

ASSEMBLY, No. 749

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

SYNOPSIS

Makes certain access changes to open public records act; requires inclusion of certain State financial information on open data website; creates program for development of local websites; makes appropriation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning access to certain government records and
2 establishment of a program for developing public websites,
3 amending and supplementing P.L.1963, c.73, supplementing
4 Title 52 of the Revised Statutes and chapter 14 of Title 40A of
5 the New Jersey Statutes, amending P.L.1995, c.23 and P.L.2001,
6 c.404, and making an appropriation.

7
8 **BE IT ENACTED** *by the Senate and General Assembly of the State*
9 *of New Jersey:*

10
11 1. (New section) This act, P.L.1963, c.73 (C.47:1A-1 et seq.),
12 shall be known and may be cited as the "Martin O'Shea Open
13 Public Records and Transparency Act."

14
15 2. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read
16 as follows:

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

19 government records shall be readily accessible for inspection,
20 copying, electronic transmission, or examination by the **【citizens of**
21 **this State】** public, with certain exceptions, for the protection of the
22 public interest, and any limitations on the right of access accorded
23 by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
24 supplemented, shall be construed in favor of the public's right of
25 access;

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

33 a public agency has a responsibility and an obligation to
34 safeguard from public access a **【citizen's】** person's personal
35 information with which it has been entrusted when disclosure
36 thereof would violate the **【citizen's】** person's reasonable
37 expectation of privacy; and nothing contained in P.L.1963, c.73
38 (C.47:1A-1 et seq.), as amended and supplemented, shall be
39 construed as affecting in any way the common law right of access to
40 any record, including but not limited to criminal investigatory
41 records of a law enforcement agency.

42 (cf: P.L.2001, c.404, s.1)

43
44 3. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to
45 read as follows:

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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

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

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

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

23 "Deputy custodian" means, in the case of a municipality, the
24 officer or employee, or officers or employees, of that municipality
25 designated or appointed by the governing body thereof who acts on
26 the custodian's behalf for any request for access to a government
27 record in the custody of the deputy custodian's particular office or
28 unit.

29 "Government record" or "record" means any paper, written,
30 electronic, or printed book, document, drawing, map, plan,
31 photograph, microfilm, data processed or image processed
32 document, information stored or maintained electronically or by
33 **[sound-recording]** video or audio recording or in a similar device,
34 or any copy thereof, that has been made, maintained or kept on file,
35 or is required by law to be made, maintained or kept on file. [in the
36 course of his or its official business] or that has been received, by
37 any **[officer, commission, agency or authority of the State or of any**
38 **political subdivision thereof, including subordinate boards thereof]**
39 public employee or public agency **], or that has been received]** in
40 the course of **[his or its]** that employee's or agency's official
41 business [by any such] [officer, commission, agency, or authority
42 of the State or of any political subdivision thereof, including
43 subordinate boards thereof]. Any video or audio recordings made
44 of those portions of meetings from which the public was not
45 excluded pursuant to subsection b. of section 7 of P.L.1975, c.231
46 (C.10:4-12), including emergency meetings held pursuant to
47 subsection b. of section 4 of P.L.1975, c.231 (C.10:4-9), shall be

1 available in unedited form. The terms shall not include inter-
2 agency or intra-agency advisory, consultative, or deliberative
3 material.

4 “Advisory, consultative or deliberative material” means material
5 that is used and relied upon during the consultative process prior to
6 the completion of a competitive application, the award of any
7 contract, or the adoption of an ordinance, rule, regulation, or policy
8 by any public agency and that reflects personal opinions,
9 recommendations, and deliberations comprising part of a process by
10 which public agency decisions and policies are formulated, rather
11 than factual or statistical data, information or the official policy of
12 that body, and the release of which would be injurious to the
13 consultative function of government.

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

17 information received by a member of the Legislature from a
18 constituent or information held by a member of the Legislature
19 concerning a constituent, including but not limited to information in
20 written form or contained in any e-mail or computer data base, or in
21 any telephone record whatsoever, unless it is information the
22 constituent is required by law to transmit;

23 any memorandum, correspondence, notes, report or other
24 communication prepared by, or for, the specific use of a member of
25 the Legislature in the course of the member's official duties, except
26 that this provision shall not apply to an otherwise publicly-
27 accessible report which is required by law to be submitted to the
28 Legislature or its members;

29 any copy, reproduction or facsimile of any photograph, negative
30 or print, including instant photographs and videotapes of the body,
31 or any portion of the body, of a deceased person, taken by or for the
32 medical examiner at the scene of death or in the course of a post
33 mortem examination or autopsy made by or caused to be made by
34 the medical examiner except:

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

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

42 for use in the field of forensic pathology or for use in medical or
43 scientific education or research, or

44 for use by any law enforcement agency in this State or any other
45 state or federal law enforcement agency;

46 criminal investigatory records;

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

1 any written request by a crime victim for a record to which the
2 victim is entitled to access as provided in this section, including,
3 but not limited to, any law enforcement agency report, domestic
4 violence offense report, and temporary or permanent restraining
5 order;

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

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

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

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

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

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

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

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

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

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

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

1 information which is to be kept confidential pursuant to court
2 order;

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

10 any copy of an oath of allegiance, oath of office or any
11 affirmation taken upon assuming the duties of any public office, or
12 that oath or affirmation, taken by a current or former officer or
13 employee in any public office or position in this State or in any
14 county or municipality of this State, including members of the
15 Legislative Branch, Executive Branch, Judicial Branch, and all law
16 enforcement entities, except that the full name, title, and oath date
17 of that person contained therein shall not be deemed confidential;

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

37 **【A】** a list of persons identifying themselves as being in need of
38 special assistance in the event of an emergency maintained by a
39 municipality for public safety purposes pursuant to section 1 of
40 P.L.2017, c.266 (C.40:48-2.67); **【and**

41 **A】** a list of persons identifying themselves as being in need of
42 special assistance in the event of an emergency maintained by a
43 county for public safety purposes pursuant to section 6 of P.L.2011,
44 c.178 (C.App.A:9-43.13);

45 cell phone numbers, unless the cell phone number is listed as a
46 home telephone number;

1 electronic-mail addresses provided to the public agency as
2 contact information for the purpose of receiving official public
3 notifications;

4 electronic-mail addresses provided to the public agency as
5 contact information on any official government form; and

6 that portion of any document that requires and would disclose
7 personal identifying information of persons under the age of 18
8 years, except with respect to the disclosure of driver information by
9 the New Jersey Motor Vehicle Commission as permitted by section
10 2 of P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver
11 information to any insurer or insurance support organization, or a
12 self-insured entity, or its agents, employees, or contractors, for use
13 in connection with claims investigation activities, antifraud
14 activities, rating or underwriting.

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

18 pedagogical, scholarly and/or academic research records and/or
19 the specific details of any research project conducted under the
20 auspices of a public higher education institution in New Jersey,
21 including, but not limited to research, development information,
22 testing procedures, or information regarding test participants,
23 related to the development or testing of any pharmaceutical or
24 pharmaceutical delivery system, except that a custodian may not
25 deny inspection of a government record or part thereof that gives
26 the name, title, expenditures, source and amounts of funding and
27 date when the final project summary of any research will be
28 available;

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

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

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

41 information contained on individual admission applications; and
42 information concerning student records or grievance or
43 disciplinary proceedings against a student to the extent disclosure
44 would reveal the identity of the student.

45 "Personal firearms record" means any information contained in a
46 background investigation conducted by the chief of police, the
47 county prosecutor, or the Superintendent of State Police, of any
48 applicant for a permit to purchase a handgun, firearms identification

1 card license, or firearms registration; any application for a permit to
2 purchase a handgun, firearms identification card license, or firearms
3 registration; any document reflecting the issuance or denial of a
4 permit to purchase a handgun, firearms identification card license,
5 or firearms registration; and any permit to purchase a handgun,
6 firearms identification card license, or any firearms license,
7 certification, certificate, form of register, or registration statement.
8 For the purposes of this paragraph, information contained in a
9 background investigation shall include, but not be limited to,
10 identity, name, address, social security number, phone number, fax
11 number, driver's license number, email address, social media
12 address of any applicant, licensee, registrant or permit holder.

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

27 "Public agency" or "agency" means any of the principal
28 departments in the Executive Branch of State Government, and any
29 division, agency, authority, board, bureau, office, commission or
30 other instrumentality within or created by such department; the
31 Legislature of the State and any office, board, bureau or
32 commission within or created by the Legislative Branch; and any
33 independent State authority, commission, instrumentality or agency.
34 The terms shall also mean any political subdivision of the State or
35 combination of political subdivisions, and any division, board,
36 bureau, office, commission or other instrumentality within or
37 created by a political subdivision of the State or combination of
38 political subdivisions, and any independent authority, commission,
39 instrumentality or agency created by a political subdivision or
40 combination of political subdivisions. The term shall also include a
41 school district, special district, an educational information resource
42 center established pursuant to P.L.1983, c.186 (C.18A:6-95.1 et
43 seq.), or charter school, quasi-governmental agency, or public
44 employee. The term shall also mean and include, by way of
45 example but not limitation, the following, and any substantially
46 similar successor organization or association thereof: the New
47 Jersey State League of Municipalities, the New Jersey Association
48 of Counties, the New Jersey School Boards Association, and the

1 New Jersey State Interscholastic Athletic Association, a joint
2 insurance group or fund for political subdivisions of this State, and
3 bi-State agencies. The term shall not mean a volunteer fire
4 company or a volunteer fire department established pursuant to
5 N.J.S.40A:14-68, or a volunteer first aid, rescue or ambulance
6 squad as defined in section 3 of P.L.1987, c.284 (C.27:5F-20).

7 “Quasi-governmental agency” means any association,
8 commission, agency, authority, organization, public-private entity,
9 or any other entity, in which one or more public agencies exercise
10 substantial control, or as determined by the Government Records
11 Council or a court of law, by considering factors including but not
12 limited to: whether a public agency exercises control over the quasi-
13 government agency or the public agency maintains the ability to
14 review, approve, or reject the quasi-governmental agency’s
15 proposals or plans, holds a beneficial interest in the quasi-
16 governmental agency’s assets, is the primary source of funding of,
17 or is indebted to, or is a creditor of, or guarantor of the debts of, the
18 quasi-governmental agency. The term shall not include any entity
19 involving the Legislature or any organization organized under
20 paragraph (3) of subsection (c) of section 501 of the federal Internal
21 Revenue Code (26 U.S.C.s.501) that was not created by, or with the
22 approval of, a public agency primarily for the purpose of assisting
23 that public agency or any labor organization or any contractor
24 providing goods or services to a public agency except as otherwise
25 provided by this subsection. However, nothing contained herein
26 shall affect the application of P.L.1963, c.73 (C.47:1A-1 et seq.) to
27 entities that otherwise fall within the definition of “public agency.”
28 The term shall not mean a volunteer fire company or a volunteer
29 fire department established pursuant to N.J.S.40A:14-68, or a
30 volunteer first aid, rescue or ambulance squad as defined in section
31 3 of P.L.1987, c.284 (C.27:5F-20).

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

37 “Law enforcement agency” means a public agency, or part
38 thereof, determined by the Attorney General to have law
39 enforcement responsibilities.

40 “Constituent” means any State resident or other person
41 communicating with a member of the Legislature.

42 “Member of the Legislature” means any person elected or
43 selected to serve in the New Jersey Senate or General Assembly.

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

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

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

10 "Victims' rights agency" means a public agency, or part thereof,
11 the primary responsibility of which is providing services, including
12 but not limited to food, shelter, or clothing, medical, psychiatric,
13 psychological or legal services or referrals, information and referral
14 services, counseling and support services, or financial services to
15 victims of crimes, including victims of sexual assault, domestic
16 violence, violent crime, child endangerment, child abuse or child
17 neglect, and the Victims of Crime Compensation Board, established
18 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
19 the Victims of Crime Compensation Office pursuant to P.L.2007,
20 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
21 (cf: P.L.2017, c.266, s.4)
22

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

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

43 b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-
44 1 et seq.), as amended and supplemented, records containing the
45 following information concerning a criminal investigation shall be
46 available to the public within 24 hours or as soon as practicable, of
47 a request for such information:

1 where a crime has been reported but no arrest yet made,
2 information as to the type of crime, time, location and type of
3 weapon, if any;
4 if an arrest has been made, information as to the name, address
5 and age of any victims unless there has not been sufficient
6 opportunity for notification of next of kin of any victims of injury
7 and/or death to any such victim or where the release of the names of
8 any victim would be contrary to existing law or court rule. In
9 deciding on the release of information as to the identity of a victim,
10 the safety of the victim and the victim's family, and the integrity of
11 any ongoing investigation, shall be considered;
12 if an arrest has been made, information as to the defendant's
13 name, age, residence, occupation, marital status and similar
14 background information and, the identity of the complaining party
15 unless the release of such information is contrary to existing law or
16 court rule;
17 information as to the text of any charges such as the complaint,
18 accusation and indictment unless sealed by the court or unless the
19 release of such information is contrary to existing law or court rule;
20 information as to the identity of the investigating and arresting
21 personnel and agency and the length of the investigation;
22 information of the circumstances immediately surrounding the
23 arrest, including but not limited to the time and place of the arrest,
24 resistance, if any, pursuit, possession and nature and use of
25 weapons and ammunition by the suspect and by the police; and
26 information as to circumstances surrounding bail, whether it was
27 posted and the amount thereof.
28 Notwithstanding any other provision of this subsection, if the
29 custodian of a government record asserts that part of a particular
30 record is exempt from public access pursuant to P.L.1963, c.73
31 (C.47:1A-1 et seq.), as amended and supplemented, the custodian
32 shall redact from a copy of the record that portion which the
33 custodian asserts is exempt from access and shall promptly permit
34 access to the remainder of the record. If the custodian of a
35 government record redacts information from a copy of the record,
36 the custodian shall provide the requestor with a redacted version of
37 the document and one written statement for the entire request that
38 states the date of the record, the originator or author of the record,
39 the subject matter or title of the record, the number of pages with
40 redactions, and the specific statutory provision or other lawful basis
41 for each such redaction. The custodian shall redact any such
42 information by deleting or obscuring only that information and shall
43 not alter in any manner the space in the government record formerly
44 occupied by such redacted information. This provision shall only
45 apply to documents redacted on or after the effective date of P.L. __, c.
46 (pending before the Legislature as this bill).
47 Notwithstanding any other provision of this subsection, where it
48 shall appear that the information requested or to be examined will

1 jeopardize the safety of any person or jeopardize any investigation
2 in progress or may be otherwise inappropriate to release, such
3 information may be withheld. This exception shall be narrowly
4 construed to prevent disclosure of information that would be
5 harmful to a bona fide law enforcement purpose or the public
6 safety. Whenever a law enforcement official determines that it is
7 necessary to withhold information, the official shall issue a brief
8 statement explaining the decision.

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

10
11 5. Section 6 of P.L.2001, c.404 (C.47:1A-5) is amended to read
12 as follows:

13 6. a. The custodian of a government record shall permit the
14 record to be inspected, examined, and copied by any person during
15 regular business hours; or in the case of a municipality having a
16 population of 5,000 or fewer according to the most recent federal
17 decennial census, a board of education having a total district
18 enrollment of 500 or fewer, or a public authority having less than
19 \$10 million in assets, during not less than six regular business hours
20 over not less than three business days per week or the entity's
21 regularly-scheduled business hours, whichever is less; unless a
22 government record is exempt from public access by: P.L.1963, c.73
23 (C.47:1A-1 et seq.) as amended and supplemented; any other
24 statute; resolution of either or both houses of the Legislature;
25 regulation promulgated under the authority of any statute or
26 Executive Order of the Governor; Executive Order of the Governor;
27 Rules of Court; any federal law; federal regulation; or federal order.
28 Prior to allowing access to any government record, the custodian
29 thereof shall redact from that record any information which
30 discloses the social security number, credit card number, personal
31 debit card number, personal bank account information, month and
32 day of birth, unlisted telephone number, or driver license number of
33 any person; except for use by any government agency, including
34 any court or law enforcement agency, in carrying out its functions,
35 or any private person or entity acting on behalf thereof, or any
36 private person or entity seeking to enforce payment of court-ordered
37 child support; except with respect to the disclosure of driver
38 information by the New Jersey Motor Vehicle Commission as
39 permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4) or the
40 disclosure of driver information to any insurer or insurance support
41 organization, or a self-insured entity, or its agents, employees, or
42 contractors, for use in connection with claims investigation
43 activities, antifraud activities, rating or underwriting; and except
44 that a social security number contained in a record required by law
45 to be made, maintained or kept on file by a public agency shall be
46 disclosed when access to the document or disclosure of that
47 information is not otherwise prohibited by State or federal law,
48 regulation or order or by State statute, resolution of either or both

1 houses of the Legislature, Executive Order of the Governor, rule of
2 court or regulation promulgated under the authority of any statute or
3 executive order of the Governor. Except where an agency can
4 demonstrate an emergent need, a regulation that limits access to
5 government records shall not be retroactive in effect or applied to
6 deny a request for access to a government record that is pending
7 before the agency, the council or a court at the time of the adoption
8 of the regulation.

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

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

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

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

45 (3) If a public agency maintains the record in an electronic
46 format or medium that can be electronically mailed without charge
47 to the requestor, and unless the requestor has requested the record
48 be provided in the form of printed matter, the public agency may

1 make the requestor aware of the electronic availability of the record
2 and may allow for delivery of the record in such electronic format
3 or medium. Upon transmission of such notification, the requestor
4 shall have seven business days to respond to the custodian,
5 otherwise the request is deemed fulfilled. A requestor who requests
6 the duplication of a government record in the form of printed matter
7 after being apprised of its existence in an electronic format or
8 medium may be charged a special service charge as provided in
9 subsection c. of this section.

10 When a requestor has not specified his or her chosen method for
11 receipt of records and if the government record is on the public
12 agency website, the custodian shall advise the requestor to obtain
13 the record from the agency website as long as the custodian
14 provides the website address, identifies each responsive document
15 and the specific location on the website of each identified
16 responsive document. If the requestor prefers to purchase copies
17 from the public agency, he or she shall be permitted to purchase
18 such copies from the records custodian, in accordance with the
19 provisions of this act, P.L.1963, c.73 (C.47:1A-1 et seq.) and may
20 be charged a special service charge as provided in subsection c. of
21 this section. The requestor shall have seven business days to
22 respond to the custodian specifying that he or she prefers to
23 purchase the copies, otherwise the request may be deemed fulfilled.

24 c. Whenever the nature, format, medium, manner of collation,
25 or volume of a government record embodied in the form of printed
26 matter to be inspected, examined, or copied pursuant to this section
27 is such that the record cannot be reproduced by ordinary document
28 copying equipment in ordinary business size or involves an
29 extraordinary expenditure of time and effort to accommodate the
30 request, or whenever a requestor requests duplication in printed
31 form of a record maintained in an electronic format or on an
32 agency's website as provided in paragraph (3) of subsection b. of
33 this section, the public agency may charge, in addition to the actual
34 cost of duplicating the record, a special service charge [that]. A
35 special service charge shall be reasonable and shall be based upon
36 the actual, direct cost of providing the copy or copies [; provided,
37 however, that]. Special service charge rates, in the case of a
38 municipality, [rates] for the duplication of particular records when
39 the actual cost of copying exceeds the foregoing rates shall be
40 established in advance by ordinance. When a request is for a
41 commercial purpose, the public agency may charge, in addition to
42 the actual cost of duplicating the record, a special administrative
43 charge. A special administrative charge shall be reasonable and
44 related to ongoing operational expenses, and shall be for
45 expenditures eligible for inclusion in the special administrative
46 charge based upon the criteria and parameters set forth by the
47 Government Records Council.

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

17 d. A custodian shall permit access to a government record and
18 provide a copy thereof in the medium or format requested if the
19 public agency maintains the record in that medium or format. If the
20 public agency does not maintain the record in the medium or format
21 requested, the custodian shall either convert the record to the
22 medium or format requested or provide a copy in some other
23 meaningful medium or format. If a request is for a record: (1) in a
24 medium or format not routinely used by the agency; (2) not
25 routinely developed or maintained by an agency; or (3) requiring a
26 substantial amount of manipulation or programming of information
27 technology, the agency may charge, in addition to the actual cost of
28 duplication, a special charge that shall be reasonable and shall be
29 based on the cost for any extensive use of information technology,
30 or for the labor cost of personnel providing the service, that is
31 actually incurred by the agency or attributable to the agency for the
32 programming, clerical, and supervisory assistance required, or both.

33 e. Immediate access ordinarily shall be granted to budgets,
34 bills, vouchers, contracts, including collective negotiations
35 agreements and individual employment contracts, and public
36 employee salary and overtime information for the current, prior, and
37 upcoming fiscal year. Immediate access shall mean by the close of
38 business or 5 P.M., whichever is earlier, unless otherwise provided
39 by law or regulation. If the request is received at noon or if
40 received after noon, the request shall be fulfilled by noon the
41 following day, unless otherwise provided by law or regulation.

42 f. The custodian of a public agency shall adopt a form for the
43 use of any person who requests access to a government record held
44 or controlled by the public agency. The form shall provide space
45 for the name, address, and **【phone】** telephone number of the
46 requestor and a brief description of the government record sought.
47 The form shall also include space for a requestor to certify that the
48 information will be used for a commercial purpose. The form shall

1 include space for the custodian to indicate which record will be
2 made available, when the record will be available, and the fees to be
3 charged. The form shall also include the following: (1) specific
4 directions and procedures for requesting a record; (2) a statement as
5 to whether prepayment of fees or a deposit is required; (3) the time
6 period within which the public agency is required by P.L.1963, c.73
7 (C.47:1A-1 et seq.) as amended and supplemented, to make the
8 record available; (4) a statement of the requestor's right to challenge
9 a decision by the public agency to deny access and the procedure
10 for filing an appeal; (5) space for the custodian to list reasons if a
11 request is denied in whole or in part; (6) space for the requestor to
12 sign and date the form; (7) space for the custodian to sign and date
13 the form if the request is fulfilled or denied. The custodian may
14 require a deposit against costs for reproducing documents sought
15 through an anonymous request whenever the custodian anticipates
16 that the information thus requested will cost in excess of \$5 to
17 reproduce.

18 If a request for a government record is made in writing on a
19 document other than the form adopted by the public agency and the
20 request contains the requisite information prescribed in this
21 subsection, the custodian shall treat the request as if made on the
22 form adopted by the public agency. The document shall also
23 indicate and provide criminal background information, similar to
24 what is required on an adopted government record request form.

25 A response on any form providing criminal background
26 information on the requestor, whether in the affirmative or negative,
27 shall be confidential and shall be redacted prior to disclosure of any
28 such request. If a requestor does not provide criminal background
29 information, the custodian shall attempt to contact the requestor to
30 obtain such information, and shall not deny the request for failure to
31 provide such information unless attempts are made by the custodian
32 to obtain such information and the requestor refuses or cannot be
33 contacted.

34 g. A request for access to a government record shall be in
35 writing and hand-delivered, mailed, transmitted electronically,
36 including by electronic mail, transmitted by facsimile when no more
37 than four pages in length, or otherwise conveyed to the appropriate
38 custodian. A request that is intended for a commercial purpose shall
39 be certified to that fact in the request. The public agency may
40 require a requestor to state whether the requested records are for a
41 commercial purpose, but the agency shall not require the requestor
42 to provide the exact purpose of the commercial use.

43 A custodian shall promptly comply with a request to inspect,
44 examine, copy, or provide a copy of a government record. If a
45 record is missing or damaged, or the custodian is unable to comply
46 with or denies a request for access, the custodian shall indicate the
47 specific basis therefor [on the request form] and promptly [return
48 it] transmit a written statement specifying the foregoing to the

1 requestor. The custodian shall sign and date the statement and
2 provide the requestor with a copy thereof. If the custodian of a
3 government record asserts that part of a particular record is exempt
4 from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)
5 as amended and supplemented, the custodian shall delete or excise
6 from a copy of the record that portion which the custodian asserts is
7 exempt from access and shall promptly permit access to the
8 remainder of the record.

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

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

30 h. Any officer or employee of a public agency who receives a
31 request for access to a government record shall forward the request
32 to the custodian or deputy custodian, as appropriate, of the record or
33 direct the requestor to the custodian or deputy custodian, as
34 appropriate, of the record.

35 In the case of a municipality, the governing body thereof may
36 designate or appoint one or more deputy custodians who shall act
37 on the custodian's behalf for any request for access to a record in
38 the custody of the deputy custodian's particular office or unit and
39 make the record available for inspection, examination, electronic
40 transmission, copying, or the purchase of copies as set forth herein.
41 Such designation or appointment shall confer to the deputy
42 custodian the responsibility accorded to records custodians under
43 P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented,
44 for each such request.

45 i. Unless a shorter time period is otherwise provided by
46 statute, regulation, or executive order, a custodian of a government
47 record shall grant access to a government record or deny a request
48 for access to a government record as soon as possible, but not later

1 than seven business days after receiving the request, beginning with
2 the business day after which the request was received by the records
3 custodian, provided that the record is currently available and not in
4 storage or archived. In the event a custodian fails to respond within
5 seven business days after receiving a request, the failure to respond
6 shall be deemed a denial of the request, unless the requestor has
7 elected not to provide a name, address or telephone number, or
8 other means of contacting the requestor. If the requestor has elected
9 not to provide a name, address, or telephone number, or other
10 means of contacting the requestor, the custodian shall not be
11 required to respond until the requestor reappears before the
12 custodian seeking a response to the original request. If the
13 government record is in storage or archived, the requestor shall be
14 so advised within seven business days after the custodian receives
15 the request. The requestor shall be advised by the custodian when
16 the record can be made available. If the record is not made
17 available by that time, access shall be deemed denied.

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

25 The custodian of a public agency that has a website shall, at a
26 minimum, prominently post on the website the name, mailing
27 address, electronic mailing address, telephone number, and
28 facsimile number for the custodian of records as well as a statement
29 that information submitted to the agency, including home addresses,
30 may be considered a government record and available for public
31 review.

32 k. The files maintained by the Office of the Public Defender
33 that relate to the handling of any case shall be considered
34 confidential and shall not be open to inspection by any person
35 unless authorized by law, court order, or the State Public Defender.

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

39 Public agencies shall notify the public that the information
40 provided on official forms may be disclosed unless it is otherwise
41 exempt by law.

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

43
44 6. Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read
45 as follows:

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

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

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

18 The right to institute any proceeding under this section shall be
19 solely that of the requestor. Any such proceeding shall proceed in a
20 summary or expedited manner. The public agency shall have the
21 burden of proving that the denial of access is authorized by law. If
22 it is determined that access has been improperly denied, the court or
23 agency head shall order that access be allowed. A requestor who
24 prevails in any proceeding shall be entitled to a reasonable
25 attorney's fee award. However, in actions involving a record
26 required by law to be made, maintained or kept on file and that does
27 not exist at the time of the request, the prevailing requestor shall not
28 be entitled to an attorney's fee award if both: (1) the failure to
29 make, maintain, or keep the record is due to mere negligence or no
30 fault on the part of the public agency; and (2) the requestor was
31 informed in a written statement by the records custodian pursuant to
32 subsections g. and i. of section 6 of P.L.2001, c.404 (C.47:1A-5)
33 that the record does not exist or no longer exists, the specific efforts
34 taken to obtain the record and why the record could not be
35 produced. Under appropriate circumstances, the rules of court and
36 section 1 of P.L.1988, c.46 (C.2A:15-59.1), shall apply for frivolous
37 causes of action.

38 (cf: P.L.2001, c.404, s.7)

39
40 7. Section 8 of P.L.2001, c.404 (C.47:1A-7) is amended to read
41 as follows:

42 8. a. There is established in, but not of, the Department of
43 Community Affairs a Government Records Council. The council
44 shall consist of : **【**the Commissioner of Community Affairs or the
45 commissioner's designee, the Commissioner of Education or the
46 commissioner's designee, and three**】** two public members appointed
47 by the Governor, with the advice and consent of the Senate, **【**not
48 more than two of whom**】** who shall not be of the same political

1 party, one of whom shall have experience with the news media and
2 one of whom shall have experience with State government as a
3 public records custodian; and five members appointed by the
4 Governor, one upon the recommendation of the Senate President,
5 one upon the recommendation of the Speaker of the General
6 Assembly, one upon the recommendation of the Municipal Clerks'
7 Association of New Jersey, and one upon the recommendation of
8 the New Jersey Press Association, no more than three of whom
9 shall be of the same political party. The [three public] members
10 appointed by the Governor shall serve [during the term of the
11 Governor making the appointment and] until the appointment of a
12 successor. [A public member shall not hold any other] Upon the
13 effective date of P.L. , c. (C.) (pending before the
14 Legislature as this bill), two members shall serve for a term of four
15 years, two members shall serve for a term of three years, three
16 members shall serve for a term of two years. No member while
17 serving shall be an officer with the New Jersey Press Association,
18 the New Jersey State League of Municipalities, the Municipal
19 Clerks' Association of New Jersey, or a substantially similar
20 organization.

21 No member while serving as a member of the council shall be
22 able to hold a State or local elected or appointed office or
23 employment [while serving as a member of the council] unless it
24 relates to the experience required for serving as a member of the
25 council. A [public] member shall not receive a salary for service
26 on the council but shall be reimbursed for reasonable and necessary
27 expenses associated with serving on the council and may receive
28 such per diem payment as may be provided in the annual
29 appropriations act. A member may be removed by the Governor
30 only for cause upon notice and opportunity to be heard. Vacancies
31 among the [public] members shall be filled in the same manner in
32 which the original appointment was made. [The members of the
33 council shall choose one of the public members to serve as the
34 council's chair] The Governor shall appoint one of the seven
35 members to serve as the chair of the council, and, once appointed,
36 that member shall serve on the council and be chair of the council
37 from the date of appointment until the end of the term of office of
38 the member or until a successor is appointed and qualified. The
39 chair may be removed by the Governor only for cause upon notice
40 and opportunity to be heard. The council may employ an executive
41 director and such professional and clerical staff as it deems
42 necessary and may call upon the Department of Community Affairs
43 for such assistance as it deems necessary and may be available to it.
44 The terms of the members serving on the effective date of P.L. ,
45 c. (C.) (pending before the Legislature as this bill) are
46 terminated as of that effective date.

47 b. The Government Records Council shall:

1 **【establish an informal mediation program to facilitate the**
2 **resolution of disputes regarding access to government records;】**

3 establish an informal mediation program to facilitate the
4 resolution of disputes regarding access to government records;

5 receive, hear, review and adjudicate a complaint filed by any
6 person concerning a denial of access to a government record by a
7 records custodian;

8 render a decision on all disputes and complaints within 150
9 calendar days of the filing of the complaint;

10 issue advisory opinions, on its own initiative, as to whether a
11 particular type of record is a government record which is accessible
12 to the public;

13 prepare guidelines and an informational pamphlet for use by
14 records custodians in complying with the law governing access to
15 public records;

16 prepare an informational pamphlet explaining the public's right
17 of access to government records and the methods for resolving
18 disputes regarding access, which records custodians shall make
19 available to persons requesting access to a government record;

20 prepare lists for use by records custodians of the types of records
21 in the possession of public agencies which are government records;

22 make training opportunities available for records custodians and
23 other public officers and employees which explain the law
24 governing access to public records; **【and】**

25 post the recommendations that the Government Records Council
26 will consider for each case online twenty-four hours before the
27 meeting, to the extent known;

28 have paper copies available at the meeting at which the case will
29 be heard, with any changes or additions that were not present when
30 the information was posted online; and

31 operate an informational website and a toll-free helpline staffed
32 by knowledgeable employees of the council during regular business
33 hours which shall enable any person, including records custodians,
34 to call for information regarding the law governing access to public
35 records and allow any person to request mediation or to file a
36 complaint with the council when access has been denied;

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

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

1 d. Upon receipt of a written complaint signed by any person
2 alleging that a custodian of a government record has improperly
3 denied that person access to a government record, the council shall
4 offer the parties the opportunity to resolve the dispute through
5 mediation. Mediation shall enable a person who has been denied
6 access to a government record and the custodian who denied or
7 failed to provide access thereto to attempt to mediate the dispute
8 through a process whereby a neutral mediator **【**, who shall be
9 trained in mediation selected by the council,**】** , who shall be trained
10 in mediation selected by the council, acts to encourage and facilitate
11 the resolution of the dispute. **【**Mediation shall be an informal,
12 nonadversarial process having the objective of helping the parties
13 reach a mutually acceptable, voluntary agreement. The mediator
14 shall assist the parties in identifying issues, foster joint problem
15 solving, and explore settlement alternatives.**】** Mediation shall be an
16 informal, nonadversarial process having the objective of helping the
17 parties reach a mutually acceptable, voluntary agreement. The
18 mediator shall assist the parties in identifying issues, foster joint
19 problem solving, and explore settlement alternatives.

20 e. If any party declines mediation or if mediation fails to
21 resolve the matter to the satisfaction of all parties, the council shall
22 initiate an investigation concerning the facts and circumstances set
23 forth in the complaint. The council shall make a determination as
24 to whether the complaint is within its jurisdiction or frivolous or
25 without any reasonable factual basis. If the council shall conclude
26 that the complaint is outside its jurisdiction, frivolous or without
27 factual basis, it shall reduce that conclusion to writing and transmit
28 a copy thereof to the complainant and to the records custodian
29 against whom the complaint was filed. Otherwise, the council shall
30 notify the records custodian against whom the complaint was filed
31 of the nature of the complaint and the facts and circumstances set
32 forth therein. The custodian shall have **【the】** an opportunity to
33 **【present】** answer the complaint by presenting the board with a
34 signed and dated affidavit containing the same information provided
35 to the complainant pursuant to subsection a. of section 6 of
36 P.L.2001, c.404 (C.47:1A-5), if applicable, and any other statement
37 or information concerning the complaint which the custodian
38 wishes. The complainant shall have an opportunity to offer a brief
39 reply affidavit that addresses any claims or defenses in the
40 custodian's answer. The complainant shall not set forth therein any
41 new allegations that do not address the custodian's claims or
42 defense. If the council is able to make a determination as to a
43 record's accessibility based upon the complaint **【and】** , the
44 custodian's **【response thereto】** answer, and the complainant's reply,
45 it shall reduce that conclusion to writing and transmit a copy thereof
46 to the complainant and to the records custodian against whom the
47 complaint was filed. If the council is unable to make a

1 determination as to a record's accessibility based upon the
2 complaint **【and】** , the custodian's **【response thereto】** answer, and
3 the complainant's reply, the council shall conduct a hearing on the
4 matter in conformity with the rules and regulations provided for
5 hearings by a State agency in contested cases under the
6 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
7 seq.), insofar as they may be applicable and practicable. The
8 council shall, by a majority vote of its members, render a decision
9 as to whether the record which is the subject of the complaint is a
10 government record which must be made available for public access
11 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
12 supplemented. If the council determines, by a majority vote of its
13 members, that a custodian has **【knowingly and willfully】**
14 knowingly and willfully denied access or has been grossly
15 negligent, as defined by section 12 of P.L.2001, c.404 (C.47:1A-
16 11), and violated P.L.1963, c.73 (C.47:1A-1 et seq.), as amended
17 and supplemented, and is found to have unreasonably denied access
18 under the totality of the circumstances, the council may impose the
19 penalties provided for in section 12 of P.L.2001, c.404 (C.47:1A-
20 11). A decision of the council may be appealed to the **【Appellate**
21 **Division of the】** Appellate Division of the Superior Court. A
22 decision of the council shall not have value as a precedent for any
23 case initiated in Superior Court pursuant to section 7 of P.L.2001,
24 c.404 (C.47:1A-6). All proceedings of the council pursuant to this
25 subsection shall be conducted as expeditiously as possible.

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

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

36 h. The council shall make available on its website a searchable
37 index of its opinions, which index shall indicate, to the extent
38 possible, whether or not an opinion has been superseded by statute
39 or invalidated by a court of competent jurisdiction.

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

41
42 8. Section 11 of P.L.2001, c.404 (C.47:1A-10) is amended to
43 read as follows:

44 11. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-
45 1 et seq.) or any other law to the contrary, the personnel or pension
46 records of any individual in the possession of a public agency,
47 including but not limited to records relating to any grievance filed
48 by or against an individual, shall not be considered a government

1 record and shall not be made available for public access, except
2 that:

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

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

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

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

41 factual or statistical data **[contained in information]** which
42 disclose conformity with specific experiential, educational or
43 medical qualifications required for government employment or for
44 receipt of a public pension, but not including any detailed medical
45 or psychological information, shall be a government record.

46 Nothing in this section exempts disclosure of disciplinary
47 records otherwise required by law to be disclosed or made public.

48 (cf: P.L.2001, c.404, s.11)

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

3 12. A public official, officer, employee or custodian who
4 **【knowingly and willfully】** violates P.L.1963, c.73 (C.47:1A-1 et
5 seq.), as amended and supplemented, and is found **【to have**
6 **unreasonably】** grossly negligent by having denied access or is
7 found to have knowingly and willfully denied access under the
8 totality of the circumstances, shall be subject to a civil penalty of
9 \$1,000 for an initial violation, \$2,500 for a second violation that
10 occurs within 10 years of an initial violation, and \$5,000 for a third
11 violation that occurs within 10 years of an initial violation. No
12 public official, officer, employee or custodian shall be subject to a
13 civil penalty for any unavailable record that is required by law to be
14 made, maintained or kept on file unless the unavailability of the
15 record is a result of the knowing and willful actions or gross
16 negligence of such person.

17 A requestor who is found to have intentionally failed to certify
18 that a records request is for commercial purposes shall be subject to
19 a civil penalty of \$500 for the first offense, \$1,000 for the second
20 offense, and \$2,000 for each subsequent offense.

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

30 **【This penalty】** These penalties shall be collected and enforced in
31 proceedings in accordance with the "Penalty Enforcement Law of
32 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court
33 governing actions for the collection of civil penalties. The Superior
34 Court shall have jurisdiction of proceedings for the collection and
35 enforcement of the penalty imposed by this section.

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

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

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

45
46 10. Section 14 of P.L.2001, c.404 (C.47:1A-13) is amended to
47 read as follows:

1 14. The Commissioner of Community Affairs shall include in
2 the annual budget request of the Department of Community Affairs
3 **【a】** the request submitted by the Government Records Council for
4 sufficient funds to effectuate the purposes of section 8 of P.L.2001,
5 c.404 (C.47:1A-7).
6 (cf: P.L.2001, c.404, s.14)
7

8 11. (New section) Any authority contained herein to exempt
9 records from public access by regulation or Executive Order of the
10 Governor shall be expressly limited to the designation of specific
11 records that are exempt from access pursuant to any exemptions set
12 forth in this act, P.L.1963, c.73 (C.47:1A-1 et seq.), and shall not be
13 construed as a grant or delegation of authority to exempt records
14 from public access not otherwise exempt by the provisions this act.
15

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

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

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

14
15 13. Section 4 of P.L.2017, c.2 (C.52:18A-234.4) is amended to
16 read as follows:

17 4. a. A Chief Data Officer shall be appointed by the Chief
18 Technology Officer, after consultation with the State Treasurer.
19 The Chief Data Officer, in cooperation with the State Treasurer,
20 shall be responsible for overseeing and implementing a unique,
21 dedicated open data website and any additional or existing open
22 data websites linked thereto by an agency. The Chief Data Officer
23 shall have the authority to:

24 (1) establish, in consultation with the Attorney General,
25 procedures, standards, and best practices regarding the appropriate
26 access and presentation of open data and datasets by each agency;

27 (2) develop a dataset format standard to be used by all agencies
28 in providing their datasets to the Chief Data Officer, or in making
29 their data available on their own websites, and ensure that under the
30 standard, the datasets shall be accessible in a non-proprietary,
31 machine-readable format that is compliant with federal and State
32 accessibility rules and requirements and implemented on a schedule
33 deemed appropriate by the Chief Data Officer;

34 (3) monitor and ensure compliance with the procedures,
35 standards, and policies adopted pursuant to this act;

36 (4) provide such management and technical assistance as the
37 Chief Data Officer deems necessary to ensure that there is ready
38 access to the open data and datasets available to the public and
39 agencies; and

40 (5) develop, in conjunction with the Attorney General, a
41 methodology to review and reconcile inter-agency disputes
42 regarding access to open data and datasets, and privacy issues.

43 b. The Chief Data Officer, with the cooperation of the State
44 Treasurer, shall be responsible for:

45 (1) creating and maintaining a unique, dedicated website that
46 either provides datasets maintained and provided by agencies or
47 searchable links to datasets hosted by agency websites;

1 (2) updating datasets and links as they are provided by an
2 agency; and

3 (3) monitoring agency websites to make certain they follow the
4 policies and procedures established by the Chief Data Officer
5 pursuant to this section.

6 c. (1) The open data website shall include data or information
7 concerning each of the following, which may be periodically
8 updated, but shall not be subject to removal, and which shall be
9 required of agencies, as that term is defined in section 3. of
10 P.L.2017, c.2 (C.52:18A-234.3), and of the Legislature of the State
11 and any office, board, bureau, or commission within or created by
12 the Legislative Branch of State Government; the Judiciary of the
13 State and any office, board, bureau, or commission within or
14 created by the Judicial Branch of State Government; and any
15 independent State authority, commission, instrumentality, or
16 agency:

17 annual agency expenditures, as determined by the State
18 Treasurer and as may be available within the central accounting
19 system and State payroll system, which shall include but not be
20 limited to: disbursements by an agency from funds established
21 within the State treasury; bond debt services, including amounts of
22 bond debt or interest paid and sources of funds for bond issues;
23 salaries and wages including, compensation paid to employees of
24 State agencies, including current contracts under which
25 compensation is determined; contractual service purchases,
26 including amounts paid to vendors; commodity purchases, including
27 amounts paid to vendors; capital outlay and improvements,
28 including amounts paid to vendors; aid to local units of government,
29 including amounts paid to individual units of local government for
30 aid programs; additional forms of assistance and benefits as
31 determined by the State Treasurer; and the exact amount of each
32 such expenditure and the name and address of each individual,
33 organization, business or other entity receiving such monies;

34 annual State revenues, as determined by the State Treasurer and
35 as may be available within the central accounting system, which
36 shall include but not be limited to: receipts and deposits by an
37 agency into funds established within the State treasury; taxes,
38 including any tax which is payable to or collectible by the Director
39 of the Division of Taxation in the Department of the Treasury;
40 agency earnings, including amounts collected by each agency for
41 merchandise sold, services performed, and licenses and permits
42 issued; revenue derived from the use of money and property,
43 including amounts received for compensation for the use of State-
44 owned money and property; gifts, donations, and federal grants,
45 including amounts received from public and private entities to aid
46 in support of a specific function or other governmental activity;
47 other revenue, including receipts not classified elsewhere; and non-

1 revenue receipts, including all receipts that do not constitute
2 revenue;

3 annual State bonded indebtedness, as determined by the State
4 Treasurer and as may be available within the central accounting
5 system, which shall include but not be limited to: the amount of the
6 total original obligation stated in terms of principal and interest; the
7 term of the obligation; the source of funding for repayment of the
8 obligation; the amount of principal and interest previously paid to
9 reduce the obligation; the remaining balance of the obligation; data
10 or information related to refinancing of the obligation; the cited
11 statutory or constitutional authority to issue such bonds; the specific
12 names of firms or individuals serving as bond counsel; and the
13 names of the banks assisting in the sale of bonds;

14 annual State liabilities for pension and post-retirement medical
15 benefits, as determined by the State Treasurer and as may be
16 available within the central accounting system; and

17 any other data or information determined to be necessary and
18 appropriated by the State Treasurer.

19 (2) The data and information required to be posted on the
20 Internet website that is based on or otherwise derived from data or
21 information made available from the central accounting system or
22 the State payroll system shall be made available on the open data
23 website as soon as practicable, but not later than 45 days after the
24 last day of the preceding State fiscal year. Data or information of
25 the kind that is not available in such systems on the effective date of
26 P.L. , c. (C.) (pending before the Legislature as this bill)
27 shall not be required to be posted.

28 The Chief Data Officer shall be entitled to receive from each
29 agency any assistance and information the Chief Data Officer
30 determines to be necessary and appropriate to compile the data and
31 information necessary to maintain and operate the open data
32 website.

33 The Chief Data Officer shall not be required to disclose or
34 otherwise make available on the open data website data or
35 information that is determined by the State Treasurer or the
36 Attorney General to be private, personal, or confidential in
37 accordance with State or federal law, rules, or regulations.

38 d. The State Treasurer and an agency may, pursuant to the
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
40 seq.), adopt such rules and regulations as may be deemed necessary
41 to effectuate the purposes of this act.

42 (cf: P.L.2017, c.2, s.4)

43
44 14. (New section) a. There is established the New Jersey Local
45 Public Finance Internet Website Development Program.

46 b. The program shall be under the jurisdiction of the
47 Department of the Treasury, and shall be administered by the State
48 Treasurer, the Chief Technology Officer, and any clerical,

1 technical, and other professional staff or assistants as may be
2 designated by the State Treasurer from among the personnel
3 appointed and employed by the department.

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

35 d. The Office of Information Technology, under the authority
36 of the State Treasurer and in consultation with the Department of
37 Community Affairs, the Government Records Council, a
38 representative from the Municipal Clerks' Association of New
39 Jersey, a representative from the New Jersey Association of
40 Counties, and a representative from the New Jersey League of
41 Municipalities shall develop and maintain a searchable, online
42 database to which units of local government may submit any
43 government record for retention thereon. The list of searchable
44 uploaded records shall be updated regularly.

45 This subsection shall not be construed to affect or supplant any
46 requirement of or any duty incumbent upon a records custodian
47 established pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

- 1 e. To effectuate the purposes of the program, the State
2 Treasurer shall:
- 3 make and publish guidelines that may be used by local units of
4 government to identify best practices in the design of a single,
5 searchable local public finance Internet website;
- 6 procure and make available to local units of government a
7 template and any prewritten or custom computer software that the
8 State Treasurer determines to be necessary and appropriate to
9 develop a single, searchable local public finance Internet website;
10 and
- 11 direct the Chief Technology Officer to provide information
12 technology support and services that may be determined by the
13 Chief Technology Officer to be necessary and appropriate for a
14 local unit of government to maintain and operate a single,
15 searchable local public finance Internet website following its initial
16 design and development.
- 17 f. The State Treasurer shall make an annual report regarding
18 the implementation and administration of the program.
- 19 The report shall identify any guidelines that were made and
20 published by the State Treasurer during the year immediately
21 preceding the year in which the report is required to be made.
- 22 The report shall identify any templates and any prewritten or
23 custom computer software that the State Treasurer determined to be
24 necessary and appropriate to develop a single, searchable local
25 public finance Internet website during the year immediately
26 preceding the year in which the report is required to be made.
- 27 The report shall identify the information technology support and
28 services provided by the Chief Technology Officer and any other
29 clerical, technical, and other professional staff or assistants to each
30 unit of local government that maintains and operates a single,
31 searchable local public finance Internet website during the year
32 immediately preceding the year in which the report is required to be
33 made.
- 34 The report shall identify each local unit of government that used
35 the guidelines, templates and software, or the information
36 technology support and services made available through the
37 program to design and develop, maintain and operate a single,
38 searchable local public finance Internet website during the year
39 immediately preceding the year in which the report is required to be
40 made.
- 41 The report shall include any findings or recommendations that
42 may be made by the State to improve the effectiveness of the
43 program during the year immediately preceding the year in which
44 the report is required to be made.
- 45 The State Treasurer shall file the report required to be made in
46 accordance with this section with the Governor and the Legislature,
47 in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), on
48 or before October 1 of the calendar year beginning January 1 next

1 succeeding the effective date of P.L. , c. (pending before the
2 Legislature as this bill) and on or before October 1 each year
3 thereafter.

4 g. Notwithstanding the provisions of the “Administrative
5 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the
6 contrary, the State Treasurer may adopt immediately upon filing
7 with the Office of Administrative Law such rules and regulations as
8 the State Treasurer determines to be necessary and appropriate to
9 effectuate the purposes of the program established in accordance
10 with this section, which rules and regulations shall be effective for a
11 period not to exceed 360 days following the effective date of
12 P.L. , c. (pending before the Legislature as this bill) and may
13 thereafter be amended, adopted, or readopted by the State Treasurer
14 in accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).

15 h. As used in this section:

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

20 "Local unit of government" includes a county, municipality,
21 local authority, school board, or other local instrumentality of the
22 State and of any public agency or agency as defined by section 1 of
23 P.L.1995, c.23 (C.47:1A-1.1).

24
25 15. (New section) The Office of Information Technology, the
26 Division of Local Government Services in the Department of
27 Community Affairs, and the Government Records Council shall
28 conduct a data practices survey every five years. The purpose of
29 the survey shall be to review the collection, processing, use and
30 dissemination of information by public agencies, in light of the
31 recognized need for open government, with a focus on identifying
32 privacy related issues. The survey results shall include any
33 recommended specific measures, including boundaries for access to
34 government records and legislation, to deal with the issues and
35 safeguard the privacy rights of individuals.

36 The Office of Information Technology shall establish an Office
37 of Privacy in, but not of, the Office of Information of Technology,
38 to assist in identification of privacy related issues and to bring those
39 issues to the attention of those charged with determining the
40 appropriate boundaries for access to government records, including
41 records custodians, the Government Records Council, and the
42 courts.

43
44 16. (New section) a. There is established a commission, to be
45 known as the Open Public Records and Transparency Act Study
46 Commission, to consist of 11 members.

1 The Commissioner of the Department of Community Affairs and
2 the Executive Director of the Government Records Council, or their
3 designees, shall serve as ex-officio members.

4 The Senate President shall appoint three members, no more than
5 two of whom shall be members of the same political party, one of
6 whom shall have experience with the news media, one of whom
7 shall have experience with the powers, functions, or duties of a
8 municipal clerk, and one of whom shall be a member of the general
9 public with an interest in an open and transparent government.

10 The Speaker of the General Assembly shall appoint three
11 members, no more than two of whom shall be members of the same
12 political party, one of whom shall be a member of the New Jersey
13 Press Association, one of whom shall have experience with State
14 government as a government records custodian, and one of whom
15 shall be a member of the general public with experience in State
16 government.

17 Three members shall be appointed by the Governor, no more
18 than two of whom shall be members of the same political party, one
19 of whom shall be a member of the general public interested in an
20 open and transparent government, and two of whom shall be
21 attorneys licensed in the State of New Jersey with knowledge and
22 experience with the law concerning the “Martin O’Shea Open
23 Public Records and Transparency Act,” P.L.1963, c.73 (C.47:1A-1
24 et seq.), one of whom shall have experience as an attorney in
25 matters affecting primarily local governments and one of whom
26 shall have experience as an attorney in matters affecting primarily
27 the State government.

28 A vacancy in the membership of the commission shall be filled
29 in the same manner in which the original appointment was made.

30 The members of the commission shall be appointed within 12
31 months of, and shall hold their initial organizational meeting on the
32 first day of the month occurring 24 months after, the effective date
33 of this act, P.L. , c. (pending before the Legislature as this bill).
34 The members shall elect one of the members to serve as chair and
35 one of the members to serve as vice-chair. The chair may appoint a
36 secretary, who need not be a member of the commission. The
37 members of the commission shall serve without compensation, but
38 shall be eligible for reimbursement for necessary and reasonable
39 expenses incurred in the performance of their official duties within
40 the limits of funds appropriated or otherwise made available to the
41 commission.

42 b. The commission shall meet at the call of the chair, but a
43 meeting of the commission may be called at the request of six of the
44 commission's members. The commission shall hold at least three
45 public hearings in different parts of the State and elicit testimony
46 from the public at such times and places as the chair shall designate.
47 Six members of the commission shall constitute a quorum.

48 c. It shall be the duty of the commission to, at a minimum:

1 (1) review implementation of the changes to the “Martin O’Shea
2 Open Public Records and Transparency Act,” P.L.1963, c.73
3 (C.47:1A-1 et seq.), pursuant to this act, P.L. , c. (pending
4 before the Legislature as this bill), and the results of such
5 implementation; and

6 (2) make recommendations for legislation or such other action
7 as it deems appropriate with regard to improving, expanding, or
8 facilitating the “Martin O’Shea Open Public Records and
9 Transparency Act.”

10 The commission may consider any other issues relating to the
11 “Martin O’Shea Open Public Records and Transparency Act” as the
12 commission may deem appropriate.

13 d. The commission shall be entitled to call to its assistance and
14 avail itself of the services of the employees of any State, county, or
15 municipal department, board, bureau, commission or agency, as it
16 may require and as may be available for its purposes, and to employ
17 clerical assistance and incur traveling and other miscellaneous
18 expenses as may be necessary in order to perform its duties, within
19 the limits of funds appropriated or otherwise made available to the
20 commission.

21 e. The commission shall submit a report containing its findings
22 and recommendations to the Legislature, pursuant to section 2 of
23 P.L.1991, c.164 (C.52:14-19.1), and the Governor within one year
24 of its initial organizational meeting and shall expire 30 days after
25 such submission.

26
27 17. (New section) There is appropriated from the General Fund
28 to the Department of the Treasury such sums as may be necessary,
29 but not to exceed \$100,000, as shall be determined by the Director
30 of the Division of Budget and Accounting in the Department of the
31 Treasury, to effectuate the purposes of the program established in
32 accordance with section 14 of P.L. , c. (C.) (pending before
33 the Legislature as this bill).

34
35 18. (New Section) The Attorney General shall adopt a policy
36 governing the use of any mobile video recording system, as that
37 term is defined in section 1 of P.L.2014, c.54 (C.40A:14-118.1).

38
39 19. This bill shall take effect 180 days following enactment.
40
41

42 STATEMENT

43
44 This bill revises the open public records act (OPRA). The bill
45 formally names OPRA as the “Martin O’Shea Open Public Records
46 Act” in honor of Martin O’Shea, a tireless advocate for broad public
47 access to government records. The bill expands and clarifies various
48 definitions and makes changes to the duties of record custodians and

1 the Government Records Council. It also revises the composition of
2 the Government Records Council and changes the council from being
3 in the Department of Community Affairs to being in, but not of, the
4 Department of Community Affairs. The bill changes certain penalty
5 provisions and modifies access to the courts. It specifies that the fines
6 imposed pursuant to OPRA cannot be paid out of public funds.

7 In addition, the bill requires the State to provide certain State
8 agency financial information on the State's open data website. The bill
9 also establishes the New Jersey Local Public Finance Internet Website
10 Development Program to provide advice and technical assistance to
11 local government units that elect to create a searchable local public
12 finance Internet website. The bill requires the Office of Information
13 Technology to develop and maintain a searchable, online database to
14 which units of local government may submit a government record for
15 retention on that database.