

SENATE, No. 4143

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED NOVEMBER 12, 2021

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Exempts from public access government records that contain solely or predominantly information on individuals.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning an exemption from public access of certain
2 government records, and amending P.L.1963, c.73.

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

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

46 any written request by a crime victim for a record to which the
47 victim is entitled to access as provided in this section, including,
48 but not limited to, any law enforcement agency report, domestic

1 violence offense report, and temporary or permanent restraining
2 order;

3 personal firearms records, except for use by any person
4 authorized by law to have access to these records or for use by any
5 government agency, including any court or law enforcement
6 agency, for purposes of the administration of justice;

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

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

19 any record within the attorney-client privilege. This paragraph
20 shall not be construed as exempting from access attorney or
21 consultant bills or invoices except that such bills or invoices may be
22 redacted to remove any information protected by the attorney-client
23 privilege;

24 administrative or technical information regarding computer
25 hardware, software and networks which, if disclosed, would
26 jeopardize computer security;

27 emergency or security information or procedures for any
28 buildings or facility which, if disclosed, would jeopardize security
29 of the building or facility or persons therein;

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

33 information which, if disclosed, would give an advantage to
34 competitors or bidders;

35 information generated by or on behalf of public employers or
36 public employees in connection with any sexual harassment
37 complaint filed with a public employer or with any grievance filed
38 by or against an individual or in connection with collective
39 negotiations, including documents and statements of strategy or
40 negotiating position;

41 information which is a communication between a public agency
42 and its insurance carrier, administrative service organization or risk
43 management office;

44 information which is to be kept confidential pursuant to court
45 order;

46 any copy of form DD-214, NGB-22, or that form, issued by the
47 United States Government, or any other certificate of honorable
48 discharge, or copy thereof, from active service or the reserves of a

1 branch of the Armed Forces of the United States, or from service in
2 the organized militia of the State, that has been filed by an
3 individual with a public agency, except that a veteran or the
4 veteran's spouse or surviving spouse shall have access to the
5 veteran's own records;

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

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

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

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

43 in addition to any other exemption, the entirety of a record that
44 contains, solely or predominantly, information obtained from or
45 concerning an individual that relates to the individual's personal
46 identifying information, activities, or interactions with the public
47 agency, including but not limited to: age, appearance, residency,
48 occupation, health status, medical history, education, members of

1 the household, ownership of property or domesticated animals,
2 marital status, address, telephone or fax number, email or social
3 media address, driver's license number, social security number, or
4 any form of financial information; payment of fees, assessments, or
5 taxes; requests for forms, explanations, or certifications;
6 applications for and receipt of licenses, permits, or registrations;
7 applications for and receipt of benefits or assistance; participation
8 in programs; or citations for violations, except that this exemption
9 shall not include deeds and mortgages, criminal records,
10 information that is a government record under section 11 of
11 P.L.2001, c.404 (C.47:1A-10), or other information that is required
12 to be disclosed by law, regulation, court order or rules of court, or
13 executive order.

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

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

28 test questions, scoring keys and other examination data
29 pertaining to the administration of an examination for employment
30 or academic examination;

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

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

40 information contained on individual admission applications; and
41 information concerning student records or grievance or
42 disciplinary proceedings against a student to the extent disclosure
43 would reveal the identity of the student.

44 "Personal firearms record" means any information contained in a
45 background investigation conducted by the chief of police, the
46 county prosecutor, or the Superintendent of State Police, of any
47 applicant for a permit to purchase a handgun, firearms identification
48 card license, or firearms registration; any application for a permit to

1 purchase a handgun, firearms identification card license, or firearms
2 registration; any document reflecting the issuance or denial of a
3 permit to purchase a handgun, firearms identification card license,
4 or firearms registration; and any permit to purchase a handgun,
5 firearms identification card license, or any firearms license,
6 certification, certificate, form of register, or registration statement.
7 For the purposes of this paragraph, information contained in a
8 background investigation shall include, but not be limited to,
9 identity, name, address, social security number, phone number, fax
10 number, driver's license number, email address, social media
11 address of any applicant, licensee, registrant or permit holder.

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

26 "Law enforcement agency" means a public agency, or part
27 thereof, determined by the Attorney General to have law
28 enforcement responsibilities.

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

31 "Judicial officer" means any active, formerly active, or retired
32 federal, state, county, or municipal judge, including a judge of the
33 Tax Court and any other court of limited jurisdiction established,
34 altered, or abolished by law, a judge of the Office of Administrative
35 Law, a judge of the Division of Workers' Compensation, and any
36 other judge established by law who serves in the executive branch.

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

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

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

47 "Victim of a crime" means a person who has suffered personal or
48 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 P.L.2007,
14 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
15 (cf: P.L.2021, c.24, s.1)

16
17 2. This act shall take effect immediately.
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19

20 STATEMENT

21
22 The purpose of the law commonly referred to as the open public
23 records act is to provide transparency in government operations.
24 Providing information to the public is necessary for members of the
25 public to understand the operation of government, participate in
26 government, make informed decisions when voting, and hold
27 government officials accountable. Government records, however,
28 do contain information on individuals, the access to which does not
29 further the goal of transparency in government operations.

30 This bill exempts from public access government records that
31 contain, solely or predominantly, information obtained from or
32 concerning an individual that relates to the individual's personal
33 identifying information, activities, or interactions with the public
34 agency.

35 Under the bill, the type of information that would be exempt
36 from public access includes, but is not limited to, health status,
37 ownership of property or domesticated animals, address, telephone
38 number, driver's license number, social security number, permits,
39 applications for and receipt of benefits or assistance, or citations for
40 violations. The exemptions, in general, will not include deeds and
41 mortgages, criminal records, certain personnel and pension records,
42 and other information that is required to be disclosed by law,
43 regulation, court order or rules of court, or executive order.