

# ASSEMBLY, No. 2119

## STATE OF NEW JERSEY

### 214th LEGISLATURE

INTRODUCED FEBRUARY 11, 2010

**Sponsored by:**

**Assemblyman THOMAS P. GIBLIN**

**District 34 (Essex and Passaic)**

**Assemblywoman CHARLOTTE VANDERVALK**

**District 39 (Bergen)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**SYNOPSIS**

Includes e-mail addresses in list of confidential items to be redacted from public records under OPRA.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/22/2010)**

A2119 GIBLIN, VANDERVALK

2

1 AN ACT concerning public records and amending P.L.1995, c.23.

2

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

5

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

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

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

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

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

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

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

43 any memorandum, correspondence, notes, report or other  
44 communication prepared by, or for, the specific use of a member of  
45 the Legislature in the course of the member's official duties, except

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

1 negotiations, including documents and statements of strategy or  
2 negotiating position;

3 information which is a communication between a public agency  
4 and its insurance carrier, administrative service organization or risk  
5 management office;

6 information which is to be kept confidential pursuant to court  
7 order;

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

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

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

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

1 test questions, scoring keys and other examination data  
2 pertaining to the administration of an examination for employment  
3 or academic examination;

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

10 valuable or rare collections of books and/or documents obtained  
11 by gift, grant, bequest or devise conditioned upon limited public  
12 access;

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

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

31 "Law enforcement agency" means a public agency, or part  
32 thereof, determined by the Attorney General to have law  
33 enforcement responsibilities.

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

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

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

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

46 "Victim of a crime" means a person who has suffered personal or  
47 psychological injury or death or incurs loss of or injury to personal  
48 or real property as a result of a crime, or if such a person is

1 deceased or incapacitated, a member of that person's immediate  
2 family.

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

13

14 2. This act shall take effect immediately.

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#### STATEMENT

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19 This bill would revise the definitions section of what is  
20 commonly known as the Open Public Records Act or OPRA,  
21 P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented  
22 by P.L.2001, c.404 (C.47:1A-5 et seq.), to include e-mail addresses  
23 in the list of confidential items that must be redacted from any  
24 public record disclosed under the provisions of the act.