

# SENATE, No. 465

## STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Authorizes public access to government records through government website.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT authorizing public access to government records through a  
2 government website and amending P.L.2001, c.404.

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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 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 New Jersey Motor Vehicle Commission as permitted by section 2 of  
34 P.L.1997, c.188 (C.39:2-3.4); and except that a social security  
35 number contained in a record required by law to be made,  
36 maintained or kept on file by a public agency shall be disclosed  
37 when access to the document or disclosure of that information is not  
38 otherwise prohibited by State or federal law, regulation or order or  
39 by State statute, resolution of either or both houses of the  
40 Legislature, Executive Order of the Governor, rule of court or  
41 regulation promulgated under the authority of any statute or  
42 executive order of the Governor. Except where an agency can  
43 demonstrate an emergent need, a regulation that limits access to  
44 government records shall not be retroactive in effect or applied to  
45 deny a request for access to a government record that is pending

**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 before the agency, the council or a court at the time of the adoption  
2 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. Except as otherwise provided by law or regulation, the  
6 fee assessed for the duplication of a government record embodied in  
7 the form of printed matter shall be \$0.05 per letter size page or  
8 smaller, and \$0.07 per legal size page or larger. If a public agency  
9 can demonstrate that its actual costs for duplication of a government  
10 record exceed the foregoing rates, the public agency shall be  
11 permitted to charge the actual cost of duplicating the record. The  
12 actual cost of duplicating the record, upon which all copy fees are  
13 based, shall be the cost of materials and supplies used to make a  
14 copy of the record, but shall not include the cost of labor or other  
15 overhead expenses associated with making the copy except as  
16 provided for in subsection c. of this section. Access to electronic  
17 records and non-printed materials shall be provided free of charge,  
18 but the public agency may charge for the actual costs of any needed  
19 supplies such as computer discs.

20 If the government record is readily available on the public  
21 agency website, the custodian shall advise the requester to obtain  
22 the record from the agency website. If the requester does not have  
23 access to a computer, the request shall be made and fulfilled  
24 pursuant to the provisions of this act, P.L.1963, c.73 (C.47:1A-1 et  
25 seq.).

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

41 d. A custodian shall permit access to a government record and  
42 provide a copy thereof in the medium requested if the public agency  
43 maintains the record in that medium. If the public agency does not  
44 maintain the record in the medium requested, the custodian shall  
45 either convert the record to the medium requested or provide a copy  
46 in some other meaningful medium. If a request is for a record: (1)  
47 in a medium not routinely used by the agency; (2) not routinely

1 developed or maintained by an agency; or (3) requiring a substantial  
2 amount of manipulation or programming of information technology,  
3 the agency may charge, in addition to the actual cost of duplication,  
4 a special charge that shall be reasonable and shall be based on the  
5 cost for any extensive use of information technology, or for the  
6 labor cost of personnel providing the service, that is actually  
7 incurred by the agency or attributable to the agency for the  
8 programming, clerical, and supervisory assistance required, or both.

9 e. Immediate access ordinarily shall be granted to budgets,  
10 bills, vouchers, contracts, including collective negotiations  
11 agreements and individual employment contracts, and public  
12 employee salary and overtime information.

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

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

1 exempt from access and shall promptly permit access to the  
2 remainder of the record. If the government record requested is  
3 temporarily unavailable because it is in use or in storage, the  
4 custodian shall so advise the requestor and shall make arrangements  
5 to promptly make available a copy of the record. If a request for  
6 access to a government record would substantially disrupt agency  
7 operations, the custodian may deny access to the record after  
8 attempting to reach a reasonable solution with the requestor that  
9 accommodates the interests of the requestor and the agency.

10 h. Any officer or employee of a public agency who receives a  
11 request for access to a government record shall forward the request  
12 to the custodian of the record or direct the requestor to the  
13 custodian of the record.

14 i. Unless a shorter time period is otherwise provided by  
15 statute, regulation, or executive order, a custodian of a government  
16 record shall grant access to a government record or deny a request  
17 for access to a government record as soon as possible, but not later  
18 than seven business days after receiving the request, provided that  
19 the record is currently available and not in storage or archived. In  
20 the event a custodian fails to respond within seven business days  
21 after receiving a request, the failure to respond shall be deemed a  
22 denial of the request, unless the requestor has elected not to provide  
23 a name, address or telephone number, or other means of contacting  
24 the requestor. If the requestor has elected not to provide a name,  
25 address, or telephone number, or other means of contacting the  
26 requestor, the custodian shall not be required to respond until the  
27 requestor reappears before the custodian seeking a response to the  
28 original request. If the government record is in storage or archived,  
29 the requestor shall be so advised within seven business days after  
30 the custodian receives the request. The requestor shall be advised  
31 by the custodian when the record can be made available. If the  
32 record is not made available by that time, access shall be deemed  
33 denied.

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

41 k. The files maintained by the Office of the Public Defender  
42 that relate to the handling of any case shall be considered  
43 confidential and shall not be open to inspection by any person  
44 unless authorized by law, court order, or the State Public Defender.  
45 (cf: P.L.2010, c.75, s.5)

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47 2. This act shall take effect immediately.

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STATEMENT

Under current law, if a person requests access to a government record, the records custodian provides access, when appropriate. This bill provides that if the government record is readily available on the public agency website, the custodian shall advise the requester to obtain the record from the agency website. If the requester does not have access to a computer, the request shall be made and fulfilled according the provisions of the open public records act.