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Assemblyman Spearman, Assemblywomen McKnight, Lopez, Assemblymen Freiman, Chiaravalloti, Mejia, Assemblywoman Jimenez, Assemblyman Giblin and Senator Stack

SYNOPSIS
Modifies deadline by which public agency is required to respond to request for government record during period of emergency.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 3/19/2020)
AN ACT concerning the availability of government records during periods of emergency and amending P.L.2001, c.404.

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

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

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

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.
before the agency, the council or a court at the time of the adoption
of the regulation.

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

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

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

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

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

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

g. A request for access to a government record shall be in
writing and hand-delivered, mailed, transmitted electronically, or
otherwise conveyed to the appropriate custodian. A custodian shall
promptly comply with a request to inspect, examine, copy, or
provide a copy of a government record. If the custodian is unable
to comply with a request for access, the custodian shall indicate the
specific basis therefor on the request form and promptly return it to
the requestor. The custodian shall sign and date the form and
provide the requestor with a copy thereof. If the custodian of a
government record asserts that part of a particular record is exempt
from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)
as amended and supplemented, the custodian shall delete or excise
from a copy of the record that portion which the custodian asserts is
exempt from access and shall promptly permit access to the
remainder of the record. If the government record requested is
temporarily unavailable because it is in use or in storage, the
custodian shall so advise the requestor and shall make arrangements
to promptly make available a copy of the record. If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.

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

i. (1) Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived. In the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request, unless the requestor has elected not to provide a name, address or telephone number, or other means of contacting the requestor. If the requestor has elected not to provide a name, address, or telephone number, or other means of contacting the requestor, the custodian shall not be required to respond until the requestor reappears before the custodian seeking a response to the original request. If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives the request. The requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied.

(2) During a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph (1) of this subsection or subsection e. of this section shall not apply, provided, however, that the custodian of a government record shall make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven business days or as soon as possible thereafter.

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

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

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

2. This act shall take effect immediately.

STATEMENT

This bill provides that during a state of emergency, public health emergency, or state of local disaster emergency, a custodian of a government record for a public agency will be required only to make a reasonable effort to respond to a request for a government record within seven business days, or as soon as possible thereafter, as the circumstances permit.

Under current law, a custodian of a government record for a public agency is required to grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived. Failure to respond within seven business days is deemed a denial of the request. A custodian is also required to so notify a requestor within seven business days if a government record is in storage or archived, as well as when the record may be made available. Moreover, access to certain records, such as budgets, bills, vouchers, contracts, and public employee salary information, must be granted immediately.

This bill modifies those deadlines in the event of a public emergency to require instead that a records custodian make a reasonable effort to respond within seven business days, as circumstances permit.