

[First Reprint]
SENATE, No. 332

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators MARTIN, GORMLEY and Kenny

1 AN ACT concerning access to ¹[government] public ¹records and
2 repealing P.L.1963, c.73 (C.47:1A-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Open Public
8 Records Act."

9

10 2. The Legislature finds and declares it to be the public policy of
11 this State that ¹the records of all ¹[State, county and municipal
12 records] public agencies ¹shall be open ¹[at all times] ¹for inspection,
13 examination and copying by members of the public except where
14 ¹disclosure of information contained in a record is expressly exempted
15 from such access by statute ¹, resolution of either or both houses of
16 the Legislature, Executive Order of the Governor, rule of court,
17 federal law or federal regulation ¹.

18

19 3. As used in this act:

20 "Public agency" or "agency" means any of the principal departments
21 in the Executive Branch of State Government, and any division, board,
22 bureau, office, commission or other instrumentality within or created
23 by such department; the Legislature of the State and any office, board,
24 bureau¹, committee¹ or commission within or created by the
25 Legislative Branch; ¹[and] ¹any independent State authority,
26 commission, ¹district, institution, ¹instrumentality or agency¹["Public
27 agency" or "agency" also means];¹ any political subdivision of the
28 State ¹[or combination of political subdivisions and];¹ any
29 ¹department, ¹division, board, bureau, office, commission¹, district,
30 institution¹ or other instrumentality within or created by a political
31 subdivision of the State or combination of political subdivisions¹; any

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 23, 1997.

1 school, fire or water district or other district or districts; any
2 independent public authority or commission, district, institution or
3 instrumentality, or any subordinate agency, office, officer, official
4 board or governing body of the above, or any combination or
5 combinations of the above now or previously existing or established¹
6 and any independent authority, commission, instrumentality or agency
7 created by a political subdivision or combination of political
8 subdivisions.

9 "1[Government] Public¹ record" or "record" means any
10 ¹[information maintained by a public agency in written, audio, video,
11 electronic or other form, but shall not include any written memorial of
12 communications received from or sent to officers or employees of the
13 same public agency or different public agencies in the course of
14 obtaining, providing, or attempting to obtain or provide information,
15 except to the extent that those memorials contain factual information,
16 or any communication covered by a privilege against disclosure under
17 any rule of evidence established by statute or court rule] paper, written
18 or printed book, document or drawing, map or plan, photograph,
19 microform, data processed or imaged processed document, sound
20 recording, or similar device, or any copy thereof which has been made
21 or is required by law to be received for filing, indexing, or reproducing
22 by any officer or employee, commission, agency or authority of the
23 State or of any political subdivision thereof, including subordinate
24 boards thereof, or which has been received by any such officer,
25 commission, agency or authority of the State or any political
26 subdivision thereof, in connection with the transaction of public
27 business and has been retained by such recipient or its successor as
28 evidence of its activities or because of the information contained
29 therein, except that in the case of the Legislature, or any
30 instrumentality of the Legislative Branch, "public record" or "record"
31 means only those records required by law to be made, maintained or
32 kept on file by the Legislature or any instrumentality of the Legislative
33 Branch. "Public record" or "record" does not mean a "motor vehicle
34 record" as defined in the "Driver's Privacy Protection Act," P.L. , c.
35 (C.) (now pending before the Legislature as Senate Bill No. 1302
36 and Assembly Bill No. 2049), including any reproduction of such
37 records in any form, and the electronic storage and maintenance of
38 such records and the information contained in such records¹.

39 "Custodian of ¹[government] public¹ records" or "custodian" means
40 the head of a public agency having ¹[possession] control¹ of
41 ¹[government] public¹ records or his designee or ¹[the individual
42 having control of the government records], in the case of a
43 municipality, it means the municipal clerk or, in the case of the
44 Legislature and members of the Legislature and staff of the Legislature
45 and staff of members of the Legislature, it means the Secretary of the
46 Senate or the Clerk of the General Assembly, the Executive Director

1 of the Office of Legislative Services, or the chairman of such other
2 entity as shall be within the Legislative Branch, as appropriate¹.

3 "Criminal intelligence information" means information ¹[concerning
4 an identifiable person or group of persons]¹ collected by a criminal
5 justice agency in an effort to anticipate, prevent or monitor possible
6 criminal activity.

7 "Active criminal intelligence information" means criminal
8 intelligence information which relates to intelligence gathering
9 conducted with a ¹[reasonable]¹ belief that it will lead to the detection
10 of criminal activity.

11 "Criminal investigative information" means information
12 ¹[concerning an identifiable person or persons]¹ compiled by a criminal
13 justice agency in the course of conducting a criminal investigation of
14 a specific act ¹[or],¹ omission, ¹or course of conduct,¹ including, but
15 not limited to, information derived from laboratory tests, reports of
16 investigators or informants, and ¹[any type of]¹ surveillance, but shall
17 not mean the time, date, location and nature of ¹[reported crime] a
18 crime that has been committed¹; the name, sex, age and address of a
19 person arrested or of the victim of a crime; the time, date and location
20 of the incident and of the arrest; the crime charged; ¹[documents given
21 or required by law or agency rule to be given to the person arrested;
22 or information and indictments] or complaints and indictments¹.

23 "Active criminal investigative information" means criminal
24 investigative information which concerns an ¹[ongoing]¹ investigation
25 ¹that is not closed and for¹ which ¹there¹ is ¹[continuing with] ¹a
26 reasonable, good faith anticipation of securing an arrest or prosecution
27 ¹[in the foreseeable future] and includes information, the disclosure of
28 which may interfere with a civil or criminal enforcement proceeding or
29 another civil or criminal investigation.

30 "Civil investigative information" means information compiled by an
31 agency in the course of conducting an investigation of a specific act,
32 omission, or course of conduct in violation of any law or regulation for
33 the purposes of a civil, administrative or remedial enforcement action,
34 including, but not limited to, information derived from laboratory
35 tests, reports of investigators or informants and surveillance, but shall
36 not mean the time, date, location and nature of a violation that has
37 occurred; the name, sex, age and address of a person charged or of any
38 victim; the violations charged; or any complaint, notice, petition or
39 order filed or served.

40 "Active civil investigative information" means civil investigative
41 information which concerns an investigation that is not closed or
42 disclosure of which may interfere with a civil, administrative, remedial
43 or criminal enforcement action¹.

1 4. a. The custodian of a ¹[government] public¹ record shall permit
2 ¹[the] a¹ record to be inspected, examined and copied by any person
3 at ¹[any] a¹ reasonable time and location consistent with this act.
4 Copies of a ¹[government] public¹ record may be purchased by any
5 person upon payment of the fee prescribed by law or, if a fee is not
6 prescribed by law, upon payment of the actual cost of duplicating the
7 record. ¹[The actual cost of duplicating the record shall be the cost of
8 materials and supplies used to make a copy of the record, but shall not
9 include the cost of labor or other overhead expenses associated with
10 making the copy.] For purposes of this subsection, actual cost is
11 limited to direct, chargeable costs related to the reproduction of a
12 public record as determined by generally accepted accounting
13 principles and does not include costs that would have been incurred by
14 the public agency if a request to reproduce a public record had not
15 been made. Notwithstanding the provisions of this subsection, if the
16 request is such as to require extensive use of information technology
17 resources or extensive clerical or supervisory assistance by personnel
18 of the agency involved, or if producing the record in the medium
19 requested results in a greater use of information technology resources
20 than that established by the agency for reproduction of the volume of
21 information requested, then the agency may charge, in addition to the
22 actual cost of duplication, a special service charge, which shall be
23 reasonable and shall be based on the actual cost incurred for such
24 extensive use of information technology resources or the labor costs
25 of the personnel providing the services, or for a greater use of
26 information technology resources than is actually incurred by the
27 agency or attributable to the agency. The costs of obtaining
28 information stored electronically shall be determined pursuant to
29 subsection c. of this section.¹ Except as otherwise provided by statute
30 or regulation, ¹[however, in no event shall]¹ the fee assessed for ¹[the
31 duplication] a photocopy¹ of a ¹[government] public¹ record embodied
32 in ¹[the] paper¹ form ¹[of printed matter exceed] shall be¹ the
33 following: first page to tenth page, ¹[\$0.50] \$0.75¹ per page; eleventh
34 page to twentieth page, ¹[\$0.25] \$0.50¹ per page; all pages over
35 twenty, ¹[\$0.10] \$0.25¹ per page¹, unless the actual cost of a
36 photocopy of the record is higher, in which case the cost shall be the
37 actual cost of a photocopy¹.

38 ¹[Prior to January 10 in each calendar year a public agency shall
39 adopt a schedule establishing the actual costs of duplicating records,
40 embodied in the form of printed matter, for which no fee is prescribed
41 by law, which shall be in effect for a period of one year.]¹ The ¹[fee
42 established] fees¹ for the purchase of copies of ¹[county]¹ maps or
43 ¹[aerial]¹ photographs ¹[from any county officer whose office is
44 established by the New Jersey Constitution]¹ may ¹[, however,]¹
45 include a reasonable charge for labor and overhead associated with
46 producing¹ duplicating ¹[a record] and transmitting copies of those

1 records¹. Unless otherwise provided by law, any fees payable under
2 this section shall be collected, deposited and accounted for in the
3 manner prescribed for other operating funds of the public agency.

4 b. Whenever the nature, format, manner of collation, or volume of
5 ¹[government] public¹ records ¹[embodied in the form of printed
6 matter]¹ to be inspected, examined or copied pursuant to this section
7 is such that the records cannot be reproduced by ordinary document
8 copying equipment in ordinary business size, ¹or involves an
9 extraordinary expenditure of time and effort to accommodate the
10 request,¹ the agency may charge, in addition to the actual cost of
11 duplicating the record, a special service charge, which shall be
12 reasonable and shall be based upon the expense associated with these
13 services¹, which may include overhead and labor costs. Public
14 agencies are hereby authorized to specify which public records, or
15 portions thereof, have a unique monetary value and to adopt
16 procedures for the production thereof. By way of example and not
17 limitation, a public record with a unique monetary value is a map used
18 in conjunction with a global positioning system or a global mapping
19 system¹.

20 c. A custodian ¹[may] shall¹, in appropriate circumstances and if
21 the requestor so desires, permit access to ¹[government] public¹
22 records by remote electronic means or provide the requestor with a
23 ¹[computer]¹ copy of the records ¹in electronic form. However, an
24 agency shall not be required to provide the requestor with a computer
25 record that requires the access, creation or transmission of a computer
26 copy of a record in any manner different from an agency's normal
27 operating procedures¹. The fee established by a public agency for this
28 type of access shall include direct and indirect costs, but shall not
29 exceed the reasonable cost to the agency of making such access
30 available to the requestor or of creating and transmitting the
31 ¹[computer]¹ copy ¹[,]¹ electronically ¹[if possible and the requestor
32 so desires, to the requestor]¹. The custodian shall take steps to
33 prevent unauthorized electronic access or alteration of public records.
34

35 5. a. The custodian of each public agency shall adopt a form for
36 the use of any person who requests access to a ¹[government] public¹
37 record held by the public agency. ¹[The use of such] Such¹ form shall
38 be ¹[at the option of the requestor and a verbal request shall] used for
39 all written requests, but a verbal request may¹ be accepted by any
40 public agency. The form shall provide for indication of the name,
41 address and phone number of the requestor and a brief description of
42 the ¹[government] public¹ records sought¹[, but the requestor shall
43 have the option not to supply a name, address or phone number] . In
44 order to process a written request and to ensure the integrity and
45 preservation of public records, a custodian may require a person or
46 persons requesting access to public records to present some form of

1 identification, but requestors or their representative shall have the
2 option to give an alternate address or telephone number where they
3 can be contacted¹. The form shall include space for the custodian to
4 indicate which records will be made available, when the records will
5 be available and the fees to be charged. The form ¹[shall] may¹also
6 include the following:

- 7 (1) specific directions and procedures for requesting records;
- 8 (2) a schedule of fees to be charged;
- 9 (3) a statement as to whether prepayment of fees or a deposit is
10 required;
- 11 (4) the time period within which the public agency is required by
12 this act to make the records available;
- 13 (5) a statement of the requestor's right to appeal a decision by the
14 public agency to deny access and the procedure for filing an appeal
15 pursuant to section 8 of this act;
- 16 (6) space for the custodian to list reasons when a request is denied
17 in whole or in part;
- 18 (7) space for the requestor to sign and date the form; ¹[and]¹
- 19 (8) space for the custodian to sign and date the form when the
20 request is complied with or denied ¹; and
- 21 (9) a list of documents or information held by the custodian which
22 are entitled to exemption from disclosure under this act¹.

23 b. Requests for access to ¹[government] public¹ records ¹[may be
24 written or verbal and]¹ shall be hand-delivered, mailed, transmitted
25 electronically, or otherwise conveyed to the appropriate custodian. If
26 the custodian is unable to comply with a request for access, he shall
27 indicate the reasons therefor on the request form and promptly return
28 it to the requestor. When a custodian denies access based upon ¹[a
29 statutory] an¹ exception to the right of access established by this act,
30 he shall cite the specific ¹[statute section] authority¹ as part of his
31 denial ¹; except that where the information sought involves active civil
32 or criminal investigative or intelligence information the custodian shall
33 be permitted to respond to such request by stating the following: "The
34 files of this agency do not include any public information relevant to
35 your request and the law does not permit a custodian of records to
36 confirm or deny possession of information included in active criminal
37 or active civil investigative files"¹. The custodian shall advise the
38 requestor in writing of the requestor's right to appeal and the manner
39 in which an appeal may be filed. The custodian shall sign and date the
40 form. If the ¹[government] public¹ records requested are temporarily
41 unavailable because they are in use or in storage, the custodian shall
42 so advise the requestor in writing on the form as well as the
43 ¹estimated¹ time and place when the information will be available.
44 ¹[When a request for access to government records would
45 substantially disrupt agency operations, the custodian may deny
46 access to the records after attempting to reach a reasonable solution

1 with the requestor which accommodates the interests of the requestor
2 and the agency.]]¹

3

4 6. Any officer or employee of a ¹[government] public¹ agency who
5 receives a request for access to a ¹[government] public¹ record shall
6 forward the request or direct the requestor to the custodian of the
7 records.

8

9 7. A custodian of ¹[government] public¹ records shall provide the
10 records or deny a request under this act for access to ¹[government]
11 public¹ records as soon as reasonable. ¹[It shall be presumed that
12 access to government records required or authorized to be provided
13 under the provisions of this act shall be granted immediately.]]¹
14 Whenever there exists a bona fide question involving a legal opinion
15 as to whether such access is required to be so provided or the time
16 required for retrieval and duplication of the records is extraordinary,
17 the custodian shall: a. within ¹[48 hours] five business days¹ of
18 receiving the request, determine the existence of such question or such
19 extraordinary requirement of time and, if the requestor has supplied
20 the custodian with sufficient information to enable the custodian to
21 contact the requestor, notify the requestor of the determination, or if
22 not, be prepared to provide notice of the determination upon inquiry
23 by the requestor; and b. provide the records or deny the request not
24 later than ¹[10] 30¹ days after receiving the request.

25

26 8. a. A person who is denied access to ¹[government] public¹
27 records by the custodian of the records may appeal the custodian's
28 decision by filing an action in Superior Court ¹in lieu of prerogative
29 writ or by order to show cause¹.

30 In any such action, the court shall proceed in a summary manner.
31 ¹[Actions brought pursuant to this act shall take precedence over all
32 other matters and shall be handled as expeditiously as possible.]]¹ The
33 ¹[government agency] custodian¹ shall have the burden of proving that
34 its denial of access is authorized by this act¹; provided, however, that
35 if the basis of the denial is that the public record is exempt from
36 disclosure pursuant to subsection q. of section 14 of this act, the
37 burden of proof shall be as provided under the applicable law
38 providing for nondisclosure¹. If it is determined that access has been
39 improperly denied, the court shall order that access be allowed.

40 b. Whenever a custodian determines that disclosure of a
41 ¹[government] public¹ record which is ordinarily accessible to the
42 public pursuant to this act would ¹[cause substantial harm to the public
43 interest] result in the public interest being clearly endangered or the
44 personal privacy or guaranteed rights of individuals would be clearly
45 in danger of unwarranted invasion¹, the custodian may apply to the
46 Superior Court for an order authorizing denial of access. The court

1 may issue such an order if it finds, after a hearing, that permitting
2 access would cause ¹[substantial harm to the public interest] such
3 danger¹. The burden of proof shall be on the custodian. Any person
4 who has sought access to a record with regard to which the custodian
5 has filed an action shall receive notice of the hearing and shall have the
6 opportunity to be heard and to be represented by counsel at the
7 hearing. ¹If, in the opinion of the custodian, the request to inspect,
8 examine, copy or obtain a copy of information is unreasonable because
9 it is overly burdensome in that compliance with the request would
10 clearly require the agency to disrupt, suspend or delay performance of
11 a significant function of the agency, then the custodian shall promptly
12 notify the requestor, in writing if requested, and offer to provide the
13 information in a different format or at a later date if an alternative
14 would avoid the disruption, suspension or delay. The requestor may
15 modify the request or treat the notice as a denial.

16 c. In order to maintain the integrity of those agencies engaged in
17 operations that are exceptions to the constitutional prohibition against
18 gambling, any such agency shall be permitted to withhold any record
19 otherwise accessible under this act if the custodian determines that
20 access may result in damage to the integrity of the operation of such
21 agency.¹

22 ¹[c.] d.¹ When ¹[a government agency] any party¹ does not prevail
23 in any proceeding brought pursuant to this act, the court may assess
24 against it reasonable attorney's fees and other reasonable litigation
25 expenses.

26
27 9. ¹[a.]¹ Access to ¹[government] public¹ records shall be
28 permitted during the regular business hours of the public agency
29 having custody of the records. A person shall have the right to copy
30 a record by hand under appropriate supervision by the custodian or the
31 custodian's designee and consistent with the need to preserve the
32 original. A person shall have the right to use his own duplicating
33 process to copy a ¹[government] public¹ record at the public agency¹
34 if the custodian finds that there is no risk of damage to the document
35 and that this would not be incompatible with the operation of the
36 public agency.

37 ¹[b. Government records shall be kept in the buildings in which
38 they are ordinarily used. Records which are worn, mutilated, damaged
39 or difficult to read shall be copied or repaired, as appropriate.
40 Records may be removed from the building in which they are
41 ordinarily kept while being copied or repaired. The custodian shall
42 certify that any copy of a record is an accurate copy of the original.]¹

43 10. When the custodian of a ¹[government] public¹ record asserts
44 that part of a particular record is exempt from public access pursuant
45 to this act, the custodian shall delete or excise from ¹a copy of¹ the
46 record that portion which is exempt from access and shall permit

1 access to the remainder of the record.

2

3 11. In any action in which the decision of a custodian to deny
4 access to a ¹[government] public¹ record is at issue, the record or part
5 thereof in question shall be submitted to the court for an inspection in
6 camera as the court determines to be ¹[necessary] appropriate¹. If the
7 court determines that the ¹[government] public¹ record is not exempt
8 from disclosure, it shall order the record to be produced for public
9 access.

10

11 12. When a custodian denies access to a ¹[government] public¹
12 record on the grounds that it is exempt from public disclosure pursuant
13 to this act, the record shall be maintained on file by the custodian for
14 at least 30 days after access is denied. No ¹[government] public¹
15 record shall be altered or destroyed during the pendency of an action
16 seeking access to the record.

17

18 13. a. Except as provided under subsection e. of this section with
19 respect to the disclosure of personal records to the individual to whom
20 those records pertain, an agency shall disclose or authorize the
21 disclosure of a ¹[personal]¹ record that includes information about a
22 person¹ to any person when the disclosure is:

23 (1) the name, compensation, job title, business address, business
24 telephone number, and job description; to the extent necessary to
25 demonstrate compliance with the requirements for holding the position
26 in the agency, the education, training background, and previous work
27 experience; and dates of first and last employment, of any present or
28 former officer or employee of the agency;

29 (2) pursuant to the prior written consent of the individual to whom
30 the record refers;

31 (3) information collected and maintained for the purpose of making
32 information available to the general public;

33 (4) information contained in or compiled from a transcript,
34 minutes, report, or summary of a proceeding open to the public;

35 (5) pursuant to federal law or a State law that expressly authorizes
36 disclosure;

37 (6) pursuant to a court order issued upon a¹ showing of
38 compelling circumstances affecting the health or safety of any
39 individual, in which case the agency shall make reasonable efforts to
40 notify the individual to whom the record refers;

41 (7) pursuant to an order of a court in which case the agency shall
42 notify the individual to whom the record refers by mailing a copy of
43 the order to the individual's last known address;

44 (8) pursuant to a subpoena from either house of the State
45 Legislature, the Joint Legislative Committee on Ethical Standards or
46 any commission¹ committee or subcommittee of the ¹ [General

- 1 Assembly or Senate] Legislature¹, in which case the agency shall notify
2 the individual to whom the record refers by mailing a copy of the
3 subpoena to the individual's last known address; ¹or¹
- 4 (9) information from motor vehicle registration lists which is
5 necessary for recall purposes ¹[;
- 6 (10) pursuant to a subpoena issued by the State Commission of
7 Investigation, in which case the agency shall notify the individual to
8 whom the record refers by mailing a copy of the subpoena to the
9 individual's last known address ; and
- 10 (11) in any other case, not a clearly unwarranted invasion of
11 personal privacy]¹.
- 12 b. Except as provided in subsection a. of this section, no agency
13 shall be required under this act to disclose information subject to a
14 significant privacy interest unless the public interest in disclosure is
15 compelled by an imminent threat to public health and safety.
16 Individuals shall be presumed to have a significant privacy interest in
17 the following matters ¹[only]¹:
- 18 (1) information relating to medical, psychiatric or psychological
19 history, diagnosis, condition, treatment, or evaluation ¹[, other than
20 directory information concerning an individual's presence at any
21 facility]¹;
- 22 (2) information compiled and identifiable as part of an investigation
23 into a possible violation of criminal law, except to the extent that
24 disclosure is necessary to prosecute the violation or to continue the
25 investigation;
- 26 (3) information relating to eligibility for social services or welfare
27 benefits or to the determination of benefits or to the determination of
28 benefit levels;
- 29 (4) information in an agency's personnel file, or applications,
30 nomination, recommendations, or proposals for public employment or
31 appointment to a governmental position, except information relating
32 to ¹[the status of any formal charges against the employee and] any¹
33 disciplinary action ¹[taken] against an employee, but only upon
34 completion of any available administrative appeal¹;
- 35 (5) information relating to an individual's nongovernmental
36 employment history, except as necessary to demonstrate compliance
37 with requirements for the particular position;
- 38 (6) information in an income or other tax return measured by items
39 of income or gathered by an agency for the purpose of administering
40 the tax;
- 41 (7) information describing a natural person's finances, income,
42 assets, liabilities, net worth, bank balances, financial history or
43 activities, or credit worthiness;
- 44 (8) information comprising a personal recommendation or
45 evaluation; or
- 46 (9) information compiled as part of an inquiry into an individual's

- 1 fitness to be granted or to retain a license, except:
- 2 (a) the record of any proceeding resulting in revocation or
3 suspension of a license and the grounds for revocation or suspension;
- 4 (b) information on the employment and required insurance
5 coverages of licensees; and
- 6 (c) the record of complaints, including all dispositions.
- 7 c. In addition to disclosures ¹[permitted] required ¹ under
8 subsection a., an agency may disclose or authorize the disclosure of an
9 individually identifiable record if made to:
- 10 (1) another agency if disclosure is:
- 11 (a) certified by the requesting agency as being necessary to the
12 performance of its duties and functions; and
- 13 (b) compatible with the purpose for which the information in the
14 record was originally collected or obtained;
- 15 (2) the State ¹[archives] Archives ¹ for purposes of historical
16 preservation or administrative maintenance;
- 17 (3) another agency, another state, or the federal government, if
18 disclosure is:
- 19 (a) for the purpose of a civil or criminal law enforcement
20 investigation;
- 21 (b) specifically authorized by statute or compact; and
- 22 (c) pursuant to agreement or written request;
- 23 (4) an agency for transmission to courts of this State, another
24 state, or the United States for presentence or probationary purposes;
- 25 (5) a foreign government pursuant to executive agreement,
26 compact, treaty, or statute;
- 27 (6) a criminal law enforcement agency of this State, another state,
28 or the federal government if the information requested is limited to an
29 individual's name and other identifying particulars, including present
30 and past addresses and present and past places of employment;
- 31 (7) authorized officials of the federal government or of an agency
32 of this State for audit or review purposes if:
- 33 (a) the audit or review is expressly authorized by law; and
- 34 (b) disclosure is certified by the requesting agency as being
35 necessary to the performance of audits or reviews; and
- 36 (8) the United States Bureau of the Census for the purpose of
37 planning or carrying out a census, survey, or related activity under
38 Title 13 of the United States Code.
- 39 d. ¹[An] A public ¹ agency receiving information pursuant to
40 subsection c. of this section shall be subject to the same provisions
41 concerning disclosure of the information as the originating agency.
- 42 e. Except as provided in this section, an individual or an
43 individual's duly authorized representative may examine or copy,
44 during the regular business hours of the agency, any accessible record
45 that pertains to the individual. In implementing the rights under this
46 subsection, the agency shall follow the procedures established herein,

1 subject to the requirement that, upon receipt of a request to examine
2 or copy an accessible record, the agency shall verify the identity of the
3 requester.

4 f. An agency is not required by subsection e. of this section to
5 disclose:

6 (1) information that may be withheld pursuant to section 14 of this
7 act ¹[, except to the extent that the information sought was submitted
8 by the requester]¹;

9 (2) information collected and used solely to evaluate the character
10 and fitness of persons¹[, but only to the extent that disclosure would
11 identify the source of the information]¹; or

12 (3) information that does not relate directly to the requester and
13 which, if disclosed, would constitute a clearly unwarranted invasion of
14 another individual's personal privacy.

15 g. Nothing contained in this section shall be construed as abridging
16 any statute that authorizes an agency to withhold information from the
17 parent or legal guardian of a child.

18 h. If an individual requests ¹[an accessible] a public¹ record which
19 contains both public information and information the agency is not
20 required to ¹[disclosure] disclose¹, the agency shall provide the
21 portion of a public record containing¹ public information ¹[contained
22 in the record]¹ after deleting the undisclosable material ¹from a copy
23 of the record to be provided to the requestor¹, provided that the
24 undisclosable material ¹[may] can¹ be severed from the ¹[public
25 information] copy of the public record¹.

26

27 14. Nothing contained in this act shall be construed to require ¹or
28 permit¹ disclosure of:

29 a. active criminal intelligence information ¹[and], ¹ active criminal
30 investigative information¹, civil investigative information or active civil
31 investigative information¹;

32 b. any information ¹[revealing] which may reveal¹ the identity of a
33 confidential informant ¹[or], ¹ a confidential source, a citizen
34 informant, or an individual whose records have been registered as
35 confidential based on State statute, resolution of either or both houses
36 of the Legislature, Executive Order of the Governor, rule of court,
37 federal law or federal regulation¹;

38 c. any information ¹[revealing] which may reveal¹ a criminal justice
39 agency's surveillance, security or investigative techniques or
40 procedures or personnel. Notwithstanding anything contained herein,
41 any comprehensive inventory of State and local law enforcement
42 resources compiled pursuant to statute and any comprehensive policies
43 or plans compiled by a criminal justice agency pertaining to the
44 mobilization, deployment, or tactical operations involved in responding
45 to emergencies are exempt from the provisions of this act and shall be
46 unavailable for inspection except by personnel authorized by State or

- 1 local law enforcement agency, the office of the Governor, the Attorney
2 General, or the Department of Community Affairs or by court order;
- 3 d. any information ¹[revealing] which may reveal¹ undercover
4 personnel of any criminal justice agency ¹[not previously disclosed]¹;
- 5 e. any criminal intelligence information or criminal ¹or civil ¹
6 investigative information including the photograph, name, address, or
7 other fact or information which reveals the identity of the victim of the
8 crime of sexual battery; the identity of the victim of the crime of lewd,
9 lascivious, or indecent assault upon or in the presence of a child; and
10 any criminal intelligence information or criminal investigative
11 information or other criminal record, including those portions of court
12 records, which may reveal the identity of a person ¹[under the age of
13 18]¹ who is a victim of any sexual offense;
- 14 f. any criminal intelligence information or criminal investigative
15 information which reveals the personal assets of the victim of a crime,
16 other than property stolen or destroyed during the commission of the
17 crime;
- 18 g. inter-agency or intra-agency advisory, consultative, or
19 deliberative material¹[, other than factual information or final policy
20 determinations, if communicated for the purpose of decision-making]
21 or advisory, consultative, or deliberative material to or from an agency
22 official, an agency employee, an elected or appointed official or a staff
23 member of an elected or appointed official, other than those records
24 defined as such in section 3 of this act¹ ;
- 25 h. material prepared in anticipation of litigation ¹[which would not
26 be available to a party in litigation with the agency under the rules of
27 pretrial discovery for actions in a court of this State]¹;
- 28 i. materials used to administer a licensing, employment, or
29 academic examination ¹[if disclosure would compromise the fairness
30 or objectivity of the examination process]¹;
- 31 j. information which, if disclosed, would frustrate government
32 procurement or give an advantage to any person proposing to enter
33 into a contract or agreement with an agency including information
34 involved in the collective bargaining process provided that a roster of
35 employees shall be open to inspection by any organization which is
36 allowed to challenge existing employee representation;
- 37 k. information identifying real property under consideration for
38 public acquisition before acquisition of rights to the property, or
39 information not otherwise available under the laws of this State
40 pertaining to real property under consideration for public acquisition
41 before making a purchase agreement;
- 42 l. administrative, technical or other information including software,
43 operating protocols and employee manuals, the disclosure of which
44 would jeopardize the security of a record-keeping system;
- 45 m. proprietary information, including computer programs and
46 software and other types of information manufactured or marketed by

1 persons under exclusive legal right, owned by the agency or entrusted
2 to it ¹; except that any public agency shall require any vendor, with
3 whom it contracts after the effective date of this act, supplying or
4 providing computer programs or software to either make provision so
5 that such program or software may be produced in print impact or
6 print character form or alternatively that such vendor consents to
7 disclosure pursuant to the provisions of this act¹;

8 n. trade secrets or confidential commercial and financial
9 information obtained, upon request, from a person;

10 o. library, archival, or museum material contributed by private
11 persons to the extent of any lawful limitation imposed on the material;

12 p. any advisory opinion rendered by the Joint Legislative
13 Committee on Ethical Standards ¹or counsel thereto¹; ¹[or]¹

14 q. information that ¹[is expressly] has heretofore been, or is
15 hereafter,¹ made nondisclosable or confidential under federal or State
16 law or protected by ¹[the rules] a rule¹ of evidence, whether or not a
17 proceeding is then pending ¹[.] :

18 r. information related to any civil or administrative enforcement
19 investigation;

20 s. any archival materials of which the New Jersey Division of
21 Archives and Records Management is the official repository that
22 would suffer damage as a consequence of access or reproduction. The
23 Director of the New Jersey Division of Archives and Records
24 Management is hereby authorized to promulgate rules for inspection
25 and copying archival materials;

26 t. grand jury materials, access to which is governed by court rule
27 and common law;

28 u. the files maintained by the Office of the Public Defender which
29 relate to the handling of any case, or which relate to any alternate
30 dispute resolution proceeding conducted by the Office of Dispute
31 Settlement;

32 v. property record cards maintained by municipalities or tax
33 assessors; provided, however, that a requestor who has filed a tax
34 appeal shall not be prohibited from obtaining through the ordinary
35 course of discovery in the tax appeal the property record card of the
36 property under appeal as well as the property record cards of any
37 properties being used as comparables; or

38 w. those parts of records or information the disclosure of which
39 appears reasonably calculated to lead to the disclosure of records or
40 information the disclosure of which is not required by this act.¹

41 Nothing contained in this section shall be construed to exempt from
42 section 4 of this act a public record which was made part of a court
43 file and which is not specifically closed by order of a court.

44
45 15. ¹a.¹ Nothing contained in this act shall be construed as limiting
46 ¹[the]¹ common law ¹[right of]¹ access to public records ¹, or the

1 balancing of interests thereunder, or as limiting common law
2 privileges¹.

3 ¹b. In addition to and not by way of limitation of anything
4 contained in this act, the following records are deemed and declared
5 public records subject to the immediate right of inspection,
6 examination and copying by members of the public:

7 (1) the record of all credit cards issued to or by any public agency
8 or by a public agency to any agent, servant or employee thereof
9 including all records of charges incurred thereon; provided, however,
10 account numbers and expiration dates shall not be deemed or declared
11 a public record;

12 (2) all settlement agreements entered into by any public agency in
13 settlement of any pending, anticipated or threatened litigation arising
14 out of such agency's official actions, duties or responsibilities;

15 (3) all salary records of any public agency; and

16 (4) nothing contained herein shall require the disclosure of any part
17 of any of the foregoing records that contains material or information
18 which is the subject of any privileges based in the Constitution,
19 statutes or case law.¹

20
21 16. P.L.1963, c.73 (C.47:1A-1 et seq.) is repealed.

22
23 17. This act shall take effect on the ¹[60th] 180th¹ day after
24 enactment, except that public agencies may take such anticipatory
25 administrative action in advance as shall be necessary for the
26 implementation of the act.

27
28
29 _____
30
31 Revises law governing access to public records.