

[Second Reprint]
SENATE, No. 2552

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 7, 2013

Sponsored by:

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District 1 (Atlantic, Cape May and Cumberland)

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District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senators Beck, Doherty and Madden

SYNOPSIS

Codifies regulation exempting firearms records from State's open public records law.

CURRENT VERSION OF TEXT

As amended by the Senate on May 13, 2013.



(Sponsorship Updated As Of: 5/31/2013)

1 AN ACT concerning firearms records and amending ²[P.L.1963,
2 c.73]² P.L.1995, c.23 ²[, c.23 and P.L.2001, c.404]².

3

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

6

7 ²[1.Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read
8 as follows:

9 1. The Legislature finds and declares it to be the public policy
10 of this State that:

11 government records shall be readily accessible for inspection,
12 copying, or examination by the citizens of this State, with certain
13 exceptions, for the protection of the public interest, and any
14 limitations on the right of access accorded by P.L.1963, c.73
15 (C.47:1A-1 et seq.) as amended and supplemented, shall be
16 construed in favor of the public's right of access;

17 all government records shall be subject to public access unless
18 exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as
19 amended and supplemented; any other statute; resolution of either
20 or both houses of the Legislature; regulation promulgated under the
21 authority of any statute or Executive Order of the Governor;
22 Executive Order of the Governor; Rules of Court; any federal law,
23 federal regulation, or federal order;

24 a public agency has a responsibility and an obligation to
25 safeguard from public access a citizen's personal information with
26 which it has been entrusted when disclosure thereof would violate
27 the citizen's reasonable expectation of privacy and to safeguard
28 from public access information when disclosure thereof would
29 jeopardize personal or public safety; and **[nothing contained in]**
30 P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented,
31 shall not be construed as affecting in any way the common law right
32 of access to any record, including but not limited to criminal
33 investigatory records of a law enforcement agency , unless
34 otherwise expressly provided.

35 (cf: P.L.2001, c.404, s.1)²

36

37 ²[**2.] 1.**² Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is
38 amended to read as follows:

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

41 "Biotechnology" means any technique that uses living
42 organisms, or parts of living organisms, to make or modify
43 products, to improve plants or animals, or to develop micro-

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLP committee amendments adopted May 9, 2013.

²Senate floor amendments adopted May 13, 2013.

1 organisms for specific uses; including the industrial use of
2 recombinant DNA, cell fusion, and novel bioprocessing techniques.

3 "Custodian of a government record" or "custodian" means in the
4 case of a municipality, the municipal clerk and in the case of any
5 other public agency, the officer officially designated by formal
6 action of that agency's director or governing body, as the case may
7 be.

8 "Government record" or "record" means any paper, written or
9 printed book, document, drawing, map, plan, photograph,
10 microfilm, data processed or image processed document,
11 information stored or maintained electronically or by sound-
12 recording or in a similar device, or any copy thereof, that has been
13 made, maintained or kept on file in the course of his or its official
14 business by any officer, commission, agency or authority of the
15 State or of any political subdivision thereof, including subordinate
16 boards thereof, or that has been received in the course of his or its
17 official business by any such officer, commission, agency, or
18 authority of the State or of any political subdivision thereof,
19 including subordinate boards thereof. The terms shall not include
20 inter-agency or intra-agency advisory, consultative, or deliberative
21 material.

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

25 information received by a member of the Legislature from a
26 constituent or information held by a member of the Legislature
27 concerning a constituent, including but not limited to information in
28 written form or contained in any e-mail or computer data base, or in
29 any telephone record whatsoever, unless it is information the
30 constituent is required by law to transmit;

31 any memorandum, correspondence, notes, report or other
32 communication prepared by, or for, the specific use of a member of
33 the Legislature in the course of the member's official duties, except
34 that this provision shall not apply to an otherwise publicly-
35 accessible report which is required by law to be submitted to the
36 Legislature or its members;

37 any copy, reproduction or facsimile of any photograph, negative
38 or print, including instant photographs and videotapes of the body,
39 or any portion of the body, of a deceased person, taken by or for the
40 medical examiner at the scene of death or in the course of a post
41 mortem examination or autopsy made by or caused to be made by
42 the medical examiner except:

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

45 for the use as a court of this State permits, by order after good
46 cause has been shown and after written notification of the request
47 for the court order has been served at least five days before the

1 order is made upon the county prosecutor for the county in which
2 the post mortem examination or autopsy occurred,
3 for use in the field of forensic pathology or for use in medical or
4 scientific education or research, or
5 for use by any law enforcement agency in this State or any other
6 state or federal law enforcement agency;
7 criminal investigatory records;
8 victims' records, except that a victim of a crime shall have access
9 to the victim's own records;
10 personal firearms records, except for use by any person
11 authorized by law to have access to these records or for use by any
12 government agency, including any court or law enforcement
13 agency, for purposes of the administration of justice;
14 ¹personal identifying information received by the Division of
15 Fish and Wildlife in the Department of Environmental Protection in
16 connection with the issuance of any license authorizing hunting
17 with a firearm. For the purposes of this paragraph, personal
18 identifying information shall include, but not be limited to, identity,
19 name, address, social security number, telephone number, fax
20 number, driver's license number, email address, or social media
21 address of any applicant or licensee;¹
22 trade secrets and proprietary commercial or financial information
23 obtained from any source. For the purposes of this paragraph, trade
24 secrets shall include data processing software obtained by a public
25 body under a licensing agreement which prohibits its disclosure;
26 any record within the attorney-client privilege. This paragraph
27 shall not be construed as exempting from access attorney or
28 consultant bills or invoices except that such bills or invoices may be
29 redacted to remove any information protected by the attorney-client
30 privilege;
31 administrative or technical information regarding computer
32 hardware, software and networks which, if disclosed, would
33 jeopardize computer security;
34 emergency or security information or procedures for any
35 buildings or facility which, if disclosed, would jeopardize security
36 of the building or facility or persons therein;
37 security measures and surveillance techniques which, if
38 disclosed, would create a risk to the safety of persons, property,
39 electronic data or software;
40 information which, if disclosed, would give an advantage to
41 competitors or bidders;
42 information generated by or on behalf of public employers or
43 public employees in connection with any sexual harassment
44 complaint filed with a public employer or with any grievance filed
45 by or against an individual or in connection with collective
46 negotiations, including documents and statements of strategy or
47 negotiating position;

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

4 information which is to be kept confidential pursuant to court
5 order;

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

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

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

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

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

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

7 valuable or rare collections of books and/or documents obtained
8 by gift, grant, bequest or devise conditioned upon limited public
9 access;

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

14 "Personal firearms record" means any ¹information contained in
15 a¹ background investigation conducted by the chief of police, the
16 county prosecutor, or the Superintendent of State Police, of any
17 applicant for a permit to purchase a handgun, firearms identification
18 card license, or firearms registration; any application for a permit to
19 purchase a handgun, firearms identification card license, or firearms
20 registration; any document reflecting the issuance or denial of a
21 permit to purchase a handgun, firearms identification card license,
22 or firearms registration; and any permit to purchase a handgun,
23 firearms identification card license, or any firearms license,
24 certification, certificate, form of register, or registration statement.

25 ¹For the purposes of this paragraph, information contained in a
26 background investigation shall include, but not be limited to,
27 identity, name, address, social security number, phone number, fax
28 number, driver's license number, email address, social media
29 address of any applicant, licensee, registrant or permit holder.¹

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

44 "Law enforcement agency" means a public agency, or part
45 thereof, determined by the Attorney General to have law
46 enforcement responsibilities.

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

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

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

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

11 "Victim of a crime" means a person who has suffered personal or
12 psychological injury or death or incurs loss of or injury to personal
13 or real property as a result of a crime, or if such a person is
14 deceased or incapacitated, a member of that person's immediate
15 family.

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

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

26

27 ²**[3.**Section 9 of P.L.2001, c.404 (C.47:1A-8) is amended to read
28 as follows:

29 9. Nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as
30 amended and supplemented, shall be construed as limiting the
31 common law right of access to a government record, including
32 criminal investigatory records of a law enforcement agency ;
33 provided, however, that any common law right of access to a
34 personal firearms record is abolished.

35 (cf: P.L.2001, c.404, s.9)²

36

37 ²**[4.]** 2.² This act shall take effect immediately.