

ASSEMBLY, No. 3849

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

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**Assemblyman Spearman, Assemblywomen McKnight, Lopez,
Assemblymen Freiman, Chiaravalloti, Mejia, Assemblywoman Jimenez,
Assemblyman Giblin and Senator Stack**

SYNOPSIS

Modifies deadline by which public agency is required to respond to request for government record during period of emergency.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/19/2020)

1 AN ACT concerning the availability of government records during
2 periods of emergency 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 (2) No fee shall be charged to a victim of a crime for a copy or
22 copies of a record to which the crime victim is entitled to access, as
23 provided in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

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

39 d. A custodian shall permit access to a government record and
40 provide a copy thereof in the medium requested if the public agency
41 maintains the record in that medium. If the public agency does not
42 maintain the record in the medium requested, the custodian shall
43 either convert the record to the medium requested or provide a copy
44 in some other meaningful medium. If a request is for a record: (1)
45 in a medium not routinely used by the agency; (2) not routinely
46 developed or maintained by an agency; or (3) requiring a substantial
47 amount of manipulation or programming of information technology,
48 the agency may charge, in addition to the actual cost of duplication,

1 a special charge that shall be reasonable and shall be based on the
2 cost for any extensive use of information technology, or for the
3 labor cost of personnel providing the service, that is actually
4 incurred by the agency or attributable to the agency for the
5 programming, clerical, and supervisory assistance required, or both.

6 e. Immediate access ordinarily shall be granted to budgets,
7 bills, vouchers, contracts, including collective negotiations
8 agreements and individual employment contracts, and public
9 employee salary and overtime information.

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

32 g. A request for access to a government record shall be in
33 writing and hand-delivered, mailed, transmitted electronically, or
34 otherwise conveyed to the appropriate custodian. A custodian shall
35 promptly comply with a request to inspect, examine, copy, or
36 provide a copy of a government record. If the custodian is unable
37 to comply with a request for access, the custodian shall indicate the
38 specific basis therefor on the request form and promptly return it to
39 the requestor. The custodian shall sign and date the form and
40 provide the requestor with a copy thereof. If the custodian of a
41 government record asserts that part of a particular record is exempt
42 from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)
43 as amended and supplemented, the custodian shall delete or excise
44 from a copy of the record that portion which the custodian asserts is
45 exempt from access and shall promptly permit access to the
46 remainder of the record. If the government record requested is
47 temporarily unavailable because it is in use or in storage, the
48 custodian shall so advise the requestor and shall make arrangements

1 to promptly make available a copy of the record. If a request for
2 access to a government record would substantially disrupt agency
3 operations, the custodian may deny access to the record after
4 attempting to reach a reasonable solution with the requestor that
5 accommodates the interests of the requestor and the agency.

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

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

30 (2) During a period declared pursuant to the laws of this State as
31 a state of emergency, public health emergency, or state of local
32 disaster emergency, the deadlines by which to respond to a request
33 for, or grant or deny access to, a government record under
34 paragraph (1) of this subsection or subsection e. of this section shall
35 not apply, provided, however, that the custodian of a government
36 record shall make a reasonable effort, as the circumstances permit,
37 to respond to a request for access to a government record within
38 seven business days or as soon as possible 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
43 provide, access to a government record by any person for
44 inspection, examination, or copying or for purchase of copies
45 thereof and the procedure by which an appeal may be filed.

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

1 confidential and shall not be open to inspection by any person
2 unless authorized by law, court order, or the State Public Defender.
3 (cf: P.L.2014, c.19, s.3)

4

5 2. This act shall take effect immediately.

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STATEMENT

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10 This bill provides that during a state of emergency, public health
11 emergency, or state of local disaster emergency, a custodian of a
12 government record for a public agency will be required only to
13 make a reasonable effort to respond to a request for a government
14 record within seven business days, or as soon as possible thereafter,
15 as the circumstances permit.

16 Under current law, a custodian of a government record for a
17 public agency is required to grant access to a government record or
18 deny a request for access to a government record as soon as
19 possible, but not later than seven business days after receiving the
20 request, provided that the record is currently available and not in
21 storage or archived. Failure to respond within seven business days
22 is deemed a denial of the request. A custodian is also required to so
23 notify a requestor within seven business days if a government
24 record is in storage or archived, as well as when the record may be
25 made available. Moreover, access to certain records, such as
26 budgets, bills, vouchers, contracts, and public employee salary
27 information, must be granted immediately.

28 This bill modifies those deadlines in the event of a public
29 emergency to require instead that a records custodian make a
30 reasonable effort to respond within seven business days, as
31 circumstances permit.