

# ASSEMBLY, No. 985

## STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**SYNOPSIS**

Concerns access to government records by licensed private detectives under certain circumstances.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning access to government records by licensed  
2 private detectives and amending P.L.2001, c.404.

3

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

6

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

9 6. a. The custodian of a government record shall permit the  
10 record to be inspected, examined, and copied by any person during  
11 regular business hours; or in the case of a municipality having a  
12 population of 5,000 or fewer according to the most recent federal  
13 decennial census, a board of education having a total district  
14 enrollment of 500 or fewer, or a public authority having less than  
15 \$10 million in assets, during not less than six regular business hours  
16 over not less than three business days per week or the entity's  
17 regularly-scheduled business hours, whichever is less; unless a  
18 government record is exempt from public access by: P.L.1963, c.73  
19 (C.47:1A-1 et seq.) as amended and supplemented; any other  
20 statute; resolution of either or both houses of the Legislature;  
21 regulation promulgated under the authority of any statute or  
22 Executive Order of the Governor; Executive Order of the Governor;  
23 Rules of Court; any federal law; federal regulation; or federal order.  
24 Prior to allowing access to any government record, the custodian  
25 thereof shall redact from that record any information which  
26 discloses the social security number, credit card number, unlisted  
27 telephone number, or driver license number of any person; except  
28 for use by any government agency, including any court or law  
29 enforcement agency, in carrying out its functions, or any private  
30 person or entity acting on behalf thereof, or any private person or  
31 entity seeking to enforce payment of court-ordered child support;  
32 except with respect to the disclosure of driver information by the  
33 Division of Motor Vehicles as permitted by section 2 of P.L.1997,  
34 c.188 (C.39:2-3.4); and except that a social security number  
35 contained in a record required by law to be made, maintained or  
36 kept on file by a public agency shall be disclosed when access to  
37 the document or disclosure of that information is not otherwise  
38 prohibited by State or federal law, regulation or order or by State  
39 statute, resolution of either or both houses of the Legislature,  
40 Executive Order of the Governor, rule of court or regulation  
41 promulgated under the authority of any statute or executive order of  
42 the Governor. Except where an agency can demonstrate an  
43 emergent need, a regulation that limits access to government  
44 records shall not be retroactive in effect or applied to deny a request

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

Matter underlined thus is new matter.

1 for access to a government record that is pending before the agency,  
2 the council or a court at the time of the adoption of the regulation.

3 b. A copy or copies of a government record may be purchased  
4 by any person upon payment of the fee prescribed by law or  
5 regulation, or if a fee is not prescribed by law or regulation, upon  
6 payment of the actual cost of duplicating the record. Except as  
7 otherwise provided by law or regulation, the fee assessed for the  
8 duplication of a government record embodied in the form of printed  
9 matter shall not exceed the following: first page to tenth page, \$0.75  
10 per page; eleventh page to twentieth page, \$0.50 per page; all pages  
11 over twenty, \$0.25 per page. The actual cost of duplicating the  
12 record shall be the cost of materials and supplies used to make a  
13 copy of the record, but shall not include the cost of labor or other  
14 overhead expenses associated with making the copy except as  
15 provided for in subsection c. of this section. If a public agency can  
16 demonstrate that its actual costs for duplication of a government  
17 record exceed the foregoing rates, the public agency shall be  
18 permitted to charge the actual cost of duplicating the record.

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

34 d. A custodian shall permit access to a government record and  
35 provide a copy thereof in the medium requested if the public agency  
36 maintains the record in that medium. If the public agency does not  
37 maintain the record in the medium requested, the custodian shall  
38 either convert the record to the medium requested or provide a copy  
39 in some other meaningful medium. If a request is for a record: (1)  
40 in a medium not routinely used by the agency; (2) not routinely  
41 developed or maintained by an agency; or (3) requiring a substantial  
42 amount of manipulation or programming of information technology,  
43 the agency may charge, in addition to the actual cost of duplication,  
44 a special charge that shall be reasonable and shall be based on the  
45 cost for any extensive use of information technology, or for the  
46 labor cost of personnel providing the service, that is actually

1 incurred by the agency or attributable to the agency for the  
2 programming, clerical, and supervisory assistance required, or both.

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

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

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

1 operations, the custodian may deny access to the record after  
2 attempting to reach a reasonable solution with the requestor that  
3 accommodates the interests of the requestor and the agency.

4 (2) A requestor who is a licensed private detective in good  
5 standing pursuant to “The Private Detective Act of 1939,”  
6 P.L.1939, c.369 (C.45:19-8 et seq.), may request, examine and  
7 obtain a copy of a motor vehicle police or accident report held by a  
8 law enforcement agency that has not been redacted pursuant to  
9 P.L.2001, c.404 (C.47:1A-1 et seq.) upon the provision to the  
10 custodian of the following additional documentation: a copy of the  
11 requestor’s State license pursuant to P.L.1939, c.369 (C.45:19-8 et  
12 seq.); a signed, sworn affidavit by the requestor attesting that the  
13 requestor is in the employ of an attorney, setting forth the date on  
14 which the requestor’s employment will expire, and stating that the  
15 requestor is requesting the documents on the attorney’s behalf; and  
16 a signed, sworn affidavit from an attorney attesting that the  
17 requestor is in the employ of the attorney, setting forth the date on  
18 which the requestor’s employment will expire, and is requesting the  
19 documents on the attorney’s behalf.

20 If it shall appear that the information requested or to be  
21 examined or copied will jeopardize the safety of any person or  
22 jeopardize any investigation in progress or may be otherwise  
23 inappropriate to release, such information may be redacted. This  
24 exception shall be narrowly construed to prevent disclosure of  
25 information that would be harmful to a bona fide law enforcement  
26 purpose or the public safety. Whenever a custodian determines that  
27 it is necessary to redact information, the custodian shall issue a  
28 brief statement explaining the decision.

29 h. Any officer or employee of a public agency who receives a  
30 request for access to a government record shall forward the request  
31 to the custodian of the record or direct the requestor to the  
32 custodian of the record.

33 i. Unless a shorter time period is otherwise provided by  
34 statute, regulation, or executive order, a custodian of a government  
35 record shall grant access to a government record or deny a request  
36 for access to a government record as soon as possible, but not later  
37 than seven business days after receiving the request, provided that  
38 the record is currently available and not in storage or archived. In  
39 the event a custodian fails to respond within seven business days  
40 after receiving a request, the failure to respond shall be deemed a  
41 denial of the request, unless the requestor has elected not to provide  
42 a name, address or telephone number, or other means of contacting  
43 the requestor. If the requestor has elected not to provide a name,  
44 address, or telephone number, or other means of contacting the  
45 requestor, the custodian shall not be required to respond until the  
46 requestor reappears before the custodian seeking a response to the  
47 original request. If the government record is in storage or archived,

1 the requestor shall be so advised within seven business days after  
2 the custodian receives the request. The requestor shall be advised  
3 by the custodian when the record can be made available. If the  
4 record is not made available by that time, access shall be deemed  
5 denied.

6 j. A custodian shall post prominently in public view in the part  
7 or parts of the office or offices of the custodian that are open to or  
8 frequented by the public a statement that sets forth in clear, concise  
9 and specific terms the right to appeal a denial of, or failure to  
10 provide, access to a government record by any person for  
11 inspection, examination, or copying or for purchase of copies  
12 thereof and the procedure by which an appeal may be filed.

13 k. The files maintained by the Office of the Public Defender  
14 that relate to the handling of any case shall be considered  
15 confidential and shall not be open to inspection by any person  
16 unless authorized by law, court order, or the State Public Defender.  
17 (cf: P.L.2001, c.404, s.6)

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19 2. This act shall take effect immediately.

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#### STATEMENT

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24 This bill amends the open public records act to allow private  
25 detectives licensed under State law to obtain copies of motor  
26 vehicle police and accident reports without redaction of  
27 information. Prior to any release of this information, a private  
28 detective would have to provide the custodian with the following  
29 additional documentation: a copy of the private detective's State  
30 license; a signed, sworn affidavit by the requestor attesting that the  
31 requestor is in the employ of an attorney and is making the request  
32 on the attorney's behalf; and a signed, sworn affidavit from an  
33 attorney attesting that the private detective is employed by the  
34 attorney, setting forth the date of the expiration of the private  
35 detective's employment, and stating that the requestor is requesting  
36 the documents on the attorney's behalf.

37 The bill provides that where the information requested will  
38 jeopardize the safety of a person or jeopardize an investigation in  
39 progress or be otherwise inappropriate to release, the information  
40 may be redacted. When a custodian determines the information  
41 must be redacted, the custodian must issue a brief statement  
42 explaining the decision.