

SENATE, No. 1295

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Authorizes public access to government records through government website.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT authorizing public access to government records through a
2 government website and amending 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 6 of P.L.2001, c.404 (C.47:1A-5) is amended to read
8 as follows:

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

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 before the agency, the council or a court at the time of the adoption
2 of the regulation.

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

21 If the government record is readily available on the public
22 agency website, the custodian shall advise the requestor to obtain
23 the record from the agency website. If the requestor does not have
24 access to a computer, the request shall be made and fulfilled
25 pursuant to the provisions of this act, P.L.1963, c.73 (C.47:1A-1 et
26 seq.).

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

30 c. Whenever the nature, format, manner of collation, or volume
31 of a government record embodied in the form of printed matter to
32 be inspected, examined, or copied pursuant to this section is such
33 that the record cannot be reproduced by ordinary document copying
34 equipment in ordinary business size or involves an extraordinary
35 expenditure of time and effort to accommodate the request, the
36 public agency may charge, in addition to the actual cost of
37 duplicating the record, a special service charge that shall be
38 reasonable and shall be based upon the actual direct cost of
39 providing the copy or copies; provided, however, that in the case of
40 a municipality, rates for the duplication of particular records when
41 the actual cost of copying exceeds the foregoing rates shall be
42 established in advance by ordinance. The requestor shall have the
43 opportunity to review and object to the charge prior to it being
44 incurred.

45 d. A custodian shall permit access to a government record and
46 provide a copy thereof in the medium requested if the public agency
47 maintains the record in that medium. If the public agency does not
48 maintain the record in the medium requested, the custodian shall

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

12 e. Immediate access ordinarily shall be granted to budgets,
13 bills, vouchers, contracts, including collective negotiations
14 agreements and individual employment contracts, and public
15 employee salary and overtime information.

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

38 g. A request for access to a government record shall be in
39 writing and hand-delivered, mailed, transmitted electronically, or
40 otherwise conveyed to the appropriate custodian. A custodian shall
41 promptly comply with a request to inspect, examine, copy, or
42 provide a copy of a government record. If the custodian is unable
43 to comply with a request for access, the custodian shall indicate the
44 specific basis therefor on the request form and promptly return it to
45 the requestor. The custodian shall sign and date the form and
46 provide the requestor with a copy thereof. If the custodian of a
47 government record asserts that part of a particular record is exempt
48 from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)

1 as amended and supplemented, the custodian shall delete or excise
2 from a copy of the record that portion which the custodian asserts is
3 exempt from access and shall promptly permit access to the
4 remainder of the record. If the government record requested is
5 temporarily unavailable because it is in use or in storage, the
6 custodian shall so advise the requestor and shall make arrangements
7 to promptly make available a copy of the record. If a request for
8 access to a government record would substantially disrupt agency
9 operations, the custodian may deny access to the record after
10 attempting to reach a reasonable solution with the requestor that
11 accommodates the interests of the requestor and the agency.

12 h. Any officer or employee of a public agency who receives a
13 request for access to a government record shall forward the request
14 to the custodian of the record or direct the requestor to the
15 custodian of the record.

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

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

43 k. The files maintained by the Office of the Public Defender
44 that relate to the handling of any case shall be considered
45 confidential and shall not be open to inspection by any person
46 unless authorized by law, court order, or the State Public Defender.
47 (cf: P.L.2014, c.19, s.3)

1 2. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 Under current law, if a person requests access to a government
7 record, the records custodian provides access, when appropriate.
8 This bill provides that if the government record is readily available
9 on the public agency website, the custodian shall advise the
10 requester to obtain the record from the agency website. If the
11 requester does not have access to a computer, the request shall be
12 made and fulfilled according to the provisions of the open public
13 records act.