security number, telephone number, fax number,  
19 driver's license number, email address, or social media address of any  
20 applicant or licensee;

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

25 any record within the attorney-client privilege. This paragraph  
26 shall not be construed as exempting from access attorney or  
27 consultant bills or invoices except that such bills or invoices may be  
28 redacted to remove any information protected by the attorney-client  
29 privilege;

30 administrative or technical information regarding computer  
31 hardware, software and networks which, if disclosed, would  
32 jeopardize computer security;

33 emergency or security information or procedures for any buildings  
34 or facility which, if disclosed, would jeopardize security of the  
35 building or facility or persons therein;

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

39 information which, if disclosed, would give an advantage to  
40 competitors or bidders;

41 information generated by or on behalf of public employers or  
42 public employees in connection with any sexual harassment  
43 complaint filed with a public employer or with any grievance filed  
44 by or against an individual or in connection with collective  
45 negotiations, including documents and statements of strategy or  
46 negotiating position;

47 information which is a communication between a public agency  
48 and its insurance carrier, administrative service organization or risk  
49 management office;

1 information which is to be kept confidential pursuant to court  
2 order;

3 any copy of form DD-214, NGB-22, or that form, issued by the  
4 United States Government, or any other certificate of honorable  
5 discharge, or copy thereof, from active service or the reserves of a  
6 branch of the Armed Forces of the United States, or from service in  
7 the organized militia of the State, that has been filed by an individual  
8 with a public agency, except that a veteran or the veteran's spouse or  
9 surviving spouse shall have access to the veteran's own records;

10 any copy of an oath of allegiance, oath of office or any affirmation  
11 taken upon assuming the duties of any public office, or that oath or  
12 affirmation, taken by a current or former officer or employee in any  
13 public office or position in this State or in any county or municipality  
14 of this State, including members of the Legislative Branch, Executive  
15 Branch, Judicial Branch, and all law enforcement entities, except that  
16 the full name, title, and oath date of that person contained therein  
17 shall not be deemed confidential;

18 that portion of any document which discloses the social security  
19 number, credit card number, unlisted telephone number or driver  
20 license number of any person, or that portion of any document which  
21 discloses the home address, whether a primary or secondary  
22 residence, or any active, formerly active, or retired judicial officer or  
23 prosecutor, and beginning 18 months after the effective date of  
24 P.L.2020, c.125 (C.56:8-166.2 et al.), any active, formerly active, or  
25 retired law enforcement officer; except for use by any government  
26 agency, including any court or law enforcement agency, in carrying  
27 out its functions, or any private person or entity acting on behalf  
28 thereof, or any private person or entity seeking to enforce payment  
29 of court-ordered child support; except with respect to the disclosure  
30 of driver information by the New Jersey Motor Vehicle Commission  
31 as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except  
32 that a social security number contained in a record required by law to  
33 be made, maintained or kept on file by a public agency shall be  
34 disclosed when access to the document or disclosure of that  
35 information is not otherwise prohibited by State or federal law,  
36 regulation or order or by State statute, resolution of either or both  
37 houses of the Legislature, Executive Order of the Governor, rule of  
38 court or regulation promulgated under the authority of any statute or  
39 executive order of the Governor;

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

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

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

4 pedagogical, scholarly and/or academic research records and/or  
5 the specific details of any research project conducted under the  
6 auspices of a public higher education institution in New Jersey,  
7 including, but not limited to research, development information,  
8 testing procedures, or information regarding test participants, related  
9 to the development or testing of any pharmaceutical or  
10 pharmaceutical delivery system, except that a custodian may not  
11 deny inspection of a government record or part thereof that gives the  
12 name, title, expenditures, source and amounts of funding and date  
13 when the final project summary of any research will be available;

14 test questions, scoring keys and other examination data pertaining  
15 to the administration of an examination for employment or academic  
16 examination;

17 records of pursuit of charitable contributions or records containing  
18 the identity of a donor of a gift if the donor requires non-disclosure  
19 of the donor's identity as a condition of making the gift provided that  
20 the donor has not received any benefits of or from the institution of  
21 higher education in connection with such gift other than a request for  
22 memorialization or dedication;

23 valuable or rare collections of books or documents obtained by  
24 gift, grant, bequest or devise conditioned upon limited public access;

25 information contained on individual admission applications; and  
26 information concerning student records or grievance or  
27 disciplinary proceedings against a student to the extent disclosure  
28 would reveal the identity of the student.

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

45 "Public agency" or "agency" means any of the principal  
46 departments in the Executive Branch of State Government, and any  
47 division, board, bureau, office, commission or other instrumentality  
48 within or created by such department; the Legislature of the State and  
49 any office, board, bureau or commission within or created by the

1 Legislative Branch; and any independent State authority,  
2 commission, instrumentality or agency. The terms also mean any  
3 political subdivision of the State or combination of political  
4 subdivisions, and any division, board, bureau, office, commission or  
5 other instrumentality within or created by a political subdivision of  
6 the State or combination of political subdivisions, and any  
7 independent authority, commission, instrumentality or agency  
8 created by a political subdivision or combination of political  
9 subdivisions.

10 "Law enforcement agency" means a public agency, or part thereof,  
11 determined by the Attorney General to have law enforcement  
12 responsibilities.

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

15 "Judicial officer" means any active, formerly active, or retired  
16 federal, state, county or municipal judge, including a judge of the Tax  
17 Court and any other court of limited jurisdiction established, altered,  
18 or abolished by law, a judge of the Office of Administrative Law, a  
19 judge of the Division of Workers' Compensation, and any other judge  
20 established by law who serves in the executive branch.

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

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

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

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

35 "Victims' rights agency" means a public agency, or part thereof,  
36 the primary responsibility of which is providing services, including  
37 but not limited to food, shelter, or clothing, medical, psychiatric,  
38 psychological or legal services or referrals, information and referral  
39 services, counseling and support services, or financial services to  
40 victims of crimes, including victims of sexual assault, domestic  
41 violence, violent crime, child endangerment, child abuse or child  
42 neglect, and the Victims of Crime Compensation Board, established  
43 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as the  
44 Victims of Crime Compensation Office pursuant to P.L.2007, c.95  
45 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.  
46 (cf: P.L.2021, c.19, s.18)

47

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

1       6. a. The custodian of a government record shall permit the  
2 record to be inspected, examined, and copied by any person during  
3 regular business hours; or in the case of a municipality having a  
4 population of 5,000 or fewer according to the most recent federal  
5 decennial census, a board of education having a total district  
6 enrollment of 500 or fewer, or a public authority having less than \$10  
7 million in assets, during not less than six regular business hours over  
8 not less than three business days per week or the entity's regularly-  
9 scheduled business hours, whichever is less; unless a government  
10 record is exempt from public access by: P.L.1963, c.73 (C.47:1A-1  
11 et seq.) as amended and supplemented; any other statute; resolution  
12 of either or both houses of the Legislature; regulation promulgated  
13 under the authority of any statute or Executive Order of the  
14 Governor; Executive Order of the Governor; Rules of Court; any  
15 federal law; federal regulation; or federal order. Prior to allowing  
16 access to any government record, the custodian thereof shall redact  
17 from that record any information which discloses the social security  
18 number, credit card number, unlisted telephone number, or driver  
19 license number of any person, or the home address, whether a  
20 primary or secondary residence, of any active, formerly active, or  
21 retired judicial officer or prosecutor, and beginning 18 months after  
22 the effective date of P.L.2020, c.125 (C.56:8-166.2 et al.), any active,  
23 formerly active, or retired law enforcement officer; except for use by  
24 any government agency, including any court or law enforcement  
25 agency, in carrying out its functions, or any private person or entity  
26 acting on behalf thereof, or any private person or entity seeking to  
27 enforce payment of court-ordered child support; except with respect  
28 to the disclosure of driver information by the New Jersey Motor  
29 Vehicle Commission as permitted by section 2 of P.L.1997, c.188  
30 (C.39:2-3.4); and except that a social security number contained in a  
31 record required by law to be made, maintained or kept on file by a  
32 public agency shall be disclosed when access to the document or  
33 disclosure of that information is not otherwise prohibited by State or  
34 federal law, regulation or order or by State statute, resolution of  
35 either or both houses of the Legislature, Executive Order of the  
36 Governor, rule of court or regulation promulgated under the authority  
37 of any statute or executive order of the Governor. Except where an  
38 agency can demonstrate an emergent need, a regulation that limits  
39 access to government records shall not be retroactive in effect or  
40 applied to deny a request for access to a government record that is  
41 pending before the agency, the council or a court at the time of the  
42 adoption of the regulation.

43       b. (1) A copy or copies of a government record may be  
44 purchased by any person upon payment of the fee prescribed by law  
45 or regulation. Except as otherwise provided by law or regulation and  
46 except as provided in paragraph (2) of this subsection, the fee  
47 assessed for the duplication of a government record embodied in the  
48 form of printed matter shall be \$0.05 per letter size page or smaller,  
49 and \$0.07 per legal size page or larger. If a public agency can



1 demonstrate that its actual costs for duplication of a government  
2 record exceed the foregoing rates, the public agency shall be  
3 permitted to charge the actual cost of duplicating the record. The  
4 actual cost of duplicating the record, upon which all copy fees are  
5 based, shall be the cost of materials and supplies used to make a copy  
6 of the record, but shall not include the cost of labor or other overhead  
7 expenses associated with making the copy except as provided for in  
8 subsection c. of this section. Access to electronic records and non-  
9 printed materials shall be provided free of charge, but the public  
10 agency may charge for the actual costs of any needed supplies such  
11 as computer discs.

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

15 c. Whenever the nature, format, medium, manner of collation,  
16 or volume of a government record embodied in the form of printed  
17 matter to be inspected, examined, or copied pursuant to this section  
18 is such that the record cannot be reproduced by ordinary document  
19 copying equipment in ordinary business size or involves an  
20 extraordinary expenditure of time and effort to accommodate the  
21 request, or the request is for a commercial purpose, the public agency  
22 may charge, in addition to the actual cost of duplicating the record, a  
23 special service charge **[that]** . A special service charge shall be  
24 reasonable and shall be based upon the actual, direct cost of providing  
25 the copy or copies**;** provided, however, that**]** . Special service  
26 charge rates, in the case of a municipality, **[rates]** for the duplication  
27 of particular records when the actual cost of copying exceeds the  
28 foregoing rates shall be established in advance by ordinance. The  
29 requestor shall have the opportunity to review and object to the  
30 charge prior to it being incurred.

31 d. A custodian shall permit access to a government record and  
32 provide a copy thereof in the medium or format requested if the  
33 public agency maintains the record in that medium or format. If the  
34 public agency does not maintain the record in the medium or format  
35 requested, the custodian shall either convert the record to the medium  
36 or format requested or provide a copy in some other meaningful  
37 medium or format. If a request is for a record: (1) in a medium or  
38 format not routinely used by the agency; (2) not routinely developed  
39 or maintained by an agency; or (3) requiring a substantial amount of  
40 manipulation or programming of information technology, the agency  
41 may charge, in addition to the actual cost of duplication, a special  
42 charge that shall be reasonable and shall be based on the cost for any  
43 extensive use of information technology, or for the labor cost of  
44 personnel providing the service, that is actually incurred by the  
45 agency or attributable to the agency for the programming, clerical,  
46 and supervisory assistance required, or both.

47 e. Immediate access ordinarily shall be granted to budgets, bills,  
48 vouchers, contracts, including collective negotiations agreements

1 and individual employment contracts, and public employee salary  
2 and overtime information.

3 f. The custodian of a public agency shall adopt a form for the  
4 use of any person who requests access to a government record held  
5 or controlled by the public agency. The form shall provide space for  
6 the name, address, and **【phone】** telephone number of the requestor  
7 and a brief description of the government record sought. The form  
8 shall also include space for a commercial requestor to certify that the  
9 information will be used for a commercial purpose. The form shall  
10 include space for the custodian to indicate which record will be made  
11 available, when the record will be available, and the fees to be  
12 charged. The form shall also include the following: (1) specific  
13 directions and procedures for requesting a record; (2) a statement as  
14 to whether prepayment of fees or a deposit is required; (3) the time  
15 period within which the public agency is required by P.L.1963, c.73  
16 (C.47:1A-1 et seq.) as amended and supplemented, to make the  
17 record available; (4) a statement of the requestor's right to challenge  
18 a decision by the public agency to deny access and the procedure for  
19 filing an appeal; (5) space for the custodian to list reasons if a request  
20 is denied in whole or in part; (6) space for the requestor to sign and  
21 date the form; (7) space for the custodian to sign and date the form if  
22 the request is fulfilled or denied. The custodian may require a deposit  
23 against costs for reproducing documents sought through an  
24 anonymous request whenever the custodian anticipates that the  
25 information thus requested will cost in excess of \$5 to reproduce.

26 g. A request for access to a government record shall be in writing  
27 and hand-delivered, mailed, transmitted electronically, or otherwise  
28 conveyed to the appropriate custodian. A requestor who intends to  
29 use the record for a commercial purpose shall certify to that fact in  
30 the request. The public agency shall require a requestor to state  
31 whether the requestor intends to use the record for a commercial  
32 purpose, but the agency shall not require the requestor to provide the  
33 exact purpose of the commercial use. A custodian shall promptly  
34 comply with a request to inspect, examine, copy, or provide a copy  
35 of a government record. If the custodian is unable to comply with a  
36 request for access, the custodian shall indicate the specific basis  
37 therefor on the request form and promptly return it to the requestor.  
38 The custodian shall sign and date the form and provide the requestor  
39 with a copy thereof. If the custodian of a government record asserts  
40 that part of a particular record is exempt from public access pursuant  
41 to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented,  
42 the custodian shall delete or excise from a copy of the record that  
43 portion which the custodian asserts is exempt from access and shall  
44 promptly permit access to the remainder of the record. If the  
45 government record requested is temporarily unavailable because it is  
46 in use or in storage, the custodian shall so advise the requestor and  
47 shall make arrangements to promptly make available a copy of the  
48 record. If a request for access to a government record would  
49 substantially disrupt agency operations, the custodian may deny

1 access to the record after attempting to reach a reasonable solution  
2 with the requestor that accommodates the interests of the requestor  
3 and the agency.

4 h. Any officer or employee of a public agency who receives a  
5 request for access to a government record shall forward the request  
6 to the custodian of the record or direct the requestor to the custodian  
7 of the record.

8 i. (1) Unless a shorter time period is otherwise provided by  
9 statute, regulation, or executive order, a custodian of a government  
10 record shall grant access to a government record or deny a request  
11 for access to a government record as soon as possible, but not later  
12 than seven business days, or fourteen business days if the request is  
13 for a commercial purpose, after receiving the request, provided that  
14 the record is currently available and not in storage or archived. In  
15 the event a custodian fails to respond within seven business days or  
16 fourteen business days, as appropriate, after receiving a request, the  
17 failure to respond shall be deemed a denial of the request, unless the  
18 requestor has elected not to provide a name, address or telephone  
19 number, or other means of contacting the requestor. If the requestor  
20 has elected not to provide a name, address, or telephone number, or  
21 other means of contacting the requestor, the custodian shall not be  
22 required to respond until the requestor reappears before the custodian  
23 seeking a response to the original request. If the government record  
24 is in storage or archived, the requestor shall be so advised within  
25 seven business days or fourteen business days, as appropriate, after  
26 the custodian receives the request. The requestor shall be advised by  
27 the custodian when the record can be made available. If the record  
28 is not made available by that time, access shall be deemed denied.

29 (2) During a period declared pursuant to the laws of this State as  
30 a state of emergency, public health emergency, or state of local  
31 disaster emergency, the deadlines by which to respond to a request  
32 for, or grant or deny access to, a government record under paragraph  
33 (1) of this subsection or subsection e. of this section shall not apply,  
34 provided, however, that the custodian of a government record shall  
35 make a reasonable effort, as the circumstances permit, to respond to  
36 a request for access to a government record within seven business  
37 days or fourteen business days, as appropriate, or as soon as possible  
38 thereafter.

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

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

1 shall not be open to inspection by any person unless authorized by  
2 law, court order, or the State Public Defender.

3 (cf: P.L.2020, c.125, s.2)

4  
5 3. Section 12 of P.L.2001, c.404 (C.47:1A-11) is amended to  
6 read as follows:

7 12. a. A public official, officer, employee or custodian who  
8 knowingly and willfully violates P.L.1963, c.73 (C.47:1A-1 et seq.),  
9 as amended and supplemented, and is found to have unreasonably  
10 denied access under the totality of the circumstances, shall be subject  
11 to a civil penalty of \$1,000 for an initial violation, \$2,500 for a  
12 second violation that occurs within 10 years of an initial violation,  
13 and \$5,000 for a third violation that occurs within 10 years of an  
14 initial violation.

15 A requestor who is found to have intentionally failed to certify that  
16 a record request is for a commercial purpose shall be subject to a civil  
17 penalty of \$500.

18 This penalty shall be collected and enforced in proceedings in  
19 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,  
20 c.274 (C.2A:58-10 et seq.), and the rules of court governing actions  
21 for the collection of civil penalties. The Superior Court shall have  
22 jurisdiction of proceedings for the collection and enforcement of the  
23 penalty imposed by this section.

24 Appropriate disciplinary proceedings may be initiated against a  
25 public official, officer, employee or custodian against whom a  
26 penalty has been imposed.

27 (cf: P.L.2001, c.404, s.12)

28  
29 4. This act shall take effect immediately.

## 30 31 32 STATEMENT

33  
34 Under current law, an open public record request for commercial  
35 purposes is treated the same as a request for personal purposes.  
36 Commercial requests, however, often take more time and utilize more  
37 resources than traditional requests.

38 This bill permits a special service charge for record requests for  
39 commercial purposes. The special service charge must be reasonable  
40 and based upon the actual, direct cost of providing the records. The  
41 bill also extends the time for a records custodian to respond to a  
42 public records request for commercial purposes from seven business  
43 days to fourteen business days.

44 Under the bill, the records custodian can require a requestor to  
45 state whether the requestor intends to use the records for a  
46 commercial purpose, but cannot require the requestor to provide the  
47 exact use for the commercial purpose. A requestor who intends to  
48 use the record for a commercial purpose must certify to that fact on  
49 the request form. A requestor who is found to have intentionally

1 failed to certify that a records request is for a commercial purpose  
2 will be subject to a civil penalty of \$500.

3 Commercial purposes mean the direct or indirect use of any part  
4 of a government record for sale, resale, solicitation, rent, or lease of  
5 a service, or any use by which the user expects a profit either through  
6 commission, salary, or fee. It does not include the use of information  
7 or data by the news media, or by any scholarly or governmental  
8 organization.