

SENATE, No. 1580

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

Includes e-mail addresses in list of confidential items to be redacted from public records under OPRA.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning public records 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:

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

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

10 "Biotechnology" means any technique that uses living
11 organisms, or parts of living organisms, to make or modify
12 products, to improve plants or animals, or to develop micro-
13 organisms for specific uses; including the industrial use of
14 recombinant DNA, cell fusion, and 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
17 other public agency, the officer officially designated by formal
18 action of that agency's director or governing body, as the case may
19 be.

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

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

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

43 any memorandum, correspondence, notes, report or other
44 communication prepared by, or for, the specific use of a member of
45 the Legislature in the course of the member's official duties, except

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 that this provision shall not apply to an otherwise publicly-
2 accessible report which is required by law to be submitted to the
3 Legislature or its members;
4 any copy, reproduction or facsimile of any photograph, negative
5 or print, including instant photographs and videotapes of the body,
6 or any portion of the body, of a deceased person, taken by or for the
7 medical examiner at the scene of death or in the course of a post
8 mortem examination or autopsy made by or caused to be made by
9 the medical examiner except:
10 when used in a criminal action or proceeding in this State which
11 relates to the death of that person,
12 for the use as a court of this State permits, by order after good
13 cause has been shown and after written notification of the request
14 for the court order has been served at least five days before the
15 order is made upon the county prosecutor for the county in which
16 the post mortem examination or autopsy occurred,
17 for use in the field of forensic pathology or for use in medical or
18 scientific education or research, or
19 for use by any law enforcement agency in this State or any other
20 state or federal law enforcement agency;
21 criminal investigatory records;
22 victims' records, except that a victim of a crime shall have access
23 to the victim's own records;
24 any written request by a crime victim for a record to which the
25 victim is entitled to access as provided in this section, including,
26 but not limited to, any law enforcement agency report, domestic
27 violence offense report, and temporary or permanent restraining
28 order;
29 personal firearms records, except for use by any person
30 authorized by law to have access to these records or for use by any
31 government agency, including any court or law enforcement
32 agency, for purposes of the administration of justice;
33 personal identifying information received by the Division of Fish
34 and Wildlife in the Department of Environmental Protection in
35 connection with the issuance of any license authorizing hunting
36 with a firearm. For the purposes of this paragraph, personal
37 identifying information shall include, but not be limited to, identity,
38 name, address, social security number, telephone number, fax
39 number, driver's license number, email address, or social media
40 address of any applicant or licensee;
41 trade secrets and proprietary commercial or financial information
42 obtained from any source. For the purposes of this paragraph, trade
43 secrets shall include data processing software obtained by a public
44 body under a licensing agreement which prohibits its disclosure;
45 any record within the attorney-client privilege. This paragraph
46 shall not be construed as exempting from access attorney or
47 consultant bills or invoices except that such bills or invoices may be

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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, NGB-22, or that form, issued by the
26 United States Government, or any other certificate of honorable
27 discharge, or copy thereof, from active service or the reserves of a
28 branch of the Armed Forces of the United States, or from service in
29 the organized militia of the State, that has been filed by an
30 individual with a public agency, except that a veteran or the
31 veteran's spouse or surviving spouse shall have access to the
32 veteran's own records;
33 any copy of an oath of allegiance, oath of office or any
34 affirmation taken upon assuming the duties of any public office, or
35 that oath or affirmation, taken by a current or former officer or
36 employee in any public office or position in this State or in any
37 county or municipality of this State, including members of the
38 Legislative Branch, Executive Branch, Judicial Branch, and all law
39 enforcement entities, except that the full name, title, and oath date
40 of that person contained therein shall not be deemed confidential;
41 that portion of any document which discloses the social security
42 number, credit card number, unlisted telephone number, e-mail
43 address, or driver license number of any person; except for use by
44 any government agency, including any court or law enforcement
45 agency, in carrying out its functions, or any private person or entity
46 acting on behalf thereof, or any private person or entity seeking to
47 enforce payment of court-ordered child support; except with respect

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

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

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

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

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

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

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

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

45 information contained on individual admission applications; and
46 information concerning student records or grievance or
47 disciplinary proceedings against a student to the extent disclosure
48 would reveal the identity of the student.

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

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

31 "Law enforcement agency" means a public agency, or part
32 thereof, determined by the Attorney General to have law
33 enforcement responsibilities.

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

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

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

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

46 "Victim of a crime" means a person who has suffered personal or
47 psychological injury or death or incurs loss of or injury to personal

1 or real property as a result of a crime, or if such a person is
2 deceased or incapacitated, a member of that person's immediate
3 family.

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

16 (cf: P.L.2019, c.255, s.4)

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18 2. This act shall take effect immediately.

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STATEMENT

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23 This bill revises the definitions section of what is commonly
24 known as the Open Public Records Act (OPRA), N.J.S.A.47:1A-1
25 et seq., to include e-mail addresses on the list of confidential items
26 that must be redacted from any public record disclosed under the
27 provisions of the act.