

SENATE, No. 1327

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Exempts certain personal information from State's open public records law; bars attorney's fees award in denial of access proceeding in certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning public records and amending P.L.1995, c.23
2 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
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 "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 and that portion of a personal
43 government record which discloses any personal identifying
44 information, including the name, address, telephone number, and e-
45 mail address of any person; except for use by any government
46 agency, including any court or law enforcement agency, in carrying
47 out its functions, or any private person or entity acting on behalf
48 thereof, or any private person or entity seeking to enforce payment

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

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

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

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

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

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

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

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

46 information contained on individual admission applications; 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 "Personal government record" means a government record that
21 consists of or pertains solely to a pet or home alarm system permit,
22 license, or registration.

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

37 "Law enforcement agency" means a public agency, or part
38 thereof, determined by the Attorney General to have law
39 enforcement responsibilities.

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

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

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

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

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

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

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23 2. Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read
24 as follows:

25 7. A person who is denied access to a government record by
26 the custodian of the record, at the option of the requestor, may:

27 institute a proceeding to challenge the custodian's decision by
28 filing an action in Superior Court which shall be heard in the
29 vicinage where it is filed by a Superior Court Judge who has been
30 designated to hear such cases because of that judge's knowledge and
31 expertise in matters relating to access to government records; or

32 in lieu of filing an action in Superior Court, file a complaint with
33 the Government Records Council established pursuant to section 8
34 of P.L.2001, c.404 (C.47:1A-7).

35 The right to institute any proceeding under this section shall be
36 solely that of the requestor. Any such proceeding shall proceed in a
37 summary or expedited manner. The public agency shall have the
38 burden of proving that the denial of access is authorized by law. If
39 it is determined that access has been improperly denied, the court or
40 agency head shall order that access be allowed. A requestor who
41 prevails in any proceeding shall be entitled to a reasonable
42 attorney's fee ; provided, however, that a requestor who prevails in
43 a proceeding concerning a personal government record shall not be
44 entitled to a reasonable attorney's fee if the court or agency head
45 finds that the decision to deny access was reasonable and made in
46 good faith after due diligence.

47 (cf: P.L.2001, c.404, s.7)

1 3. This act shall take effect immediately.

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STATEMENT

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6 This bill would exempt personal information contained in pet
7 and home alarm system license records from public access under
8 P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the “Open
9 Public Records Act” (OPRA). The bill would also bar an award of
10 attorney’s fees in a successful challenge to a denial of access to
11 these records under OPRA if the records custodian acted reasonably
12 and exercised good faith and due diligence. This bill would
13 improve OPRA by strengthening privacy rights and by helping to
14 reduce government costs.

15 OPRA generally authorizes public access to government records
16 unless a specific exception applies. There is currently no exception
17 for a government record consisting of or relating to a pet or home
18 alarm system permit, license, or registration. The public disclosure
19 of the personal information contained in these records would
20 significantly compromise the privacy of individuals without
21 providing much, if any benefit, to public knowledge about
22 government. Exempting this information from public record would
23 therefore protect reasonable expectations of privacy without
24 hindering government transparency.

25 OPRA also currently requires the award of attorney’s fees to a
26 requestor who successfully challenges a denial of access. This bill
27 would provide an exception to this requirement with respect to
28 proceedings involving pet and home alarm system license records if
29 the reviewing court or Government Records Council finds that the
30 records custodian denied the request in good faith and after due
31 diligence based upon a reasonable interpretation of the law.