

[First Reprint]

SENATE, No. 1046

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 8, 2016

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Makes certain access changes to open public records act; establishes State public finance website and creates program for development of local websites; makes appropriation.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 29, 2017, with amendments.



(Sponsorship Updated As Of: 2/12/2016)

1 AN ACT concerning access to certain government records and
2 establishment of a program for developing public websites,
3 amending and supplementing P.L.1963, c.73, supplementing
4 Title 52 of the Revised Statutes, amending P.L.1995, c.23 and
5 P.L.2001, c.404, and making an appropriation.

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. (New section) This act, P.L.1963, c.73 (C.47:1A-1 et seq.),
11 shall be known and may be cited as the "Martin O'Shea Open
12 Public Records and Transparency Act."

13
14 2. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read
15 as follows:

16 1. The Legislature finds and declares it to be the public policy
17 of this State that:

18 government records shall be readily accessible for inspection,
19 copying, or examination **【by the citizens of this State】** ¹by the
20 citizens of this State¹, with certain exceptions, for the protection of
21 the public interest, and any limitations on the right of access
22 accorded by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
23 supplemented, shall be construed in favor of the public's right of
24 access;

25 all government records shall be subject to public access unless
26 exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as
27 amended and supplemented; any other statute; resolution of either
28 or both houses of the Legislature; regulation promulgated under the
29 authority of any statute or Executive Order of the Governor;
30 Executive Order of the Governor; Rules of Court; any federal law,
31 federal regulation, or federal order;

32 a public agency has a responsibility and an obligation to
33 safeguard from public access a **【citizen's】** person's personal
34 information with which it has been entrusted when disclosure
35 thereof would violate the **【citizen's】** person's reasonable
36 expectation of privacy; and nothing contained in P.L.1963, c.73
37 (C.47:1A-1 et seq.), as amended and supplemented, shall be
38 construed as affecting in any way the common law right of access to
39 any record, including but not limited to criminal investigatory
40 records of a law enforcement agency.

41 (cf: P.L.2001, c.404, s.1)

42
43 3. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to
44 read as follows:

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted June 29, 2017.

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

3 "Biotechnology" means any technique that uses living
4 organisms, or parts of living organisms, to make or modify
5 products, to improve plants or animals, or to develop micro-
6 organisms for specific uses; including the industrial use of
7 recombinant DNA, cell fusion, and novel bioprocessing techniques.

8 "Commercial purpose" means the direct or indirect use of any
9 part of a government record for sale, resale, solicitation, rent or
10 lease of a service, or any use by which the user expects a profit
11 either through commission, salary, or fee. "Commercial purpose"
12 shall not include using, distributing, gathering, procuring,
13 transmitting, compiling, editing, disseminating, or publishing of
14 information or data by the news media, or any parent, subsidiary, or
15 affiliate of any news media, as defined by section 2 of P.L.1977,
16 c.253 (C.2A:84A-21a), or by any news, journalistic, educational,
17 scientific, scholarly, or governmental organization.

18 "Custodian of a government record" or "custodian" means in the
19 case of a municipality, the municipal clerk and in the case of any
20 other public agency, the officer officially designated by formal or
21 written action of that agency's director or governing body, as the
22 case may be. ¹In the case of a volunteer fire company or a
23 volunteer fire department established pursuant to N.J.S.40A:14-68,
24 a volunteer fire company or department may enter into a contract
25 with the governing body of the municipality it serves wherein the
26 municipal clerk shall serve as the custodian for government record
27 request purposes.¹

28 "Government record" or "record" means any paper, written,
29 electronic, or printed book, document, drawing, map, plan,
30 photograph, microfilm, data processed or image processed
31 document, information stored or maintained electronically or by
32 **【sound-recording】** video or audio recording or in a similar device,
33 or any copy thereof, that has been made, maintained or kept on file,
34 or is required by law to be made, maintained or kept on file, in the
35 course of his or its official business by any **【officer, commission,**
36 **agency or authority of the State or of any political subdivision**
37 **thereof, including subordinate boards thereof】** public employee or
38 public agency, or that has been received in the course of his or its
39 official business by any such **【officer, commission, agency, or**
40 **authority of the State or of any political subdivision thereof,**
41 **including subordinate boards thereof】** public employee or public
42 agency. Any video or audio recordings made of those portions of
43 meetings from which the public was not excluded pursuant to
44 subsection b. of section 7 of P.L.1975, c.231 (C.10:4-12), including
45 emergency meetings held pursuant to subsection b. of section 4 of
46 P.L.1975, c.231 (C.10:4-9), shall be available in unedited form.
47 The terms shall not include inter-agency or intra-agency advisory,
48 consultative, or deliberative material.

1 “Advisory, consultative or deliberative material” means material
2 that is used and relied upon during the consultative process prior to
3 the completion of a competitive application ¹, the award of any
4 contract,¹ or the adoption of an ordinance, rule, regulation, or
5 policy by any public agency and that reflects personal opinions,
6 recommendations, and deliberations comprising part of a process by
7 which public agency decisions and policies are formulated, rather
8 than factual or statistical data, information or the official policy of
9 that body, and the release of which would be injurious to the
10 consultative function of government.

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

14 information received by a member of the Legislature from a
15 constituent or information held by a member of the Legislature
16 concerning a constituent, including but not limited to information in
17 written form or contained in any e-mail or computer data base, or in
18 any telephone record whatsoever, unless it is information the
19 constituent is required by law to transmit;

20 any memorandum, correspondence, notes, report or other
21 communication prepared by, or for, the specific use of a member of
22 the Legislature in the course of the member's official duties, except
23 that this provision shall not apply to an otherwise publicly-
24 accessible report which is required by law to be submitted to the
25 Legislature or its members;

26 any copy, reproduction or facsimile of any photograph, negative
27 or print, including instant photographs and videotapes of the body,
28 or any portion of the body, of a deceased person, taken by or for the
29 medical examiner at the scene of death or in the course of a post
30 mortem examination or autopsy made by or caused to be made by
31 the medical examiner except:

32 when used in a criminal action or proceeding in this State which
33 relates to the death of that person,

34 for the use as a court of this State permits, by order after good
35 cause has been shown and after written notification of the request
36 for the court order has been served at least five days before the
37 order is made upon the county prosecutor for the county in which
38 the post mortem examination or autopsy occurred,

39 for use in the field of forensic pathology or for use in medical or
40 scientific education or research, or

41 for use by any law enforcement agency in this State or any other
42 state or federal law enforcement agency;

43 criminal investigatory records;

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, including location, ¹[on] of private¹ alarm systems
34 and surveillance cameras;

35 information which, if disclosed, would give an advantage to
36 competitors or bidders;

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

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

46 information which is to be kept confidential pursuant to court
47 order;

1 any copy of form DD-214, or that form, issued by the United
2 States Government, or any other certificate of honorable discharge,
3 or copy thereof, from active service or the reserves of a branch of
4 the Armed Forces of the United States, or from service in the
5 organized militia of the State, that has been filed by an individual
6 with a public agency, except that a veteran or the veteran's spouse
7 or surviving spouse shall have access to the veteran's own records;

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

16 **【and】**

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

35 cell phone numbers, unless the cell phone number is listed as a
36 home telephone number;

37 electronic-mail addresses provided to the public agency as
38 contact information for the purpose of receiving official public
39 notifications; ¹and¹

40 electronic-mail addresses provided to the public agency as
41 contact information on any official government form ¹【; and

42 that portion of any document that requires and would disclose
43 personal identifying information of persons under the age of 18
44 years, except with respect to the disclosure of driver information by
45 the New Jersey Motor Vehicle Commission as permitted by section
46 2 of P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver
47 information to any insurer or insurance support organization, or a
48 self-insured entity, or its agents, employees, or contractors, for use

1 in connection with claims investigation activities, antifraud
2 activities, rating or underwriting】¹.

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

6 pedagogical, scholarly and/or academic research records and/or
7 the specific details of any research project conducted under the
8 auspices of a public higher education institution in New Jersey,
9 including, but not limited to research, development information,
10 testing procedures, or information regarding test participants,
11 related to the development or testing of any pharmaceutical or
12 pharmaceutical delivery system, except that a custodian may not
13 deny inspection of a government record or part thereof that gives
14 the name, title, expenditures, source and amounts of funding and
15 date when the final project summary of any research will be
16 available;

17 test questions, scoring keys and other examination data
18 pertaining to the administration of an examination for employment
19 or academic examination;

20 records of pursuit of charitable contributions or records
21 containing the identity of a donor of a gift if the donor requires non-
22 disclosure of the donor's identity as a condition of making the gift
23 provided that the donor has not received any benefits of or from the
24 institution of higher education in connection with such gift other
25 than a request for memorialization or dedication;

26 valuable or rare collections of books and/or documents obtained
27 by gift, grant, bequest or devise conditioned upon limited public
28 access;

29 information contained on individual admission applications; and
30 information concerning student records or grievance or
31 disciplinary proceedings against a student to the extent disclosure
32 would reveal the identity of the student.

33 "Personal firearms record" means any information contained in a
34 background investigation conducted by the chief of police, the
35 county prosecutor, or the Superintendent of State Police, of any
36 applicant for a permit to purchase a handgun, firearms identification
37 card license, or firearms registration; any application for a permit to
38 purchase a handgun, firearms identification card license, or firearms
39 registration; any document reflecting the issuance or denial of a
40 permit to purchase a handgun, firearms identification card license,
41 or firearms registration; and any permit to purchase a handgun,
42 firearms identification card license, or any firearms license,
43 certification, certificate, form of register, or registration statement.
44 For the purposes of this paragraph, information contained in a
45 background investigation shall include, but not be limited to,
46 identity, name, address, social security number, phone number, fax
47 number, driver's license number, email address, social media
48 address of any applicant, licensee, registrant or permit holder.

1 The term “government record” shall include allowances sold at
2 auction pursuant to P.L.2007, c.340 (C.26:2C-45 et seq.) or any
3 similar greenhouse gas initiative, together with the auction clearing
4 price for each allowance, the identity of the winning bidder, and the
5 quantity of allowances obtained by each bidder, and of which none
6 shall be considered to be a trade secret within the scope of this act,
7 P.L.1963, c.73 (C.47:1A-1 et seq.). The term shall also include
8 records containing the names of reviewers of grants, donations,
9 gifts or applications made to a public agency including the names of
10 reviewers of charter school applications, which names shall not be
11 redacted, and EZ pass records, or substantially similar records, for
12 vehicles owned by the State ¹and any other public entities¹, other
13 than those reflecting law enforcement usage notwithstanding any
14 other law to the contrary.

15 "Public agency" or "agency" means any of the principal
16 departments in the Executive Branch of State Government, and any
17 division, agency, authority, board, bureau, office, commission or
18 other instrumentality within or created by such department; the
19 Legislature of the State and any office, board, bureau or
20 commission within or created by the Legislative Branch; and any
21 independent State authority, commission, instrumentality or agency.
22 The terms shall also mean any political subdivision of the State or
23 combination of political subdivisions, and any division, board,
24 bureau, office, commission or other instrumentality within or
25 created by a political subdivision of the State or combination of
26 political subdivisions, and any independent authority, commission,
27 instrumentality or agency created by a political subdivision or
28 combination of political subdivisions. The term shall also include a
29 school district, special district, an educational information resource
30 center established pursuant to P.L.1983, c.186 (C.18A:6-95.1 et
31 seq.), or charter school, quasi-governmental agency, or public
32 employee. The term shall also mean and include, by way of
33 example but not limitation, the New Jersey State League of
34 Municipalities, the New Jersey Association of Counties, the New
35 Jersey School Boards Association, and the New Jersey State
36 Interscholastic Athletic Association, and a substantially similar
37 successor organization or association, a joint insurance group or
38 fund for political subdivisions of this State, and bi-State agencies.

39 “Quasi-governmental agency” means any association,
40 commission, agency, authority, organization, public-private entity,
41 or any other entity, in which one or more public agencies exercise
42 substantial control, or as determined by the Government Records
43 Council or a court of law, by considering factors including but not
44 limited to: whether a public agency exercises control over the quasi-
45 government agency or the public agency maintains the ability to
46 review, approve, or reject the quasi-governmental agency’s
47 proposals or plans, holds a beneficial interest in the quasi-
48 governmental agency’s assets, is the primary source of funding of,

1 or is indebted to, or is a creditor of, or guarantor of the debts of, the
2 quasi-governmental agency. The term shall not include any entity
3 involving the Legislature or any organization organized under
4 paragraph (3) of subsection c. of section 501 of the federal Internal
5 Revenue Code (26 U.S.C.s.501) that was not created by, or with the
6 approval of, a public agency primarily for the purpose of assisting
7 that public agency or any labor organization or any contractor
8 providing goods or services to a public agency except as otherwise
9 provided by this subsection. However, nothing contained herein
10 shall affect the application of P.L.1963, c.73 (C.47:1A-1 et seq.) to
11 entities that otherwise fall within the definition of "public agency."

12 "Public employee" means any person who occupies any office,
13 position or employment in a public agency, as defined in this
14 section, but only to the extent that he or she acts in an official
15 capacity. This term shall also include, but shall not be limited to,
16 an elected and appointed person¹, an intern and volunteer
17 employee¹.

18 "Law enforcement agency" means a public agency, or part
19 thereof, determined by the Attorney General to have law
20 enforcement responsibilities.

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

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

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

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

33 "Victim of a crime" means a person who has suffered personal or
34 psychological injury or death or incurs loss of or injury to personal
35 or real property as a result of a crime, or if such a person is
36 deceased or incapacitated, a member of that person's immediate
37 family.

38 "Victims' rights agency" means a public agency, or part thereof,
39 the primary responsibility of which is providing services, including
40 but not limited to food, shelter, or clothing, medical, psychiatric,
41 psychological or legal services or referrals, information and referral
42 services, counseling and support services, or financial services to
43 victims of crimes, including victims of sexual assault, domestic
44 violence, violent crime, child endangerment, child abuse or child
45 neglect, and the Victims of Crime Compensation Board, established
46 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
47 the Victims of Crime Compensation Office pursuant to P.L.2007,

1 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
2 (cf: P.L.2015, c.59, s.1)

3
4 4. Section 3 of P.L.1963, c.73 (C.47:1A-3) is amended to read
5 as follows:

6 3. a. Notwithstanding the provisions of P.L.1963, c.73
7 (C.47:1A-1 et seq.) as amended and supplemented, where it shall
8 appear that the record or records which are sought to be inspected,
9 copied, or examined shall pertain to an investigation in progress by
10 any public agency, the right of access provided for in P.L.1963,
11 c.73 (C.47:1A-1 et seq.) as amended and supplemented may be
12 denied if the inspection, copying or examination of such record or
13 records shall be inimical to the public interest; provided, however,
14 that this provision shall not be construed to allow any public agency
15 to prohibit access to a record of that agency that was open for
16 public inspection, examination, or copying before the investigation
17 commenced. Whenever a public agency, during the course of an
18 investigation, obtains from another public agency a government
19 record that was open for public inspection, examination or copying
20 before the investigation commenced, the investigating agency shall
21 provide the other agency with sufficient access to the record to
22 allow the other agency to comply with requests made pursuant to
23 P.L.1963, c.73 (C.47:1A-1 et seq.).

24 b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-
25 1 et seq.), as amended and supplemented, records containing the
26 following information concerning a criminal investigation shall be
27 available to the public within 24 hours or as soon as practicable, of
28 a request for such information:

29 where a crime has been reported but no arrest yet made,
30 information as to the type of crime, time, location and type of
31 weapon, if any;

32 if an arrest has been made, information as to the name, address
33 and age of any victims unless there has not been sufficient
34 opportunity for notification of next of kin of any victims of injury
35 and/or death to any such victim or where the release of the names of
36 any victim would be contrary to existing law or court rule. In
37 deciding on the release of information as to the identity of a victim,
38 the safety of the victim and the victim's family, and the integrity of
39 any ongoing investigation, shall be considered;

40 if an arrest has been made, information as to the defendant's
41 name, age, residence, occupation, marital status and similar
42 background information and, the identity of the complaining party
43 unless the release of such information is contrary to existing law or
44 court rule;

45 information as to the text of any charges such as the complaint,
46 accusation and indictment unless sealed by the court or unless the
47 release of such information is contrary to existing law or court rule;

1 information as to the identity of the investigating and arresting
2 personnel and agency and the length of the investigation;

3 information of the circumstances immediately surrounding the
4 arrest, including but not limited to the time and place of the arrest,
5 resistance, if any, pursuit, possession and nature and use of
6 weapons and ammunition by the suspect and by the police; and

7 information as to circumstances surrounding bail, whether it was
8 posted and the amount thereof.

9 Notwithstanding any other provision of this subsection, if the
10 custodian of a government record asserts that part of a particular
11 record is exempt from public access pursuant to P.L.1963, c.73
12 (C.47:1A-1 et seq.), as amended and supplemented, the custodian
13 shall redact from a copy of the record that portion which the
14 custodian asserts is exempt from access and shall promptly permit
15 access to the remainder of the record. If the custodian of a
16 government record redacts information from a copy of the record,
17 the custodian shall provide the requestor with a redacted version of
18 the document and one affidavit¹ or certified statement¹ for the
19 entire request that states the date of the record, the originator or
20 author of the record, the subject matter or title of the record, the
21 number of pages with redactions, and the specific statutory
22 provision or other lawful basis for each such redaction. ¹The
23 custodian shall redact any such information by deleting or
24 obscuring only that information and shall not alter in any manner
25 the space in the government record formerly occupied by such
26 redacted information.¹ This provision shall only apply to documents
27 redacted on or after the effective date of P.L. , c. (pending before
28 the Legislature as this bill).

29 Notwithstanding any other provision of this subsection, where it
30 shall appear that the information requested or to be examined will
31 jeopardize the safety of any person or jeopardize any investigation
32 in progress or may be otherwise inappropriate to release, such
33 information may be withheld. This exception shall be narrowly
34 construed to prevent disclosure of information that would be
35 harmful to a bona fide law enforcement purpose or the public
36 safety. Whenever a law enforcement official determines that it is
37 necessary to withhold information, the official shall issue a brief
38 statement explaining the decision.

39 (cf: P.L.2001, c.404, s.5)

40

41 5. Section 6 of P.L.2001, c.404 (C.47:1A-5) is amended to read
42 as follows:

43 6. a. The custodian of a government record shall permit the
44 record to be inspected, examined, and copied by any person during
45 regular business hours; or in the case of a municipality having a
46 population of 5,000 or fewer according to the most recent federal
47 decennial census, a board of education having a total district
48 enrollment of 500 or fewer, or a public authority having less than

1 \$10 million in assets, during not less than six regular business hours
2 over not less than three business days per week or the entity's
3 regularly-scheduled business hours, whichever is less; unless a
4 government record is exempt from public access by: P.L.1963, c.73
5 (C.47:1A-1 et seq.) as amended and supplemented; any other
6 statute; resolution of either or both houses of the Legislature;
7 regulation promulgated under the authority of any statute or
8 Executive Order of the Governor; Executive Order of the Governor;
9 Rules of Court; any federal law; federal regulation; or federal order.
10 Prior to allowing access to any government record, the custodian
11 thereof shall redact from that record any information which
12 discloses the social security number, credit card number, personal
13 debit card number, personal bank account information, unlisted
14 telephone number, or driver license number of any person; except
15 for use by any government agency, including any court or law
16 enforcement agency, in carrying out its functions, or any private
17 person or entity acting on behalf thereof, or any private person or
18 entity seeking to enforce payment of court-ordered child support;
19 except with respect to the disclosure of driver information by the
20 New Jersey Motor Vehicle Commission as permitted by section 2 of
21 P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver information
22 to any insurer or insurance support organization, or a self-insured
23 entity, or its agents, employees, or contractors, for use in
24 connection with claims investigation activities, antifraud activities,
25 rating or underwriting; and except that a social security number
26 contained in a record required by law to be made, maintained or
27 kept on file by a public agency shall be disclosed when access to
28 the document or disclosure of that information is not otherwise
29 prohibited by State or federal law, regulation or order or by State
30 statute, resolution of either or both houses of the Legislature,
31 Executive Order of the Governor, rule of court or regulation
32 promulgated under the authority of any statute or executive order of
33 the Governor. Except where an agency can demonstrate an
34 emergent need, a regulation that limits access to government
35 records shall not be retroactive in effect or applied to deny a request
36 for access to a government record that is pending before the agency,
37 the council or a court at the time of the adoption of the regulation.

38 If the custodian of a government record redacts information from
39 a copy of the record, the custodian shall provide the requestor with
40 a redacted version of the document and one affidavit ¹or certified
41 statement¹ for the entire request that states the date of the record,
42 the originator or author of the record, the subject matter or title of
43 the record, the number of pages with redactions, and the specific
44 statutory provision or other lawful basis for each such redaction.
45 ¹The custodian shall redact any such information by deleting or
46 obscuring only that information and shall not alter in any manner
47 the space in the government record formerly occupied by such
48 redacted information.¹ This provision shall only apply to documents

1 redacted on or after the effective date of P.L. , c. (pending before
2 the Legislature as this bill).

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. A public agency may
18 charge the fee for each copy made in the process of responding to a
19 government record request made during the redaction process.

20 Access to electronic records and non-printed materials shall be
21 provided free of charge, but the public agency may charge for the
22 actual costs of any needed supplies such as computer discs.

23 (2) No fee shall be charged to a victim of a crime for a copy or
24 copies of a record to which the crime victim is entitled to access, as
25 provided in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

26 (3) If a public agency maintains the record in an electronic
27 format or medium that can be electronically mailed without charge
28 to the requestor, it shall make the requestor aware and allow for
29 delivery of the record in such format or medium. The requestor
30 shall have seven business days to respond to the custodian,
31 otherwise the request is deemed fulfilled.

32 When a requestor has not specified his or her chosen method for
33 receipt of records and if the government record is on the public
34 agency website, the custodian shall advise the requester to obtain
35 the record from the agency website as long as the custodian
36 provides the website address, identifies each responsive document
37 and the specific location on the website of each identified
38 responsive document. If the requester prefers to purchase copies
39 from the public agency, he or she shall be permitted to purchase
40 such copies from the records custodian, in accordance with the
41 provisions of this act, P.L.1963, c.73 (C.47:1A-1 et seq.). The
42 requestor shall have seven business days to ¹[advise] respond to¹
43 the custodian ¹specifying¹ that he or she prefers to purchase the
44 copies, otherwise the request may be deemed fulfilled.

45 ¹If a public agency maintains a government record in a format or
46 medium that can be inspected without charge to the requestor, it
47 shall inform the requestor of the place and time that the record will
48 be available for inspection in such format or medium. If the

1 requestor prefers to purchase copies from the public agency, the
2 requester shall be permitted to purchase such copies from the
3 records custodian, in accordance with the provisions of this act,
4 P.L.1963, c.73 (C.47:1A-1 et seq.). The requestor shall have seven
5 business days to respond to the custodian specifying that he or she
6 prefers to purchase the copies, otherwise the request may be
7 deemed fulfilled.¹

8 c. Whenever the nature, format, medium, manner of collation,
9 or volume of a government record embodied in the form of printed
10 matter to be inspected, examined, or copied pursuant to this section
11 is such that the record cannot be reproduced by ordinary document
12 copying equipment in ordinary business size or involves an
13 extraordinary expenditure of time and effort to accommodate the
14 request, ¹**[or the request is for a commercial purpose,]** the public
15 agency may charge, in addition to the actual cost of duplicating the
16 record, a special service charge **[that]** . A special service charge
17 shall be reasonable and shall be based upon the actual, direct cost of
18 providing the copy or copies **;** provided, however, that . Special
19 service charge rates, in the case of a municipality, [rates] for the
20 duplication of particular records when the actual cost of copying
21 exceeds the foregoing rates shall be established in advance by
22 ordinance. ¹When a request is for a commercial purpose, the public
23 agency may charge, in addition to the actual cost of duplicating the
24 record, a special administrative charge. A special administrative
25 charge shall be reasonable and related to ongoing operational
26 expenses, and shall be for expenditures eligible for inclusion in the
27 special administrative charge based upon the criteria and parameters
28 set forth by the Government Records Council.¹

29 For purposes hereof, the actual, direct costs shall mean those
30 expenditures that an agency actually incurs in searching for and
31 duplicating documents to respond to a request, which includes basic
32 rate of pay for the employee. Direct costs shall not include
33 overhead expenses such as costs of space and heating or lighting the
34 facility in which the records are stored. The requestor shall have
35 the opportunity to review and object to the charge prior to it being
36 incurred. During such review, the public agency shall provide the
37 requestor, without charge, a detailed breakdown of how the special
38 service charge was assessed including, at a minimum, reasonable
39 estimates categorizing the hours needed to identify, copy or prepare
40 for inspection, and to produce and return the requested documents,
41 and the number of pages to be produced. Special service charges
42 shall not be assessed for requests for budgets, bills, vouchers,
43 contracts and public employee salary and overtime information
44 unless the request is deemed voluminous.

45 d. A custodian shall permit access to a government record and
46 provide a copy thereof in the medium or format requested if the
47 public agency maintains the record in that medium or format. If the
48 public agency does not maintain the record in the medium or format

1 requested, the custodian shall either convert the record to the
2 medium or format requested or provide a copy in some other
3 meaningful medium or format. If a request is for a record: (1) in a
4 medium or format not routinely used by the agency; (2) not
5 routinely developed or maintained by an agency; or (3) requiring a
6 substantial amount of manipulation or programming of information
7 technology, the agency may charge, in addition to the actual cost of
8 duplication, a special charge that shall be reasonable and shall be
9 based on the cost for any extensive use of information technology,
10 or for the labor cost of personnel providing the service, that is
11 actually incurred by the agency or attributable to the agency for the
12 programming, clerical, and supervisory assistance required, or both.

13 e. Immediate access ordinarily shall be granted to budgets,
14 bills, vouchers, contracts, including collective negotiations
15 agreements and individual employment contracts, and public
16 employee salary and overtime information for the current, prior, and
17 upcoming fiscal year. Immediate access shall mean by the close of
18 business or 5 P.M., whichever is earlier, unless otherwise provided
19 by law or regulation. If the request is received at noon or if
20 received after noon, the request shall be fulfilled by noon the
21 following day, unless otherwise provided by law or regulation.

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

46 If a request for information is made in writing on a document
47 other than the form adopted by the public agency and the request
48 contains the requisite information prescribed in this subsection, the

1 custodian shall treat the request as if made on the form adopted by
2 the public agency. The document shall also indicate and provide
3 criminal background information, similar to what is required on an
4 adopted government record request form.

5 A response on any form providing criminal background
6 information on the requestor, whether in the affirmative or negative,
7 shall be confidential and shall be redacted prior to disclosure of any
8 such request. If a requestor does not provide criminal background
9 information, the custodian shall attempt to contact the requestor to
10 obtain such information, and shall not deny the request for failure to
11 provide such information unless attempts are made by the custodian
12 to obtain such information and the requestor refuses or cannot be
13 contacted.

14 g. A request for access to a government record shall be in
15 writing and hand-delivered, mailed, transmitted electronically,
16 including by electronic mail, transmitted by facsimile when no more
17 than four pages in length, or otherwise conveyed to the appropriate
18 custodian. A ¹[requestor who intends to use the record for a
19 commercial purpose shall certify] request that is intended for a
20 commercial purpose shall be certified¹ to that fact in the request.
21 The public agency may require a requestor to state whether the
22 ¹[requestor intends to use the] requested¹ records ¹are¹ for a
23 commercial purpose, but the agency shall not require the requestor
24 to provide the exact purpose of the commercial use. A custodian
25 shall promptly comply with a request to inspect, examine, copy, or
26 provide a copy of a government record. If a record is missing or
27 damaged, or the custodian is unable to comply with or denies a
28 request for access, the custodian shall indicate the specific basis
29 therefor on the request form and promptly return it to the requestor.
30 The custodian shall sign and date the form and provide the
31 requestor with a copy thereof. If the custodian of a government
32 record asserts that part of a particular record is exempt from public
33 access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended
34 and supplemented, the custodian shall delete or excise from a copy
35 of the record that portion which the custodian asserts is exempt
36 from access and shall promptly permit access to the remainder of
37 the record.

38 If the custodian of a government record redacts information from
39 a copy of the record, the custodian shall provide the requestor with
40 a redacted version of the document and one affidavit ¹or certified
41 statement¹ for the entire request that states the date of the record,
42 the originator or author of the record, the subject matter or title of
43 the record, the number of pages with redactions, and the specific
44 statutory provision or other lawful basis for each such redaction.
45 ¹The custodian shall redact any such information by deleting or
46 obscuring only that information and shall not alter in any manner
47 the space in the government record formerly occupied by such
48 redacted information.¹ This provision shall only apply to documents

1 redacted on or after the effective date of P.L. , c. (pending before
2 the Legislature as this bill).

3 If the government record requested is temporarily unavailable
4 because it is in use or in storage, the custodian shall so advise the
5 requestor and shall make arrangements to promptly make available
6 a copy of the record. If a request for access to a government record
7 would substantially disrupt agency operations, the custodian may
8 deny access to the record after attempting to reach a reasonable
9 solution with the requestor that accommodates the interests of the
10 requestor and the agency.

11 h. Any officer or employee of a public agency who receives a
12 request for access to a government record shall forward the request
13 to the custodian of the record or direct the requestor to the
14 custodian of the record.

15 ¹In the case of a municipality, a custodian, in response to a
16 request for access forwarded by another officer or employee or
17 received directly by the custodian, may direct any officer or
18 employee of that municipality having custody of a record to act on
19 the custodian's behalf and make the record available for inspection,
20 examination, copying, or the purchase of copies. Such direction
21 shall not relieve the custodian of any responsibility under P.L.1963,
22 c.73 (C.47:1A-1 et seq.), as amended and supplemented.¹

23 i. Unless a shorter time period is otherwise provided by
24 statute, regulation, or executive order, a custodian of a government
25 record shall grant access to a government record or deny a request
26 for access to a government record as soon as possible, but not later
27 than seven business days after receiving the request, including the
28 business day on which the request was received by the records
29 custodian, if received by noon, provided that the record is currently
30 available and not in storage or archived. In the event a custodian
31 fails to respond within seven business days after receiving a
32 request, the failure to respond shall be deemed a denial of the
33 request, unless the requestor has elected not to provide a name,
34 address or telephone number, or other means of contacting the
35 requestor. If the requestor has elected not to provide a name,
36 address, or telephone number, or other means of contacting the
37 requestor, the custodian shall not be required to respond until the
38 requestor reappears before the custodian seeking a response to the
39 original request. If the government record is in storage or archived,
40 the requestor shall be so advised within seven business days after
41 the custodian receives the request. The requestor shall be advised
42 by the custodian when the record can be made available. If the
43 record is not made available by that time, access shall be deemed
44 denied.

45 A request received after 12 p.m. shall be deemed as received on
46 the next business day.

47 j. A custodian shall post prominently in public view in the part
48 or parts of the office or offices of the custodian that are open to or

1 frequented by the public a statement that sets forth in clear, concise
2 and specific terms the right to appeal a denial of, or failure to
3 provide, access to a government record by any person for
4 inspection, examination, or copying or for purchase of copies
5 thereof and the procedure by which an appeal may be filed.

6 The custodian of a public agency that has a website shall, at a
7 minimum, prominently post on the website the name, mailing
8 address, electronic mailing address, telephone number, and
9 facsimile number for the custodian of records as well as a statement
10 that information submitted to the agency, including home addresses,
11 may be considered a government record and available for public
12 review.

13 ¹【The custodian may permit an individual to provide an address
14 of record, in addition to the home address, for disclosure purposes
15 for five years after the effective date of P.L. , c. (C.) (pending
16 before the Legislature as this bill). At the end of the five-year
17 period and thereafter, the custodian shall permit an individual to
18 provide an address of record for disclosure purposes. The Attorney
19 General shall promulgate rules and regulations for the
20 implementation of this provision.】¹

21 k. The files maintained by the Office of the Public Defender
22 that relate to the handling of any case shall be considered
23 confidential and shall not be open to inspection by any person
24 unless authorized by law, court order, or the State Public Defender.

25 l. A public agency shall adopt policies and procedures to
26 ensure that records exempt from disclosure are not inadvertently or
27 deliberately disclosed by the use of technology.

28 A public agency shall adopt procedures to have computer
29 systems and computer applications collect, but not disclose,
30 information exempt from access but maintained as electronic
31 records.

32 Public agencies shall notify the public that the information
33 provided on official forms may be disclosed, unless otherwise
34 exempt by law.

35 (cf: P.L.2014, c.19, s.3)

36

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

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

41 institute a proceeding to challenge the custodian's decision or
42 seek injunctive relief by filing an action in Superior Court which
43 shall be heard in the vicinage where it is filed by a Superior Court
44 Judge who has been designated to hear such cases because of that
45 judge's knowledge and expertise in matters relating to access to
46 government records; or

47 in lieu of filing an action in Superior Court, file a complaint with
48 the Government Records Council established pursuant to section 8

1 of P.L.2001, c.404 (C.47:1A-7). If the Government Records
2 Council does not render a decision within the time period
3 established pursuant to subsection b. of section 8 of P.L.2001, c.404
4 (C.47:1A-7), the requestor may institute a proceeding to challenge
5 the custodian's decision by filing an action in Superior Court. That
6 court proceeding shall be deemed filed as of the date of filing of the
7 proceeding before the Government Records Council and shall
8 render the proceedings pending before the Government Records
9 Council withdrawn.

10 The right to institute any proceeding under this section shall be
11 solely that of the requestor. Any such proceeding shall proceed in a
12 summary or expedited manner. The public agency shall have the
13 burden of proving that the denial of access is authorized by law. If
14 it is determined that access has been improperly denied, the court or
15 agency head shall order that access be allowed. A requestor who
16 prevails in any proceeding shall be entitled to a reasonable
17 attorney's fee award. However, in actions involving a record
18 required by law to be made, maintained or kept on file and that does
19 not exist at the time of the request, the prevailing requestor shall not
20 be entitled to an attorney's fee award if both: (1) the failure to
21 make, maintain, or keep the record is due to mere negligence or no
22 fault on the part of the public entity; and (2) the requestor was
23 informed in writing by formal certification or affidavit by the
24 records custodian prior to the filing of the complaint that the record
25 does not exist or no longer exists, the specific efforts taken to obtain
26 the record and why the record could not be produced. Under
27 appropriate circumstances, the rules of court and section 1 of
28 P.L.1988, c.46 (C. 2A:15-59.1), shall apply for frivolous causes of
29 action.

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

31

32 7. Section 8 of P.L.2001, c.404 (C.47:1A-7) is amended to read
33 as follows:

34 8. a. There is established in, but not of, the Department of
35 Community Affairs a Government Records Council. The council
36 shall consist of **【**the Commissioner of Community Affairs or the
37 commissioner's designee, the Commissioner of Education or the
38 commissioner's designee, and three**】** four public members appointed
39 by the Governor, with the advice and consent of the Senate, not
40 more than two of whom shall be of the same political party, **1【two】**
41 one¹ of whom shall have experience with the news media, one of
42 whom shall ¹【have experience with the powers, functions or duties
43 of a municipal clerk】 be a member of the Municipal Clerks'
44 Association of New Jersey, one of whom shall be a member of the
45 New Jersey Press Association¹ , and one of whom shall have
46 experience with State government ¹as a public records custodian¹ ;
47 and three members appointed by the Governor, one upon the
48 recommendation of the Senate President, one upon the

1 recommendation of the Speaker of the General Assembly, and one
2 upon the joint recommendation of the Senate President and Speaker
3 of the General Assembly, no more than two of whom shall be of the
4 same political party. The [three public] members appointed by the
5 Governor shall serve [during the term of the Governor making the
6 appointment and] until the appointment of a successor. [A public
7 member shall not hold any other] Upon the effective date of P.L. ,
8 c. (C.) (pending before the Legislature as this bill), two members
9 shall serve for a term of four years, two members shall serve for a
10 term of three years, three members shall serve for a term of two
11 years. No member while serving shall be an officer with the New
12 Jersey Press Association, the New Jersey State League of
13 Municipalities, the Municipal Clerks' Association of New Jersey, or
14 a substantially similar organization.

15 No member while serving as a member of the council shall be
16 able to hold a State or local elected or appointed office or
17 employment [while serving as a member of the council] unless it
18 relates to the experience required for serving as a member of the
19 council. A [public] member shall not receive a salary for service
20 on the council but shall be reimbursed for reasonable and necessary
21 expenses associated with serving on the council and may receive
22 such per diem payment as may be provided in the annual
23 appropriations act. A member may be removed by the Governor
24 only for cause upon notice and opportunity to be heard. Vacancies
25 among the [public] members shall be filled in the same manner in
26 which the original appointment was made. [The members of the
27 council shall choose one of the public members to serve as the
28 council's chair] The Governor shall appoint one of the seven
29 members to serve as the chair of the council, and, once appointed,
30 that member shall serve on the council and be chair of the council
31 from the date of appointment until the end of the term of office of
32 the member or until a successor is appointed and qualified. The
33 chair may be removed by the Governor only for cause upon notice
34 and opportunity to be heard. The council may employ an executive
35 director and such professional and clerical staff as it deems
36 necessary and may call upon the Department of Community Affairs
37 for such assistance as it deems necessary and may be available to it.
38 The terms of the members serving on the effective date of P.L. ,
39 c. (C.) (pending before the Legislature as this bill) are
40 terminated as of that effective date.

41 b. The Government Records Council shall:

42 [establish an informal mediation program to facilitate the
43 resolution of disputes regarding access to government records;]

44 receive, hear, review and adjudicate a complaint filed by any
45 person concerning a denial of access to a government record by a
46 records custodian;

1 render a decision on all disputes and complaints within 150
2 calendar days of the filing of the complaint;

3 issue advisory opinions, on its own initiative, as to whether a
4 particular type of record is a government record which is accessible
5 to the public;

6 prepare guidelines and an informational pamphlet for use by
7 records custodians in complying with the law governing access to
8 public records;

9 prepare an informational pamphlet explaining the public's right
10 of access to government records and the methods for resolving
11 disputes regarding access, which records custodians shall make
12 available to persons requesting access to a government record;

13 prepare lists for use by records custodians of the types of records
14 in the possession of public agencies which are government records;

15 make training opportunities available for records custodians and
16 other public officers and employees which explain the law
17 governing access to public records; **[and]**

18 post the recommendations that the Government Records Council
19 will consider for each case online twenty-four hours before the
20 meeting, to the extent known;

21 have paper copies available at the meeting at which the case will
22 be heard, with any changes or additions that were not present when
23 the information was posted online; and

24 operate an informational website and a toll-free helpline staffed
25 by knowledgeable employees of the council during regular business
26 hours which shall enable any person, including records custodians,
27 to call for information regarding the law governing access to public
28 records and allow any person to request mediation or to file a
29 complaint with the council when access has been denied;

30 In implementing the provisions of subsections d. and e. of this
31 section, the council shall: act, to the maximum extent possible, at
32 the convenience of the parties; utilize teleconferencing, faxing of
33 documents, e-mail and similar forms of modern communication;
34 and when in-person meetings are necessary, send representatives to
35 meet with the parties at a location convenient to the parties.

36 c. At the request of the council, a public agency shall produce
37 documents and ensure the attendance of witnesses with respect to
38 the council's investigation of any complaint or the holding of any
39 hearing. Each party shall have the opportunity to provide to the
40 council any documents or information necessary for the
41 adjudication of the case.

42 d. Upon receipt of a written complaint signed by any person
43 alleging that a custodian of a government record has improperly
44 denied that person access to a government record, the council shall
45 offer the parties the opportunity to resolve the dispute through
46 mediation pursuant to section 13 of P.L. , c. (C.) (pending
47 before the Legislature as this bill). Mediation shall enable a person
48 who has been denied access to a government record and the

1 custodian who denied or failed to provide access thereto to attempt
2 to mediate the dispute through a process whereby a neutral
3 mediator[, who shall be trained in mediation selected by the
4 council,] acts to encourage and facilitate the resolution of the
5 dispute. [Mediation shall be an informal, nonadversarial process
6 having the objective of helping the parties reach a mutually
7 acceptable, voluntary agreement. The mediator shall assist the
8 parties in identifying issues, foster joint problem solving, and
9 explore settlement alternatives.]

10 e. If any party declines mediation or if mediation fails to
11 resolve the matter to the satisfaction of all parties, the council shall
12 initiate an investigation concerning the facts and circumstances set
13 forth in the complaint. The council shall make a determination as
14 to whether the complaint is within its jurisdiction or frivolous or
15 without any reasonable factual basis. If the council shall conclude
16 that the complaint is outside its jurisdiction, frivolous or without
17 factual basis, it shall reduce that conclusion to writing and transmit
18 a copy thereof to the complainant and to the records custodian
19 against whom the complaint was filed. Otherwise, the council shall
20 notify the records custodian against whom the complaint was filed
21 of the nature of the complaint and the facts and circumstances set
22 forth therein. The custodian shall have [the] an opportunity to
23 [present] answer the complaint by presenting the board with a
24 signed and dated affidavit containing the same information provided
25 to the complainant pursuant to subsection a. of section 6 of
26 P.L.2001, c.404 (C.47:1A-5), if applicable, and any other statement
27 or information concerning the complaint which the custodian
28 wishes. The complainant shall have an opportunity to offer a brief
29 reply affidavit that addresses any claims or defenses in the
30 custodian's answer. The complainant shall not set forth therein any
31 new allegations that do not address the custodian's claims or
32 defense. If the council is able to make a determination as to a
33 record's accessibility based upon the complaint [and] , the
34 custodian's [response thereto] answer, and the complainant's reply,
35 it shall reduce that conclusion to writing and transmit a copy thereof
36 to the complainant and to the records custodian against whom the
37 complaint was filed. If the council is unable to make a
38 determination as to a record's accessibility based upon the
39 complaint [and] , the custodian's [response thereto] answer, and
40 the complainant's reply, the council shall conduct a hearing on the
41 matter in conformity with the rules and regulations provided for
42 hearings by a State agency in contested cases under the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), insofar as they may be applicable and practicable. The
45 council shall, by a majority vote of its members, render a decision
46 as to whether the record which is the subject of the complaint is a
47 government record which must be made available for public access
48 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and

1 supplemented. If the council determines, by a majority vote of its
2 members, that a custodian has **【knowingly and willfully】** willfully
3 denied access or been grossly negligent, as defined by section 12 of
4 P.L.2001, c.404 (C.47:1A-11), and violated P.L.1963, c.73
5 (C.47:1A-1 et seq.), as amended and supplemented, and is found to
6 have unreasonably denied access under the totality of the
7 circumstances, the council may impose the penalties provided for in
8 section 12 of P.L.2001, c.404 (C.47:1A-11). A decision of the
9 council may be appealed to the **【Appellate Division of the】**
10 Appellate Division of the Superior Court. A decision of the council
11 shall not have value as a precedent for any case initiated in Superior
12 Court pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6). All
13 proceedings of the council pursuant to this subsection shall be
14 conducted as expeditiously as possible.

15 f. The council shall not charge any party a fee in regard to
16 actions filed with the council. The council shall be subject to the
17 provisions of the "Open Public Meetings Act," P.L.1975, c.231
18 (C.10:4-6), except that the council may go into closed session
19 during that portion of any proceeding during which the contents of a
20 contested record would be disclosed. A requestor who prevails in
21 any proceeding shall be entitled to a reasonable attorney's fee.

22 g. The council shall not have jurisdiction over the Judicial or
23 Legislative Branches of State Government or any agency, officer, or
24 employee of those branches.

25 h. The council shall make available on its website a searchable
26 index of its opinions.

27 (cf: P.L.2001, c.404, s.8)

28

29 8. Section 11 of P.L.2001, c.404 (C.47:1A-10) is amended to
30 read as follows:

31 11. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-
32 1 et seq.) or any other law to the contrary, the personnel or pension
33 records of any individual in the possession of a public agency,
34 including but not limited to records relating to any grievance filed
35 by or against an individual, shall not be considered a government
36 record and shall not be made available for public access, except
37 that:

38 an individual's name, title, position, educational and training
39 background, salary, payroll record, length of service, date of
40 separation and the reason therefor, work address and work
41 telephone number, job description, and the amount and type of any
42 pension received shall be a government record;

43 personnel or pension records of any individual shall be
44 accessible when required to be disclosed by another law, when
45 disclosure is essential to the performance of official duties of a
46 person duly authorized by this State or the United States, or when
47 authorized by an individual in interest; **【and】**

1 records pertaining to the factual basis for the final administrative
2 determination of a disciplinary action, including a disciplinary
3 action that is the result of an internal affairs investigation by a
4 public safety agency, in which an employee is suspended, demoted,
5 discharged, or resigned not in good standing, if it was due to the
6 conviction of a crime, shall be a government record, except that
7 specific factual details of incidents involving sexual harassment,
8 sexual assault, domestic violence or rape by or against a public
9 employee, and the identity of the victim of the misconduct alleged,
10 may be deleted or excised if disclosure would violate any
11 individual's reasonable expectation of privacy so long as the agency
12 provides a statement that such information is being deleted or
13 excised pursuant to this particular exception;

14 records pertaining to settlements of lawsuits or claims involving
15 public agencies, public officials or employees shall be a
16 government record, except that specific factual details of incidents
17 involving sexual harassment, sexual assault, domestic violence or
18 rape by or against a public employee, and the identity of the victim
19 of the misconduct alleged, may be deleted or excised if disclosure
20 would violate any individual's reasonable expectation of privacy so
21 long as the agency provides a statement that such information is
22 being deleted or excised pursuant to this particular exception. No
23 public agency shall be liable for damages, pursuant to this
24 subsection, for releasing settlements of lawsuits or claims involving
25 public agencies, public officials or employees, entered into before
26 the effective date of P.L. , c. (pending before the Legislature as
27 this bill). The public agency shall make reasonable efforts to notify
28 the affected parties of the release of the documents; and

29 factual or statistical data [contained in information] which
30 disclose conformity with specific experiential, educational or
31 medical qualifications required for government employment or for
32 receipt of a public pension, but not including any detailed medical
33 or psychological information, shall be a government record.

34 Nothing in this section exempts disclosure of disciplinary
35 records otherwise required by law to be disclosed or made public.

36 (cf: P.L.2001, c.404, s.11)

37

38 9. Section 12 of P.L.2001, c.404 (C.47:1A-11) is amended to
39 read as follows:

40 12. a. A public official, officer, employee or custodian who
41 **[knowingly and willfully]** violates P.L.1963, c.73 (C.47:1A-1 et
42 seq.), as amended and supplemented, and is found **[to have**
43 **unreasonably]** grossly negligent by having denied access or is
44 found to have willfully denied access under the totality of the
45 circumstances, shall be subject to a civil penalty of \$1,000 for an
46 initial violation, \$2,500 for a second violation that occurs within 10
47 years of an initial violation, and \$5,000 for a third violation that
48 occurs within 10 years of an initial violation. No public official,

1 officer, employee or custodian shall be subject to a civil penalty for
2 any unavailable record that is required by law to be made,
3 maintained or kept on file unless the unavailability of the record is a
4 result of the willful actions or gross negligence of such person.

5 A requestor who is found to have intentionally failed to certify
6 that a records request is for commercial purposes shall be subject to
7 a civil penalty of \$500.

8 Penalties may be imposed by the courts or the Government
9 Records Council. A penalty imposed pursuant to P.L.1963, c.43
10 (C.47:1A-1 et seq.) shall be paid by the individual found to have
11 committed the violation out of the individual's personal funds.
12 Under no circumstances shall public funds, or contributions as
13 defined in subsection b. of section 3 of P.L.1973, c.83 (C.19:44A-3)
14 of "The New Jersey Campaign Contributions and Expenditures
15 Reporting Act", be used to pay a penalty or to reimburse a person
16 who has paid, or will pay, a penalty for the cost of that penalty.

17 **【This penalty】** These penalties shall be collected and enforced in
18 proceedings in accordance with the "Penalty Enforcement Law of
19 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court
20 governing actions for the collection of civil penalties. The Superior
21 Court shall have jurisdiction of proceedings for the collection and
22 enforcement of the penalty imposed by this section.

23 Appropriate disciplinary proceedings may be initiated against a
24 public official, officer, employee or custodian against whom a
25 penalty has been imposed.

26 For the purposes of this act, P.L.1963, c.73 (C.47:1A-1 et seq.),
27 "grossly negligent" shall mean engaging in conduct involving a
28 gross deviation from the acceptable standards of conduct from the
29 duties and responsibilities imposed by this act that a reasonable
30 person would have observed in the actor's situation.

31 (cf: P.L.2001, c.404, s.12)

32

33 10. Section 14 of P.L.2001, c.404 (C.47:1A-13) is amended to
34 read as follows:

35 14. The Commissioner of Community Affairs shall include in
36 the annual budget request of the Department of Community Affairs
37 **【a】** the request submitted by the Government Records Council
38 sufficient funds to effectuate the purposes of section 8 of P.L.2001,
39 c.404 (C.47:1A-7).

40 (cf: P.L.2001, c.404, s.14)

41

42 11. (New section) Any authority contained herein to exempt
43 records from public access by regulation or Executive Order of the
44 Governor shall be expressly limited to the designation of specific
45 records that are exempt from access pursuant to any exemptions set
46 forth in this act, P.L.1963, c.73 (C.47:1A-1 et seq.), and shall not be
47 construed as a grant or delegation of authority to exempt records
48 from public access not otherwise exempt by the provisions this act.

1 12. (New section) a. In exceptional circumstances, and
2 notwithstanding any other law or rule or regulation to the contrary,
3 whenever ¹[it is made to appear by] there is filed a¹ verified
4 petition to the Superior Court of the county in which the request for
5 government records was made under P.L.1963, c.73 (C.47:1A-1 et
6 seq.) ¹alleging that a requestor has sought records thereunder for the
7 sole purpose to harass a public agency¹, the court may issue a
8 protective order limiting the number and scope of requests ¹[a] the¹
9 requestor may make or such other relief as it deems appropriate,
10 including referral of the matter to mediation. The court may issue
11 the protective order if it finds that the requestor has sought records
12 under P.L.1963, c.73 (C.47:1A-1 et seq.) for the sole purpose to
13 harass the public agency as the term harass is defined in
14 N.J.S.2C:33-4. The petition shall be accompanied by a declaration
15 of facts by the public agency withholding the records demonstrating
16 that it has complied with P.L.1963, c.73 (C.47:1A-1 et seq.) and has
17 made a good faith effort to reach an informal resolution of the
18 issues relating to the records request. The requestor shall have
19 notice and an opportunity to answer the allegations set forth in the
20 petition submitted by the public agency. The public agency shall
21 have the burden of proof by clear and convincing evidence. The
22 court's consideration of a public agency's petition for relief shall
23 proceed in a summary or expedited manner and shall include a
24 formal hearing whenever the interest of justice so requires. If the
25 custodian of a public agency determines that responding to a record
26 request will substantially disrupt agency operations, the custodian
27 may deny access to the record after attempting to reach a reasonable
28 solution with the requestor that accommodates the interests of the
29 requestor and the agency, as set forth in subsection g. of section 6
30 of P.L.2001, c.404 (C.47:1A-5).

31 b. The order specified in subsection a. of this section may limit,
32 or in appropriate circumstances, eliminate, the public agency's duty
33 to respond to government records requests from the requestor in the
34 future.

35 c. Upon entry of an order pursuant to this section, the order of
36 the court shall be immediately reviewable by petition to the
37 Appellate Division of the Superior Court. A party shall, in order to
38 obtain review of the order, file a petition within 20 days after
39 service upon him or her of a written notice of entry of the order, or
40 within further time not exceeding an additional 20 days as the court
41 may for good cause allow. If the notice is served by mail, the
42 period within which to file the petition shall be increased by five
43 days. A stay of an order or judgment shall not be granted unless the
44 petitioning party demonstrates that it will otherwise sustain
45 irreparable damage and probable success on the merits. Any person
46 who fails to obey the order of the court shall be cited to show cause
47 why he or she is not in contempt of court.

1 13. (New section) The Office of Dispute Settlement, in the
2 Office of The Public Defender, shall be available to mediate a
3 dispute over records requests when both requestor and public
4 agency consent thereto. However, mediation shall not alter the
5 responsibility of the custodian to respond and provide documents
6 within the timeframes set forth in this act, P.L.1963, c.73 (C.47:1A-
7 1 et seq.).

8
9 14. (New section) a. Notwithstanding the provisions of any
10 other law to the contrary, the State Treasurer, in consultation with
11 the Chief Technology Officer, shall design and develop, maintain
12 and operate a single, searchable Internet website that is accessible
13 to the general public without charge for access, and that includes
14 data or information concerning each of the following:

15 annual State agency expenditures, as determined by the State
16 Treasurer and as may be available within the central accounting
17 system and State payroll system, which shall include but not be
18 limited to: disbursements by a State agency from funds established
19 within the State treasury; bond debt services, including amounts of
20 bond debt or interest paid and sources of funds for bond issues;
21 salaries and wages including, compensation paid to employees of
22 State agencies, including current contracts under which
23 compensation is determined; contractual service purchases,
24 including amounts paid to vendors; commodity purchases, including
25 amounts paid to vendors; capital outlay and improvements,
26 including amounts paid to vendors; aid to local units of government,
27 including amounts paid to individual units of local government for
28 aid programs; additional forms of assistance and benefits as
29 determined by the State Treasurer; and the exact amount of each
30 such expenditure and the name and address of each individual,
31 organization, business or other entity receiving such monies;

32 annual State revenues, as determined by the State Treasurer and
33 as may be available within the central accounting system, which
34 shall include but not be limited to: receipts and deposits by a State
35 agency into funds established within the State treasury; taxes,
36 including any tax which is payable to or collectible by the Director
37 of the Division of Taxation in the Department of the Treasury; State
38 agency earnings, including amounts collected by each State agency
39 for merchandise sold, services performed, and licenses and permits
40 issued; revenue derived from the use of money and property,
41 including amounts received for compensation for the use of State-
42 owned money and property; gifts, donations, and federal grants,
43 including amounts received from public and private entities to aid
44 in support of a specific function or other governmental activity;
45 other revenue, including receipts not classified elsewhere; and non-
46 revenue receipts, including all receipts that do not constitute
47 revenue;

1 annual State bonded indebtedness, as determined by the State
2 Treasurer and as may be available within the central accounting
3 system, which shall include but not be limited to: the amount of the
4 total original obligation stated in terms of principal and interest; the
5 term of the obligation; the source of funding for repayment of the
6 obligation; the amount of principal and interest previously paid to
7 reduce the obligation; the remaining balance of the obligation; data
8 or information related to refinancing of the obligation; the cited
9 statutory or constitutional authority to issue such bonds; the specific
10 names of firms or individuals serving as bond counsel; and the
11 names of the banks assisting in the sale of bonds;

12 annual State liabilities for pension and post-retirement medical
13 benefits, as determined by the State Treasurer and as may be
14 available within the central accounting system; and

15 any other data or information determined to be necessary and
16 appropriated by the State Treasurer.

17 b. The Internet website designed and developed, maintained
18 and operated by the State Treasurer in accordance with this section
19 shall include all data and information enumerated in subsection a.
20 of this section for State fiscal year 2013 and each State fiscal year
21 thereafter. The data and information posted on the Internet website
22 may be periodically updated, but shall not be subject to removal.

23 The data and information required to be posted on the Internet
24 website that is based on or otherwise derived from data or
25 information made available from the central accounting system or
26 the State payroll system shall be made available on the Internet
27 website as soon as practicable, but not later than 45 days after the
28 last day of the preceding State fiscal year.

29 The State Treasurer shall not be required to provide data or
30 information on the Internet website of the kind that is not available
31 in the central accounting system or the State payroll system on the
32 date the Internet website is first made available to the public.

33 The State Treasurer shall be entitled to receive from each State
34 agency any assistance and information the State Treasurer
35 determines to be necessary and appropriate to compile the data and
36 information necessary to design and develop, maintain and operate
37 the Internet website.

38 The State Treasurer shall not be required to disclose or otherwise
39 make available on the Internet website data or information that is
40 determined by the State Treasurer to be private, personal, or
41 confidential in accordance with State or federal law, rules, or
42 regulations.

43 c. Notwithstanding the provisions of the "Administrative
44 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
45 contrary, the State Treasurer may adopt immediately upon filing
46 with the Office of Administrative Law such rules and regulations as
47 the State Treasurer determines to be necessary and appropriate to
48 design and develop, maintain and operate the Internet website and

1 to compile data and information in accordance with this section,
2 which rules and regulations shall be effective for a period not to
3 exceed 360 days following the effective date of
4 P.L. , c. (pending before the Legislature as this bill) and may
5 thereafter be amended, adopted, or readopted by the State Treasurer
6 in accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).

7 d. As used in this section:

8 "Chief Technology Officer" means the person appointed by and
9 serving at the pleasure of the Governor who is responsible for the
10 day-to-day operations of the Office of Information Technology in,
11 but not of, the Department of the Treasury; and

12 "State agency" means any of the principal departments in the
13 Executive Branch of State Government, and any division, board,
14 bureau, office, commission, or other instrumentality within or
15 created by such principal department; the Legislature of the State
16 and any office, board, bureau, or commission within or created by
17 the Legislative Branch of State Government; the Judiciary of the
18 State and any office, board, bureau, or commission within or
19 created by the Judicial Branch of State Government; and any
20 independent State authority, commission, instrumentality, or
21 agency.

22
23 15. (New section) a. There is established the New Jersey Local
24 Public Finance Internet Website Development Program.

25 b. The program shall be under the jurisdiction of the
26 Department of the Treasury, and shall be administered by the State
27 Treasurer, the Chief Technology Officer, and any clerical,
28 technical, and other professional staff or assistants as may be
29 designated by the State Treasurer from among the personnel
30 appointed and employed by the department.

31 c. The purpose of the program shall be to provide advice and
32 technical assistance to units of local government that elect to design
33 and develop, maintain and operate a single, searchable local public
34 finance Internet website that has the capacity to display and retain
35 data and information concerning the unit of local government's (1)
36 annual expenditures, including, bond debt services and interest,
37 salaries and wages paid to employees, contractual service purchases
38 including amounts paid to vendors, commodity purchases including
39 amounts paid to vendors, capital outlays and improvements
40 including amounts paid to vendors, and aid paid to subunits of the
41 entity; (2) annual revenues, including, revenue derived from the
42 receipts and deposits from any State agency, taxes including
43 compulsory tolls or fees imposed by the public entity for the
44 purpose of financing services, the amounts received as
45 compensation for the use of property owned or used by the public
46 entity, and gifts, donations and federal grants and other sources of
47 revenue not classified elsewhere; (3) total bonded indebtedness,
48 including the amount of the original obligation stated in terms of

1 principal and interest, the terms of the obligation and the source of
2 funding for the repayment thereof, the amounts of principal and
3 interest previously paid to reduce the obligation and the remaining
4 balance of the obligation, the data and information related to
5 refinancing of the obligation, if such refinancing occurred, the
6 statutory or constitutional authority to issue such bonds, the name
7 of the firms or individuals serving as bond counsel, and the name of
8 the banks assisting in the sale of bonds; and (4) outstanding
9 liabilities for pension and post-retirement medical benefits; and has
10 the capacity to display and retain public notices, agendas,
11 schedules, minutes, and other electronic documents required to be
12 made available in accordance with P.L.1963, c.73 (C.47:1A-1 et
13 seq.).

14 d. To effectuate the purposes of the program, the State
15 Treasurer shall:

16 make and publish guidelines that may be used by local units of
17 government to identify best practices in the design of a single,
18 searchable local public finance Internet website;

19 procure and make available to local units of government a
20 template and any prewritten or custom computer software that the
21 State Treasurer determines to be necessary and appropriate to
22 develop a single, searchable local public finance Internet website;
23 and

24 direct the Chief Technology Officer to provide information
25 technology support and services that may be determined by the
26 Chief Technology Officer to be necessary and appropriate for a
27 local unit of government to maintain and operate a single,
28 searchable local public finance Internet website following its initial
29 design and development.

30 e. The State Treasurer shall make an annual report regarding
31 the implementation and administration of the program.

32 The report shall identify any guidelines that were made and
33 published by the State Treasurer during the year immediately
34 preceding the year in which the report is required to be made.

35 The report shall identify any templates and any prewritten or
36 custom computer software that the State Treasurer determined to be
37 necessary and appropriate to develop a single, searchable local
38 public finance Internet website during the year immediately
39 preceding the year in which the report is required to be made.

40 The report shall identify the information technology support and
41 services provided by the Chief Technology Officer and any other
42 clerical, technical, and other professional staff or assistants to each
43 unit of local government that maintains and operates a single,
44 searchable local public finance Internet website during the year
45 immediately preceding the year in which the report is required to be
46 made.

47 The report shall identify each local unit of government that used
48 the guidelines, templates and software, or the information

1 technology support and services made available through the
2 program to design and develop, maintain and operate a single,
3 searchable local public finance Internet website during the year
4 immediately preceding the year in which the report is required to be
5 made.

6 The report shall include any findings or recommendations that
7 may be made by the State to improve the effectiveness of the
8 program during the year immediately preceding the year in which
9 the report is required to be made.

10 The State Treasurer shall file the report required to be made in
11 accordance with this section with the Governor and the Legislature,
12 in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), on
13 or before October 1, 2013 and on or before October 1 each year
14 thereafter.

15 f. Notwithstanding the provisions of the “Administrative
16 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the
17 contrary, the State Treasurer may adopt immediately upon filing
18 with the Office of Administrative Law such rules and regulations as
19 the State Treasurer determines to be necessary and appropriate to
20 effectuate the purposes of the program established in accordance
21 with this section, which rules and regulations shall be effective for a
22 period not to exceed 360 days following the effective date of
23 P.L. , c. (pending before the Legislature as this bill) and may
24 thereafter be amended, adopted, or readopted by the State Treasurer
25 in accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).

26 g. As used in this section:

27 "Chief Technology Officer" means the person appointed by and
28 serving at the pleasure of the Governor who is responsible for the
29 day-to-day operations of the Office of Information Technology in,
30 but not of, the Department of the Treasury; and

31 "Local unit of government" includes a county, municipality,
32 local authority, school board, or other local instrumentality of the
33 State and any public agency or agency as defined by section 1 of
34 P.L.1995, c.23 (C.47:1A-1.1).

35
36 16. (New section) The Office of Information Technology, the
37 Division of Local Government Services in the Department of
38 Community Affairs, and the Government Records Council shall
39 conduct a data practices survey every five years. The purpose of
40 the survey shall be to review the collection, processing, use and
41 dissemination of information by public agencies, in light of the
42 recognized need for open government, with a focus on
43 ~~identifying~~ identifying¹ privacy related issues. The survey
44 results shall include any recommended specific measures, including
45 boundaries for access to government records and legislation, to deal
46 with the issues and safeguard the privacy rights of individuals.

47 The Office of Information Technology shall establish an Office
48 of Privacy in, but not of, the Office of Information of Technology,

1 to assist in identification of privacy related issues and to bring those
2 issues to the attention of those charged with determining the
3 appropriate boundaries for access to government records, including
4 records custodians, the Government Records Council, and the
5 courts.

6
7 17. (New section) There is appropriated from the General Fund
8 to the Department of the Treasury such sums as may be necessary,
9 but not to exceed \$100,000, as shall be determined by the Director
10 of the Division of Budget and Accounting in the Department of the
11 Treasury, to effectuate the purposes of the program established in
12 accordance with section 15 of P.L. , c. (C.) (pending before
13 the Legislature as this bill).

14
15 18. This bill shall take effect 120 days following enactment.