

SENATE, No. 332

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator MARTIN

1 AN ACT concerning access to government records and repealing
2 P.L.1963, c.73 (C.47:1A-1 et seq.).

3

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

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7 1. This act shall be known and may be cited as the "Open Public
8 Records Act."

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10 2. The Legislature finds and declares it to be the public policy of
11 this State that all State, county and municipal records shall be open at
12 all times for inspection, examination and copying by members of the
13 public except where a record is expressly exempted from such access
14 by statute.

15

16 3. As used in this act:

17 "Public agency" or "agency" means any of the principal departments
18 in the Executive Branch of State Government, and any division, board,
19 bureau, office, commission or other instrumentality within or created
20 by such department; the Legislature of the State and any office, board,
21 bureau or commission within or created by the Legislative Branch; and
22 any independent State authority, commission, instrumentality or
23 agency. "Public agency" or "agency" also means any political
24 subdivision of the State or combination of political subdivisions and
25 any division, board, bureau, office, commission or other
26 instrumentality within or created by a political subdivision of the State
27 or combination of political subdivisions and any independent authority,
28 commission, instrumentality or agency created by a political
29 subdivision or combination of political subdivisions.

30 "Government record" or "record" means any information
31 maintained by a public agency in written, audio, video, electronic or
32 other form, but shall not include any written memorial of
33 communications received from or sent to officers or employees of the
34 same public agency or different public agencies in the course of
35 obtaining, providing, or attempting to obtain or provide information,
36 except to the extent that those memorials contain factual information,
37 or any communication covered by a privilege against disclosure under

1 any rule of evidence established by statute or court rule.

2 "Custodian of government records" or "custodian" means the head
3 of a public agency having possession of government records or his
4 designee or the individual having control of the government records.

5 "Criminal intelligence information" means information concerning
6 an identifiable person or group of persons collected by a criminal
7 justice agency in an effort to anticipate, prevent or monitor possible
8 criminal activity.

9 "Active criminal intelligence information" means criminal
10 intelligence information which relates to intelligence gathering
11 conducted with a reasonable belief that it will lead to the detection of
12 criminal activity.

13 "Criminal investigative information" means information concerning
14 an identifiable person or persons compiled by a criminal justice agency
15 in the course of conducting a criminal investigation of a specific act or
16 omission, including, but not limited to, information derived from
17 laboratory tests, reports of investigators or informants, and any type
18 of surveillance, but shall not mean the time, date, location and nature
19 of reported crime; the name, sex, age and address of a person arrested
20 or of the victim of a crime; the time, date and location of the incident
21 and of the arrest; the crime charged; documents given or required by
22 law or agency rule to be given to the person arrested; or information
23 and indictments.

24 "Active criminal investigative information" means criminal
25 investigative information which concerns an ongoing investigation
26 which is continuing with a reasonable, good faith anticipation of
27 securing an arrest or prosecution in the foreseeable future.

28

29 4. a. The custodian of a government record shall permit the record
30 to be inspected, examined and copied by any person at any reasonable
31 time and location consistent with this act. Copies of a government
32 record may be purchased by any person upon payment of the fee
33 prescribed by law or, if a fee is not prescribed by law, upon payment
34 of the actual cost of duplicating the record. The actual cost of
35 duplicating the record shall be the cost of materials and supplies used
36 to make a copy of the record, but shall not include the cost of labor or
37 other overhead expenses associated with making the copy. Except as
38 otherwise provided by statute or regulation, however, in no event shall
39 the fee assessed for the duplication of a government record embodied
40 in the form of printed matter exceed the following: first page to tenth
41 page, \$0.50 per page; eleventh page to twentieth page, \$0.25 per page;
42 all pages over twenty, \$0.10 per page.

43 Prior to January 10 in each calendar year a public agency shall
44 adopt a schedule establishing the actual costs of duplicating records,
45 embodied in the form of printed matter, for which no fee is prescribed
46 by law, which shall be in effect for a period of one year. The fee

1 established for the purchase of copies of county maps or aerial
2 photographs from any county officer whose office is established by the
3 New Jersey Constitution may, however, include a reasonable charge
4 for labor and overhead associated with duplicating a record. Unless
5 otherwise provided by law, any fees payable under this section shall be
6 collected, deposited and accounted for in the manner prescribed for
7 other operating funds of the public agency.

8 b. Whenever the nature, format, manner of collation, or volume of
9 government records embodied in the form of printed matter to be
10 inspected, examined or copied pursuant to this section is such that the
11 records cannot be reproduced by ordinary document copying
12 equipment in ordinary business size, the agency may charge, in
13 addition to the actual cost of duplicating the record, a special service
14 charge, which shall be reasonable and shall be based upon the expense
15 associated with these services.

16 c. A custodian may, in appropriate circumstances and if the
17 requestor so desires, permit access to government records by remote
18 electronic means or provide the requestor with a computer copy of the
19 records. The fee established by a public agency for this type of access
20 shall include direct and indirect costs, but shall not exceed the
21 reasonable cost to the agency of making such access available to the
22 requestor or of creating and transmitting the computer copy,
23 electronically if possible and the requestor so desires, to the requestor.
24 The custodian shall take steps to prevent unauthorized electronic
25 access or alteration of public records.

26

27 5. a. The custodian of each public agency shall adopt a form for
28 the use of any person who requests access to a government record
29 held by the public agency. The use of such form shall be at the option
30 of the requestor and a verbal request shall be accepted by any public
31 agency. The form shall provide for indication of the name, address
32 and phone number of the requestor and a brief description of the
33 government records sought, but the requestor shall have the option not
34 to supply a name, address or phone number. The form shall include
35 space for the custodian to indicate which records will be made
36 available, when the records will be available and the fees to be
37 charged. The form shall also include the following:

38 (1) specific directions and procedures for requesting records;

39 (2) a schedule of fees to be charged;

40 (3) a statement as to whether prepayment of fees or a deposit is
41 required;

42 (4) the time period within which the public agency is required by
43 this act to make the records available;

44 (5) a statement of the requestor's right to appeal a decision by the
45 public agency to deny access and the procedure for filing an appeal
46 pursuant to section 8 of this act;

1 (6) space for the custodian to list reasons when a request is denied
2 in whole or in part;

3 (7) space for the requestor to sign and date the form; and

4 (8) space for the custodian to sign and date the form when the
5 request is complied with or denied.

6 b. Requests for access to government records may be written or
7 verbal and shall be hand-delivered, mailed, transmitted electronically,
8 or otherwise conveyed to the appropriate custodian. If the custodian
9 is unable to comply with a request for access, he shall indicate the
10 reasons therefor on the request form and promptly return it to the
11 requestor. When a custodian denies access based upon a statutory
12 exception to the right of access established by this act, he shall cite the
13 specific statute section as part of his denial. The custodian shall advise
14 the requestor in writing of the requestor's right to appeal and the
15 manner in which an appeal may be filed. The custodian shall sign and
16 date the form. If the government records requested are temporarily
17 unavailable because they are in use or in storage, the custodian shall
18 so advise the requestor in writing on the form as well as the time and
19 place when the information will be available. When a request for
20 access to government records would substantially disrupt agency
21 operations, the custodian may deny access to the records after
22 attempting to reach a reasonable solution with the requestor which
23 accommodates the interests of the requestor and the agency.

24

25 6. Any officer or employee of a government agency who receives
26 a request for access to a government record shall forward the request
27 or direct the requestor to the custodian of the records.

28

29 7. A custodian of government records shall provide the records or
30 deny a request under this act for access to government records as soon
31 as reasonable. It shall be presumed that access to government records
32 required or authorized to be provided under the provisions of this act
33 shall be granted immediately. Whenever there exists a bona fide
34 question involving a legal opinion as to whether such access is
35 required to be so provided or the time required for retrieval and
36 duplication of the records is extraordinary, the custodian shall: a.
37 within 48 hours of receiving the request, determine the existence of
38 such question or such extraordinary requirement of time and, if the
39 requestor has supplied the custodian with sufficient information to
40 enable the custodian to contact the requestor, notify the requestor of
41 the determination, or if not, be prepared to provide notice of the
42 determination upon inquiry by the requestor; and b. provide the
43 records or deny the request not later than 10 days after receiving the
44 request.

45

46 8. a. A person who is denied access to government records by the

1 custodian of the records may appeal the custodian's decision by filing
2 an action in Superior Court.

3 In any such action, the court shall proceed in a summary manner.
4 Actions brought pursuant to this act shall take precedence over all
5 other matters and shall be handled as expeditiously as possible. The
6 government agency shall have the burden of proving that its denial of
7 access is authorized by this act. If it is determined that access has
8 been improperly denied, the court shall order that access be allowed.

9 b. Whenever a custodian determines that disclosure of a
10 government record which is ordinarily accessible to the public
11 pursuant to this act would cause substantial harm to the public
12 interest, the custodian may apply to the Superior Court for an order
13 authorizing denial of access. The court may issue such an order if it
14 finds, after a hearing, that permitting access would cause substantial
15 harm to the public interest. The burden of proof shall be on the
16 custodian. Any person who has sought access to a record with regard
17 to which the custodian has filed an action shall receive notice of the
18 hearing and shall have the opportunity to be heard and to be
19 represented by counsel at the hearing.

20 c. When a government agency does not prevail in any proceeding
21 brought pursuant to this act, the court may assess against it reasonable
22 attorney's fees and other reasonable litigation expenses.

23

24 9. a. Access to government records shall be permitted during the
25 regular business hours of the public agency having custody of the
26 records. A person shall have the right to copy a record by hand under
27 appropriate supervision by the custodian or the custodian's designee
28 and consistent with the need to preserve the original. A person shall
29 have the right to use his own duplicating process to copy a
30 government record if the custodian finds that there is no risk of
31 damage to the document and that this would not be incompatible with
32 the operation of the public agency.

33 b. Government records shall be kept in the buildings in which they
34 are ordinarily used. Records which are worn, mutilated, damaged or
35 difficult to read shall be copied or repaired, as appropriate. Records
36 may be removed from the building in which they are ordinarily kept
37 while being copied or repaired. The custodian shall certify that any
38 copy of a record is an accurate copy of the original.

39

40 10. When the custodian of a government record asserts that part
41 of a particular record is exempt from public access pursuant to this
42 act, the custodian shall delete or excise from the record that portion
43 which is exempt from access and shall permit access to the remainder
44 of the record.

45

46 11. In any action in which the decision of a custodian to deny

1 access to a government record is at issue, the record or part thereof in
2 question shall be submitted to the court for an inspection in camera as
3 the court determines to be necessary. If the court determines that the
4 government record is not exempt from disclosure, it shall order the
5 record to be produced for public access.

6
7 12. When a custodian denies access to a government record on the
8 grounds that it is exempt from public disclosure pursuant to this act,
9 the record shall be maintained on file by the custodian for at least 30
10 days after access is denied. No government record shall be altered or
11 destroyed during the pendency of an action seeking access to the
12 record.

13
14 13. a. Except as provided under subsection e. of this section with
15 respect to the disclosure of personal records to the individual to whom
16 those records pertain, an agency shall disclose or authorize the
17 disclosure of a personal record to any person when the disclosure is:

18 (1) the name, compensation, job title, business address, business
19 telephone number, and job description; to the extent necessary to
20 demonstrate compliance with the requirements for holding the position
21 in the agency, the education, training background, and previous work
22 experience; and dates of first and last employment, of any present or
23 former officer or employee of the agency;

24 (2) pursuant to the prior written consent of the individual to whom
25 the record refers;

26 (3) information collected and maintained for the purpose of making
27 information available to the general public;

28 (4) information contained in or compiled from a transcript,
29 minutes, report, or summary of a proceeding open to the public;

30 (5) pursuant to federal law or a State law that expressly authorizes
31 disclosure;

32 (6) pursuant to a showing of compelling circumstances affecting
33 the health or safety of any individual, in which case the agency shall
34 make reasonable efforts to notify the individual to whom the record
35 refers;

36 (7) pursuant to an order of a court in which case the agency shall
37 notify the individual to whom the record refers by mailing a copy of
38 the order to the individual's last known address;

39 (8) pursuant to a subpoena from either house of the State
40 Legislature, the Joint Legislative Committee on Ethical Standards or
41 any committee or subcommittee of the General Assembly or Senate,
42 in which case the agency shall notify the individual to whom the record
43 refers by mailing a copy of the subpoena to the individual's last known
44 address;

45 (9) information from motor vehicle registration lists which is
46 necessary for recall purposes;

- 1 (10) pursuant to a subpoena issued by the State Commission of
2 Investigation, in which case the agency shall notify the individual to
3 whom the record refers by mailing a copy of the subpoena to the
4 individual's last known address; and
- 5 (11) in any other case, not a clearly unwarranted invasion of
6 personal privacy.
- 7 b. Except as provided in subsection a. of this section, no agency
8 shall be required under this act to disclose information subject to a
9 significant privacy interest unless the public interest in disclosure is
10 compelled by an imminent threat to public health and safety.
11 Individuals shall be presumed to have a significant privacy interest in
12 the following matters only:
- 13 (1) information relating to medical, psychiatric or psychological
14 history, diagnosis, condition, treatment, or evaluation, other than
15 directory information concerning an individual's presence at any
16 facility;
- 17 (2) information compiled and identifiable as part of an investigation
18 into a possible violation of criminal law, except to the extent that
19 disclosure is necessary to prosecute the violation or to continue the
20 investigation;
- 21 (3) information relating to eligibility for social services or welfare
22 benefits or to the determination of benefits or to the determination of
23 benefit levels;
- 24 (4) information in an agency's personnel file, or applications,
25 nomination, recommendations, or proposals for public employment or
26 appointment to a governmental position, except information relating
27 to the status of any formal charges against the employee and
28 disciplinary action taken;
- 29 (5) information relating to an individual's nongovernmental
30 employment history, except as necessary to demonstrate compliance
31 with requirements for the particular position;
- 32 (6) information in an income or other tax return measured by items
33 of income or gathered by an agency for the purpose of administering
34 the tax;
- 35 (7) information describing a natural person's finances, income,
36 assets, liabilities, net worth, bank balances, financial history or
37 activities, or credit worthiness;
- 38 (8) information comprising a personal recommendation or
39 evaluation; or
- 40 (9) information compiled as part of an inquiry into an individual's
41 fitness to be granted or to retain a license, except:
- 42 (a) the record of any proceeding resulting in revocation or
43 suspension of a license and the grounds for revocation or suspension;
- 44 (b) information on the employment and required insurance
45 coverages of licensees; and
- 46 (c) the record of complaints, including all dispositions.

1 c. In addition to disclosures permitted under subsection a., an
2 agency may disclose or authorize the disclosure of an individually
3 identifiable record if made to:

4 (1) another agency if disclosure is:

5 (a) certified by the requesting agency as being necessary to the
6 performance of its duties and functions; and

7 (b) compatible with the purpose for which the information in the
8 record was originally collected or obtained;

9 (2) the State archives for purposes of historical preservation or
10 administrative maintenance;

11 (3) another agency, another state, or the federal government, if
12 disclosure is:

13 (a) for the purpose of a civil or criminal law enforcement
14 investigation;

15 (b) specifically authorized by statute or compact; and

16 (c) pursuant to agreement or written request;

17 (4) an agency for transmission to courts of this State, another
18 state, or the United States for presentence or probationary purposes;

19 (5) a foreign government pursuant to executive agreement,
20 compact, treaty, or statute;

21 (6) a criminal law enforcement agency of this State, another state,
22 or the federal government if the information requested is limited to an
23 individual's name and other identifying particulars, including present
24 and past addresses and present and past places of employment;

25 (7) authorized officials of the federal government or of an agency
26 of this State for audit or review purposes if:

27 (a) the audit or review is expressly authorized by law; and

28 (b) disclosure is certified by the requesting agency as being
29 necessary to the performance of audits or reviews; and

30 (8) the United States Bureau of the Census for the purpose of
31 planning or carrying out a census, survey, or related activity under
32 Title 13 of the United States Code.

33 d. An agency receiving information pursuant to subsection c. of
34 this section shall be subject to the same provisions concerning
35 disclosure of the information as the originating agency.

36 e. Except as provided in this section, an individual or an
37 individual's duly authorized representative may examine or copy,
38 during the regular business hours of the agency, any accessible record
39 that pertains to the individual. In implementing the rights under this
40 subsection, the agency shall follow the procedures established herein,
41 subject to the requirement that, upon receipt of a request to examine
42 or copy an accessible record, the agency shall verify the identity of the
43 requester.

44 f. An agency is not required by subsection e. of this section to
45 disclose:

46 (1) information that may be withheld pursuant to section 14 of this

1 act, except to the extent that the information sought was submitted by
2 the requester;

3 (2) information collected and used solely to evaluate the character
4 and fitness of persons, but only to the extent that disclosure would
5 identify the source of the information; or

6 (3) information that does not relate directly to the requester and
7 which, if disclosed, would constitute a clearly unwarranted invasion of
8 another individual's personal privacy.

9 g. Nothing contained in this section shall be construed as abridging
10 any statute that authorizes an agency to withhold information from the
11 parent or legal guardian of a child.

12 h. If an individual requests an accessible record which contains
13 both public information and information the agency is not required to
14 disclosure, the agency shall provide the public information contained
15 in the record after deleting the undisclosable material, provided that
16 the undisclosable material may be severed from the public information.

17

18 14. Nothing contained in this act shall be construed to require
19 disclosure of:

20 a. active criminal intelligence information and active criminal
21 investigative information;

22 b. any information revealing the identity of a confidential informant
23 or a confidential source;

24 c. any information revealing a criminal justice agency's surveillance,
25 security or investigative techniques or procedures or personnel.
26 Notwithstanding anything contained herein, any comprehensive
27 inventory of State and local law enforcement resources compiled
28 pursuant to statute and any comprehensive policies or plans compiled
29 by a criminal justice agency pertaining to the mobilization,
30 deployment, or tactical operations involved in responding to
31 emergencies are exempt from the provisions of this act and shall be
32 unavailable for inspection except by personnel authorized by State or
33 local law enforcement agency, the office of the Governor, the Attorney
34 General, or the Department of Community Affairs or by court order;

35 d. any information revealing undercover personnel of any criminal
36 justice agency not previously disclosed;

37 e. any criminal intelligence information or criminal investigative
38 information including the photograph, name, address, or other fact or
39 information which reveals the identity of the victim of the crime of
40 sexual battery; the identity of the victim of the crime of lewd,
41 lascivious, or indecent assault upon or in the presence of a child; and
42 any criminal intelligence information or criminal investigative
43 information or other criminal record, including those portions of court
44 records, which may reveal the identity of a person under the age of 18
45 who is a victim of any sexual offense;

46 f. any criminal intelligence information or criminal investigative

- 1 information which reveals the personal assets of the victim of a crime,
2 other than property stolen or destroyed during the commission of the
3 crime;
- 4 g. inter-agency or intra-agency advisory, consultative, or
5 deliberative material, other than factual information or final policy
6 determinations, if communicated for the purpose of decision-making;
- 7 h. material prepared in anticipation of litigation which would not
8 be available to a party in litigation with the agency under the rules of
9 pretrial discovery for actions in a court of this State;
- 10 i. materials used to administer a licensing, employment, or
11 academic examination if disclosure would compromise the fairness or
12 objectivity of the examination process;
- 13 j. information which, if disclosed, would frustrate government
14 procurement or give an advantage to any person proposing to enter
15 into a contract or agreement with an agency including information
16 involved in the collective bargaining process provided that a roster of
17 employees shall be open to inspection by any organization which is
18 allowed to challenge existing employee representation;
- 19 k. information identifying real property under consideration for
20 public acquisition before acquisition of rights to the property, or
21 information not otherwise available under the laws of this State
22 pertaining to real property under consideration for public acquisition
23 before making a purchase agreement;
- 24 l. administrative, technical or other information including software,
25 operating protocols and employee manuals, the disclosure of which
26 would jeopardize the security of a record-keeping system;
- 27 m. proprietary information, including computer programs and
28 software and other types of information manufactured or marketed by
29 persons under exclusive legal right, owned by the agency or entrusted
30 to it;
- 31 n. trade secrets or confidential commercial and financial
32 information obtained, upon request, from a person;
- 33 o. library, archival, or museum material contributed by private
34 persons to the extent of any lawful limitation imposed on the material;
- 35 p. any advisory opinion rendered by the Joint Legislative
36 Committee on Ethical Standards; or
- 37 q. information that is expressly made nondisclosable or confidential
38 under federal or State law or protected by the rules of evidence,
39 whether or not a proceeding is then pending.
- 40 Nothing contained in this section shall be construed to exempt from
41 section 4 of this act a public record which was made part of a court
42 file and which is not specifically closed by order of a court.
- 43
- 44 15. Nothing contained in this act shall be construed as limiting the
45 common law right of access to public records.

1 16. P.L.1963, c.73 (C.47:1A-1 et seq.) is repealed.

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3 17. This act shall take effect on the 60th day after enactment,
4 except that public agencies may take such anticipatory administrative
5 action in advance as shall be necessary for the implementation of the
6 act.

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11 Revises law governing access to public records.