

ASSEMBLY, No. 4491

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED AUGUST 10, 2020

Sponsored by:

Assemblywoman AURA K. DUNN

District 25 (Morris and Somerset)

SYNOPSIS

Removes modified deadline by which public agency is required to respond to request for government record during periods of emergency.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the deadline for a public agency to respond to a
2 request for a government record during periods of emergency,
3 and amending P.L.2001, c.404
4

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

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

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

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 deny a request for access to a government record that is pending
2 before the agency, the council or a court at the time of the adoption
3 of the regulation.

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

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

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

40 d. A custodian shall permit access to a government record and
41 provide a copy thereof in the medium requested if the public agency
42 maintains the record in that medium. If the public agency does not
43 maintain the record in the medium requested, the custodian shall
44 either convert the record to the medium requested or provide a copy
45 in some other meaningful medium. If a request is for a record: (1)
46 in a medium not routinely used by the agency; (2) not routinely
47 developed or maintained by an agency; or (3) requiring a substantial
48 amount of manipulation or programming of information technology,

1 the agency may charge, in addition to the actual cost of duplication,
2 a special charge that shall be reasonable and shall be based on the
3 cost for any extensive use of information technology, or for the
4 labor cost of personnel providing the service, that is actually
5 incurred by the agency or attributable to the agency for the
6 programming, clerical, and supervisory assistance required, or both.

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

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

33 g. A request for access to a government record shall be in
34 writing and hand-delivered, mailed, transmitted electronically, or
35 otherwise conveyed to the appropriate custodian. A custodian shall
36 promptly comply with a request to inspect, examine, copy, or
37 provide a copy of a government record. If the custodian is unable
38 to comply with a request for access, the custodian shall indicate the
39 specific basis therefor on the request form and promptly return it to
40 the requestor. The custodian shall sign and date the form and
41 provide the requestor with a copy thereof. If the custodian of a
42 government record asserts that part of a particular record is exempt
43 from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)
44 as amended and supplemented, the custodian shall delete or excise
45 from a copy of the record that portion which the custodian asserts is
46 exempt from access and shall promptly permit access to the
47 remainder of the record. If the government record requested is
48 temporarily unavailable because it is in use or in storage, the

1 custodian shall so advise the requestor and shall make arrangements
2 to promptly make available a copy of the record. If a request for
3 access to a government record would substantially disrupt agency
4 operations, the custodian may deny access to the record after
5 attempting to reach a reasonable solution with the requestor that
6 accommodates the interests of the requestor and the agency.

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

11 i. **[(1)]** Unless a shorter time period is otherwise provided by
12 statute, regulation, or executive order, a custodian of a government
13 record shall grant access to a government record or deny a request
14 for access to a government record as soon as possible, but not later
15 than seven business days after receiving the request, provided that
16 the record is currently available and not in storage or archived. In
17 the event a custodian fails to respond within seven business days
18 after receiving a request, the failure to respond shall be deemed a
19 denial of the request, unless the requestor has elected not to provide
20 a name, address or telephone number, or other means of contacting
21 the requestor. If the requestor has elected not to provide a name,
22 address, or telephone number, or other means of contacting the
23 requestor, the custodian shall not be required to respond until the
24 requestor reappears before the custodian seeking a response to the
25 original request. If the government record is in storage or archived,
26 the requestor shall be so advised within seven business days after
27 the custodian receives the request. The requestor shall be advised
28 by the custodian when the record can be made available. If the
29 record is not made available by that time, access shall be deemed
30 denied.

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

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

47 k. The files maintained by the Office of the Public Defender
48 that relate to the handling of any case shall be considered

1 confidential and shall not be open to inspection by any person
2 unless authorized by law, court order, or the State Public Defender.
3 (cf: P.L.2020, c.10, s.1)
4

5 2. This act shall take effect immediately.
6
7

8 STATEMENT
9

10 Under the law commonly referred to as the open public records
11 act, the custodian of a government record for a public agency is
12 required to grant access to a government record or deny access to a
13 government record as soon as possible, but not later than seven
14 business days after receiving the request. The law was amended in
15 March 2020 to provide that during a state of emergency, public
16 health emergency, or state of local disaster emergency, the
17 custodian of a government record for a public agency will only be
18 required to make a reasonable effort to respond to a request for a
19 government record within seven business days, or as soon as
20 possible thereafter, as the circumstances permit.

21 This bill removes the modified deadline provided to a custodian
22 of a government record in the event of an emergency. The law was
23 modified to address the effects of COVID-19 on public agencies,
24 such as the shuttering of public agency offices, and the reduction in
25 staff. As the State recovers from the effects of COVID-19 and its
26 public agencies return to normal practices, which may include
27 telework, the modified deadline is no longer necessary, and we
28 should return to the original timeline.