Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator JOSEPH PENNACCHIO
District 26 (Essex, Morris and Passaic)

SYNOPSIS
Makes certain access changes to open public records act; establishes State public finance website and creates program for development of local websites; makes appropriation.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning access to certain government records and
establishment of a program for developing public websites,
amending and supplementing P.L.1963, c.73, supplementing
Title 52 of the Revised Statutes, amending P.L.1995, c.23 and
P.L.2001, c.404, and making an appropriation.

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

1. (New section) This act, P.L.1963, c.73 (C.47:1A-1 et seq.),
shall be known and may be cited as the "Martin O'Shea Open
Public Records and Transparency Act."

2. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read
as follows:
   1. The Legislature finds and declares it to be the public policy
      of this State that:
      - government records shall be readily accessible for inspection,
copying, or examination by the citizens of this State, with certain
      exceptions, for the protection of the public interest, and any
      limitations on the right of access accorded by P.L.1963, c.73
      (C.47:1A-1 et seq.) as amended and supplemented, shall be
      construed in favor of the public's right of access;
      - all government records shall be subject to public access unless
      exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as
      amended and supplemented; any other statute; resolution of either
      or both houses of the Legislature; regulation promulgated under the
      authority of any statute or Executive Order of the Governor;
      Executive Order of the Governor; Rules of Court; any federal law,
      federal regulation, or federal order;
      - a public agency has a responsibility and an obligation to
      safeguard from public access a [citizen's] person’s personal
      information with which it has been entrusted when disclosure
      thereof would violate the [citizen's] person’s reasonable
      expectation of privacy; and nothing contained in P.L.1963, c.73
      (C.47:1A-1 et seq.), as amended and supplemented, shall be
      construed as affecting in any way the common law right of access to
      any record, including but not limited to criminal investigatory
      records of a law enforcement agency.
      (cf: P.L.2001, c.404, s.1)

3. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to
read as follows:
   1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended
and supplemented:

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

"Commercial purpose" means the direct or indirect use of any part of a government record for sale, resale, solicitation, rent or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee. "Commercial purpose" shall not include using, distributing, gathering, procuring, transmitting, compiling, editing, disseminating, or publishing of information or data by the news media, or any parent, subsidiary, or affiliate of any news media, as defined by section 2 of P.L.1977, c.253 (C.2A:84A-21a), or by any news, journalistic, educational, scientific, scholarly, or governmental organization.

"Custodian of a government record" or "custodian" means in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal or written action of that agency's director or governing body, as the case may be. In the case of a volunteer fire company or a volunteer fire department established pursuant to N.J.S.40A:14-68, a volunteer fire company or department may enter into a contract with the governing body of the municipality it serves wherein the municipal clerk shall serve as the custodian for government record request purposes.

"Government record" or "record" means any paper, written, electronic, or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording video or audio recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file, or is required by law to be made, maintained or kept on file, in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof public employee or public agency, or that has been received in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof public employee or public agency. Any video or audio recordings made of those portions of meetings from which the public was not excluded pursuant to subsection b. of section 7 of P.L.1975, c.231 (C.10:4-12), including emergency meetings held pursuant to subsection b. of section 4 of P.L.1975, c.231 (C.10:4-9), shall be available in unedited form. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.
“Advisory, consultative or deliberative material” means material that is used and relied upon during the consultative process prior to the completion of a competitive application, the award of any contract, or the adoption of an ordinance, rule, regulation, or policy by any public agency and that reflects personal opinions, recommendations, and deliberations comprising part of a process by which public agency decisions and policies are formulated, rather than factual or statistical data, information or the official policy of that body, and the release of which would be injurious to the consultative function of government.

A government record shall not include the following information:

- information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit;
- any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members;
- any copy, reproduction or facsimile of any photograph, negative or print, including instant photographs and videotapes of the body, or any portion of the body, of a deceased person, taken by or for the medical examiner at the scene of death or in the course of a post mortem examination or autopsy made by or caused to be made by the medical examiner except:
  - when used in a criminal action or proceeding in this State which relates to the death of that person,
  - for the use as a court of this State permits, by order after good cause has been shown and after written notification of the request for the court order has been served at least five days before the order is made upon the county prosecutor for the county in which the post mortem examination or autopsy occurred,
  - for use in the field of forensic pathology or for use in medical or scientific education or research, or
  - for use by any law enforcement agency in this State or any other state or federal law enforcement agency;
- criminal investigatory records;
- victims’ records, except that a victim of a crime shall have access to the victim's own records;
- any written request by a crime victim for a record to which the victim is entitled to access as provided in this section, including, but not limited to, any law enforcement agency report, domestic
violence offense report, and temporary or permanent restraining order;

personal firearms records, except for use by any person authorized by law to have access to these records or for use by any government agency, including any court or law enforcement agency, for purposes of the administration of justice;

personal identifying information received by the Division of Fish and Wildlife in the Department of Environmental Protection in connection with the issuance of any license authorizing hunting with a firearm. For the purposes of this paragraph, personal identifying information shall include, but not be limited to, identity, name, address, social security number, telephone number, fax number, driver's license number, email address, or social media address of any applicant or licensee;

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

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

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

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

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

information, including location, of private alarm systems and surveillance cameras;

information which, if disclosed, would give an advantage to competitors or bidders;

information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position;

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

information which is to be kept confidential pursuant to court order;
any copy of form DD-214, or that form, issued by the United States Government, or any other certificate of honorable discharge, or copy thereof, from active service or the reserves of a branch of the Armed Forces of the United States, or from service in the organized militia of the State, that has been filed by an individual with a public agency, except that a veteran or the veteran's spouse or surviving spouse shall have access to the veteran's own records; any copy of an oath of allegiance, oath of office or any affirmation taken upon assuming the duties of any public office, or that oath or affirmation, taken by a current or former officer or employee in any public office or position in this State or in any county or municipality of this State, including members of the Legislative Branch, Executive Branch, Judicial Branch, and all law enforcement entities, except that the full name, title, and oath date of that person contained therein shall not be deemed confidential; that portion of any document which discloses the social security number, credit card number, personal debit card number, personal bank account information, unlisted telephone number or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor; cell phone numbers, unless the cell phone number is listed as a home telephone number; electronic-mail addresses provided to the public agency as contact information for the purpose of receiving official public notifications; and electronic-mail addresses provided to the public agency as contact information on any official government form. A government record shall not include, with regard to any public institution of higher education, the following information which is deemed to be privileged and confidential: pedagogical, scholarly and/or academic research records and/or the specific details of any research project conducted under the auspices of a public higher education institution in New Jersey, including, but not limited to research, development information,
testing procedures, or information regarding test participants, related to the development or testing of any pharmaceutical or pharmaceutical delivery system, except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available;

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

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

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

information contained on individual admission applications; and

information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.

"Personal firearms record" means any information contained in a background investigation conducted by the chief of police, the county prosecutor, or the Superintendent of State Police, of any applicant for a permit to purchase a handgun, firearms identification card license, or firearms registration; any application for a permit to purchase a handgun, firearms identification card license, or firearms registration; any document reflecting the issuance or denial of a permit to purchase a handgun, firearms identification card license, or firearms registration; and any permit to purchase a handgun, firearms identification card license, or firearms license, certification, certificate, form of register, or registration statement.

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

The term “government record” shall include allowances sold at auction pursuant to P.L.2007, c.340 (C.26:2C-45 et seq.) or any similar greenhouse gas initiative, together with the auction clearing price for each allowance, the identity of the winning bidder, and the quantity of allowances obtained by each bidder, and of which none shall be considered to be a trade secret within the scope of this act, P.L.1963, c.73 (C.47:1A-1 et seq.). The term shall also include records containing the names of reviewers of grants, donations, gifts or applications made to a public agency including the names of
reviewers of charter school applications, which names shall not be
redacted, and EZ pass records, or substantially similar records, for
vehicles owned by the State and any other public entities, other than
those reflecting law enforcement usage notwithstanding any other
law to the contrary.

"Public agency" or "agency" means any of the principal
departments in the Executive Branch of State Government, and any
division, agency, authority, board, bureau, office, commission or
other instrumentality within or created by such department; the
Legislature of the State and any office, board, bureau or
commission within or created by the Legislative Branch; and any
independent State authority, commission, instrumentality or agency.
The terms shall also mean any political subdivision of the State or
combination of political subdivisions, and any division, board, 
bureau, office, commission or other instrumentality within or
created by a political subdivision of the State or combination of
political subdivisions, and any independent authority, commission,
instrumentality or agency created by a political subdivision or
combination of political subdivisions. The term shall also include a
school district, special district, an educational information resource
center established pursuant to P.L.1983, c.186 (C.18A:6-95.1 et
seq.), or charter school, quasi-governmental agency, or public
employee. The term shall also mean and include, by way of
example but not limitation, the New Jersey State League of
Municipalities, the New Jersey Association of Counties, the New
Jersey School Boards Association, and the New Jersey State
Interscholastic Athletic Association, and a substantially similar
successor organization or association, a joint insurance group or
fund for political subdivisions of this State, and bi-State agencies.

“Quasi-governmental agency” means any association,
commission, agency, authority, organization, public-private entity,
or any other entity, in which one or more public agencies exercise
substantial control, or as determined by the Government Records
Council or a court of law, by considering factors including but not
limited to: whether a public agency exercises control over the quasi-
government agency or the public agency maintains the ability to
review, approve, or reject the quasi-governmental agency’s
proposals or plans, holds a beneficial interest in the quasi-
governmental agency’s assets, is the primary source of funding of,
or is indebted to, or is a creditor of, or guarantor of the debts of, the
quasi-governmental agency. The term shall not include any entity
involving the Legislature or any organization organized under
paragraph (3) of subsection c. of section 501 of the federal Internal
Revenue Code (26 U.S.C.s.501) that was not created by, or with the
approval of, a public agency primarily for the purpose of assisting
that public agency or any labor organization or any contractor
providing goods or services to a public agency except as otherwise
provided by this subsection. However, nothing contained herein
shall affect the application of P.L.1963, c.73 (C.47:1A-1 et seq.) to entities that otherwise fall within the definition of “public agency.”

“Public employee” means any person who occupies any office, position or employment in a public agency, as defined in this section, but only to the extent that he or she acts in an official capacity. This term shall also include, but shall not be limited to, an elected and appointed person, an intern and volunteer employee.

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

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

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

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

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

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

"Victims' rights agency" means a public agency, or part thereof, the primary responsibility of which is providing services, including but not limited to food, shelter, or clothing, medical, psychiatric, psychological or legal services or referrals, information and referral services, counseling and support services, or financial services to victims of crimes, including victims of sexual assault, domestic violence, violent crime, child endangerment, child abuse or child neglect, and the Victims of Crime Compensation Board, established pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as the Victims of Crime Compensation Office pursuant to P.L.2007, c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.

(cf: P.L.2015, c.59, s.1)

4. Section 3 of P.L.1963, c.73 (C.47:1A-3) is amended to read as follows:

3. a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented may be
denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced. Whenever a public agency, during the course of an investigation, obtains from another public agency a government record that was open for public inspection, examination or copying before the investigation commenced, the investigating agency shall provide the other agency with sufficient access to the record to allow the other agency to comply with requests made pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, records containing the following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable, of a request for such information:

where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;
if an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notification of next of kin of any victims of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or court rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;
if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or court rule;
information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the release of such information is contrary to existing law or court rule;
information as to the identity of the investigating and arresting personnel and agency and the length of the investigation;
information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police; and information as to circumstances surrounding bail, whether it was posted and the amount thereof.

Notwithstanding any other provision of this subsection, if the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, the custodian...
shall redact from a copy of the record that portion which the
custodian asserts is exempt from access and shall promptly permit
access to the remainder of the record. If the custodian of a
government record redacts information from a copy of the record,
the custodian shall provide the requestor with a redacted version of
the document and one affidavit or certified statement for the entire
request that states the date of the record, the originator or author of
the record, the subject matter or title of the record, the number of
pages with redactions, and the specific statutory provision or other
lawful basis for each such redaction. The custodian shall redact any
such information by deleting or obscuring only that information and
shall not alter in any manner the space in the government record
formerly occupied by such redacted information. This provision
shall only apply to documents redacted on or after the effective date
of P.L. . , c. (pending before the Legislature as this bill).

Notwithstanding any other provision of this subsection, where it
shall appear that the information requested or to be examined will
jeopardize the safety of any person or jeopardize any investigation
in progress or may be otherwise inappropriate to release, such
information may be withheld. This exception shall be narrowly
construed to prevent disclosure of information that would be
harmful to a bona fide law enforcement purpose or the public
safety. Whenever a law enforcement official determines that it is
necessary to withhold information, the official shall issue a brief
statement explaining the decision.

(cf: P.L.2001, c.404, s.5)

5. Section 6 of P.L.2001, c.404 (C.47:1A-5) is amended to read
as follows:

6. a. The custodian of a government record shall permit the
record to be inspected, examined, and copied by any person during
regular business hours; or in the case of a municipality having a
population of 5,000 or fewer according to the most recent federal
decennial census, a board of education having a total district
enrollment of 500 or fewer, or a public authority having less than
$10 million in assets, during not less than six regular business hours
over not less than three business days per week or the entity's
regularly-scheduled business hours, whichever is less; unless a
government record is exempt from public access by: P.L.1963, c.73
(C.47:1A-1 et seq.) as amended and supplemented; any other
statute; resolution of either or both houses of the Legislature;
regulation promulgated under the authority of any statute or
Executive Order of the Governor; Executive Order of the Governor;
Rules of Court; any federal law; federal regulation; or federal order.
Prior to allowing access to any government record, the custodian
thereof shall redact from that record any information which
discloses the social security number, credit card number, personal
debit card number, personal bank account information, unlisted
telephone number, or driver license number of any person; except
for use by any government agency, including any court or law
enforcement agency, in carrying out its functions, or any private
person or entity acting on behalf thereof, or any private person or
entity seeking to enforce payment of court-ordered child support;
except with respect to the disclosure of driver information by the
New Jersey Motor Vehicle Commission as permitted by section 2 of
P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver information
to any insurer or insurance support organization, or a self-insured
entity, or its agents, employees, or contractors, for use in
connection with claims investigation activities, antifraud activities,
rating or underwriting; and except that a social security number
contained in a record required by law to be made, maintained or
kept on file by a public agency shall be disclosed when access to
the document or disclosure of that information is not otherwise
prohibited by State or federal law, regulation or order or by State
statute, resolution of either or both houses of the Legislature,
Executive Order of the Governor, rule of court or regulation
promulgated under the authority of any statute or executive order of
the Governor. Except where an agency can demonstrate an
emergent need, a regulation that limits access to government
records shall not be retroactive in effect or applied to deny a request
for access to a government record that is pending before the agency,
the council or a court at the time of the adoption of the regulation.

If the custodian of a government record redacts information from
a copy of the record, the custodian shall provide the requestor with
a redacted version of the document and one affidavit or certified
statement for the entire request that states the date of the record, the
originator or author of the record, the subject matter or title of the
record, the number of pages with redactions, and the specific
statutory provision or other lawful basis for each such redaction.
The custodian shall redact any such information by deleting or
obscuring only that information and shall not alter in any manner
the space in the government record formerly occupied by such
redacted information. This provision shall only apply to documents
redacted on or after the effective date of P.L.  , c. (pending before
the Legislature as this bill).

b. (1) A copy or copies of a government record may be
purchased by any person upon payment of the fee prescribed by law
or regulation. Except as otherwise provided by law or regulation
and except as provided in paragraph (2) of this subsection, the fee
assessed for the duplication of a government record embodied in the
form of printed matter shall be $0.05 per letter size page or smaller,
and $0.07 per legal size page or larger. If a public agency can
demonstrate that its actual costs for duplication of a government
record exceed the foregoing rates, the public agency shall be
permitted to charge the actual cost of duplicating the record. The
actual cost of duplicating the record, upon which all copy fees are
based, shall be the cost of materials and supplies used to make a
copy of the record, but shall not include the cost of labor or other
overhead expenses associated with making the copy except as
provided for in subsection c. of this section. A public agency may
charge the fee for each copy made in the process of responding to a
government record request made during the redaction process.

Access to electronic records and non-printed materials shall be
provided free of charge, but the public agency may charge for the
actual costs of any needed supplies such as computer discs.

(2) No fee shall be charged to a victim of a crime for a copy or
copies of a record to which the crime victim is entitled to access, as
provided in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

(3) If a public agency maintains the record in an electronic
format or medium that can be electronically mailed without charge
to the requestor, it shall make the requestor aware and allow for
delivery of the record in such format or medium. The requestor
shall have seven business days to respond to the custodian,
otherwise the request is deemed fulfilled.

When a requestor has not specified his or her chosen method for
receipt of records and if the government record is on the public
agency website, the custodian shall advise the requester to obtain
the record from the agency website as long as the custodian
provides the website address, identifies each responsive document
and the specific location on the website of each identified
responsive document. If the requester prefers to purchase copies
from the public agency, he or she shall be permitted to purchase
such copies from the records custodian, in accordance with the
provisions of this act, P.L.1963, c.73 (C.47:1A-1 et seq.). The
requestor shall have seven business days to respond to the custodian
specifying that he or she prefers to purchase the copies, otherwise
the request may be deemed fulfilled.

If a public agency maintains a government record in a format or
medium that can be inspected without charge to the requestor, it
shall inform the requestor of the place and time that the record will
be available for inspection in such format or medium. If the
requestor prefers to purchase copies from the public agency, the
requester shall be permitted to purchase such copies from the
records custodian, in accordance with the provisions of this act,
P.L.1963, c.73 (C.47:1A-1 et seq.). The requestor shall have seven
business days to respond to the custodian specifying that he or she
prefers to purchase the copies, otherwise the request may be
deemed fulfilled.

c. Whenever the nature, format, medium, manner of collation,
or volume of a government record embodied in the form of printed
matter to be inspected, examined, or copied pursuant to this section
is such that the record cannot be reproduced by ordinary document
copying equipment in ordinary business size or involves an
extraordinary expenditure of time and effort to accommodate the
request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge. A special service charge shall be reasonable and shall be based upon the actual, direct cost of providing the copy or copies; provided, however, that special service charge rates, in the case of a municipality, for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance. When a request is for a commercial purpose, the public agency may charge, in addition to the actual cost of duplicating the record, a special administrative charge. A special administrative charge shall be reasonable and related to ongoing operational expenses, and shall be for expenditures eligible for inclusion in the special administrative charge based upon the criteria and parameters set forth by the Government Records Council.

For purposes hereof, the actual, direct costs shall mean those expenditures that an agency actually incurs in searching for and duplicating documents to respond to a request, which includes basic rate of pay for the employee. Direct costs shall not include overhead expenses such as costs of space and heating or lighting the facility in which the records are stored. The requestor shall have the opportunity to review and object to the charge prior to it being incurred. During such review, the public agency shall provide the requestor, without charge, a detailed breakdown of how the special service charge was assessed, including, at a minimum, reasonable estimates categorizing the hours needed to identify, copy or prepare for inspection, and to produce and return the requested documents, and the number of pages to be produced. Special service charges shall not be assessed for requests for budgets, bills, vouchers, contracts and public employee salary and overtime information unless the request is deemed voluminous.

d. A custodian shall permit access to a government record and provide a copy thereof in the medium or format requested if the public agency maintains the record in that medium or format. If the public agency does not maintain the record in the medium or format requested, the custodian shall either convert the record to the medium or format requested or provide a copy in some other meaningful medium or format. If a request is for a record: (1) in a medium or format not routinely used by the agency; (2) not routinely developed or maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.
e. Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information for the current, prior, and upcoming fiscal year. Immediate access shall mean by the close of business or 5 P.M., whichever is earlier, unless otherwise provided by law or regulation. If the request is received at noon or if received after noon, the request shall be fulfilled by noon the following day, unless otherwise provided by law or regulation.

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

If a request for information is made in writing on a document other than the form adopted by the public agency and the request contains the requisite information prescribed in this subsection, the custodian shall treat the request as if made on the form adopted by the public agency. The document shall also indicate and provide criminal background information, similar to what is required on an adopted government record request form. A response on any form providing criminal background information on the requestor, whether in the affirmative or negative, shall be confidential and shall be redacted prior to disclosure of any such request. If a requestor does not provide criminal background information, the custodian shall attempt to contact the requestor to obtain such information, and shall not deny the request for failure to provide such information unless attempts are made by the custodian.
to obtain such information and the requestor refuses or cannot be
contacted.

g. A request for access to a government record shall be in
writing and hand-delivered, mailed, transmitted electronically,
including by electronic mail, transmitted by facsimile when no more
than four pages in length, or otherwise conveyed to the appropriate
custodian. A request that is intended for a commercial purpose shall
be certified to that fact in the request. The public agency may
require a requestor to state whether the requested records are for a
commercial purpose, but the agency shall not require the requestor
to provide the exact purpose of the commercial use. A custodian
shall promptly comply with a request to inspect, examine, copy, or
provide a copy of a government record. If a record is missing or
damaged, or the custodian is unable to comply with or denies a
request for access, the custodian shall indicate the specific basis
therefor on the request form and promptly return it to the requestor.
The custodian shall sign and date the form and provide the
requestor with a copy thereof. If the custodian of a govern-
ment record asserts that part of a particular record is exempt from public
access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended
and supplemented, the custodian shall delete or excise from a copy
of the record that portion which the custodian asserts is exempt
from access and shall promptly permit access to the remainder of
the record.

If the custodian of a government record redacts information from
a copy of the record, the custodian shall provide the requestor with
a redacted version of the document and one affidavit or certified
statement for the entire request that states the date of the record, the
originator or author of the record, the subject matter or title of the
record, the number of pages with redactions, and the specific
statutory provision or other lawful basis for each such redaction.
The custodian shall redact any such information by deleting or
obscuring only that information and shall not alter in any manner
the space in the government record formerly occupied by such
redacted information. This provision shall only apply to documents
redacted on or after the effective date of P.L. , c. (pending before
the Legislature as this bill).

If the government record requested is temporarily unavailable
because it is in use or in storage, the custodian shall so advise the
requestor and shall make arrangements to promptly make available
a copy of the record. If a request for access to a government record
would substantially disrupt agency operations, the custodian may
deny access to the record after attempting to reach a reasonable
solution with the requestor that accommodates the interests of the
requestor and the agency.

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

In the case of a municipality, a custodian, in response to a
request for access forwarded by another officer or employee or
received directly by the custodian, may direct any officer or
employee of that municipality having custody of a record to act on
the custodian’s behalf and make the record available for inspection,

examination, copying, or the purchase of copies. Such direction
shall not relieve the custodian of any responsibility under P.L.1963,
c.73 (C.47:1A-1 et seq.), as amended and supplemented.

i. Unless a shorter time period is otherwise provided by
statute, regulation, or executive order, a custodian of a government
record shall grant access to a government record or deny a request
for access to a government record as soon as possible, but not later
than seven business days after receiving the request, including the
business day on which the request was received by the records
custodian, if received by noon, provided that the record is currently
available and not in storage or archived. In the event a custodian
fails to respond within seven business days after receiving a
request, the failure to respond shall be deemed a denial of the
request, unless the requestor has elected not to provide a name,
address or telephone number, or other means of contacting the
requestor. If the requestor has elected not to provide a name,
address, or telephone number, or other means of contacting the
requestor, the custodian shall not be required to respond until the
requestor reappears before the custodian seeking a response to the
original request. If the government record is in storage or archived,
the requestor shall be so advised within seven business days after
the custodian receives the request. The requestor shall be advised
by the custodian when the record can be made available. If the
record is not made available by that time, access shall be deemed
denied.

A request received after 12 p.m. shall be deemed as received on
the next business day.

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

The custodian of a public agency that has a website shall, at a
minimum, prominently post on the website the name, mailing
address, electronic mailing address, telephone number, and
facsimile number for the custodian of records as well as a statement
that information submitted to the agency, including home addresses,
may be considered a government record and available for public
review.
k. The files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.

1. A public agency shall adopt policies and procedures to ensure that records exempt from disclosure are not inadvertently or deliberately disclosed by the use of technology.

A public agency shall adopt policies and procedures to have computer systems and computer applications collect, but not disclose, information exempt from access but maintained as electronic records.

Public agencies shall notify the public that the information provided on official forms may be disclosed, unless otherwise exempt by law.

(cf: P.L.2014, c.19, s.3)

6. Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read as follows:

7. A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

institute a proceeding to challenge the custodian's decision or seek injunctive relief by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records; or

in lieu of filing an action in Superior Court, file a complaint with the Government Records Council established pursuant to section 8 of P.L.2001, c.404 (C.47:1A-7). If the Government Records Council does not render a decision within the time period established pursuant to subsection b. of section 8 of P.L.2001, c.404 (C.47:1A-7), the requestor may institute a proceeding to challenge the custodian's decision by filing an action in Superior Court. That court proceeding shall be deemed filed as of the date of filing of the proceeding before the Government Records Council and shall render the proceedings pending before the Government Records Council withdrawn.

The right to institute any proceeding under this section shall be solely that of the requestor. Any such proceeding shall proceed in a summary or expedited manner. The public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee award. However, in actions involving a record required by law to be made, maintained or kept on file and that does not exist at the time of the request, the prevailing requestor shall not be entitled to an attorney's fee award if both: (1) the failure to
make, maintain, or keep the record is due to mere negligence or no
fault on the part of the public entity; and (2) the requestor was
informed in writing by formal certification or affidavit by the
records custodian prior to the filing of the complaint that the record
does not exist or no longer exists, the specific efforts taken to obtain
the record and why the record could not be produced. Under
appropriate circumstances, the rules of court and section 1 of
P.L.1988, c.46 (C. 2A:15-59.1), shall apply for frivolous causes of
action.
(cf: P.L.2001, c.404, s.7)

7. Section 8 of P.L.2001, c.404 (C.47:1A-7) is amended to read
as follows:
8. a. There is established in, but not of, the Department of
Community Affairs a Government Records Council. The council
shall consist of [the Commissioner of Community Affairs or the
commissioner's designee, the Commissioner of Education or the
commissioner's designee, and three] four public members appointed
by the Governor, with the advice and consent of the Senate, not
more than two of whom shall be of the same political party, one of
whom shall have experience with the news media, one of whom
shall be a member of the Municipal Clerks’ Association of New
Jersey, one of whom shall be a member of the New Jersey Press
Association, and one of whom shall have experience with State
government as a public records custodian; and three members
appointed by the Governor, one upon the recommendation of the
Senate President, one upon the recommendation of the Speaker of
the General Assembly, and one upon the joint recommendation of
the Senate President and Speaker of the General Assembly, no more
than two of whom shall be of the same political party. The [three
public] members appointed by the Governor shall serve [during the
term of the Governor making the appointment and] until the
appointment of a successor. [A public member shall not hold any
other] Upon the effective date of P.L. , c. (C. ) (pending before
the Legislature as this bill), two members shall serve for a term of
four years, two members shall serve for a term of three years, three
members shall serve for a term of two years. No member while
serving shall be an officer with the New Jersey Press Association,
the New Jersey State League of Municipalities, the Municipal
Clerks’ Association of New Jersey, or a substantially similar
organization.
No member while serving as a member of the council shall be
able to hold a State or local elected or appointed office or
employment [while serving as a member of the council] unless it
relates to the experience required for serving as a member of the
council. A [public] member shall not receive a salary for service
on the council but shall be reimbursed for reasonable and necessary
expenses associated with serving on the council and may receive such per diem payment as may be provided in the annual appropriations act. A member may be removed by the Governor only for cause upon notice and opportunity to be heard. Vacancies among the [public] members shall be filled in the same manner in which the original appointment was made. [The members of the council shall choose one of the public members to serve as the council's chair] The Governor shall appoint one of the seven members to serve as the chair of the council, and, once appointed, that member shall serve on the council and be chair of the council from the date of appointment until the end of the term of office of the member or until a successor is appointed and qualified. The chair may be removed by the Governor only for cause upon notice and opportunity to be heard. The council may employ an executive director and such professional and clerical staff as it deems necessary and may call upon the Department of Community Affairs for such assistance as it deems necessary and may be available to it. The terms of the members serving on the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) are terminated as of that effective date.

b. The Government Records Council shall:
[establish an informal mediation program to facilitate the resolution of disputes regarding access to government records;]
receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian;
render a decision on all disputes and complaints within 150 calendar days of the filing of the complaint;
issue advisory opinions, on its own initiative, as to whether a particular type of record is a government record which is accessible to the public;
prepare guidelines and an informational pamphlet for use by records custodians in complying with the law governing access to public records;
prepare an informational pamphlet explaining the public's right of access to government records and the methods for resolving disputes regarding access, which records custodians shall make available to persons requesting access to a government record;
prepare lists for use by records custodians of the types of records in the possession of public agencies which are government records;
make training opportunities available for records custodians and other public officers and employees which explain the law governing access to public records; [and]
post the recommendations that the Government Records Council will consider for each case online twenty-four hours before the meeting, to the extent known;
have paper copies available at the meeting at which the case will be heard, with any changes or additions that were not present when the information was posted online; and
operate an informational website and a toll-free helpline staffed by knowledgeable employees of the council during regular business hours which shall enable any person, including records custodians, to call for information regarding the law governing access to public records and allow any person to request mediation or to file a complaint with the council when access has been denied;

In implementing the provisions of subsections d. and e. of this section, the council shall: act, to the maximum extent possible, at the convenience of the parties; utilize teleconferencing, faxing of documents, e-mail and similar forms of modern communication; and when in-person meetings are necessary, send representatives to meet with the parties at a location convenient to the parties.

c. At the request of the council, a public agency shall produce documents and ensure the attendance of witnesses with respect to the council’s investigation of any complaint or the holding of any hearing. Each party shall have the opportunity to provide to the council any documents or information necessary for the adjudication of the case.

d. Upon receipt of a written complaint signed by any person alleging that a custodian of a government record has improperly denied that person access to a government record, the council shall offer the parties the opportunity to resolve the dispute through mediation pursuant to section 13 of P.L. , c. (C.) (pending before the Legislature as this bill). Mediation shall enable a person who has been denied access to a government record and the custodian who denied or failed to provide access thereto to attempt to mediate the dispute through a process whereby a neutral mediator, who shall be trained in mediation selected by the council, acts to encourage and facilitate the resolution of the dispute. Mediation shall be an informal, nonadversarial process having the objective of helping the parties reach a mutually acceptable, voluntary agreement. The mediator shall assist the parties in identifying issues, foster joint problem solving, and explore settlement alternatives.

e. If any party declines mediation or if mediation fails to resolve the matter to the satisfaction of all parties, the council shall initiate an investigation concerning the facts and circumstances set forth in the complaint. The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the council shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed. Otherwise, the council shall notify the records custodian against whom the complaint was filed.
of the nature of the complaint and the facts and circumstances set forth therein. The custodian shall have [the] an opportunity to present the complaint by presenting the board with a signed and dated affidavit containing the same information provided to the complainant pursuant to subsection a of section 6 of P.L.2001, c.404 (C.47:1A-5), if applicable, and any other statement or information concerning the complaint which the custodian wishes. The complainant shall have an opportunity to offer a brief reply affidavit that addresses any claims or defenses in the custodian’s answer. The complainant shall not set forth therein any new allegations that do not address the custodian’s claims or defense. If the council is able to make a determination as to a record's accessibility based upon the complaint [and] the custodian's [response thereto] answer, and the complainant’s reply, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed. If the council is unable to make a determination as to a record's accessibility based upon the complaint [and] the custodian’s [response thereto] answer, and the complainant’s reply, the council shall conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a State agency in contested cases under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), insofar as they may be applicable and practicable. The council shall, by a majority vote of its members, render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented. If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully willfully denied access or been grossly negligent, as defined by section 12 of P.L.2001, c.404 (C.47:1A-11), and violated P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in section 12 of P.L.2001, c.404 (C.47:1A-11). A decision of the council may be appealed to the [Appellate Division of the] Appellate Division of the Superior Court. A decision of the council shall not have value as a precedent for any case initiated in Superior Court pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6). All proceedings of the council pursuant to this subsection shall be conducted as expeditiously as possible.

f. The council shall not charge any party a fee in regard to actions filed with the council. The council shall be subject to the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6), except that the council may go into closed session during that portion of any proceeding during which the contents of a
contested record would be disclosed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

g. The council shall not have jurisdiction over the Judicial or Legislative Branches of State Government or any agency, officer, or employee of those branches.

h. The council shall make available on its website a searchable index of its opinions.

(cf: P.L.2001, c.404, s.8)

8. Section 11 of P.L.2001, c.404 (C.47:1A-10) is amended to read as follows:

11. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that:

an individual's name, title, position, educational and training background, salary, payroll record, length of service, date of separation and the reason therefor, work address and work telephone number, job description, and the amount and type of any pension received shall be a government record;

personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; [and]

records pertaining to the factual basis for the final administrative determination of a disciplinary action, including a disciplinary action that is the result of an internal affairs investigation by a public safety agency, in which an employee is suspended, demoted, discharged, or resigned not in good standing, if it was due to the conviction of a crime, shall be a government record, except that specific factual details of incidents involving sexual harassment, sexual assault, domestic violence or rape by or against a public employee, and the identity of the victim of the misconduct alleged, may be deleted or excised if disclosure would violate any individual’s reasonable expectation of privacy so long as the agency provides a statement that such information is being deleted or excised pursuant to this particular exception;

records pertaining to settlements of lawsuits or claims involving public agencies, public officials or employees shall be a government record, except that specific factual details of incidents involving sexual harassment, sexual assault, domestic violence or rape by or against a public employee, and the identity of the victim of the misconduct alleged, may be deleted or excised if disclosure would violate any individual’s reasonable expectation of privacy so
long as the agency provides a statement that such information is
being deleted or excised pursuant to this particular exception. No
public agency shall be liable for damages, pursuant to this
subsection, for releasing settlements of lawsuits or claims involving
public agencies, public officials or employees, entered into before
the effective date of P.L._____, c. (pending before the Legislature as
this bill). The public agency shall make reasonable efforts to notify
the affected parties of the release of the documents; and

9. Section 12 of P.L.2001, c.404 (C.47:1A-11) is amended to
read as follows:

12. a. A public official, officer, employee or custodian who
[knowingly and willfully] violates P.L.1963, c.73 (C.47:1A-1 et
seq.), as amended and supplemented, and is found [to have
unreasonably] grossly negligent by having denied access or is
found to have willfully denied access under the totality of the
circumstances, shall be subject to a civil penalty of $1,000 for an
initial violation, $2,500 for a second violation that occurs within 10
years of an initial violation, and $5,000 for a third violation that
occurs within 10 years of an initial violation. No public official,
officer, employee or custodian shall be subject to a civil penalty for
any unavailable record that is required by law to be made,
maintained or kept on file unless the unavailability of the record is a
result of the willful actions or gross negligence of such person.

A requestor who is found to have intentionally failed to certify
that a records request is for commercial purposes shall be subject to
a civil penalty of $500.

Penalties may be imposed by the courts or the Government
Records Council. A penalty imposed pursuant to P.L.1963, c.43
(C.47:1A-1 et seq.) shall be paid by the individual found to have
committed the violation out of the individual’s personal funds.
Under no circumstances shall public funds, or contributions as
defined in subsection b. of section 3 of P.L.1973, c.83 (C.19:44A-3)
of “The New Jersey Campaign Contributions and Expenditures
Reporting Act”, be used to pay a penalty or to reimburse a person
who has paid, or will pay, a penalty for the cost of that penalty.

This penalty shall be collected and enforced in
proceedings in accordance with the "Penalty Enforcement Law of
governing actions for the collection of civil penalties. The Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the penalty imposed by this section.

Appropriate disciplinary proceedings may be initiated against a public official, officer, employee or custodian against whom a penalty has been imposed.

For the purposes of this act, P.L.1963, c.73 (C.47:1A-1 et seq.), “grossly negligent” shall mean engaging in conduct involving a gross deviation from the acceptable standards of conduct from the duties and responsibilities imposed by this act that a reasonable person would have observed in the actor’s situation.

(cf: P.L.2001, c.404, s.12)

10. Section 14 of P.L.2001, c.404 (C.47:1A-13) is amended to read as follows:

14. The Commissioner of Community Affairs shall include in the annual budget request of the Department of Community Affairs [a] the request submitted by the Government Records Council for sufficient funds to effectuate the purposes of section 8 of P.L.2001, c.404 (C.47:1A-7).

(cf: P.L.2001, c.404, s.14)

11. (New section) Any authority contained herein to exempt records from public access by regulation or Executive Order of the Governor shall be expressly limited to the designation of specific records that are exempt from access pursuant to any exemptions set forth in this act, P.L.1963, c.73 (C.47:1A-1 et seq.), and shall not be construed as a grant or delegation of authority to exempt records from public access not otherwise exempt by the provisions this act.

12. (New section) a. In exceptional circumstances, and notwithstanding any other law or rule or regulation to the contrary, whenever there is filed a verified petition to the Superior Court of the county in which the request for government records was made under P.L.1963, c.73 (C.47:1A-1 et seq.) alleging that a requestor has sought records thereunder for the sole purpose to harass a public agency, the court may issue a protective order limiting the number and scope of requests the requestor may make or such other relief as it deems appropriate, including referral of the matter to mediation. The court may issue the protective order if it finds that the requestor has sought records under P.L.1963, c.73 (C.47:1A-1 et seq.) for the sole purpose to harass the public agency as the term harass is defined in N.J.S.2C:33-4. The petition shall be accompanied by a declaration of facts by the public agency withholding the records demonstrating that it has complied with P.L.1963, c.73 (C.47:1A-1 et seq.) and has made a good faith effort to reach an informal resolution of the issues relating to the records request. The requestor shall have notice and an opportunity to
answer the allegations set forth in the petition submitted by the
public agency. The public agency shall have the burden of proof by
clear and convincing evidence. The court’s consideration of a
public agency’s petition for relief shall proceed in a summary or
expedited manner and shall include a formal hearing whenever the
interest of justice so requires. If the custodian of a public agency
determines that responding to a record request will substantially
disrupt agency operations, the custodian may deny access to the
record after attempting to reach a reasonable solution with the
requestor that accommodates the interests of the requestor and the
agency, as set forth in subsection g. of section 6 of P.L.2001, c.404
(C.47:1A-5).

b. The order specified in subsection a. of this section may limit,
or in appropriate circumstances, eliminate, the public agency’s duty
to respond to government records requests from the requestor in the
future.

c. Upon entry of an order pursuant to this section, the order of
the court shall be immediately reviewable by petition to the
Appellate Division of the Superior Court. A party shall, in order to
obtain review of the order, file a petition within 20 days after
service upon him or her of a written notice of entry of the order, or
within further time not exceeding an additional 20 days as the court
may for good cause allow. If the notice is served by mail, the
period within which to file the petition shall be increased by five
days. A stay of an order or judgment shall not be granted unless the
petitioning party demonstrates that it will otherwise sustain
irreparable damage and probable success on the merits. Any person
who fails to obey the order of the court shall be cited to show cause
why he or she is not in contempt of court.

13. (New section) The Office of Dispute Settlement, in the
Office of The Public Defender, shall be available to mediate a
dispute over records requests when both requestor and public
agency consent thereto. However, mediation shall not alter the
responsibility of the custodian to respond and provide documents
within the timeframes set forth in this act, P.L.1963, c.73 (C.47:1A-
1 et seq.).

14. (New section) a. Notwithstanding the provisions of any
other law to the contrary, the State Treasurer, in consultation with
the Chief Technology Officer, shall design and develop, maintain
and operate a single, searchable Internet website that is accessible
to the general public without charge for access, and that includes
data or information concerning each of the following:
annual State agency expenditures, as determined by the State
Treasurer and as may be available within the central accounting
system and State payroll system, which shall include but not be
limited to: disbursements by a State agency from funds established
within the State treasury; bond debt services, including amounts of 
bond debt or interest paid and sources of funds for bond issues; 
salaries and wages including, compensation paid to employees of 
State agencies, including current contracts under which 
compensation is determined; contractual service purchases, 
including amounts paid to vendors; commodity purchases, including 
amounts paid to vendors; capital outlay and improvements, 
including amounts paid to vendors; aid to local units of government, 
including amounts paid to individual units of local government for 
ad programs; additional forms of assistance and benefits as 
determined by the State Treasurer; and the exact amount of each 
such expenditure and the name and address of each individual, 
organization, business or other entity receiving such monies; 
annual State revenues, as determined by the State Treasurer and as 
may be available within the central accounting system, which 
shall include but not be limited to: receipts and deposits by a State 
agency into funds established within the State treasury; taxes, 
including any tax which is payable to or collectible by the Director 
of the Division of Taxation in the Department of the Treasury; State 
agency earnings, including amounts collected by each State agency 
for merchandise sold, services performed, and licenses and permits 
issued; revenue derived from the use of money and property, 
including amounts received for compensation for the use of State- 
owned money and property; gifts, donations, and federal grants, 
including amounts received from public and private entities to aid 
in support of a specific function or other governmental activity; 
other revenue, including receipts not classified elsewhere; and non-
revenue receipts, including all receipts that do not constitute 
revenue; 
annual State bonded indebtedness, as determined by the State 
Treasurer and as may be available within the central accounting 
system, which shall include but not be limited to: the amount of the 
total original obligation stated in terms of principal and interest; the 
term of the obligation; the source of funding for repayment of the 
obligation; the amount of principal and interest previously paid to 
reduce the obligation; the remaining balance of the obligation; data 
or information related to refinancing of the obligation; the cited 
statutory or constitutional authority to issue such bonds; the specific 
names of firms or individuals serving as bond counsel; and the 
names of the banks assisting in the sale of bonds; 
annual State liabilities for pension and post-retirement medical 
benefits, as determined by the State Treasurer and as may be 
available within the central accounting system; and 
any other data or information determined to be necessary and 
appropriated by the State Treasurer.

b. The Internet website designed and developed, maintained 
and operated by the State Treasurer in accordance with this section 
shall include all data and information enumerated in subsection a.
of this section for State fiscal year 2013 and each State fiscal year thereafter. The data and information posted on the Internet website may be periodically updated, but shall not be subject to removal.

The data and information required to be posted on the Internet website that is based on or otherwise derived from data or information made available from the central accounting system or the State payroll system shall be made available on the Internet website as soon as practicable, but not later than 45 days after the last day of the preceding State fiscal year.

The State Treasurer shall not be required to provide data or information on the Internet website of the kind that is not available in the central accounting system or the State payroll system on the date the Internet website is first made available to the public.

The State Treasurer shall be entitled to receive from each State agency any assistance and information the State Treasurer determines to be necessary and appropriate to compile the data and information necessary to design and develop, maintain and operate the Internet website.

The State Treasurer shall not be required to disclose or otherwise make available on the Internet website data or information that is determined by the State Treasurer to be private, personal, or confidential in accordance with State or federal law, rules, or regulations.

c. Notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the State Treasurer determines to be necessary and appropriate to design and develop, maintain and operate the Internet website and to compile data and information in accordance with this section, which rules and regulations shall be effective for a period not to exceed 360 days following the effective date of P.L. , c. (pending before the Legislature as this bill) and may thereafter be amended, adopted, or readopted by the State Treasurer in accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).

d. As used in this section:

"Chief Technology Officer" means the person appointed by and serving at the pleasure of the Governor who is responsible for the day-to-day operations of the Office of Information Technology in, but not of, the Department of the Treasury; and

"State agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission, or other instrumentality within or created by such principal department; the Legislature of the State and any office, board, bureau, or commission within or created by the Legislative Branch of State Government; the Judiciary of the State and any office, board, bureau, or commission within or created by the Judicial Branch of State Government; and any
independent State authority, commission, instrumentality, or agency.

15. (New section) a. There is established the New Jersey Local Public Finance Internet Website Development Program.

b. The program shall be under the jurisdiction of the Department of the Treasury, and shall be administered by the State Treasurer, the Chief Technology Officer, and any clerical, technical, and other professional staff or assistants as may be designated by the State Treasurer from among the personnel appointed and employed by the department.

c. The purpose of the program shall be to provide advice and technical assistance to units of local government that elect to design and develop, maintain and operate a single, searchable local public finance Internet website that has the capacity to display and retain data and information concerning the unit of local government’s (1) annual expenditures, including, bond debt services and interest, salaries and wages paid to employees, contractual service purchases including amounts paid to vendors, commodity purchases including amounts paid to vendors, capital outlays and improvements including amounts paid to vendors, and aid paid to subunits of the entity; (2) annual revenues, including, revenue derived from the receipts and deposits from any State agency, taxes including compulsory tolls or fees imposed by the public entity for the purpose of financing services, the amounts received as compensation for the use of property owned or used by the public entity, and gifts, donations and federal grants and other sources of revenue not classified elsewhere; (3) total bonded indebtedness, including the amount of the original obligation stated in terms of principal and interest, the terms of the obligation and the source of funding for the repayment thereof, the amounts of principal and interest previously paid to reduce the obligation and the remaining balance of the obligation, the data and information related to refinancing of the obligation, if such refinancing occurred, the statutory or constitutional authority to issue such bonds, the name of the firms or individuals serving as bond counsel, and the name of the banks assisting in the sale of bonds; and (4) outstanding liabilities for pension and post-retirement medical benefits; and has the capacity to display and retain public notices, agendas, schedules, minutes, and other electronic documents required to be made available in accordance with P.L. 1963, c.73 (C.47:1A-1 et seq.).

d. To effectuate the purposes of the program, the State Treasurer shall:

make and publish guidelines that may be used by local units of government to identify best practices in the design of a single, searchable local public finance Internet website;
procure and make available to local units of government a
template and any prewritten or custom computer software that the
State Treasurer determines to be necessary and appropriate to
develop a single, searchable local public finance Internet website;
and
direct the Chief Technology Officer to provide information
technology support and services that may be determined by the
Chief Technology Officer to be necessary and appropriate for a
local unit of government to maintain and operate a single,
searchable local public finance Internet website following its initial
design and development.

e. The State Treasurer shall make an annual report regarding
the implementation and administration of the program.
The report shall identify any guidelines that were made and
published by the State Treasurer during the year immediately
preceding the year in which the report is required to be made.
The report shall identify any templates and any prewritten or
custom computer software that the State Treasurer determined to be
necessary and appropriate to develop a single, searchable local
public finance Internet website during the year immediately
preceding the year in which the report is required to be made.
The report shall identify the information technology support and
services provided by the Chief Technology Officer and any other
clerical, technical, and other professional staff or assistants to each
unit of local government that maintains and operates a single,
searchable local public finance Internet website during the year
immediately preceding the year in which the report is required to be
made.
The report shall identify each local unit of government that used
the guidelines, templates and software, or the information
technology support and services made available through the
program to design and develop, maintain and operate a single,
searchable local public finance Internet website during the year
immediately preceding the year in which the report is required to be
made.
The report shall include any findings or recommendations that
may be made by the State to improve the effectiveness of the
program during the year immediately preceding the year in which
the report is required to be made.
The State Treasurer shall file the report required to be made in
accordance with this section with the Governor and the Legislature,
in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), on
or before October 1, 2013 and on or before October 1 each year
thereafter.
f. Notwithstanding the provisions of the “Administrative
Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the
contrary, the State Treasurer may adopt immediately upon filing
with the Office of Administrative Law such rules and regulations as
the State Treasurer determines to be necessary and appropriate to
effectuate the purposes of the program established in accordance
with this section, which rules and regulations shall be effective for a
period not to exceed 360 days following the effective date of
P.L. , c. (pending before the Legislature as this bill) and may
thereafter be amended, adopted, or readopted by the State Treasurer
in accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).

g. As used in this section:
"Chief Technology Officer" means the person appointed by and
serving at the pleasure of the Governor who is responsible for the
day-to-day operations of the Office of Information Technology in,
but not of, the Department of the Treasury; and
“Local unit of government” includes a county, municipality,
local authority, school board, or other local instrumentality of the
State and any public agency or agency as defined by section 1 of
P.L.1995, c.23 (C.47:1A-1.1).

16. (New section) The Office of Information Technology, the
Division of Local Government Services in the Department of
Community Affairs, and the Government Records Council shall
conduct a data practices survey every five years. The purpose of
the survey shall be to review the collection, processing, use and
dissemination of information by public agencies, in light of the
recognized need for open government, with a focus on indentifying
identifying privacy related issues. The survey results shall include
any recommended specific measures, including boundaries for
access to government records and legislation, to deal with the issues
and safeguard the privacy rights of individuals.
The Office of Information Technology shall establish an Office
of Privacy in, but not of, the Office of Information of Technology,
to assist in identification of privacy related issues and to bring those
issues to the attention of those charged with determining the
appropriate boundaries for access to government records, including
records custodians, the Government Records Council, and the
courts.

17. (New section) There is appropriated from the General Fund
to the Department of the Treasury such sums as may be necessary,
but not to exceed $100,000, as shall be determined by the Director
of the Division of Budget and Accounting in the Department of the
Treasury, to effectuate the purposes of the program established in
accordance with section 15 of P.L. , c. (C. ) (pending before
the Legislature as this bill).

18. This bill shall take effect 120 days following enactment.
This bill revises the open public records act (OPRA). The bill formally names OPRA as the “Martin O’Shea Open Public Records Act” in honor of Martin O’Shea, a tireless advocate for broad public access to government records. The bill expands and clarifies various definitions and makes changes to the duties of record custodians and the Government Records Council. It also revises the composition of the Government Records Council and changes the council from being in the Department of Community Affairs to being in, but not of, the Department of Community Affairs. It modifies the mediation process making the Office of Dispute Settlement in the Office of the Public Defender available to mediate disputes, changes the penalty provisions, and modifies access to the courts. It specifies that the fines imposed pursuant to OPRA cannot be paid out of public funds. The bill changes the membership of the Government Records Council to seven members.

In addition, the bill requires the State to create a public finance website and establish the New Jersey Local Public Finance Internet Website Development Program to provide advice and technical assistance to units of local government that elect to create a searchable local public finance Internet website.