

ASSEMBLY, No. 3433

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Prohibits release of police internal investigation information under State's open public records law.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT prohibiting the public release of police internal
2 investigation records and amending P.L.1963, c.73.

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

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

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

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

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

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

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

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

44 any memorandum, correspondence, notes, report or other
45 communication prepared by, or for, the specific use of a member of

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 the Legislature in the course of the member's official duties, except
2 that this provision shall not apply to an otherwise publicly-
3 accessible report which is required by law to be submitted to the
4 Legislature or its members;

5 any copy, reproduction or facsimile of any photograph, negative
6 or print, including instant photographs and videotapes of the body,
7 or any portion of the body, of a deceased person, taken by or for the
8 medical examiner at the scene of death or in the course of a post
9 mortem examination or autopsy made by or caused to be made by
10 the medical examiner except:

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

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

18 for use in the field of forensic pathology or for use in medical or
19 scientific education or research, or

20 for use by any law enforcement agency in this State or any other
21 state or federal law enforcement agency;

22 criminal investigatory records;

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

25 any written request by a crime victim for a record to which the
26 victim is entitled to access as provided in this section, including,
27 but not limited to, any law enforcement agency report, domestic
28 violence offense report, and temporary or permanent restraining
29 order;

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

34 records directly relating to an ongoing or closed internal affairs
35 investigation of a law enforcement officer's conduct, which shall
36 include personal information identifying a law enforcement officer
37 as being the subject of an internal affairs investigation, personal
38 information identifying any witness to the incident which gave rise
39 to the investigation, internal affairs case files or any other files
40 relating to the internal affairs investigation, records pertaining to
41 the allegations, the complainant, the date a complaint was received,
42 the internal affairs officer assigned to the case, and the disposition
43 or disposition date for each complaint. For the purposes of this
44 paragraph, personal information shall include the name, home and
45 employment addresses, home and employment telephone numbers,
46 home and employment fax numbers, or social media address of the
47 law enforcement officer or witness;

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

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

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

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

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

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

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

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

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

38 information which is to be kept confidential pursuant to court
39 order;

40 any copy of form DD-214, NGB-22, or that form, issued by the
41 United States Government, or any other certificate of honorable
42 discharge, or copy thereof, from active service or the reserves of a
43 branch of the Armed Forces of the United States, or from service in
44 the organized militia of the State, that has been filed by an
45 individual with a public agency, except that a veteran or the
46 veteran's spouse or surviving spouse shall have access to the
47 veteran's own records;

1 any copy of an oath of allegiance, oath of office or any
2 affirmation taken upon assuming the duties of any public office, or
3 that oath or affirmation, taken by a current or former officer or
4 employee in any public office or position in this State or in any
5 county or municipality of this State, including members of the
6 Legislative Branch, Executive Branch, Judicial Branch, and all law
7 enforcement entities, except that the full name, title, and oath date
8 of that person contained therein shall not be deemed confidential;

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

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

30 a list of persons identifying themselves as being in need of
31 special assistance in the event of an emergency maintained by a
32 county for public safety purposes pursuant to section 6 of
33 P.L.2011, c.178 (C.App.A:9-43.13).

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

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

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

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

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

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

17 "Personal firearms record" means any information contained in a
18 background investigation conducted by the chief of police, the
19 county prosecutor, or the Superintendent of State Police, of any
20 applicant for a permit to purchase a handgun, firearms identification
21 card license, or firearms registration; any application for a permit to
22 purchase a handgun, firearms identification card license, or firearms
23 registration; any document reflecting the issuance or denial of a
24 permit to purchase a handgun, firearms identification card license,
25 or firearms registration; and any permit to purchase a handgun,
26 firearms identification card license, or any firearms license,
27 certification, certificate, form of register, or registration statement.
28 For the purposes of this paragraph, information contained in a
29 background investigation shall include, but not be limited to,
30 identity, name, address, social security number, phone number, fax
31 number, driver's license number, email address, social media
32 address of any applicant, licensee, registrant or permit holder.

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

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

4 "Law enforcement officer" means any person who is employed
5 as a permanent full-time member of any State, county, or municipal
6 law enforcement agency, department, or division of those
7 governments who is statutorily empowered to act for the detection,
8 investigation, arrest, conviction, detention, or rehabilitation of
9 persons violating the criminal laws of this State and statutorily
10 required to successfully complete a training course approved by the
11 Police Training Commission pursuant to P.L.1961, c.56 (C.52:17B-
12 66 et seq.), or certified as being substantially equivalent to such an
13 approved course.

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

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

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

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

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

31 "Victims' rights agency" means a public agency, or part thereof,
32 the primary responsibility of which is providing services, including
33 but not limited to food, shelter, or clothing, medical, psychiatric,
34 psychological or legal services or referrals, information and referral
35 services, counseling and support services, or financial services to
36 victims of crimes, including victims of sexual assault, domestic
37 violence, violent crime, child endangerment, child abuse or child
38 neglect, and the Victims of Crime Compensation Board, established
39 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
40 the Victims of Crime Compensation Office pursuant to
41 P.L.2007, c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No.
42 001-2008.

43 (cf: P.L.2019, c.255, s.4)

44
45 2. This act shall take effect immediately.

1 STATEMENT

2

3 This bill amends P.L.1963, c.73 (C.47:1A-1 et seq.), commonly
4 known as the open public records act, to prohibit the release of
5 information pertaining to an ongoing or closed internal affairs
6 investigation of a law enforcement officer’s conduct.

7 Specifically, the bill prohibits the release of personal information
8 identifying a law enforcement officer as being subject to an internal
9 affairs investigation, personal information identifying any witness
10 to the incident which gave rise to the investigation, internal affairs
11 case files or any other files relating to the internal affairs
12 investigation, records pertaining to the allegations, the complainant,
13 the date a complaint was received, the internal affairs officer
14 assigned to the case, and the disposition or disposition date for each
15 complaint. The bill defines personal information as the name, home
16 and employment addresses, home and employment telephone
17 numbers, home and employment fax numbers, or social media
18 address of the law enforcement officer or witness.