

SENATE, No. 312

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator ROBERT M. GORDON

District 38 (Bergen and Passaic)

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SYNOPSIS

Subjects Port Authority of New York and New Jersey to New York's Freedom of Information Law and New Jersey's Open Public Records Act.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the public availability of certain Port Authority
2 of New York and New Jersey records, amending P.L.1995, c.23,
3 and supplementing chapter 1 of Title 32 of the Revised Statutes.
4

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

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

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

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

17 "Custodian of a government record" or "custodian" means in the
18 case of a municipality, the municipal clerk and in the case of any
19 other public agency, the officer officially designated by formal
20 action of that agency's director or governing body, as the case may
21 be.

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

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

40 information received by a member of the Legislature from a
41 constituent or information held by a member of the Legislature
42 concerning a constituent, including but not limited to information in
43 written form or contained in any e-mail or computer data base, or in
44 any telephone record whatsoever, unless it is information the
45 constituent is required by law to transmit;

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 memorandum, correspondence, notes, report or other
2 communication prepared by, or for, the specific use of a member of
3 the Legislature in the course of the member's official duties, except
4 that this provision shall not apply to an otherwise publicly-
5 accessible report which is required by law to be submitted to the
6 Legislature or its members;

7 any copy, reproduction or facsimile of any photograph, negative
8 or print, including instant photographs and videotapes of the body,
9 or any portion of the body, of a deceased person, taken by or for the
10 medical examiner at the scene of death or in the course of a post
11 mortem examination or autopsy made by or caused to be made by
12 the medical examiner except:

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

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

20 for use in the field of forensic pathology or for use in medical or
21 scientific education or research, or

22 for use by any law enforcement agency in this State or any other
23 state or federal law enforcement agency;

24 criminal investigatory records;

25 victims' records, except that a victim of a crime shall have access
26 to the victim's own records;

27 trade secrets and proprietary commercial or financial information
28 obtained from any source. For the purposes of this paragraph, trade
29 secrets shall include data processing software obtained by a public
30 body under a licensing agreement which prohibits its disclosure;

31 any record within the attorney-client privilege. This paragraph
32 shall not be construed as exempting from access attorney or
33 consultant bills or invoices except that such bills or invoices may be
34 redacted to remove any information protected by the attorney-client
35 privilege;

36 administrative or technical information regarding computer
37 hardware, software and networks which, if disclosed, would
38 jeopardize computer security;

39 emergency or security information or procedures for any
40 buildings or facility which, if disclosed, would jeopardize security
41 of the building or facility or persons therein;

42 security measures and surveillance techniques which, if
43 disclosed, would create a risk to the safety of persons, property,
44 electronic data or software;

45 information which, if disclosed, would give an advantage to
46 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;

12 any copy of form DD-214, or that form, issued by the United
13 States Government, or any other certificate of honorable discharge,
14 or copy thereof, from active service or the reserves of a branch of
15 the Armed Forces of the United States, or from service in the
16 organized militia of the State, that has been filed by an individual
17 with a public agency, except that a veteran or the veteran's spouse
18 or surviving spouse shall have access to the veteran's own records;
19 and

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

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

40 pedagogical, scholarly and/or academic research records and/or
41 the specific details of any research project conducted under the
42 auspices of a public higher education institution in New Jersey,
43 including, but not limited to research, development information,
44 testing procedures, or information regarding test participants,
45 related to the development or testing of any pharmaceutical or
46 pharmaceutical delivery system, except that a custodian may not
47 deny inspection of a government record or part thereof that gives

1 the name, title, expenditures, source and amounts of funding and
2 date when the final project summary of any research will be
3 available;

4 test questions, scoring keys and other examination data
5 pertaining to the administration of an examination for employment
6 or academic examination;

7 records of pursuit of charitable contributions or records
8 containing the identity of a donor of a gift if the donor requires non-
9 disclosure of the donor's identity as a condition of making the gift
10 provided that the donor has not received any benefits of or from the
11 institution of higher education in connection with such gift other
12 than a request for memorialization or dedication;

13 valuable or rare collections of books and/or documents obtained
14 by gift, grant, bequest or devise conditioned upon limited public
15 access;

16 information contained on individual admission applications; and
17 information concerning student records or grievance or
18 disciplinary proceedings against a student to the extent disclosure
19 would reveal the identity of the student.

20 "Public agency" or "agency" means any of the principal
21 departments in the Executive Branch of State Government, and any
22 division, board, bureau, office, commission or other instrumentality
23 within or created by such department; the Legislature of the State
24 and any office, board, bureau or commission within or created by
25 the Legislative Branch; **[and]** any independent State authority,
26 commission, instrumentality or agency; and the Port Authority of
27 New York and New Jersey. The terms also mean any political
28 subdivision of the State or combination of political subdivisions,
29 and any division, board, bureau, office, commission or other
30 instrumentality within or created by a political subdivision of the
31 State or combination of political subdivisions, and any independent
32 authority, commission, instrumentality or agency created by a
33 political subdivision or combination of political subdivisions.

34 "Law enforcement agency" means a public agency, or part
35 thereof, determined by the Attorney General to have law
36 enforcement responsibilities.

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

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

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

45 "Victim's record" means an individually-identifiable file or
46 document held by a victims' rights agency which pertains directly to

1 a victim of a crime except that a victim of a crime shall have access
2 to the victim's own records.

3 "Victim of a crime" means a person who has suffered personal or
4 psychological injury or death or incurs loss of or injury to personal
5 or real property as a result of a crime, or if such a person is
6 deceased or incapacitated, a member of that person's immediate
7 family.

8 "Victims' rights agency" means a public agency, or part thereof,
9 the primary responsibility of which is providing services, including
10 but not limited to food, shelter, or clothing, medical, psychiatric,
11 psychological or legal services or referrals, information and referral
12 services, counseling and support services, or financial services to
13 victims of crimes, including victims of sexual assault, domestic
14 violence, violent crime, child endangerment, child abuse or child
15 neglect, and the Victims of Crime Compensation Board, established
16 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.).

17 (cf: P.L.2005, c.170, s.1)

18

19 2. (New section) The Port Authority of New York and New
20 Jersey shall be subject to the provisions of New York's Freedom of
21 Information Law pursuant to NY Pub.Off.Law ss.84-90, and to the
22 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known
23 as the open public records act.

24

25 3. This act shall take effect upon the enactment into law by the
26 State of New York of legislation having an identical effect with this
27 act, provided that if the State of New York should enact legislation
28 having an identical effect of any section of this act, that section of
29 this act shall take effect upon that enactment, but if the State of
30 New York has already enacted such legislation, this act or the
31 section in question shall take effect immediately.

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STATEMENT

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36 The bill subjects the Port Authority of New York and New Jersey
37 ("Port Authority") to New York's Freedom of Information Law and
38 New Jersey's Open Public Records Act ("OPRA") and amends the
39 definitions of government record and public agency under OPRA to
40 include the Port Authority. These laws, which provide citizens with
41 access to government records, currently do not include bi-state
42 authorities within the definition of a public agency.

43 Although the Port Authority readopted policies and procedures
44 concerning public access to its records in November 2008, the
45 public does not have any recourse if the requested documents are
46 not provided, because the authority is not subject to either state's
47 law.