

SENATE, No. 1557

STATE OF NEW JERSEY

INTRODUCED OCTOBER 3, 1996

By Senator BUBBA

1 AN ACT concerning access to public records and amending P.L.1963.  
2 c.73.

3

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

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

9 2. Except as otherwise provided in this act or by any other statute,  
10 resolution of either or both houses of the Legislature, executive order  
11 of the Governor, rule of court, any federal law, regulation or order, or  
12 by any regulation promulgated under the authority of any statute or  
13 executive order of the Governor, all records which are required by law  
14 to be made, maintained or kept on file by any board, body, agency,  
15 department, commission or official of the State or of any political  
16 subdivision thereof or by any public board, body, commission or  
17 authority created pursuant to law by the State or any of its political  
18 subdivisions, or by any official acting for or on behalf thereof (each of  
19 which is hereinafter referred to as the "custodian" thereof) shall, for  
20 the purposes of this act, be deemed to be public records. Every citizen  
21 of this State, during the regular business hours maintained by the  
22 custodian of any such records, shall have the right to inspect such  
23 records. Every citizen of this State shall also have the right, during  
24 such regular business hours and under the supervision of a  
25 representative of the custodian, to copy such records by hand, and  
26 shall also have the right to purchase copies of such records.

27 Access to records which are readily accessible to the custodian  
28 thereof shall be provided immediately. If the records requested are not  
29 readily accessible to the custodian at the time that a request for access  
30 is made because the records are in storage, in active use, or otherwise  
31 unavailable, the custodian shall provide the citizen who requested the  
32 records with a written statement which indicates why the records are  
33 unavailable and establishes a date and time when the records will be  
34 available. Access to records which are not readily accessible to the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 custodian at the time that a request for access is made shall be  
 2 provided within two business days except that such period may be  
 3 extended by up to 14 additional business days if the custodian makes  
 4 a determination, and informs the citizen in writing, that the request is  
 5 broadly stated and encompasses all or substantially all of a large  
 6 category of records and is without sufficient specificity to allow the  
 7 custodian to reasonably provide access within the two-day period; or  
 8 that the request is broadly stated and encompasses all or substantially  
 9 all of a large category of records and during the two-day period the  
 10 custodian must devote all or substantially all of the custodian's  
 11 resources to meeting deadlines for other requests for access to records  
 12 or other compelling duties.

13 A custodian of records who fails to allow access to records within  
 14 these time periods shall be deemed to have denied the requestor's right  
 15 to inspect, copy or purchase a copy of public records and the  
 16 custodian and the public entity on behalf of which the custodian acted  
 17 shall be liable to the penalties provided by section 4 of P.L.1963, c.73  
 18 (C.47:1A-4).

19 Copies of records shall be made available upon the payment of  
 20 such price as shall be established by law. If a price has not been  
 21 established by law for copies of any records, the custodian of such  
 22 records shall make and supply copies of such records upon the  
 23 payment of the following fees which shall be based upon the total  
 24 number of pages or parts thereof to be purchased without regard to  
 25 the number of records being copied:

26  
 27 First page to tenth page ..... \$0.75 per page,  
 28  
 29 Eleventh page to twentieth page..... \$0.50 per page,  
 30  
 31 All pages over 20 ..... \$0.25 per page[.];  
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33 except that the fee shall be \$0.05 per page in the case of records which  
 34 are printed directly from a computerized database.

35  
 36 If the custodian of any such records shall find that there is no risk  
 37 of damage or mutilation of such records and that it would not be  
 38 incompatible with the economic and efficient operation of the office  
 39 and the transaction of public business therein, he may permit any  
 40 citizen who is seeking to copy more than 100 pages of records to use  
 41 his own photographic process, approved by the custodian, upon the  
 42 payment of a reasonable fee, considering the equipment and the time  
 43 involved, to be fixed by the custodian of not less than \$10.00 or more  
 44 than \$50.00 per day.

45 (cf. P.L.1991, c.177, s.18)

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

3       4. a. Any such citizen of this State who has been or shall have  
4 been denied for any reason the right to inspect, copy or obtain a copy  
5 of any such record as provided in this act may apply to the Superior  
6 Court of New Jersey by a proceeding in lieu of prerogative writ for an  
7 order requiring the custodian of the record to afford inspection, the  
8 right to copy or to obtain a copy thereof, as provided in this act. A  
9 plaintiff in whose favor such an order issues shall be entitled to taxed  
10 costs and [may] shall be awarded a reasonable attorney's fee [not to  
11 exceed \$500.00]. A defendant who prevails in preventing the issuance  
12 of such an order shall be entitled to taxed costs.

13       In addition, if the court determines that a custodian of public  
14 records has denied a citizen the right to inspect, copy or obtain a copy  
15 of a record, it shall impose civil fines upon both the custodian and the  
16 public entity on behalf of which the custodian acted in an amount of  
17 not less than \$1,000 nor more than \$5,000 for each record access to  
18 which was denied. Any such penalty shall be collected as provided in  
19 "the penalty enforcement law," N.J.S.2A:58-1 et seq.

20       b. If the custodian of a record determines that complying with a  
21 citizen's request for access to a record would cause substantial injury  
22 to the public interest, the custodian may apply to the Superior Court  
23 of New Jersey for an order restricting disclosure of the record. A  
24 hearing on the application shall be held on an expedited basis. In an  
25 appropriate case, the court may issue an order that disclosure of the  
26 record would cause substantial injury to the public interest. The  
27 burden of proof in such an action shall be upon the custodian. The  
28 citizen who requested access to the record shall have the opportunity  
29 to appear and be heard.

30 (cf. P.L.1981, c.338, s.1)

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32       3. This act shall take effect immediately.

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#### STATEMENT

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37       This bill would amend the law governing the public's right to  
38 inspect, copy or purchase copies of public records to provide that  
39 access by a citizen to records which are readily accessible to the  
40 custodian thereof shall be provided immediately. If the records  
41 requested are not readily accessible to the custodian at the time that  
42 a request for access is made because the records are in storage, in  
43 active use, or otherwise unavailable, the custodian shall provide the  
44 citizen who requested the records with a written a statement which  
45 indicates why the records are unavailable and establishes a date and  
46 time when the records will be available. Access to records which are

1 not readily accessible to the custodian at the time that a request for  
2 access is made shall be provided within two business days except that  
3 such period may be extended by up to 14 business days if the  
4 custodian informs the requestor in writing that the request is broadly  
5 stated, involves a large category of records and is not sufficiently  
6 specific to allow the custodian to reasonably provide access within the  
7 two-day period; or that the request is broadly stated, involves a large  
8 category of records and during the two-day period the custodian must  
9 devote resources to meeting deadlines for other requests for access to  
10 records or other compelling duties.

11 At present, the law provides that a citizen who is denied access to  
12 public records may apply to the Superior Court for an order requiring  
13 the custodian to afford inspection, the right to copy or to obtain a  
14 copy of the records. Existing law also provides that a successful  
15 plaintiff may be awarded a reasonable attorney's fee not to exceed  
16 \$500. The bill makes the awarding of attorney's fees mandatory and  
17 eliminates the \$500 limit on attorney's fees. It also provides that if the  
18 court determines that a custodian of public records has denied a  
19 citizen's request for access to records, the court shall impose civil fines  
20 on both the custodian and the public entity on behalf of which the  
21 custodian acted in an amount of not less than \$1,000 nor more than  
22 \$5,000 for each record to which access was denied. The bill would  
23 allow a custodian of a public record to apply to the Superior Court for  
24 an order restricting access to a public record when disclosure thereof  
25 would cause substantial injury to the public interest.

26 In addition, the bill establishes the fee for obtaining records which  
27 are printed directly from a computerized database at \$0.05 per page.

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32 Provides for immediate public access to public records in most cases;  
33 establishes fines for denial of right of access.