

ASSEMBLY, No. 838

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

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District 31 (Hudson)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

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Assemblymen Wilson, Cryan and Wimberly

SYNOPSIS

Provides that certain personal identifying information may be redacted from certain public records in certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/25/2014)

A838 MAINOR, BENSON

2

1 AN ACT concerning public records and amending R.S.39:4-131 and
2 P.L.1995, c.23 (C.47:1A-1.1).

3

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

6

7 1. R.S.39:4-131 is amended to read as follows:

8 39:4-131. The commission shall prepare and supply to police
9 departments and other suitable agencies, forms for accident reports
10 calling for sufficiently detailed information with reference to a
11 motor vehicle accident, including the cause, the conditions then
12 existing, the persons and vehicles involved, the compliance with
13 P.L.1984, c.179 (C.39:3-76.2e et seq.) by the operators and
14 passengers of the vehicles involved in the accident, whether the
15 operator of the vehicle was using a cellular telephone when the
16 accident occurred, and such other information as the chief
17 administrator may require.

18 Every law enforcement officer who investigates a vehicle
19 accident of which report must be made as required in this Title, or
20 who otherwise prepares a written report as a result of an accident or
21 thereafter by interviewing the participants or witnesses, shall
22 forward a written report of such accident to the commission, on
23 forms furnished by it, within five days after his investigation of the
24 accident.

25 Such written reports required to be forwarded by law
26 enforcement officers and the information contained therein shall not
27 be privileged or held confidential, except that prior to allowing
28 access to such written reports, the custodian thereof shall redact
29 from that record any information which discloses the social security
30 number, unlisted telephone number, address or driver license
31 number of any person named in the report, unless the report is
32 accessed by any government agency, including any court or law
33 enforcement agency, in carrying out its functions or by any person
34 named in the report or an individual acting on the person's behalf.

35 Every citizen of this State shall have the right, during regular
36 business hours and under supervision, to inspect and copy such
37 reports and shall also have the right in person to purchase copies of
38 the reports at the same fee established by section 6 of P.L.2001,
39 c.404 (C.47:1A-5). If copies of reports are requested other than in
40 person, an additional fee of up to \$5.00 may be added to cover the
41 administrative costs of the report. Upon request, a police
42 department shall send an accident report to a person through the
43 mail or via fax as defined in section 2 of P.L.1976, c.23 (C.19:59-
44 2). The police department may require the person requesting the
45 report to provide a completed request form and the appropriate fee

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 prior to faxing or mailing the report. The police department shall
2 provide the person requesting the report with the option of
3 submitting the form and providing the appropriate fee either in
4 person, through the mail, or via fax as defined in section 2 of
5 P.L.1976, c.23 (C.19:59-2).

6 The provisions of any other law or regulation to the contrary
7 notwithstanding, reports obtained pursuant to this act shall not be
8 subject to confidentiality requirements except as provided by
9 section 28 of P.L.1960, c.52 (C.2A:84A-28).

10 When a motor vehicle accident results in the death or
11 incapacitation of the driver or any passenger, the law enforcement
12 officer responsible for notifying the next of kin that their relative is
13 deceased or incapacitated, also shall inform the relative, in writing,
14 how to obtain a copy of the accident report required by this section
15 and the name, address, and telephone number of the person storing
16 the motor vehicle pursuant to section 1 of P.L.1964, c.81
17 (C.39:10A-1).

18 (cf: P.L.2010, c.75, s.2)

19

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

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

24 "Biotechnology" means any technique that uses living
25 organisms, or parts of living organisms, to make or modify
26 products, to improve plants or animals, or to develop micro-
27 organisms for specific uses; including the industrial use of
28 recombinant DNA, cell fusion, and novel bioprocessing techniques.

29 "Custodian of a government record" or "custodian" means in the
30 case of a municipality, the municipal clerk and in the case of any
31 other public agency, the officer officially designated by formal
32 action of that agency's director or governing body, as the case may
33 be.

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

1 A government record shall not include the following information
2 which is deemed to be confidential for the purposes of P.L.1963,
3 c.73 (C.47:1A-1 et seq.) as amended and supplemented:
4 information received by a member of the Legislature from a
5 constituent or information held by a member of the Legislature
6 concerning a constituent, including but not limited to information in
7 written form or contained in any e-mail or computer data base, or in
8 any telephone record whatsoever, unless it is information the
9 constituent is required by law to transmit;
10 any memorandum, correspondence, notes, report or other
11 communication prepared by, or for, the specific use of a member of
12 the Legislature in the course of the member's official duties, except
13 that this provision shall not apply to an otherwise publicly-
14 accessible report which is required by law to be submitted to the
15 Legislature or its members;
16 any copy, reproduction or facsimile of any photograph, negative
17 or print, including instant photographs and videotapes of the body,
18 or any portion of the body, of a deceased person, taken by or for the
19 medical examiner at the scene of death or in the course of a post
20 mortem examination or autopsy made by or caused to be made by
21 the medical examiner except:
22 when used in a criminal action or proceeding in this State which
23 relates to the death of that person,
24 for the use as a court of this State permits, by order after good
25 cause has been shown and after written notification of the request
26 for the court order has been served at least five days before the
27 order is made upon the county prosecutor for the county in which
28 the post mortem examination or autopsy occurred,
29 for use in the field of forensic pathology or for use in medical or
30 scientific education or research, or
31 for use by any law enforcement agency in this State or any other
32 state or federal law enforcement agency;
33 criminal investigatory records;
34 victims' records, except that a victim of a crime shall have access
35 to the victim's own records;
36 trade secrets and proprietary commercial or financial information
37 obtained from any source. For the purposes of this paragraph, trade
38 secrets shall include data processing software obtained by a public
39 body under a licensing agreement which prohibits its disclosure;
40 any record within the attorney-client privilege. This paragraph
41 shall not be construed as exempting from access attorney or
42 consultant bills or invoices except that such bills or invoices may be
43 redacted to remove any information protected by the attorney-client
44 privilege;
45 administrative or technical information regarding computer
46 hardware, software and networks which, if disclosed, would
47 jeopardize computer security;

1 emergency or security information or procedures for any
2 buildings or facility which, if disclosed, would jeopardize security
3 of the building or facility or persons therein;
4 security measures and surveillance techniques which, if
5 disclosed, would create a risk to the safety of persons, property,
6 electronic data or software;
7 information which, if disclosed, would give an advantage to
8 competitors or bidders;
9 information generated by or on behalf of public employers or
10 public employees in connection with any sexual harassment
11 complaint filed with a public employer or with any grievance filed
12 by or against an individual or in connection with collective
13 negotiations, including documents and statements of strategy or
14 negotiating position;
15 information which is a communication between a public agency
16 and its insurance carrier, administrative service organization or risk
17 management office;
18 information which is to be kept confidential pursuant to court
19 order;
20 any copy of form DD-214, or that form, issued by the United
21 States Government, or any other certificate of honorable discharge,
22 or copy thereof, from active service or the reserves of a branch of
23 the Armed Forces of the United States, or from service in the
24 organized militia of the State, that has been filed by an individual
25 with a public agency, except that a veteran or the veteran's spouse
26 or surviving spouse shall have access to the veteran's own records;
27 **[and]**
28 that portion of any document which discloses the social security
29 number, credit card number, unlisted telephone number or driver
30 license number of any person; except for use by any government
31 agency, including any court or law enforcement agency, in carrying
32 out its functions, or any private person or entity acting on behalf
33 thereof, or any private person or entity seeking to enforce payment
34 of court-ordered child support; except with respect to the disclosure
35 of driver information by the New Jersey Motor Vehicle
36 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-
37 3.4); and except that a social security number contained in a record
38 required by law to be made, maintained or kept on file by a public
39 agency shall be disclosed when access to the document or
40 disclosure of that information is not otherwise prohibited by State
41 or federal law, regulation or order or by State statute, resolution of
42 either or both houses of the Legislature, Executive Order of the
43 Governor, rule of court or regulation promulgated under the
44 authority of any statute or executive order of the Governor; and
45 that portion of any incident report produced by a law
46 enforcement agency which discloses the address of any person;
47 except for use by any government agency, including any court or

1 law enforcement agency, in carrying out its functions or by any
2 person named in the report or an individual acting on the person's
3 behalf.

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

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

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

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

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

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

34 "Public agency" or "agency" means any of the principal
35 departments in the Executive Branch of State Government, and any
36 division, board, bureau, office, commission or other instrumentality
37 within or created by such department; the Legislature of the State
38 and any office, board, bureau or commission within or created by
39 the Legislative Branch; and any independent State authority,
40 commission, instrumentality or agency. The terms also mean any
41 political subdivision of the State or combination of political
42 subdivisions, and any division, board, bureau, office, commission or
43 other instrumentality within or created by a political subdivision of
44 the State or combination of political subdivisions, and any
45 independent authority, commission, instrumentality or agency
46 created by a political subdivision or combination of political
47 subdivisions.

1 "Law enforcement agency" means a public agency, or part
2 thereof, determined by the Attorney General to have law
3 enforcement responsibilities.

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

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

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

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

16 "Victim of a crime" means a person who has suffered personal or
17 psychological injury or death or incurs loss of or injury to personal
18 or real property as a result of a crime, or if such a person is
19 deceased or incapacitated, a member of that person's immediate
20 family.

21 "Victims' rights agency" means a public agency, or part thereof,
22 the primary responsibility of which is providing services, including
23 but not limited to food, shelter, or clothing, medical, psychiatric,
24 psychological or legal services or referrals, information and referral
25 services, counseling and support services, or financial services to
26 victims of crimes, including victims of sexual assault, domestic
27 violence, violent crime, child endangerment, child abuse or child
28 neglect, and the Victims of Crime Compensation Board, established
29 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.).
30 (cf: P.L.2005, c.170, s.1)

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32 3. This act shall take effect immediately.

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STATEMENT

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37 This bill provides that certain personal identifying information
38 may be redacted from motor vehicle accident reports and law
39 enforcement agency incident reports prior to allowing the public
40 access to the reports.

41 Under current law, the information contained in motor vehicle
42 accident reports is not privileged or held confidential, and every
43 citizen of this State has the right to inspect and copy the reports, or
44 purchase the reports for a fee.

45 The bill provides that prior to allowing access to the motor
46 vehicle reports, the reports' custodian will redact from the record
47 any information which discloses the social security number,

1 unlisted telephone number, and address or driver license number of
2 any person named in the report. Exceptions under the bill include
3 access to this information by: (1) any government agency, including
4 any court or law enforcement agency, in carrying out its functions;
5 and (2) any person named in the report or an individual acting on
6 the person's behalf.

7 The bill also provides that the portion of a document which
8 contains the address of a person named in an incident report
9 produced by a law enforcement agency shall be considered
10 confidential under P.L.1963, c.73 (C.47:1A-1 et seq.), commonly
11 known as the open public records act (OPRA). Under the current
12 provisions of OPRA, the portion of any document which discloses
13 the social security number, credit card number, unlisted telephone
14 number or driver license number of any person are already
15 considered confidential, with certain exceptions. This bill provides
16 that for purposes of incident reports, the address of a person will be
17 considered confidential as well.

18 It is the sponsor's intent that this provision will protect the
19 privacy of individuals named in motor vehicle accident reports and
20 law enforcement incident reports in order to prevent identity theft.