

ASSEMBLY, No. 487

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

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SYNOPSIS

Exempts municipal clerk from penalties for Open Public Records Act violations under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/28/2014)

1 AN ACT concerning access to certain government records and
2 amending P.L.1995, c.23.

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

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

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

11 "Biotechnology" means any technique that uses living
12 organisms, or parts of living organisms, to make or modify
13 products, to improve plants or animals, or to develop micro-
14 organisms for specific uses; including the industrial use of
15 recombinant DNA, cell fusion, and novel bioprocessing techniques.

16 "Custodian of a government record" or "custodian" means in the
17 case of a municipality, the municipal clerk, or, if it can be proven
18 that the municipal clerk has exercised due diligence in attempting to
19 collect the requested record, by documenting at least two attempts
20 to collect the requested record within seven days of receiving the
21 request, the municipal official in actual possession of the record,
22 and in the case of any other public agency, the officer officially
23 designated by formal action of that agency's director or governing
24 body, as the case may be.

25 "Government record" or "record" means any paper, written or
26 printed book, document, drawing, map, plan, photograph,
27 microfilm, data processed or image processed document,
28 information stored or maintained electronically or by sound-
29 recording or in a similar device, or any copy thereof, that has been
30 made, maintained or kept on file in the course of his or its official
31 business by any officer, commission, agency or authority of the
32 State or of any political subdivision thereof, including subordinate
33 boards thereof, or that has been received in the course of his or its
34 official business by any such officer, commission, agency, or
35 authority of the State or of any political subdivision thereof,
36 including subordinate boards thereof. The terms shall not include
37 inter-agency or intra-agency advisory, consultative, or deliberative
38 material.

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

42 information received by a member of the Legislature from a
43 constituent or information held by a member of the Legislature
44 concerning a constituent, including but not limited to information in
45 written form or contained in any e-mail or computer data base, or in

**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 any telephone record whatsoever, unless it is information the
2 constituent is required by law to transmit;
3 any memorandum, correspondence, notes, report or other
4 communication prepared by, or for, the specific use of a member of
5 the Legislature in the course of the member's official duties, except
6 that this provision shall not apply to an otherwise publicly-
7 accessible report which is required by law to be submitted to the
8 Legislature or its members;
9 any copy, reproduction or facsimile of any photograph, negative
10 or print, including instant photographs and videotapes of the body,
11 or any portion of the body, of a deceased person, taken by or for the
12 medical examiner at the scene of death or in the course of a post
13 mortem examination or autopsy made by or caused to be made by
14 the medical examiner except:
15 when used in a criminal action or proceeding in this State which
16 relates to the death of that person,
17 for the use as a court of this State permits, by order after good
18 cause has been shown and after written notification of the request
19 for the court order has been served at least five days before the
20 order is made upon the county prosecutor for the county in which
21 the post mortem examination or autopsy occurred,
22 for use in the field of forensic pathology or for use in medical or
23 scientific education or research, or
24 for use by any law enforcement agency in this State or any other
25 state or federal law enforcement agency;
26 criminal investigatory records;
27 victims' records, except that a victim of a crime shall have access
28 to the victim's own records;
29 trade secrets and proprietary commercial or financial information
30 obtained from any source. For the purposes of this paragraph, trade
31 secrets shall include data processing software obtained by a public
32 body under a licensing agreement which prohibits its disclosure;
33 any record within the attorney-client privilege. This paragraph
34 shall not be construed as exempting from access attorney or
35 consultant bills or invoices except that such bills or invoices may be
36 redacted to remove any information protected by the attorney-client
37 privilege;
38 administrative or technical information regarding computer
39 hardware, software and networks which, if disclosed, would
40 jeopardize computer security;
41 emergency or security information or procedures for any
42 buildings or facility which, if disclosed, would jeopardize security
43 of the building or facility or persons therein;
44 security measures and surveillance techniques which, if
45 disclosed, would create a risk to the safety of persons, property,
46 electronic data or software;
47 information which, if disclosed, would give an advantage to
48 competitors or bidders;

1 information generated by or on behalf of public employers or
2 public employees in connection with any sexual harassment
3 complaint filed with a public employer or with any grievance filed
4 by or against an individual or in connection with collective
5 negotiations, including documents and statements of strategy or
6 negotiating position;

7 information which is a communication between a public agency
8 and its insurance carrier, administrative service organization or risk
9 management office;

10 information which is to be kept confidential pursuant to court
11 order; and

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

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

32 pedagogical, scholarly and/or academic research records and/or
33 the specific details of any research project conducted under the
34 auspices of a public higher education institution in New Jersey,
35 including, but not limited to research, development information,
36 testing procedures, or information regarding test participants,
37 related to the development or testing of any pharmaceutical or
38 pharmaceutical delivery system, except that a custodian may not
39 deny inspection of a government record or part thereof that gives
40 the name, title, expenditures, source and amounts of funding and
41 date when the final project summary of any research will be
42 available;

43 test questions, scoring keys and other examination data
44 pertaining to the administration of an examination for employment
45 or academic examination;

46 records of pursuit of charitable contributions or records
47 containing the identity of a donor of a gift if the donor requires non-
48 disclosure of the donor's identity as a condition of making the gift

1 provided that the donor has not received any benefits of or from the
2 institution of higher education in connection with such gift other
3 than a request for memorialization or dedication;

4 valuable or rare collections of books and/or documents obtained
5 by gift, grant, bequest or devise conditioned upon limited public
6 access;

7 information contained on individual admission applications; and
8 information concerning student records or grievance or
9 disciplinary proceedings against a student to the extent disclosure
10 would reveal the identity of the student.

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

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

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

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

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

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

40 "Victim of a crime" means a person who has suffered personal or
41 psychological injury or death or incurs loss of or injury to personal
42 or real property as a result of a crime, or if such a person is
43 deceased or incapacitated, a member of that person's immediate
44 family.

45 "Victims' rights agency" means a public agency, or part thereof,
46 the primary responsibility of which is providing services, including
47 but not limited to food, shelter, or clothing, medical, psychiatric,
48 psychological or legal services or referrals, information and referral

1 services, counseling and support services, or financial services to
2 victims of crimes, including victims of sexual assault, domestic
3 violence, violent crime, child endangerment, child abuse or child
4 neglect, and the Victims of Crime Compensation Board, established
5 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.).
6 (cf: P.L.2001, c.404, s.2)

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8 2. This act shall take effect immediately.

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STATEMENT

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13 This act amends the Open Public Records Act (OPRA), to
14 provide that, if it can be proven that a municipal clerk has exercised
15 due diligence in attempting to collect a record requested under
16 OPRA, by documenting at least two attempts to collect the
17 requested record within seven days of receiving the request, the
18 municipal official in actual possession of the record will be deemed
19 to be the custodian of the requested record, and therefore be liable
20 for any violations, penalties, or disciplinary proceedings that may
21 result from an unreasonable denial of access to the requested record.