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**REPORTS:** No

**HEARINGS:** Yes

New Jersey. Legislature. Senate. Judiciary Committee.

Public hearing on issues dealing with public access records, held March 9, 2000, Trenton 2000

Library call number: 973.90 A673, 2000 (available online at <https://dspace.njstatelib.org/handle/10929/22417>).

**NEWSPAPER ARTICLES:** Yes

"Access bill faces final vote," 1-6-2002 Home News, p.A1

"Senate passes public access proposal," 1-8-2002 The Press, p.A1

"New public access means more open government," 1-9-2002 Asbury Park Press, p.A3

"Citizens gain more access," 1-9-2002 The Press, p.A4

"NJ public record made more accessible," 1-9-2002 Philadelphia Inquirer, p.B1

"Loophole in open-records law likely to be closed," 1-9-2002 Asbury Park Press, p.A1

"Bill expanding public access to records becomes law," 1-9-2002 Home News, p.A3

**GOVERNOR MCGREEVEY'S MESSAGE REGARDING LAW** Yes

§§6-14 -  
C.47:1A-5  
to 47:1A-13  
§15 - T&E  
§16 - Approp.  
§17 - Repealer  
§18 - Note to §§1-17

P.L. 2001, CHAPTER 404, *approved January 8, 2002*  
Assembly, No. 1309 (*Fifth Reprint*)

1 AN ACT concerning public access to government records <sup>4</sup>[and] <sup>4</sup>  
2 amending and supplementing P.L.1963, c.73 (C.47:1A-1 et seq.) <sup>4</sup>  
3 amending P.L.1995, c.23 and P.L.1998, c.17, establishing a Privacy  
4 Study Commission and making an appropriation for the expenses  
5 thereof, and repealing parts of the statutory law<sup>4</sup>.

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

9  
10 1. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read as  
11 follows:

12 1. The Legislature finds and declares it to be the public policy of  
13 this State that **[public]** <sup>4</sup>,<sup>4</sup>  
14 government records shall be readily accessible for inspection,  
15 copying, or examination by the citizens of this State, with certain  
16 exceptions, for the protection of the public interest, and any limitations  
17 on the right of access accorded by P.L.1963, c.73 (C.47:1A-1 et seq.)  
18 as amended and supplemented, shall be construed in favor of the  
19 public's right of access <sup>4</sup>[.] <sup>4</sup>

20 <sup>4</sup>[All] all<sup>4</sup> government records shall be subject to public access  
21 unless exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et  
22 seq.) as amended and supplemented; any other statute; resolution of  
23 either or both houses of the Legislature; regulation promulgated under  
24 the authority of any statute or Executive Order of the Governor;  
25 Executive Order of the Governor; Rules of Court; any federal law,  
26 <sup>4</sup>[other than the federal Freedom of Information Act (5  
27 U.S.C.s.552);] <sup>4</sup> federal regulation<sup>4</sup>[;],<sup>4</sup> or federal order <sup>4</sup>;

28 a public agency has a responsibility and an obligation to safeguard  
29 from public access a citizen's personal information with which it has  
30 been entrusted when disclosure thereof would violate the citizen's  
31 reasonable expectation of privacy; and nothing contained in P.L.1963,  
32 c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall be

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ASG committee amendments adopted March 6, 2000.

<sup>2</sup> Assembly floor amendments adopted March 27, 2000.

<sup>3</sup> Assembly floor amendments adopted June 26, 2000.

<sup>4</sup> Senate floor amendments adopted May 3, 2001.

<sup>5</sup> Assembly floor amendments adopted January 3, 2002.

1 construed as affecting in any way the common law right of access to  
2 any record, including but not limited to criminal investigatory records  
3 of a law enforcement agency<sup>4</sup>.

4 (cf: P.L.1963, c.73, s.1)

5

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

8 1. As used in <sup>1</sup>[this act] P.L.1963, c.73 (C.47:1A-1 et seq.) as  
9 amended and supplemented<sup>1</sup> :

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

15 "Custodian of a government record" or "custodian" means <sup>1</sup>[the  
16 head of a public agency having custody or control of a government  
17 record or the head's designee or designees] <sup>4</sup>[.]<sup>4</sup> in the case of a  
18 municipality, the municipal clerk and in the case of any other public  
19 agency, the officer officially designated by formal action of that  
20 agency's director or governing body, as the case may be<sup>1</sup> .

21 "Government record" or "record" means any paper, written or  
22 printed book, document, drawing, map, plan, photograph, microfilm,  
23 data processed or image processed document, information stored or  
24 maintained electronically or by sound-recording or in a similar device,  
25 or any copy thereof, that has been made, maintained or kept on file <sup>3</sup>in  
26 the course of his or its official business<sup>3</sup> by any officer, commission,  
27 agency or authority of the State or of any political subdivision thereof,  
28 including subordinate boards thereof, or that has been received <sup>4</sup>in the  
29 course of his or its official business<sup>4</sup> by any such officer, commission,  
30 agency, or authority of the State or of any political subdivision  
31 thereof, including subordinate boards thereof. The terms shall not  
32 include inter-agency or intra-agency advisory, consultative, or  
33 deliberative material.

34 <sup>4</sup>A government record shall not include the following information  
35 which is deemed to be confidential for the purposes of P.L.1963, c.73  
36 (C.47:1A-1 et seq.) as amended and supplemented:

37 <sup>5</sup>information received by a member of the Legislature from a  
38 constituent or information held by a member of the Legislature  
39 concerning a constituent, including but not limited to information in  
40 written form or contained in any e-mail or computer data base, or in  
41 any telephone record whatsoever, unless it is information the  
42 constituent is required by law to transmit:

43 any memorandum, correspondence, notes, report or other  
44 communication prepared by, or for, the specific use of a member of the  
45 Legislature in the course of the member's official duties, except that  
46 this provision shall not apply to an otherwise publicly-accessible report

1 which is required by law to be submitted to the Legislature or its  
2 members;  
3 any copy, reproduction or facsimile of any photograph, negative or  
4 print, including instant photographs and videotapes of the body, or any  
5 portion of the body, of a deceased person, taken by or for the medical  
6 examiner at the scene of death or in the course of a post mortem  
7 examination or autopsy made by or caused to be made by the medical  
8 examiner except:  
9 when used in a criminal action or proceeding in this State which  
10 relates to the death of that person,  
11 for the use as a court of this State permits, by order after good  
12 cause has been shown and after written notification of the request for  
13 the court order has been served at least five days before the order is  
14 made upon the county prosecutor for the county in which the post  
15 mortem examination or autopsy occurred,  
16 for use in the field of forensic pathology or for use in medical or  
17 scientific education or research, or  
18 for use by any law enforcement agency in this State or any other  
19 State or federal law enforcement agency;<sup>5</sup>  
20 criminal investigatory records;  
21 victims' records, except that a victim of a crime shall have access to  
22 the victim's own records;  
23 trade secrets and proprietary commercial or financial information  
24 obtained from any source. For the purposes of this paragraph, trade  
25 secrets shall include data processing software obtained by a public  
26 body under a licensing agreement which prohibits its disclosure;  
27 any record within the attorney-client privilege. This paragraph shall  
28 not be construed as exempting from access attorney or consultant bills  
29 or invoices except that such bills or invoices may be redacted to  
30 remove any information protected by the attorney-client privilege;  
31 administrative or technical information regarding computer  
32 hardware, software and networks which, if disclosed, would jeopardize  
33 computer security;  
34 emergency or security information or procedures for any buildings  
35 or facility which, if disclosed, would jeopardize security of the building  
36 or facility or persons therein;  
37 security measures and surveillance techniques which, if disclosed,  
38 would create a risk to the safety of persons, property, electronic data  
39 or software;  
40 information which, if disclosed, would give an advantage to  
41 competitors or bidders;  
42 information generated by or on behalf of public employers or public  
43 employees in connection with any sexual harassment complaint filed  
44 with a public employer or with any grievance filed by or against an  
45 individual or in connection with collective negotiations, including  
46 documents and statements of strategy or negotiating position;

1 information which is a communication between a public agency and  
2 its insurance carrier, administrative service organization or risk  
3 management office;

4 information which is to be kept confidential pursuant to court  
5 order; and

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

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

25 pedagogical, scholarly and/or academic research records and/or the  
26 specific details of any research project conducted under the auspices  
27 of a public higher education institution in New Jersey, including, but  
28 not limited to research, development information, testing procedures,  
29 or information regarding test participants, related to the development  
30 or testing of any pharmaceutical or pharmaceutical delivery system,  
31 except that a custodian may not deny inspection of a government  
32 record or part thereof that gives the name, title, expenditures, source  
33 and amounts of funding and date when the final project summary of  
34 any research will be available;

35 test questions, scoring keys and other examination data pertaining  
36 to the administration of an examination for employment or academic  
37 examination;

38 records of pursuit of charitable contributions or records containing  
39 the identity of a donor of a gift if the donor requires non-disclosure of  
40 the donor's identity as a condition of making the gift provided that the  
41 donor has not received any benefits of or from the institution of higher  
42 education in connection with such gift other than a request for  
43 memorialization or dedication;

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

46 information contained on individual admission applications; and

1 information concerning student records or grievance or disciplinary  
2 proceedings against a student to the extent disclosure would reveal the  
3 identity of the student.<sup>4</sup>

4 ["Local agency" means a county or municipality, and includes a  
5 local health board or other local subdivision.

6 "State agency" means each of the principal departments in the  
7 Executive Branch of the State Government, and all boards, divisions,  
8 commissions, agencies, departments, councils, authorities, offices or  
9 officers within any such departments now existing or hereafter  
10 established.]

11 "Public agency" or "agency" means any of the principal departments  
12 in the Executive Branch of State Government, and any division, board,  
13 bureau, office, commission or other instrumentality within or created  
14 by such department; the Legislature of the State and any office, board,  
15 bureau or commission within or created by the Legislative Branch; and  
16 any independent State authority, commission, instrumentality or  
17 agency. The terms also mean any political subdivision of the State or  
18 combination of political subdivisions, and any division, board, bureau,  
19 office, commission or other instrumentality within or created by a  
20 political subdivision of the State or combination of political  
21 subdivisions, and any independent authority, commission,  
22 instrumentality or agency created by a political subdivision or  
23 combination of political subdivisions.

24 <sup>4</sup>"Law enforcement agency" means a public agency, or part thereof,  
25 determined by the Attorney General to have law enforcement  
26 responsibilities.

27 <sup>5</sup>"Constituent" means any State resident or other person  
28 communicating with a member of the Legislature.

29 "Member of the Legislature" means any person elected or selected  
30 to serve in the New Jersey Senate or General Assembly.<sup>5</sup>

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

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

39 "Victim of a crime" means a person who has suffered personal or  
40 psychological injury or death or incurs loss of or injury to personal or  
41 real property as a result of a crime, or if such a person is deceased or  
42 incapacitated, a member of that person's immediate family.

43 "Victims' rights agency" means a public agency, or part thereof, the  
44 primary responsibility of which is providing services, including but not  
45 limited to food, shelter, or clothing, medical, psychiatric, psychological  
46 or legal services or referrals, information and referral services,

1 counseling and support services, or financial services to victims of  
2 crimes, including victims of sexual assault, domestic violence, violent  
3 crime, child endangerment, child abuse or child neglect, and the  
4 Victims of Crime Compensation Board, established pursuant to  
5 P.L.1971, c.317 (C.52:4B-1 et seq.).<sup>4</sup>

6 (cf: P.L.1995, c.23, s.1)

7

8 3. Section 2 of P.L.1995, c.23 (C.47:1A-1.2) is amended to read  
9 as follows:

10 2. a. When federal law or regulation requires the submission of  
11 biotechnology trade secrets and related confidential information,  
12 **[State and local agencies]** a public agency shall not have access to this  
13 information except as allowed by federal law.

14 b. A **[State or local agency]** public agency shall not make any  
15 **[information]** biotechnology trade secrets and related confidential  
16 information it has access to under this act available to any other **[State**  
17 **or local agency]** public agency, or to the general public, except as  
18 allowed pursuant to federal law.

19 (cf: P.L.1995, c.23, s.2)

20

21 4. Section 1 of P.L.1998, c.17 (C.47:1A-2.2) is amended to read  
22 as follows:

23 1. a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1  
24 et seq.) or the provisions of any other law to the contrary, where it  
25 shall appear that a person who is <sup>4</sup>**[serving a term of imprisonment or**  
26 **is on parole or probation as the result of a conviction]** convicted<sup>4</sup> of  
27 any indictable offense under the laws of this State, any other state or  
28 the United States is seeking **[public]** government records containing  
29 personal information pertaining to the person's victim or the victim's  
30 family, including but not limited to a victim's home address, home  
31 telephone number, work or school address, work telephone number,  
32 social security account number, medical history or any other  
33 identifying information, the right of **[examination herein]** access  
34 provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
35 supplemented shall be denied.

36 b. **[Public]** <sup>4</sup>**[Government records]** A government record<sup>4</sup>  
37 containing personal identifying information which is protected under  
38 the provisions of this section may be released <sup>4</sup>**[to an inmate or his**  
39 **representative]**<sup>4</sup> only if the information is necessary to assist in the  
40 <sup>4</sup>**[inmate's own]**<sup>4</sup> defense <sup>4</sup>**of the requestor**<sup>4</sup>. A determination that the  
41 information is necessary to assist in the <sup>4</sup>**[inmate's]** requestor's<sup>4</sup>  
42 defense shall be made by the court upon motion by the <sup>4</sup>**[inmate]**  
43 requestor<sup>4</sup> or his representative.

44 <sup>4</sup>**c.** Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1  
45 et seq.) as amended and supplemented, or any other law to the



1 contrary, a custodian shall not comply with an anonymous request for  
2 a government record which is protected under the provisions of this  
3 section.<sup>4</sup>

4 (cf: P.L.1998, c.17, s.1.)

5

6 5. Section 3 of P.L.1963, c.73 (C.47:1A-3) is amended to read as  
7 follows:

8 3. <sup>4</sup>a.<sup>4</sup> Notwithstanding the provisions of [this act] P.L.1963,  
9 c.73 (C.47:1A-1 et seq.) as amended and supplemented, where it shall  
10 appear that the record or records which are sought to be inspected,  
11 copied, or examined shall pertain to an investigation in progress by any  
12 [such body,] public agency, [commission, board, authority or  
13 official,] the right of [examination herein] access provided for in  
14 P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented may  
15 be denied if the inspection, copying or [publication] examination of  
16 such record or records shall be inimical to the public interest;  
17 provided, however, that this provision shall not be construed to  
18 [prohibit any such body, agency, commission, board, authority or  
19 official from opening such record or records for public examination  
20 if not otherwise prohibited by law] allow any public agency to prohibit  
21 access to a record <sup>4</sup>of that agency <sup>4</sup>that was open for public  
22 inspection, examination, or copying before the investigation  
23 commenced. <sup>4</sup>Whenever a public agency, during the course of an  
24 investigation, obtains from another public agency a government record  
25 that was open for public inspection, examination or copying before the  
26 investigation commenced, the investigating agency shall provide the  
27 other agency with sufficient access to the record to allow the other  
28 agency to comply with requests made pursuant to P.L.1963, c.73  
29 (C.47:1A-1 et seq.).<sup>4</sup>

30 <sup>4</sup>b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1  
31 et seq.), as amended and supplemented, the following information  
32 concerning a criminal investigation shall be available to the public  
33 within 24 hours or as soon as practicable, of a request for such  
34 information:

35 where a crime has been reported but no arrest yet made,  
36 information as to the type of crime, time, location and type of weapon,  
37 if any;

38 if an arrest has been made, information as to the name, address and  
39 age of any victims unless there has not been sufficient opportunity for  
40 notification of next of kin of any victims of injury and/or death to any  
41 such victim or where the release of the names of any victim would be  
42 contrary to existing law or Court Rule. In deciding on the release of  
43 information as to the identity of a victim, the safety of the victim and  
44 the victim's family, and the integrity of any ongoing investigation, shall  
45 be considered;

46 if an arrest has been made, information as to the defendant's name,

1 age, residence, occupation, marital status and similar background  
2 information and, the identity of the complaining party unless the  
3 release of such information is contrary to existing law or Court Rule;  
4 information as to the text of any charges such as the complaint,  
5 accusation and indictment unless sealed by the court or unless the  
6 release of such information is contrary to existing law or court rule;  
7 information as to the identity of the investigating and arresting  
8 personnel and agency and the length of the investigation;  
9 information of the circumstances immediately surrounding the  
10 arrest, including but not limited to the time and place of the arrest,  
11 resistance, if any, pursuit, possession and nature and use of weapons  
12 and ammunition by the suspect and by the police; and  
13 information as to circumstances surrounding bail, whether it was  
14 posted and the amount thereof.

15 Notwithstanding any other provision of this subsection, where it  
16 shall appear that the information requested or to be examined will  
17 jeopardize the safety of any person or jeopardize any investigation in  
18 progress or may be otherwise inappropriate to release, such  
19 information may be withheld. This exception shall be narrowly  
20 construed to prevent disclosure of information that would be harmful  
21 to a bona fide law enforcement purpose or the public safety.  
22 Whenever a law enforcement official determines that it is necessary to  
23 withhold information, the official shall issue a brief statement  
24 explaining the decision.<sup>4</sup>

25 (cf: P.L.1963, c.73, s.3)

26

27 6. (New Section) a. The custodian of a government record shall  
28 permit the record to be inspected, examined, and copied by any person  
29 during regular business hours <sup>4</sup>[,] ; or in the case of a municipality  
30 having a population of 5,000 or fewer according to the most recent  
31 federal decennial census, a board of education having a total district  
32 enrollment of 500 or fewer, or a public authority having less than \$10  
33 million in assets, during not less than six regular business hours over  
34 not less than three business days per week or the entity's regularly-  
35 scheduled business hours, whichever is less;<sup>4</sup> unless a government  
36 record is exempt from public access by: P.L.1963, c.73 (C.47:1A-1 et  
37 seq.) as amended and supplemented; any other statute; resolution of  
38 either or both houses of the Legislature; regulation promulgated under  
39 the authority of any statute or Executive Order of the Governor;  
40 Executive Order of the Governor; Rules of Court; any federal law <sup>4</sup>[,  
41 other than the federal Freedom of Information Act (5 U.S.C.s.552)]<sup>4</sup>;  
42 federal regulation; or federal order. <sup>4</sup>[An agency] Prior to allowing  
43 access to any government record, the custodian thereof shall redact  
44 from that record any information which discloses the social security  
45 number, credit card number, unlisted telephone number, or driver  
46 license number of any person ; except for use by any government

1 agency, including any court or law enforcement agency, in carrying out  
2 its functions, or any private person or entity acting on behalf thereof,  
3 or any private person or entity seeking to enforce payment of court-  
4 ordered child support; except with respect to the disclosure of driver  
5 information by the Division of Motor Vehicles as permitted by section  
6 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social security  
7 number contained in a record required by law to be made, maintained  
8 or kept on file by a public agency shall be disclosed when access to the  
9 document or disclosure of that information is not otherwise prohibited  
10 by State or federal law, regulation or order or by State statute,  
11 resolution of either or both houses of the Legislature, Executive Order  
12 of the Governor, rule of court or regulation promulgated under the  
13 authority of any statute or executive order of the Governor. Except  
14 where an agency can demonstrate an emergent need, a<sup>4</sup> regulation that  
15 limits access to government records shall not be retroactive in effect  
16 or applied to deny a request for access to a government record that is  
17 pending before the agency<sup>4</sup>, the council<sup>4</sup> or a court at the time of the  
18 adoption of the regulation.

19 b. A copy or copies of a government record may be purchased by  
20 any person upon payment of the fee prescribed by law or regulation,  
21 or if a fee is not prescribed by law or regulation, upon payment of the  
22 actual cost of duplicating the record. Except as otherwise provided  
23 by law or regulation, the fee assessed for the duplication of a  
24 government record embodied in the form of printed matter shall not  
25 exceed the following: first page to tenth page, \$0.75 per page;  
26 eleventh page to twentieth page, \$0.50 per page; all pages over  
27 twenty, \$0.25 per page. The actual cost of duplicating the record shall  
28 be the cost of materials and supplies used to make a copy of the  
29 record, but shall not include the cost of labor or other overhead  
30 expenses associated with making the copy<sup>1</sup> except as provided for in  
31 subsection c. of this section<sup>1</sup>. If a public agency can<sup>4</sup> [show]  
32 demonstrate<sup>4</sup> that its actual costs for duplication of a government  
33 record exceed the foregoing rates, the public agency shall be permitted  
34 to charge the actual cost of duplicating the record.

35 c. Whenever the nature, format, manner of collation, or volume of  
36 a government record embodied in the form of printed matter to be  
37 inspected, examined, or copied pursuant to this section is such that the  
38 record cannot be reproduced by ordinary document copying equipment  
39 in ordinary business size or involves an extraordinary expenditure of  
40 time and effort to accommodate the request, the public agency may  
41 charge, in addition to the actual cost of duplicating the record, a  
42 special service charge that shall be reasonable and shall be based upon  
43 the actual direct cost of providing the copy or copies<sup>4</sup>; provided,  
44 however, that in the case of a municipality, rates for the duplication of  
45 particular records when the actual cost of copying exceeds the  
46 foregoing rates shall be established in advance by ordinance<sup>4</sup>. The

1 requestor shall have the opportunity to review and object to the charge  
2 prior to it being incurred.

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

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

22 f.<sup>4</sup> The custodian of a public agency shall adopt a form for the use  
23 of any person who requests access to a government record held or  
24 controlled by the public agency. The form shall provide <sup>4</sup>[for  
25 indication of] space for<sup>4</sup> the name, address, and phone number of the  
26 requestor and a brief description of the government record sought <sup>4</sup>[,  
27 but the requestor shall have the option to not provide a name, address,  
28 or phone number]<sup>4</sup>. The form shall include space for the custodian to  
29 indicate which record will be made available, when the record will be  
30 available, and the fees to be charged. The form shall also include the  
31 following: (1) specific directions and procedures for requesting a  
32 record; (2) a statement as to whether prepayment of fees or a deposit  
33 is required; (3) the time period within which the public agency is  
34 required by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
35 supplemented, to make the record available; (4) a statement of the  
36 requestor's right to challenge a decision by the public agency to deny  
37 access and the procedure for filing an appeal; (5) space for the  
38 custodian to list reasons if a request is denied in whole or in part; (6)  
39 space for the requestor to sign and date the form; (7) space for the  
40 custodian to sign and date the form if the request is fulfilled or denied.

41 <sup>1</sup>The custodian may require a deposit against costs for reproducing  
42 documents sought through an anonymous request whenever the  
43 custodian anticipates that the information thus requested will cost in  
44 excess of <sup>4</sup>[\$15] \$5<sup>4</sup> to reproduce.<sup>1</sup>

45 <sup>4</sup>[f.] g.<sup>4</sup> A request for access to a government record shall be in  
46 writing and hand-delivered, mailed, transmitted electronically, or

1 otherwise conveyed to the appropriate custodian. A custodian shall  
2 promptly comply with a request to inspect, examine, copy, or provide  
3 a copy of a government record. If the custodian is unable to comply  
4 with a request for access, the custodian shall indicate the specific basis  
5 therefor on the request form and promptly return it to the requestor.  
6 The custodian shall sign and date the form <sup>4</sup>and provide the requestor  
7 with a copy thereof<sup>4</sup>. If the custodian of a government record asserts  
8 that part of a particular record is exempt from public access pursuant  
9 to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented,  
10 the custodian shall delete or excise from a copy of the record that  
11 portion which the custodian asserts is exempt from access and shall  
12 promptly permit access to the remainder of the record. If the  
13 government record requested is temporarily unavailable because it is  
14 in use or in storage, the custodian shall so advise the requestor and  
15 shall make arrangements to promptly make available a copy of the  
16 record. If a request for access to a government record would  
17 substantially disrupt agency operations, the custodian may deny access  
18 to the record after attempting to reach a reasonable solution with the  
19 requestor that accommodates the interests of the requestor and the  
20 agency.

21 <sup>4</sup>[g.] h.<sup>4</sup> Any officer or employee of a public agency who receives  
22 a request for access to a government record shall forward the request  
23 to the custodian of the record or direct the requestor to the custodian  
24 of the record.

25 <sup>4</sup>[h.] i.<sup>4</sup> Unless a shorter time period is otherwise provided by  
26 statute, regulation, or executive order, a custodian of a government  
27 record shall grant <sup>1</sup>access to a government record<sup>1</sup> or deny a request  
28 for access to a government record as soon as possible, but not later  
29 than seven business days after receiving the request <sup>3</sup>, provided that  
30 the record is currently available and not in storage or archived<sup>4</sup> [and  
31 the record consists of a total of 100 or fewer pages<sup>3</sup>.]<sup>4</sup> In the event a  
32 custodian fails to respond within seven business days after receiving  
33 a request, the failure to respond shall be deemed a denial of the  
34 request, unless the requestor has elected not to provide a name,  
35 address or telephone number, or other means of contacting the  
36 requestor. If the requestor has elected not to provide a name, address,  
37 or telephone number, or other means of contacting the requestor, the  
38 custodian shall not be required to respond until the requestor  
39 reappears before the custodian seeking a response to the original  
40 request. <sup>3</sup>If the government record is in storage or archived<sup>4</sup> [or  
41 exceeds 100 pages]<sup>4</sup>, the requestor shall be so advised within seven  
42 business days after the custodian receives the request. The requestor  
43 shall be advised by the custodian when the record can be made  
44 available. If the record is not made available by that time, access shall  
45 be deemed denied.<sup>3</sup>

46 <sup>4</sup>[i.] j. A custodian shall post prominently in public view in the

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

7 k.<sup>4</sup> The files maintained by the Office of the Public Defender that  
8 relate to the handling of any case shall be considered confidential and  
9 shall not be open to inspection by any person unless authorized by law,  
10 court order, or the State Public Defender.

11  
12 7. (New Section) A person who is denied access to a government  
13 record by the custodian of the record, at the option of the requestor,  
14 <sup>4</sup>[(1)]<sup>4</sup> may <sup>4</sup>[institute a proceeding to challenge the custodian's  
15 decision by filing in the Superior Court an action in lieu of prerogative  
16 writ or an order to show cause, or both, or (2) if the record to which  
17 access is denied is in the custody of a State agency as defined in  
18 section 2 of P.L.1968, c.410 (C.52:14B-2), may have the matter  
19 considered a contested case and handled in the manner provided in the  
20 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1et seq.);  
21 or (3) if the custodian is an officer, official or employee of a  
22 municipality or municipal entity <sup>2</sup>,of a county or county entity, or of  
23 a board of education<sup>2</sup>, may challenge the custodian's decision by filing  
24 a complaint in the municipal court of the municipality in which access  
25 was denied.

26 If a complaint is filed with a municipal court, the court clerk shall  
27 transmit the complaint by the end of the second business day  
28 following receipt to the assignment judge for the vicinage in which that  
29 municipal court is located for assignment of the complaint either to the  
30 municipal court in which it was filed or to another municipal court in  
31 the vicinage for disposition. The municipal courts in a vicinage in  
32 which a complaint is filed shall have jurisdiction of proceedings  
33 initiated by such a complaint to enforce the provisions of P.L.1963,  
34 c.73 (C.47:1A-1 et seq.), as amended and supplemented,  
35 notwithstanding N.J.S.2B:12-16 to the contrary. At the request of  
36 the requestor who filed a complaint, the municipal prosecutor shall  
37 represent the requestor in the proceedings before the municipal court,  
38 at no cost to the requestor];

39 institute a proceeding to challenge the custodian's decision by filing  
40 an action in Superior Court which shall be heard in the vicinage where  
41 it is filed by a Superior Court Judge who has been designated to hear  
42 such cases because of that judge's knowledge and expertise in matters  
43 relating to access to government records; or

44 in lieu of filing an action in Superior Court, file a complaint with  
45 the Government Records Council established pursuant to section 8 of  
46 P.L. , c. (C. ) (now pending before the Legislature as this bill)<sup>4</sup>.

1 The right to institute any proceeding under this section <sup>4</sup>[upon a  
2 denial of access]<sup>4</sup> shall be solely that of the requestor. Any such  
3 proceeding shall proceed in a summary or expedited manner. The  
4 public agency shall have the burden of proving that the denial of access  
5 is authorized by law. If it is determined that access has been  
6 improperly denied, the court or agency head shall order that access be  
7 allowed. <sup>4</sup>[If a decision of a municipal court finding that access has  
8 been improperly denied is appealed, the county prosecutor shall  
9 represent the appellee, at the request of the appellee, in the  
10 proceedings on the appeal, at no cost to the appellee.]<sup>4</sup> A requestor  
11 who prevails in any proceeding <sup>4</sup>[instituted under this section]<sup>4</sup> shall  
12 be entitled to <sup>4</sup>[taxed costs, and may be awarded]<sup>4</sup> a reasonable  
13 attorney's fee. <sup>4</sup>[A custodian who prevails in any proceeding  
14 instituted under this section shall be entitled to taxed costs.]<sup>4</sup>

15  
16 <sup>4</sup>8. (New section) a. There is established in the Department of  
17 Community Affairs a Government Records Council. The council shall  
18 consist of the Commissioner of Community Affairs or the  
19 commissioner's designee, the Commissioner of Education or the  
20 commissioner's designee, and three public members appointed by the  
21 Governor, with the advice and consent of the Senate, not more than  
22 two of whom shall be of the same political party. The three public  
23 members shall serve during the term of the Governor making the  
24 appointment and until the appointment of a successor. A public  
25 member shall not hold any other State or local elected or appointed  
26 office or employment while serving as a member of the council. A  
27 public member shall not receive a salary for service on the council but  
28 shall be reimbursed for reasonable and necessary expenses associated  
29 with serving on the council and may receive such per diem payment as  
30 may be provided in the annual appropriations act. A member may be  
31 removed by the Governor for cause. Vacancies among the public  
32 members shall be filled in the same manner in which the original  
33 appointment was made. The members of the council shall choose one  
34 of the public members to serve as the council's chair. The council may  
35 employ an executive director and such professional and clerical staff  
36 as it deems necessary and may call upon the Department of  
37 Community Affairs for such assistance as it deems necessary and may  
38 be available to it.

39 b. The Government Records Council shall:  
40 establish an informal mediation program to facilitate the resolution  
41 of disputes regarding access to government records;  
42 receive, hear, review and adjudicate a complaint filed by any person  
43 concerning a denial of access to a government record by a records  
44 custodian;  
45 issue advisory opinions, on its own initiative, as to whether a  
46 particular type of record is a government record which is accessible to

1 the public;  
2 prepare guidelines and an informational pamphlet for use by records  
3 custodians in complying with the law governing access to public  
4 records;  
5 prepare an informational pamphlet explaining the public's right of  
6 access to government records and the methods for resolving disputes  
7 regarding access, which records custodians shall make available to  
8 persons requesting access to a government record;  
9 prepare lists for use by records custodians of the types of records  
10 in the possession of public agencies which are government records;  
11 make training opportunities available for records custodians and  
12 other public officers and employees which explain the law governing  
13 access to public records; and  
14 operate an informational website and a toll-free helpline staffed by  
15 knowledgeable employees of the council during regular business hours  
16 which shall enable any person, including records custodians, to call for  
17 information regarding the law governing access to public records and  
18 allow any person to request mediation or to file a complaint with the  
19 counsel when access has been denied;  
20 In implementing the provisions of subsections d. and e. of this  
21 section, the council shall: act, to the maximum extent possible, at the  
22 convenience of the parties; utilize teleconferencing, faxing of  
23 documents, e-mail and similar forms of modern communication; and  
24 when in-person meetings are necessary, send representatives to meet  
25 with the parties at a location convenient to the parties.  
26 c. At the request of the council, a public agency shall produce  
27 documents and ensure the attendance of witnesses with respect to the  
28 council's investigation of any complaint or the holding of any hearing.  
29 d. Upon receipt of a written complaint signed by any person  
30 alleging that a custodian of a government record has improperly  
31 denied that person access to a government record, the council shall  
32 offer the parties the opportunity to resolve the dispute through  
33 mediation. Mediation shall enable a person who has been denied  
34 access to a government record and the custodian who denied or failed  
35 to provide access thereto to attempt to mediate the dispute through a  
36 process whereby a neutral mediator, who shall be trained in mediation  
37 selected by the council, acts to encourage and facilitate the resolution  
38 of the dispute. Mediation shall be an informal, nonadversarial process  
39 having the objective of helping the parties reach a mutually acceptable,  
40 voluntary agreement. The mediator shall assist the parties in  
41 identifying issues, foster joint problem solving, and explore settlement  
42 alternatives.  
43 e. If any party declines mediation or if mediation fails to resolve  
44 the matter to the satisfaction of all parties, the council shall initiate an  
45 investigation concerning the facts and circumstances set forth in the  
46 complaint. The council shall make a determination as to whether the



1 complaint is within its jurisdiction or frivolous or without any  
2 reasonable factual basis. If the council shall conclude that the  
3 complaint is outside its jurisdiction, frivolous or without factual basis,  
4 it shall reduce that conclusion to writing and transmit a copy thereof  
5 to the complainant and to the records custodian against whom the  
6 complaint was filed. Otherwise, the council shall notify the records  
7 custodian against whom the complaint was filed of the nature of the  
8 complaint and the facts and circumstances set forth therein. The  
9 custodian shall have the opportunity to present the board with any  
10 statement or information concerning the complaint which the custodian  
11 wishes. If the council is able to make a determination as to a record's  
12 accessibility based upon the complaint and the custodian's response  
13 thereto, it shall reduce that conclusion to writing and transmit a copy  
14 thereof to the complainant and to the records custodian against whom  
15 the complaint was filed. If the council is unable to make a  
16 determination as to a record's accessibility based upon the complaint  
17 and the custodian's response thereto, the council shall conduct a  
18 hearing on the matter in conformity with the rules and regulations  
19 provided for hearings by a state agency in contested cases under the  
20 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
21 seq.), in so far as they may be applicable and practicable. The council  
22 shall, by a majority vote of its members, render a decision as to  
23 whether the record which is the subject of the complaint is a  
24 government record which must be made a available for public access  
25 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
26 supplemented. If the council determines, by a majority vote of its  
27 members, that a custodian has knowingly and willfully violated  
28 P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented,  
29 and is found to have unreasonably denied access under the totality of  
30 the circumstances, the council may impose the penalties provided for  
31 in section 12 of P.L. , c. (C. ) (now pending before the  
32 Legislature as this bill). A decision of the council may be appealed to  
33 the Appellate Division of Superior Court. A decision of the council  
34 shall not have value as a precedent for any case initiated in Superior  
35 Court pursuant to section 7 of P.L. , c. (C. ) (now pending before  
36 the Legislature as this bill). All proceedings of the council pursuant  
37 to this subsection shall be conducted as expeditiously as possible.

38 f. The council shall not charge any party a fee in regard to actions  
39 filed with the council. The council shall be subject to the provisions  
40 of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6),  
41 except that the council may go into closed session during that portion  
42 of any proceeding during which the contents of a contested record  
43 would be disclosed. A requestor who prevails in any proceeding shall  
44 be entitled to a reasonable attorney's fee.

45 g. The council shall not have jurisdiction over the Judicial or  
46 Legislative Branches of State Government or any agency, officer, or

1 employee of those branches.<sup>4</sup>

2

3 <sup>4</sup>[8.] 9.<sup>4</sup> (New Section) Nothing contained in P.L.1963, c.73  
4 (C.47:1A-1 et seq.)<sup>4</sup>,<sup>4</sup> as amended and supplemented<sup>4</sup>,<sup>4</sup> shall be  
5 construed as limiting <sup>4</sup>the<sup>4</sup> common law <sup>4</sup>right of<sup>4</sup> access to <sup>4</sup>a<sup>4</sup>  
6 government <sup>4</sup>[records] record, including criminal investigatory  
7 records of a law enforcement agency<sup>4</sup>.

8

9 <sup>4</sup>[<sup>3</sup>9.] 10.<sup>4</sup> (New Section) a. The provisions of this act, P.L. \_\_\_\_\_,  
10 c. \_\_\_\_\_ (C. \_\_\_\_\_) (now pending before the Legislature as this bill), shall  
11 not abrogate any exemption of a public record or government record  
12 from public access heretofore made pursuant to P.L.1963, c.73  
13 (C.47:1A-1 et seq.); any other statute; resolution of either or both  
14 Houses of the Legislature; regulation promulgated under the authority  
15 of any statute or Executive Order of the Governor; Executive Order  
16 of the Governor; Rules of Court; any federal law; federal regulation;  
17 or federal order.

18 b. The provisions of this act, P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (now pending  
19 before the Legislature as this bill), shall not abrogate or erode any  
20 executive or legislative privilege or grant of confidentiality heretofore  
21 established or recognized by the Constitution of this State, statute,  
22 court rule or judicial case law, which privilege or grant of  
23 confidentiality may duly be claimed to restrict public access to a public  
24 record or government record.<sup>3</sup>

25

26 <sup>4</sup>[<sup>3</sup>10.] 11.<sup>4</sup> (New section) Notwithstanding the provisions of  
27 P.L.1963, c.73 (C.47:1A-1 et seq.) or any other law to the contrary,  
28 the personnel or pension records of any individual in the possession of  
29 a public agency<sup>4</sup>, including but not limited to records relating to any  
30 grievance filed by or against an individual,<sup>4</sup> shall not be considered a  
31 government record and shall not be made available for public access,  
32 except that:

33 an individual's name, title, position, salary, payroll record, length of  
34 service, date of separation and the reason therefor, and the amount and  
35 type of any pension received shall be a government record;

36 personnel or pension records of any individual shall be accessible  
37 when required to be disclosed by another law, when disclosure is  
38 essential to the performance of official duties of a person duly  
39 authorized by this State or the United States, or when authorized by  
40 an individual in interest; and

41 data contained in information which disclose conformity with  
42 specific experiential, educational or medical qualifications required for  
43 government employment or for receipt of a public pension, but not  
44 including any detailed medical or psychological information, shall be  
45 a government record.<sup>3</sup>

1       <sup>3</sup>[9.] <sup>4</sup>[11.<sup>3</sup>] 12.<sup>4</sup> (New Section) a. A public official, officer,  
2 employee or custodian who knowingly and willfully violates P.L.1963,  
3 c.73 (C.47:1A-1 et seq.), as amended and supplemented, <sup>3</sup>and is found  
4 to have unreasonably denied access under the totality of the  
5 circumstances.<sup>3</sup> shall be subject to a civil penalty of \$1,000 for an  
6 initial violation, \$2,500 for a second violation that occurs within 10  
7 years of an initial violation, and \$5,000 for a third violation that occurs  
8 within 10 years of an initial violation. This penalty shall be collected  
9 and enforced in <sup>4</sup>[summary]<sup>4</sup> proceedings in accordance with <sup>4</sup>["the  
10 penalty enforcement law," N.J.S.2A:58-1 et seq.] the "Penalty  
11 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.)<sup>4</sup> ,  
12 and the rules of court governing actions for the collection of civil  
13 penalties. The Superior Court <sup>4</sup>[and the municipal courts]<sup>4</sup> shall have  
14 jurisdiction of proceedings for the collection and enforcement of the  
15 penalty imposed by this section. <sup>4</sup>[An action shall be brought in the  
16 name of the State upon the complaint of the Attorney General, the  
17 municipal prosecutor of the municipality in which the violation  
18 occurred or the county prosecutor of the county in which the violation  
19 occurred.

20       The court also may recommend to an appropriate entity that  
21 appropriate]

22       Appropriate<sup>4</sup> disciplinary proceedings <sup>4</sup>may<sup>4</sup> be initiated against a  
23 public official, officer, employee or custodian against whom a penalty  
24 has been imposed.

25

26       <sup>4</sup>13. (New section) The New Jersey Supreme Court may adopt  
27 such court rules as it deems necessary to effectuate the purposes of  
28 this act.<sup>4</sup>

29

30       <sup>4</sup>14. (New section) The Commissioner of Community Affairs shall  
31 include in the annual budget request of the Department of Community  
32 Affairs a request for sufficient funds to effectuate the purposes of  
33 section 8 of P.L. , c. (C. ) (now pending before the Legislature as  
34 this bill).<sup>4</sup>

35

36       <sup>4</sup>15. (New section) a. There is established a temporary Privacy  
37 Study Commission which shall consist of 13 members. The President  
38 of the Senate, the Minority Leader of the Senate, the Speaker of the  
39 General Assembly and the Minority Leader of the General Assembly  
40 shall each appoint one public member. The Governor shall appoint  
41 nine members and shall designate one of the commission's members to  
42 serve as chair of the commission. In making appointments to the  
43 commission, legislative leaders and the Governor shall cooperate and  
44 coordinate to ensure that the representatives of the following groups  
45 and organizations are represented among the commission's  
46 membership and that the membership represents a balance between

1 groups which advocate citizen privacy interests and groups which  
2 advocate increased access to government records: State and local law  
3 enforcement agencies, State and local government officers and  
4 employees, attorneys practicing in the field of individual privacy rights,  
5 public interest groups with a record of activity with respect to  
6 openness in government, crime victim advocates, members of the news  
7 media, and at least one retired member of the State Judiciary.  
8 Vacancies in the membership of the commission shall be filled in the  
9 same manner as the original appointments were made.

10 b. The commission shall organize within 14 days after the  
11 appointment of a majority of its members.

12 c. The commission shall meet at the call of the chair and hold  
13 hearings at such places as the chair shall designate during the sessions  
14 and recesses of the Legislature. The commission shall comply with the  
15 provisions of the "Open Public Meetings Act, P.L.1975, c.231  
16 (C.10:4-6 et seq.).

17 d. The commission shall be entitled to call to its assistance and  
18 avail itself of the services of the employees of any State, county, or  
19 municipal department, board, bureau, commission or agency, as it may  
20 require and as may be available for its purposes, and to employ  
21 stenographic and clerical assistance and incur traveling and other  
22 miscellaneous expenses as may be necessary in order to perform its  
23 duties, within the limits of funds appropriated or otherwise made  
24 available to it for its purposes.

25 e. The commission shall study the privacy issues raised by the  
26 collection, processing, use and dissemination of information by public  
27 agencies, in light of the recognized need for openness in government  
28 and recommend specific measures, including legislation, the  
29 commission may deem appropriate to deal with these issues and  
30 safeguard the privacy rights of individuals. In the course of its study,  
31 the commission shall review the current and proposed means used for  
32 the collection, processing, use and dissemination of information by  
33 State and local government agencies.

34 f. The commission shall report its findings and recommendations  
35 to the Governor and the Legislature within 18 months of the effective  
36 date of P.L. , c. (C. ) (now pending before the Legislature as this  
37 bill) and may accompany the same with any legislative bills which it  
38 may desire to recommend for adoption by the Legislature.<sup>4</sup>

39  
40 <sup>4</sup>16. There is appropriated \$95,000 from the General Fund to the  
41 Privacy Study Commission established pursuant to section 15 of P.L. ,  
42 c. (C. ) (now pending before the Legislature as this bill).<sup>4</sup>

43  
44 <sup>1</sup>[10.] <sup>4</sup>[12. <sup>1</sup>] 17. <sup>4</sup> Section 2 of P.L.1963, c.73 (C.47:1A-2),  
45 section 8 of P.L.1994, c.140 (C.47:1A-2.1) and section 4 of P.L.1963,  
46 c.73 (C.47:1A-4) are repealed.



# ASSEMBLY, No. 1309

## STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Assemblyman GEORGE F. GEIST**

**District 4 (Camden and Gloucester)**

**Assemblyman JACK COLLINS**

**District 3 (Salem, Cumberland and Gloucester)**

**Co-Sponsored by:**

**Assemblymen Asselta, Augustine, Assemblywoman Heck, Assemblyman**

**R.Smith and Assemblywoman Greenstein**

**SYNOPSIS**

Provides public access to government records.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/7/2000)**

1 AN ACT concerning public access to government records and  
2 amending and supplementing 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:

6  
7 1. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read as  
8 follows:

9 1. The Legislature finds and declares it to be the public policy of  
10 this State that **[public] government** records shall be readily accessible  
11 for inspection, copying, or examination by the citizens of this State,  
12 with certain exceptions, for the protection of the public interest, and  
13 any limitations on the right of access accorded by P.L.1963, c.73  
14 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed  
15 in favor of the public's right of access. All government records shall  
16 be subject to public access unless exempt from such access by:  
17 P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any  
18 other statute; resolution of either or both houses of the Legislature;  
19 regulation promulgated under the authority of any statute or Executive  
20 Order of the Governor; Executive Order of the Governor; Rules of  
21 Court; any federal law, other than the federal Freedom of Information  
22 Act (5 U.S.C. s.552); federal regulation; or federal order.

23 (cf: P.L.1963, c.73, s.1)

24

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

27 1. As used in this act:

28 "Biotechnology" means any technique that uses living organisms,  
29 or parts of living organisms, to make or modify products, to improve  
30 plants or animals, or to develop micro-organisms for specific uses;  
31 including the industrial use of recombinant DNA, cell fusion, and novel  
32 bioprocessing techniques.

33 "Custodian of a government record" or "custodian" means the head  
34 of a public agency having custody or control of a government record  
35 or the head's designee or designees.

36 "Government record" or "record" means any paper, written or  
37 printed book, document, drawing, map, plan, photograph, microfilm,  
38 data processed or image processed document, information stored or  
39 maintained electronically or by sound-recording or in a similar device,  
40 or any copy thereof, that has been made, maintained or kept on file by  
41 any officer, commission, agency or authority of the State or of any  
42 political subdivision thereof, including subordinate boards thereof, or  
43 that has been received by any such officer, commission, agency, or

**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 authority of the State or of any political subdivision thereof, including  
2 subordinate boards thereof. The terms shall not include inter-agency  
3 or intra-agency advisory, consultative, or deliberative material.

4 ["Local agency" means a county or municipality, and includes a  
5 local health board or other local subdivision.

6 "State agency" means each of the principal departments in the  
7 Executive Branch of the State Government, and all boards, divisions,  
8 commissions, agencies, departments, councils, authorities, offices or  
9 officers within any such departments now existing or hereafter  
10 established.]

11 "Public agency" or "agency" means any of the principal departments  
12 in the Executive Branch of State Government, and any division, board,  
13 bureau, office, commission or other instrumentality within or created  
14 by such department; the Legislature of the State and any office, board,  
15 bureau or commission within or created by the Legislative Branch; and  
16 any independent State authority, commission, instrumentality or  
17 agency. The terms also mean any political subdivision of the State or  
18 combination of political subdivisions, and any division, board, bureau,  
19 office, commission or other instrumentality within or created by a  
20 political subdivision of the State or combination of political  
21 subdivisions, and any independent authority, commission,  
22 instrumentality or agency created by a political subdivision or  
23 combination of political subdivisions.

24 (cf: P.L.1995, c.23, s.1)

25  
26 3. Section 2 of P.L.1995, c.23 (C.47:1A-1.2) is amended to read  
27 as follows:

28 2. a. When federal law or regulation requires the submission of  
29 biotechnology trade secrets and related confidential information,  
30 [State and local agencies] a public agency shall not have access to this  
31 information except as allowed by federal law.

32 b. A [State or local agency] public agency shall not make any  
33 [information] biotechnology trade secrets and related confidential  
34 information it has access to under this act available to any other [State  
35 or local agency] public agency, or to the general public, except as  
36 allowed pursuant to federal law.

37 (cf: P.L.1995, c.23, s.2)

38  
39 4. Section 1 of P.L.1998, c.17 (C.47:1A-2.2) is amended to read  
40 as follows:

41 1. a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1  
42 et seq.) or the provisions of any other law to the contrary, where it  
43 shall appear that a person who is serving a term of imprisonment or  
44 is on parole or probation as the result of a conviction of any indictable  
45 offense under the laws of this State, any other state or the United



1 States is seeking [public] government records containing personal  
2 information pertaining to the person's victim or the victim's family,  
3 including but not limited to a victim's home address, home telephone  
4 number, work or school address, work telephone number, social  
5 security account number, medical history or any other identifying  
6 information, the right of [examination herein] access provided for in  
7 P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented shall  
8 be denied.

9 b. [Public] Government records containing personal identifying  
10 information which is protected under the provisions of this section may  
11 be released to an inmate or his representative only if the information  
12 is necessary to assist in the inmate's own defense. A determination  
13 that the information is necessary to assist in the inmate's defense shall  
14 be made by the court upon motion by the inmate or his representative.  
15 (cf: P.L.1998, c.17, s.1.)

16

17 5. Section 3 of P.L.1963, c.73 (C.47:1A-3) is amended to read as  
18 follows:

19 3. Notwithstanding the provisions of [this act] P.L.1963, c.73  
20 (C.47:1A-1 et seq.) as amended and supplemented, where it shall  
21 appear that the record or records which are sought to be inspected,  
22 copied, or examined shall pertain to an investigation in progress by any  
23 [such body,] public agency, [commission, board, authority or  
24 official,] the right of [examination herein] access provided for in  
25 P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented may  
26 be denied if the inspection, copying or [publication] examination of  
27 such record or records shall be inimical to the public interest;  
28 provided, however, that this provision shall not be construed to  
29 [prohibit any such body, agency, commission, board, authority or  
30 official from opening such record or records for public examination  
31 if not otherwise prohibited by law] allow any public agency to prohibit  
32 access to a record that was open for public inspection, examination, or  
33 copying before the investigation commenced.

34 (cf: P.L.1963, c.73, s.3)

35

36 6. (New Section) a. The custodian of a government record shall  
37 permit the record to be inspected, examined, and copied by any person  
38 during regular business hours, unless a government record is exempt  
39 from public access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended  
40 and supplemented; any other statute; resolution of either or both  
41 houses of the Legislature; regulation promulgated under the authority  
42 of any statute or Executive Order of the Governor; Executive Order  
43 of the Governor; Rules of Court; any federal law, other than the  
44 federal Freedom of Information Act (5 U.S.C. s.552); federal  
45 regulation; or federal order. An agency regulation that limits access to

1 government records shall not be retroactive in effect or applied to  
2 deny a request for access to a government record that is pending  
3 before the agency or a court at the time of the adoption of the  
4 regulation.

5 b. A copy or copies of a government record may be purchased by  
6 any person upon payment of the fee prescribed by law or regulation,  
7 or if a fee is not prescribed by law or regulation, upon payment of the  
8 actual cost of duplicating the record. Except as otherwise provided  
9 by law or regulation, the fee assessed for the duplication of a  
10 government record embodied in the form of printed matter shall not  
11 exceed the following: first page to tenth page, \$0.75 per page;  
12 eleventh page to twentieth page, \$0.50 per page; all pages over  
13 twenty, \$0.25 per page. The actual cost of duplicating the record shall  
14 be the cost of materials and supplies used to make a copy of the  
15 record, but shall not include the cost of labor or other overhead  
16 expenses associated with making the copy. If a public agency can  
17 show that its actual costs for duplication of a government record  
18 exceed the foregoing rates, the public agency shall be permitted to  
19 charge the actual cost of duplicating the record.

20 c. Whenever the nature, format, manner of collation, or volume of  
21 a government record embodied in the form of printed matter to be  
22 inspected, examined, or copied pursuant to this section is such that the  
23 record cannot be reproduced by ordinary document copying equipment  
24 in ordinary business size or involves an extraordinary expenditure of  
25 time and effort to accommodate the request, the public agency may  
26 charge, in addition to the actual cost of duplicating the record, a  
27 special service charge that shall be reasonable and shall be based upon  
28 the actual direct cost of providing the copy or copies. The requestor  
29 shall have the opportunity to review and object to the charge prior to  
30 it being incurred.

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

46 e. The custodian of a public agency shall adopt a form for the use

1 of any person who requests access to a government record held or  
2 controlled by the public agency. The form shall provide for indication  
3 of the name, address, and phone number of the requestor and a brief  
4 description of the government record sought, but the requestor shall  
5 have the option to not provide a name, address, or phone number.  
6 The form shall include space for the custodian to indicate which record  
7 will be made available, when the record will be available, and the fees  
8 to be charged. The form shall also include the following: (1) specific  
9 directions and procedures for requesting a record; (2) a statement as  
10 to whether prepayment of fees or a deposit is required; (3) the time  
11 period within which the public agency is required by P.L.1963, c.73  
12 (C.47:1A-1 et seq.) as amended and supplemented, to make the record  
13 available; (4) a statement of the requestor's right to challenge a  
14 decision by the public agency to deny access and the procedure for  
15 filing an appeal; (5) space for the custodian to list reasons if a request  
16 is denied in whole or in part; (6) space for the requestor to sign and  
17 date the form; (7) space for the custodian to sign and date the form if  
18 the request is fulfilled or denied.

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

40 g. Any officer or employee of a public agency who receives a  
41 request for access to a government record shall forward the request to  
42 the custodian of the record or direct the requestor to the custodian of  
43 the record.

44 h. Unless a shorter time period is otherwise provided by statute,  
45 regulation, or executive order, a custodian of a government record  
46 shall grant or deny a request for access to a government record as

1 soon as possible, but not later than seven business days after receiving  
2 the request. In the event a custodian fails to respond within seven  
3 business days after receiving a request, the failure to respond shall be  
4 deemed a denial of the request, unless the requestor has elected not to  
5 provide a name, address or telephone number, or other means of  
6 contacting the requestor. If the requestor has elected not to provide  
7 a name, address, or telephone number, or other means of contacting  
8 the requestor, the custodian shall not be required to respond until the  
9 requestor reappears before the custodian seeking a response to the  
10 original request.

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

15

16 7. (New Section) A person who is denied access to a government  
17 record by the custodian of the record, at the option of the requestor,  
18 (1) may institute a proceeding to challenge the custodian's decision by  
19 filing in the Superior Court an action in lieu of prerogative writ or an  
20 order to show cause, or both, or (2) if the record to which access is  
21 denied is in the custody of a State agency as defined in section 2 of  
22 P.L.1968, c. 410 (C.52:14B-2), may have the matter considered a  
23 contested case and handled in the manner provided in the  
24 "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1et  
25 seq.); or (3) if the custodian is an officer, official or employee of a  
26 municipality or municipal entity, may challenge the custodian's  
27 decision by filing a complaint in the municipal court of the municipality  
28 in which access was denied.

29 If a complaint is filed with a municipal court, the court clerk shall  
30 transmit the complaint by the end of the second business day  
31 following receipt to the assignment judge for the vicinage in which that  
32 municipal court is located for assignment of the complaint either to the  
33 municipal court in which it was filed or to another municipal court in  
34 the vicinage for disposition. The municipal courts in a vicinage in  
35 which a complaint is filed shall have jurisdiction of proceedings  
36 initiated by such a complaint to enforce the provisions of P.L.1963,  
37 c.73 (C.47:1A-1 et seq.), as amended and supplemented,  
38 notwithstanding N.J.S.2B:12-16 to the contrary. At the request of  
39 the requestor who filed a complaint, the municipal prosecutor shall  
40 represent the requestor in the proceedings before the municipal court,  
41 at no cost to the requestor.

42 The right to institute any proceeding under this section upon a  
43 denial of access shall be solely that of the requestor. Any such  
44 proceeding shall proceed in a summary or expedited manner. The  
45 public agency shall have the burden of proving that the denial of access  
46 is authorized by law. If it is determined that access has been

1 improperly denied, the court or agency head shall order that access be  
2 allowed. If a decision of a municipal court finding that access has  
3 been improperly denied is appealed, the county prosecutor shall  
4 represent the appellee, at the request of the appellee, in the  
5 proceedings on the appeal, at no cost to the appellee.

6 A requestor who prevails in any proceeding instituted under this  
7 section shall be entitled to taxed costs, and may be awarded a  
8 reasonable attorney's fee. A custodian who prevails in any proceeding  
9 instituted under this section shall be entitled to taxed costs.

10  
11 8. (New Section) Nothing contained in P.L.1963, c.73 (C.47:1A-1  
12 et seq.) as amended and supplemented shall be construed as limiting  
13 common law access to government records.

14  
15 9. (New Section) a. A public official, officer, employee or  
16 custodian who knowingly and willfully violates P.L.1963, c.73  
17 (C.47:1A-1 et seq.), as amended and supplemented, shall be subject to  
18 a civil penalty of \$1,000 for an initial violation, \$2,500 for a second  
19 violation that occurs within 10 years of an initial violation, and \$5,000  
20 for a third violation that occurs within 10 years of an initial violation.  
21 This penalty shall be collected and enforced in summary proceedings  
22 in accordance with "the penalty enforcement law," N.J.S.2A:58-1 et  
23 seq., and the rules of court governing actions for the collection of  
24 civil penalties. The Superior Court and the municipal courts shall have  
25 jurisdiction of proceedings for the collection and enforcement of the  
26 penalty imposed by this section. An action shall be brought in the name  
27 of the State upon the complaint of the Attorney General, the municipal  
28 prosecutor of the municipality in which the violation occurred or the  
29 county prosecutor of the county in which the violation occurred.

30 The court also may recommend to an appropriate entity that  
31 appropriate disciplinary proceedings be initiated against a public  
32 official, officer, employee or custodian against whom a penalty has  
33 been imposed.

34  
35 10. Section 2 of P.L.1963, c.73 (C.47:1A-2), section 8 of  
36 P.L.1994, c.140 (C.47:1A-2.1) and section 4 of P.L.1963, c.73  
37 (C.47:1A-4) are repealed.

38  
39 11. This act shall take effect on the first day of the third month  
40 following enactment.

41  
42  
43 STATEMENT

44  
45 The purpose of this bill is to provide public access to government  
46 records. The bill amends current law (P.L.1963, c.73; C.47:1A-1 et

1 seq.) to affirmatively state the public's right to access all government  
2 records (section 1) and the manner in which that access is to provided  
3 by the custodian of a government record (section 6). Government  
4 records would be exempt from public access only if exempt by:  
5 N.J.S.A.47:1A-1 et seq. as amended and supplemented; any other  
6 statute; resolution of either or both houses of the Legislature;  
7 regulation promulgated under the authority of any statute or Executive  
8 Order of the Governor; Executive Order of the Governor; Rules of  
9 Court; any federal law, other than the federal Freedom of Information  
10 Act (5\_U.S.C. s.552); federal regulation; or federal order.

11 The bill provides a comprehensive definition for "government  
12 record" and "public agency" (section 2), amends current sections of  
13 law to ensure that wording in these sections correspond to the new  
14 terms used in the bill (sections 3, 4 and 5), and revises the procedures  
15 by which a requestor who is denied access may challenge the denial in  
16 Superior Court, through the administrative law process, or in  
17 municipal court (with certain additional assistance provided to those  
18 who file complaints in municipal court) (section 7). The bill specifies  
19 that its provisions shall not be construed to limit the common law  
20 access to government records (section 8). Finally, the bill establishes  
21 civil monetary penalties that may be imposed against a public official,  
22 officer, employee or custodian who knowingly and willfully violates  
23 the law governing the right to public access (section 9).

24 The bill repeals N.J.S.A.47:1A-2 which deals with the right of  
25 inspection of public records, how copies are to be provided and the  
26 fees that may be charged; N.J.S.A.47:1A-2.1 which deals with the  
27 right to receive printed copies of data or image processed documents;  
28 and N.J.S.A.47:1A-4 which deals with proceedings to enforce the right  
29 to inspect or copy records. The provisions of these three sections are  
30 dealt with in the new sections in this bill.

# ASSEMBLY STATE GOVERNMENT COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 1309**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 6, 2000

The Assembly State Government Committee reports favorably and with committee amendments Assembly, No. 1309.

As amended, this bill expands the public's right to access to all public records under current law (N.J.S.A.47:1A-1 et seq.) to include all government records and facilitates the way in which that access is provided by the custodian of a government record. Government records would be exempt from public access only if exempted by: N.J.S.A.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, other than the federal Freedom of Information Act (5 U.S.C. §552); federal regulation; or federal order.

The committee notes that the New Jersey Supreme Court, in North Jersey Newspapers v. Passaic County, 127 N.J. 9 (1992), citing Evidence Rule 34 and N.J.S.A.2A:84A-27, acknowledged that some communications by government officials may be protected, at the State level, by the official information privilege and exempt from disclosure.

The bill defines government record as any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards, or that has been received by any such officer, commission, agency, or authority of the State or of any political subdivision, including subordinate boards.

The bill amends current sections of law relating to access to public records to ensure that wording in these sections corresponds to the new terms used in the bill, and revises the procedures by which a requestor who is denied access may challenge the denial in Superior Court, through the administrative law process, or in municipal court (with certain additional assistance provided to those who file complaints in municipal court). The bill specifies that its provisions will not be construed to limit the common law access to government

records.

Finally, the bill establishes civil monetary penalties that may be imposed against a public official, officer, employee or custodian who knowingly and willfully violates the law governing the right to public access.

The bill repeals N.J.S.A.47:1A-2 which deals with the right of inspection of public records, how copies are to be provided and the fees that may be charged; N.J.S.A.47:1A-2.1 which deals with the right to receive printed copies of data or image processed documents; and N.J.S.A.47:1A-4 which deals with proceedings to enforce the right to inspect or copy records. The provisions of these three sections are dealt with in the new sections of the bill.

The committee amended the bill to: (1) clarify that the bill's new definitions apply to N.J.S.A.47:1A-1 et seq., as amended and supplemented; (2) revise the definition of custodian of a government record to mean in the case of a municipality, the municipal clerk, and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body; (3) recognize that in certain cases the cost of labor or other overhead expenses may be included in the cost of duplicating a record; (4) provide that a custodian may require a deposit against costs for reproducing documents sought through an anonymous request when it is anticipated that the cost will be in excess of \$15; and (5) clarify that a custodian of a government record will either grant access to a government record or deny the request for such access not later than seven business days after receiving a request for access, as opposed to grant or deny the request within that time period.



STATEMENT TO

[First Reprint]

**ASSEMBLY, No. 1309**

with Assembly Floor Amendments  
(Proposed By Assemblyman GEIST)

ADOPTED: MARCH 27, 2000

This floor amendment provides that a person denied access to a government record by the custodian of the record who is an officer, official or employee of a county or county entity, or of a board of education, may challenge the custodian's decision by filing a complaint in the municipal court of the municipality in which access was denied.

STATEMENT TO  
[Second Reprint]  
**ASSEMBLY, No. 1309**

with Assembly Floor Amendments  
(Proposed By Assemblyman COLLINS)

ADOPTED: JUNE 26, 2000

These amendments provide that:

(1) in order to be publicly accessible, a government record must have been made, maintained or kept on file in the course of official business;

(2) when a government record is stored, archived or consists of more than 100 pages, the custodian may exceed the usual seven days provided by the bill to grant or deny access if the custodian advises when the record can be made available and the failure to produce the record by that date will constitute a denial of access;

(3) the bill's provisions will not abrogate any existing exemption of a public record or government record from public access established by law, legislative resolution, regulation, Executive Order of the Governor, court rule, federal law or regulation, or federal order;

(4) the bill's provisions will not abrogate or erode any existing executive or legislative privilege or grant of confidentiality established or recognized by the State Constitution, statute, court rule or judicial case law, which may be claimed to restrict public access to a public record or government record;

(5) the personnel or pension records of any individual in the possession of a public agency will not be considered a government record and will not be made available for public access, except that the following information will be accessible:

(a) an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received;

(b) personnel or pension records of any individual when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person authorized by this State or the United States, or when authorized by an individual in interest; and

(c) data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information; and

(6) an official must have unreasonably denied access under the totality of the circumstances in order to be subject to the bill's penalty provisions.

STATEMENT TO  
[Third Reprint]  
**ASSEMBLY, No. 1309**

with Senate Floor Amendments  
(Proposed By Senator MARTIN)

ADOPTED: MAY 3, 2001

These Senate Amendments make this bill identical to Senate No, 2003 of 2000. As amended, the bill revises the existing "Right to Know" law, N.J.S.A.47:1A-1 et seq., to:

broaden the scope of accessible government records while protecting certain specified government records from disclosure;

impose new responsibilities on the custodians of government records;

create a Government Records Council in the Department of Community Affairs to mediate disputes and adjudicate complaints regarding denials of access to government records;

create a temporary privacy study commission; and

increase the penalties which may be imposed upon persons who unreasonably deny access to a government record.

The amended bill preserves existing legislative and executive privileges and grants of confidentiality, as well as exemptions to the right of access established pursuant to statute, legislative resolution, regulation; Executive Order, court rule, or federal law.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

[Fourth Reprint]

## ASSEMBLY, No. 1309

# STATE OF NEW JERSEY

DATED: DECEMBER 6, 2001

The Assembly Judiciary Committee reports favorably Assembly Bill No. 1309 (4R).

This bill expands the public's right to access to all public records under current law (N.J.S.A.47:1A-1 et seq.) to include all government records and facilitates the way in which that access is provided by the custodian of a government record. Government records would be exempt from public access only if exempted by: N.J.S.A.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.

The bill defines government record as any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision, including subordinate boards.

STATEMENT TO  
[Fourth Reprint]  
**ASSEMBLY, No. 1309**

with Assembly Floor Amendments  
(Proposed By Assemblymen GEIST and COLLINS)

ADOPTED: JANUARY 3, 2002

These amendments would except from the definition of government record, and therefor from public access under the bill:

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

any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, but not including an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members; and

any copy, reproduction or facsimile of any photograph, negative, or print, including instant photographs and videotapes, of the body of a deceased person, taken by or for the medical examiner at the scene of death or in the course of a post mortem examination or autopsy, with certain exceptions.

**SENATE, No. 2003**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED DECEMBER 14, 2000

**Sponsored by:**

**Senator ROBERT J. MARTIN**

**District 26 (Essex, Morris and Passaic)**

**Senator BYRON M. BAER**

**District 37 (Bergen)**

**SYNOPSIS**

Provides for public access to government records; protects certain government records from public disclosure.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning public access to government records, amending  
2 and supplementing P.L.1963, c.73 (C.47:1A-1 et seq.), amending  
3 P.L.1995, c.23 and P.L.1998, c.17, and repealing parts of the  
4 statutory law.

5

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

8

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

11 1. The Legislature finds and declares it to be the public policy of  
12 this State that **[public]** :

13 government records shall be readily accessible for inspection,  
14 copying, or examination by the citizens of this State, with certain  
15 exceptions for the protection of the public interest, and any limitations  
16 on the right of access accorded by P.L.1963, c.73 (C.47:1A-1 et seq.),  
17 as amended and supplemented, shall be construed in favor of the  
18 public's right of access;

19 all government records shall be subject to public access unless  
20 exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as  
21 amended and supplemented; any other statute; resolution of either or  
22 both houses of the Legislature; regulation promulgated under the  
23 authority of any statute or Executive Order of the Governor;  
24 Executive Order of the Governor; Rules of Court; any federal law,  
25 federal regulation, or federal order; and

26 a public agency has a responsibility and an obligation to safeguard  
27 from public access a citizen's personal information with which it has  
28 been entrusted when disclosure thereof would violate the citizen's  
29 reasonable expectation of privacy.

30 (cf: P.L.1963, c.73, s.1)

31

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

34 1. As used in **[this act]** P.L.1963, c.73 (C.47:1A-1 et seq.) as  
35 amended and supplemented:

36 "Biotechnology" means any technique that uses living organisms,  
37 or parts of living organisms, to make or modify products, to improve  
38 plants or animals, or to develop micro-organisms for specific uses;  
39 including the industrial use of recombinant DNA, cell fusion, and novel  
40 bioprocessing techniques.

41 "Custodian of a government record" or "custodian" means in the  
42 case of a municipality, the municipal clerk and in the case of any other  
43 public agency, the officer officially designated by formal action of that

**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 agency's director or governing body, as the case may be.  
2 "Government record" or "record" means:  
3 in the case of a public agency which is a victims' rights agency, any  
4 record which is required by law to be made, maintained or kept on file;  
5 and  
6 in the case of any public agency which is not a victims' rights  
7 agency, any paper, written or printed book, document, drawing, map,  
8 plan, photograph, microfilm, data processed or image processed  
9 document, information stored or maintained electronically or by  
10 sound-recording or in a similar device, or any copy thereof, that has  
11 been made, maintained or kept on file in the course of his or its official  
12 business by any officer, commission, agency or authority of the State  
13 or of any political subdivision thereof, including subordinate boards  
14 thereof, or that has been received by any such officer, commission,  
15 agency, or authority of the State or of any political subdivision  
16 thereof, including subordinate boards thereof. The terms shall not  
17 include inter-agency or intra-agency advisory, consultative, or  
18 deliberative material.  
19 A government record shall not include the following information  
20 which is deemed to be privileged and confidential:  
21 trade secrets and proprietary commercial or financial information  
22 obtained from any source. For the purposes of this paragraph, trade  
23 secrets shall include data processing software obtained by a public  
24 body under a licensing agreement which prohibits its disclosure;  
25 any record within the attorney-client privilege. This paragraph shall  
26 not be construed as exempting from access attorney or consultant bills  
27 or invoices except that such bills or invoices may be redacted to  
28 remove any information protected by the attorney-client privilege;  
29 administrative or technical information regarding computer  
30 hardware, software and networks which, if disclosed, would jeopardize  
31 computer security;  
32 emergency or security information or procedures for any buildings  
33 or facility which, if disclosed, would jeopardize security of the building  
34 or facility or persons therein;  
35 security measures and surveillance techniques which, if disclosed,  
36 would create a risk to the safety of persons, property, electronic data  
37 or software;  
38 information which, if disclosed, would give an advantage to  
39 competitors or bidders;  
40 information generated by or on behalf of public employers or public  
41 employees in connection with any sexual harassment complaint filed  
42 with a public employer or with any grievance filed by or against an  
43 individual or in connection with collective negotiations, including  
44 documents and statements of strategy or negotiating position;  
45 information which is a communication between a public agency and  
46 its insurance carrier;



1 information which is to be kept confidential pursuant to court  
2 order; and

3 that portion of any document which discloses the social security  
4 number, credit card number, unlisted telephone number or driver  
5 license number of any person.

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

9 pedagogical, scholarly and/or academic research records and/or the  
10 specific details of any research project conducted under the auspices  
11 of a public higher education institution in New Jersey, including, but  
12 not limited to research, development information, testing procedures,  
13 or information regarding test participants, related to the development  
14 or testing of any pharmaceutical or pharmaceutical delivery system,  
15 except that a custodian may not deny inspection of a government  
16 record or part thereof that gives the name, title, expenditures, source  
17 and amounts of funding and date when the final project summary of  
18 any research will be available;

19 test questions, scoring keys and other examination data pertaining  
20 to the administration of an examination for employment or academic  
21 examination;

22 records of pursuit of charitable contributions or records containing  
23 the identity of a donor of a gift if the donor requires non-disclosure of  
24 the donor's identity as a condition of making the gift provided that the  
25 donor has not received any benefits of or from the institution of higher  
26 education in connection with such gift other than a request for  
27 memorialization or dedication;

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

30 information contained on individual admission applications; and  
31 information concerning student records or grievance or disciplinary  
32 proceedings against a student to the extent disclosure would reveal the  
33 identity of the student.

34 ["Local agency" means a county or municipality, and includes a  
35 local health board or other local subdivision.

36 "State agency" means each of the principal departments in the  
37 Executive Branch of the State Government, and all boards, divisions,  
38 commissions, agencies, departments, councils, authorities, offices or  
39 officers within any such departments now existing or hereafter  
40 established.]

41 "Public agency" or "agency" means any of the principal departments  
42 in the Executive Branch of State Government, and any division, board,  
43 bureau, office, commission or other instrumentality within or created  
44 by such department; the Legislature of the State and any office, board,  
45 bureau or commission within or created by the Legislative Branch; and  
46 any independent State authority, commission, instrumentality or

1 agency. The terms also mean any political subdivision of the State or  
2 combination of political subdivisions, and any division, board, bureau,  
3 office, commission or other instrumentality within or created by a  
4 political subdivision of the State or combination of political  
5 subdivisions, and any independent authority, commission,  
6 instrumentality or agency created by a political subdivision or  
7 combination of political subdivisions.

8 "Victims' rights agency" means a public agency, or part thereof,  
9 determined by the Attorney General to have responsibilities relating to  
10 victims of sexual assault or domestic violence, and the Victims of  
11 Crime Compensation Board, established pursuant to P.L.1971, c.317  
12 (C.52:4B-1 et seq.).

13 (cf: P.L.1995, c.23, s.1)

14  
15 3. Section 2 of P.L.1995, c.23 (C.47:1A-1.2) is amended to read  
16 as follows:

17 2. a. When federal law or regulation requires the submission of  
18 biotechnology trade secrets and related confidential information,  
19 [State and local agencies] a public agency shall not have access to this  
20 information except as allowed by federal law.

21 b. A [State or local agency] public agency shall not make any  
22 [information] biotechnology trade secrets and related confidential  
23 information it has access to under this act available to any other [State  
24 or local agency] public agency, or to the general public, except as  
25 allowed pursuant to federal law.

26 (cf: P.L.1995, c.23, s.2)

27  
28 4. Section 1 of P.L.1998, c.17 (C.47:1A-2.2) is amended to read  
29 as follows:

30 1. a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1  
31 et seq.) or the provisions of any other law to the contrary, where it  
32 shall appear that a person who is [serving a term of imprisonment or  
33 is on parole or probation as the result of a conviction] convicted of  
34 any indictable offense under the laws of this State, any other state or  
35 the United States is seeking [public] government records containing  
36 personal information pertaining to the person's victim or the victim's  
37 family, including but not limited to a victim's home address, home  
38 telephone number, work or school address, work telephone number,  
39 social security account number, medical history or any other  
40 identifying information, the right of [examination herein] access  
41 provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
42 supplemented shall be denied.

43 b. [Public records] A government record containing personal  
44 identifying information which is protected under the provisions of this  
45 section may be released [to an inmate or his representative] only if the

1 information is necessary to assist in the [inmate's own] defense of the  
2 requestor. A determination that the information is necessary to assist  
3 in the [inmate's] requestor's defense shall be made by the court upon  
4 motion by the [inmate] requestor or his representative.

5 c. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et  
6 seq.) as amended and supplemented, or any other law to the contrary,  
7 a custodian shall not comply with an anonymous request for a  
8 government record which is protected under the provisions of this  
9 section.

10 (cf: P.L.1998, c.17, s.1.)

11  
12 5. Section 3 of P.L.1963, c.73 (C.47:1A-3) is amended to read as  
13 follows:

14 3. a. Notwithstanding the provisions of [this act] P.L.1963, c.73  
15 (C.47:1A-1 et seq.) as amended and supplemented, where it shall  
16 appear that the record or records which are sought to be inspected,  
17 copied, or examined shall pertain to an active investigation in progress  
18 by any [such body,] public agency, [commission, board, authority or  
19 official,] the right of [examination herein] access provided for in  
20 P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented may  
21 be denied if the inspection, copying or [publication] examination of  
22 such record or records shall be inimical to the public interest;  
23 provided, however, that this provision shall be subject to subsection  
24 c. of this section and shall not be construed to [prohibit any such  
25 body, agency, commission, board, authority or official from opening  
26 such record or records for public examination if not otherwise  
27 prohibited by law] allow any public agency to prohibit access to a  
28 record that was open for public inspection, examination, or copying  
29 before the investigation commenced.

30 b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et  
31 seq.), as amended and supplemented, inactive investigatory files  
32 maintained by a law enforcement agency shall be open to inspection,  
33 copying or examination by any person unless exempt pursuant to  
34 section 1 of P.L.1995, c.23 (C.47:1A-1.1) or unless the disclosure of  
35 the information reveals the identity of a confidential source, discloses  
36 confidential investigative techniques and procedures or endangers the  
37 life or physical safety of law enforcement personnel or others;  
38 provided, however, that this provision shall not be construed to allow  
39 any public agency to prohibit access to a record that was open for  
40 public inspection, examination or copying before the investigation  
41 commenced.

42 c. "Active investigation" for the purposes of this section is defined  
43 to include information compiled by a public agency in the course of  
44 conducting an ongoing criminal or civil investigation of a specific act  
45 or omission which is continuing with a reasonable good faith

1 anticipation of securing an arrest or prosecution in the foreseeable  
2 future. The term shall not include the following which, under all  
3 circumstances, shall be available to the public within 24 hours or as  
4 soon as practicable, of a request for such information:

5 where a crime has been reported but no arrest yet made,  
6 information as to the type of crime, time, location and type of weapon,  
7 if any;

8 if an arrest has been made, information as to the name, address and  
9 age of any victims unless there has not been sufficient opportunity for  
10 notification of next of kin of any victims of injury and/or death to any  
11 such victim or where the release of the names of any victim would be  
12 contrary to existing law or Court Rule. In deciding on the release of  
13 information as to the identity of a victim, the safety of the victim and  
14 the victim's family, and the integrity of any ongoing investigation, shall  
15 be considered;

16 if an arrest has been made, information as to the defendant's name,  
17 age, residence, occupation, marital status and similar background  
18 information and, the identity of the complaining party unless the  
19 release of such information is contrary to existing law or Court Rule;

20 information as to the text of any charges such as the complaint,  
21 accusation and indictment unless sealed by the court or unless the  
22 release of such information is contrary to existing law or court rule;

23 information as to the identity of the investigating and arresting  
24 personnel and agency and the length of the investigation;

25 information of the circumstances immediately surrounding the  
26 arrest, including but not limited to the time and place of the arrest,  
27 resistance, if any, pursuit, possession and nature and use of weapons  
28 and ammunition by the suspect and by the police; and

29 information as to circumstances surrounding bail, whether it was  
30 posted and the amount thereof.

31 (cf: P.L.1963, c.73, s.3)

32  
33 6. (New section) a. The custodian of a government record shall  
34 permit the record to be inspected, examined, and copied by any person  
35 during regular business hours; or in the case of a municipality having  
36 a population of 5,000 or fewer according to the most recent federal  
37 decennial census, a board of education having a total district  
38 enrollment of 500 or fewer, or a public authority having less than \$10  
39 million in assets, during not less than six regular business hours over  
40 not less than three business days per week or the entity's regularly-  
41 scheduled business hours, whichever is less; unless a government  
42 record is exempt from public access by: P.L.1963, c.73 (C.47:1A-1 et  
43 seq.) as amended and supplemented; any other statute; resolution of  
44 either or both houses of the Legislature; regulation promulgated under  
45 the authority of any statute or Executive Order of the Governor;  
46 Executive Order of the Governor; Rules of Court; any federal law;

1 federal regulation; or federal order. Prior to allowing access to any  
2 government record, the custodian thereof shall redact from that record  
3 any information which discloses the social security number, credit card  
4 number, unlisted telephone number, or driver license number of any  
5 person. Except where an agency can demonstrate an emergent need,  
6 a regulation that limits access to government records shall not be  
7 retroactive in effect or applied to deny a request for access to a  
8 government record that is pending before the agency, the council or a  
9 court at the time of the adoption of the regulation.

10 b. A copy or copies of a government record may be purchased by  
11 any person upon payment of the fee prescribed by law or regulation,  
12 or if a fee is not prescribed by law or regulation, upon payment of the  
13 actual cost of duplicating the record. Except as otherwise provided  
14 by law or regulation, the fee assessed for the duplication of a  
15 government record embodied in the form of printed matter shall not  
16 exceed the following: first page to tenth page, \$0.75 per page;  
17 eleventh page to twentieth page, \$0.50 per page; all pages over  
18 twenty, \$0.25 per page. The actual cost of duplicating the record shall  
19 be the cost of materials and supplies used to make a copy of the  
20 record, but shall not include the cost of labor or other overhead  
21 expenses associated with making the copy except as provided for in  
22 subsection c. of this section. If a public agency can demonstrate that  
23 its actual costs for duplication of a government record exceed the  
24 foregoing rates, the public agency shall be permitted to charge the  
25 actual cost of duplicating the record.

26 c. Whenever the nature, format, manner of collation, or volume of  
27 a government record embodied in the form of printed matter to be  
28 inspected, examined, or copied pursuant to this section is such that the  
29 record cannot be reproduced by ordinary document copying equipment  
30 in ordinary business size or involves an extraordinary expenditure of  
31 time and effort to accommodate the request, the public agency may  
32 charge, in addition to the actual cost of duplicating the record, a  
33 special service charge that shall be reasonable and shall be based upon  
34 the actual direct cost of providing the copy or copies; provided,  
35 however, that in the case of a municipality, rates for the duplication of  
36 particular records when the actual cost of copying exceeds the  
37 foregoing rates shall be established in advance by ordinance. The  
38 requestor shall have the opportunity to review and object to the charge  
39 prior to it being 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 either  
44 convert the record to the medium requested or provide a copy in some  
45 other meaningful medium. If a request is for a record: (1) in a medium  
46 not routinely used by the agency; (2) not routinely developed or

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

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

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

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

1 promptly permit access to the remainder of the record. If the  
2 government record requested is temporarily unavailable because it is  
3 in use or in storage, the custodian shall so advise the requestor and  
4 shall make arrangements to promptly make available a copy of the  
5 record. If a request for access to a government record would  
6 substantially disrupt agency operations, the custodian may deny access  
7 to the record after attempting to reach a reasonable solution with the  
8 requestor that accommodates the interests of the requestor and the  
9 agency.

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

14 i. Unless a shorter time period is otherwise provided by statute,  
15 regulation, or executive order, a custodian of a government record  
16 shall grant access to a government record or deny a request for access  
17 to a government record as soon as possible, but not later than seven  
18 business days after receiving the request, provided that the record is  
19 currently available and not in storage or archived and the record  
20 consists of a total of 100 or fewer pages. In the event a custodian fails  
21 to respond within seven business days after receiving a request, the  
22 failure to respond shall be deemed a denial of the request, unless the  
23 requestor has elected not to provide a name, address or telephone  
24 number, or other means of contacting the requestor. If the requestor  
25 has elected not to provide a name, address or telephone number, or  
26 other means of contacting the requestor, the custodian shall not be  
27 required to respond until the requestor reappears before the custodian  
28 seeking a response to the original request. If the government record  
29 is in storage or archived or exceeds 100 pages, the requestor shall be  
30 so advised within seven business days after the custodian receives the  
31 request. The requestor shall be advised by the custodian when the  
32 record can be made available. If the record is not made available by  
33 that time, access shall be deemed denied.

34 j. A custodian shall prepare a list of the government records under  
35 the control or in the care or custody of the custodian to which any  
36 person has the right of access for inspection, examination, or copying  
37 or for the purchase of copies thereof. The custodian shall review the  
38 prepared list at least annually thereafter and shall revise it promptly  
39 whenever necessary to maintain its accuracy. Once prepared, the list  
40 shall be used thereafter by the custodian to determine if a person has  
41 the right of access to a requested record for inspection, examination,  
42 or copying or for purchase of copies thereof. A copy of the most  
43 current version of the list shall be provided to any person upon  
44 request. A copy of the most current version of the list shall be posted  
45 prominently in public view in the part or parts of the office or offices  
46 of the custodian that are open to or frequented by the public. The

1 copy of the list provided to any person and posted in public view shall  
2 contain a statement that sets forth in clear, concise and specific terms  
3 the right to appeal a denial of, or failure to provide, access to any  
4 person for inspection, examination, or copying or for purchase of  
5 copies thereof and the procedure by which an appeal may be filed.  
6 The failure of a custodian for any reason to include a government  
7 record on the list shall not in anyway affect the right of access to that  
8 record.

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

13

14 7. (New section) A person who is denied access to a government  
15 record by the custodian of the record, at the option of the requestor,  
16 may :

17 institute a proceeding to challenge the custodian's decision by filing  
18 an action in the special civil part of Superior Court which shall be  
19 heard in the vicinage where it is filed by a Superior Court Judge who  
20 has been designated by the Assignment Judge to hear such cases  
21 because of that judge's knowledge and expertise in matters relating to  
22 access to government records; or

23 in lieu of filing an action in Superior Court, file a complaint with the  
24 Government Records Council established pursuant to section 8 of  
25 P.L. , c. (C. ) (now pending before the Legislature as this bill);

26 except that an action to obtain access to an active or inactive  
27 investigatory file pursuant to section 3 of P.L.1963, c.73 (C.47:1A-3)  
28 or to a government record of a victims' rights agency, as defined in  
29 section 1 of P.L.1995, c.23 (C.47:1A-1.1), shall be filed in Superior  
30 Court in the manner provided by this section.

31 The right to institute any proceeding under this section shall be  
32 solely that of the requestor. Any such proceeding shall proceed in a  
33 summary or expedited manner. The public agency shall have the  
34 burden of proving that the denial of access is authorized by law,  
35 except that in the case of a public agency which is a victims' rights  
36 agency, as defined in section 1 of P.L.1995, c.23 (C.47:1A-1.1), the  
37 applicable burdens and presumptions shall continue to be those which  
38 applied prior to the effective date of P.L. , c. (C. ) (now pending  
39 before the Legislature as this bill). If it is determined that access has  
40 been improperly denied, the court or agency head shall order that  
41 access be allowed. A requestor who prevails in any proceeding shall  
42 to a reasonable attorney's fee.

43

44 8. (New section) a. There is established in the Department of  
45 Community Affairs a Government Records Council. The council shall  
46 consist of the Commissioner of Community Affairs or the



1 commissioner's designee, the Commissioner of Education or the  
2 commissioner's designee, and three public members appointed by the  
3 Governor, with the advice and consent of the Senate, not more than  
4 two of whom shall be of the same political party. The three public  
5 members shall serve during the term of the Governor making the  
6 appointment and until the appointment of a successor. A public  
7 member shall not hold any other State or local elected or appointed  
8 office or employment while serving as a member of the council. A  
9 public member shall not receive a salary for service on the council but  
10 shall be reimbursed for reasonable and necessary expenses associated  
11 with serving on the council and may receive such per diem payment as  
12 may be provided in the annual appropriations act. The appointment of  
13 a member may be revoked by the Governor for cause. Vacancies  
14 among the public members shall be filled in the same manner in which  
15 the original appointment was made. The members of the council shall  
16 choose one of the public members to serve as the council's chair. The  
17 council may employ an executive director and such professional and  
18 clerical staff as it deems necessary and may call upon the Department  
19 of Community Affairs for such assistance as it deems necessary and  
20 may be available to it.

21 b. The Government Records Council shall:

22 establish an informal mediation program to facilitate the resolution  
23 of disputes regarding access to government records;

24 receive, hear, review and adjudicate a complaint filed by any person  
25 concerning a denial of access to a government record by a records  
26 custodian;

27 issue advisory opinions, on its own initiative, as to whether a  
28 particular type of record is a government record which is accessible to  
29 the public;

30 prepare guidelines and an informational pamphlet for use by records  
31 custodians in complying with the law governing access to public  
32 records;

33 prepare an informational pamphlet explaining the public's right of  
34 access to government records and the methods for resolving disputes  
35 regarding access, which records custodians shall make available to  
36 persons requesting access to a government record;

37 prepare guidelines for use by records custodians outlining the types  
38 of records in the possession of public agencies which are government  
39 records;

40 make training opportunities available for records custodians and  
41 other public officers and employees which explain the law governing  
42 access to public records; and

43 operate an informational website and a toll-free helpline staffed by  
44 knowledgeable employees of the council during regular business hours  
45 which shall enable any person, including records custodians, to call for  
46 information regarding the law governing access to public records and

1 allow any person to request mediation or to file a complaint with the  
2 counsel when access has been denied;

3 In implementing the provisions of subsections d. and e. of this  
4 section, the council shall: act, to the maximum extent possible, at the  
5 convenience of the parties; utilize teleconferencing, faxing of  
6 documents, e-mail and similar forms of modern communication; and  
7 when in-person meetings are necessary, send representatives to meet  
8 with the parties at a location convenient to the parties.

9 c. At the request of the council, a public agency shall produce  
10 documents and ensure the attendance of witnesses with respect to the  
11 council's investigation of any complaint or the holding of any hearing.

12 d. Upon receipt of a written complaint signed by any person  
13 alleging that a custodian of a government record has improperly  
14 denied that person access to a government record, the council shall  
15 offer the parties the opportunity to resolve the dispute through  
16 mediation. Mediation shall enable a person who has been denied  
17 access to a government record and the custodian who denied or failed  
18 to provide access thereto to attempt to mediate the dispute through a  
19 process whereby a neutral mediator, who shall be an attorney selected  
20 by the council, acts to encourage and facilitate the resolution of the  
21 dispute. Mediation shall be an informal, nonadversarial process having  
22 the objective of helping the parties reach a mutually acceptable,  
23 voluntary agreement. The mediator shall assist the parties in  
24 identifying issues, foster joint problem solving, and explore settlement  
25 alternatives.

26 e. If any party declines mediation or if mediation fails to resolve  
27 the matter to the satisfaction of all parties, the council shall initiate an  
28 investigation concerning the facts and circumstances set forth in the  
29 complaint. The council shall make a determination as to whether the  
30 complaint is within its jurisdiction or frivolous or without any  
31 reasonable factual basis. If the council shall conclude that the  
32 complaint is outside its jurisdiction, frivolous or without factual basis,  
33 it shall reduce that conclusion to writing and transmit a copy thereof  
34 to the complainant and to the records custodian against whom the  
35 complaint was filed. Otherwise, the council shall notify the records  
36 custodian against whom the complaint was filed of the nature of the  
37 complaint and the facts and circumstances set forth therein. The  
38 custodian shall have the opportunity to present the board with any  
39 statement or information concerning the complaint which the custodian  
40 wishes. If the council is able to make a determination as to a record's  
41 accessibility based upon the complaint and the custodian's response  
42 thereto, it shall reduce that conclusion to writing and transmit a copy  
43 thereof to the complainant and to the records custodian against whom  
44 the complaint was filed. If the council is unable to make a  
45 determination as to a record's accessibility based upon the complaint  
46 and the custodian's response thereto, the council shall conduct a

1 hearing on the matter in conformity with the rules and regulations  
2 provided for hearings by a state agency in contested cases under the  
3 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
4 seq.), in so far as they may be applicable and practicable. The council  
5 shall, by a majority vote of its members, render a decision as to  
6 whether the record which is the subject of the complaint is a  
7 government record which must be made available for public access  
8 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
9 supplemented. If the council determines, by a majority vote of its  
10 members, that a custodian has knowingly and willfully violated  
11 P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented,  
12 and is found to have unreasonably denied access under the totality of  
13 the circumstances, the council may impose the penalties provided for  
14 in section 12 of P.L. , c. (C. ) (now pending before the  
15 Legislature as this bill). A decision of the council may be appealed to  
16 the Appellate Division of Superior Court. A decision of the council  
17 shall not have value as a precedent for any case initiated in Superior  
18 Court pursuant to section 7 of P.L. , c. (C. ) (now pending before  
19 the Legislature as this bill). All proceedings of the council pursuant  
20 to this subsection shall be conducted as expeditiously as possible.

21 f. The council shall not charge any party a fee in regard to actions  
22 filed with the council. The council shall be subject to the provisions  
23 of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6),  
24 except that the council may go into closed session during that portion  
25 of any proceeding during which the contents of a contested record  
26 would be disclosed. A requestor who prevails in any proceeding shall  
27 be entitled to a reasonable attorney's fee.

28 g. The council shall not have jurisdiction over the Judicial or  
29 Legislative Branches of State Government or any agency, officer, or  
30 employee of those branches.

31

32 9. (New section) Nothing contained in P.L.1963, c.73 (C.47:1A-1  
33 et seq.), as amended and supplemented, shall be construed as limiting  
34 the common law right of access to a government record.

35

36 10. (New Section) a. The provisions of this act, P.L. , c.  
37 (C. ) (now pending before the Legislature as this bill), shall not  
38 abrogate any exemption of a public record or government record from  
39 public access heretofore made pursuant to P.L.1963, c.73 (C.47:1A-1  
40 et seq.); any other statute; resolution of either or both Houses of the  
41 Legislature; regulation promulgated under the authority of any statute  
42 or Executive Order of the Governor; Executive Order of the  
43 Governor; Rules of Court; any federal law, federal regulation, or  
44 federal order.

45 b. The provisions of this act, P.L. , c. (C. ) (now pending  
46 before the Legislature as this bill), shall not abrogate or erode any

1 executive or legislative privilege or grant of confidentiality heretofore  
2 established or recognized by the Constitution of this State, statute,  
3 court rule or judicial case law, which privilege or grant of  
4 confidentiality may duly be claimed to restrict public access to a public  
5 record or government record.

6  
7 11. (New section) Notwithstanding the provisions of P.L.1963,  
8 c.73 (C.47:1A-1 et seq.) or any other law to the contrary, the  
9 personnel or pension records of any individual in the possession of a  
10 public agency, including but not limited to records relating to any  
11 grievance filed by or against an individual, shall not be considered a  
12 government record and shall not be made available for public access,  
13 except that:

14 an individual's name, title, position, salary, payroll record, length of  
15 service, date of separation and the reason therefor, and the amount and  
16 type of any pension received shall be a government record;

17 personnel or pension records of any individual shall be accessible  
18 when required to be disclosed by another law, when disclosure is  
19 essential to the performance of official duties of a person duly  
20 authorized by this State or the United States, or when authorized by  
21 an individual in interest; and

22 data contained in information which disclose conformity with  
23 specific experiential, educational or medical qualifications required for  
24 government employment or for receipt of a public pension, but not  
25 including any detailed medical or psychological information, shall be  
26 a government record.

27  
28 12. (New section) A public official, officer, employee or custodian  
29 who knowingly and willfully violates P.L.1963, c.73 (C.47:1A-1 et  
30 seq.), as amended and supplemented, and is found to have  
31 unreasonably denied access under the totality of the circumstances,  
32 shall be subject to a civil penalty of \$1,000 for an initial violation,  
33 \$2,500 for a second violation that occurs within 10 years of an initial  
34 violation, and \$5,000 for a third violation that occurs within 10 years  
35 of an initial violation. This penalty shall be collected and enforced in  
36 proceedings in accordance with the "Penalty Enforcement Law of  
37 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court  
38 governing actions for the collection of civil penalties. The Superior  
39 Court shall have jurisdiction of proceedings for the collection and  
40 enforcement of the penalty imposed by this section.

41 Appropriate disciplinary proceedings may be initiated against a  
42 public official, officer, employee or custodian against whom a penalty  
43 has been imposed.

44  
45 13. (New section) The New Jersey Supreme Court may adopt such  
46 court rules as it deems necessary to effectuate the purposes of this  
47 act.

1 14. (New section) The Commissioner of Community Affairs shall  
2 include in the annual budget request of the Department of Community  
3 Affairs a request for sufficient funds to effectuate the purposes of  
4 section 8 of P.L. , c. (C. ) (now pending before the Legislature as  
5 this bill).

6  
7 15. Section 2 of P.L.1963, c.73 (C.47:1A-2), section 8 of  
8 P.L.1994, c.140 (C.47:1A-2.1) and section 4 of P.L.1963, c.73  
9 (C.47:1A-4) are repealed.

10  
11 16. This act shall take effect on the 180th day after enactment.

12  
13  
14 STATEMENT

15  
16 The purpose of this bill is to provide public access to government  
17 records. It revises the existing "Right to Know" law, N.J.S.A.47:1A-1  
18 et seq., to: broaden the scope of accessible government records;  
19 impose new responsibilities on the custodians of government records;  
20 create a Government Records Council in the Department of  
21 Community Affairs to mediate disputes and adjudicate complaints  
22 regarding denials of access to government records; and increase the  
23 penalties which may be imposed upon persons who unreasonably deny  
24 access to a government record.

25 Section 1: The bill amends N.J.S.A.47:1A-1 to affirmatively state  
26 that: the public has a right of access, with certain exceptions, to all  
27 government records; any limitations on the right of access in the bill  
28 will be construed in favor of the public's right of access; and a  
29 government record will be excepted from public access only if exempt  
30 by: N.J.S.A.47:1A-1 et seq., as amended and supplemented; any other  
31 statute; resolution of either or both houses of the Legislature (in  
32 regard to legislative records); regulation promulgated under the  
33 authority of any statute or Executive Order of the Governor;  
34 Executive Order of the Governor; Rules of Court; or federal law. The  
35 legislative findings also recognize the responsibility of a public agency  
36 to protect a citizen's personal information with which it has been  
37 entrusted.

38 Section 2: The bill amends N.J.S.A.47:1A-1.1 to establish  
39 definitions for "custodian of a government record," "public agency,"  
40 "government record," and "victims' rights agency."

41 "Custodian of a government record" is defined, in the case of a  
42 municipality, as the municipal clerk and, in the case of any other  
43 agency, as the officer officially designated by formal action of that  
44 agency's director or governing body.

45 "Public agency" is defined for purposes of the bill as: any principal  
46 department in the Executive Branch of State Government, or any part  
47 thereof; the Legislature and any agency within the Legislative Branch;

1 any independent State authority, commission, instrumentality or  
2 agency; any political subdivision or combination of political  
3 subdivisions, or part thereof; and any independent agency created by  
4 one or more political subdivisions.

5 The definition of "government record" is divided into two parts.  
6 A "government record" for the purposes of a public agency which is  
7 a victims' rights agency is any record which is required by law to be  
8 made, maintained or kept on file (the definition of a public record  
9 under existing law). A "victims' rights agency," is defined as a public  
10 agency, or part thereof, which the Attorney General determines to  
11 have responsibilities relating to victims of sexual assault or domestic  
12 violence, and the Victims of Crime Compensation Board.

13 For all other public agencies, a "government record" is defined as  
14 information in printed form, as well as virtually any other format  
15 (photographic, microfilm, data processed, imaged processed,  
16 electronically stored, or sound recorded) "that has been made,  
17 maintained or kept on file in the course of his or its official business"  
18 by any State or local officer or agency. The term does not include  
19 "inter agency or intra-agency advisory, consultative, or deliberative  
20 material."

21 Section 2 of the bill expressly excludes the following types of  
22 records from the definition of "government record" and, therefore,  
23 from public access:

24 trade secrets (including data processing software used by a public  
25 agency under a licensing agreement prohibiting its disclosure) and  
26 proprietary commercial or financial information obtained from any  
27 source;

28 any record within the attorney-client privilege;

29 computer security information;

30 building security information;

31 other security and surveillance techniques;

32 information which would give an advantage to competitors or  
33 bidders;

34 certain information concerning sexual harassment complaints and  
35 grievances filed with public employers and certain collective  
36 negotiations information;

37 communications between a public agency and its insurance carrier;

38 information required to be kept confidential pursuant to a court  
39 order; and

40 that portion of any document not required for purposes of the  
41 government record or which discloses certain personal information  
42 about any person.

43 In addition, the following information held by an institution of  
44 higher education is excluded from the definition of "government  
45 record" and, therefore, from public access:

46 certain pedagogical, scholarly and/or academic research records;

47 employment or academic testing information;

1 certain donor and fund-raising information;  
2 certain rare books;  
3 admission applications; and  
4 information concerning student records or grievance or disciplinary  
5 proceedings which would reveal a student's identity.

6 Sections 3: The bill amends N.J.S.A.47:1A-1.2 to ensure that  
7 wording in sections 3 correspond to the new terms used in the bill.

8 Section 4: The bill amends N.J.S.A.47:1A-2.2 to further limit the  
9 ability of convicted criminals to gain access to government records  
10 which contain information about their victims.

11 Section 5: In addition, section 5 amends N.J.S.A.47:1A-3 to  
12 regulate access to active and inactive investigatory files of public  
13 agencies. If a file concerns an active investigation, access may be  
14 denied if examination of the record is inimical to the public interest.  
15 Inactive investigatory files maintained by a law enforcement agency  
16 will be open to the public unless otherwise exempt or unless  
17 disclosure would reveal the identity of a confidential source, disclose  
18 confidential investigative techniques and procedures or endanger the  
19 life or physical safety of law enforcement personnel or others. In the  
20 case of either type of record, a public agency could not use the fact  
21 that an investigation has been initiated to prevent access to a record  
22 that was open to the public before the investigation began. The term  
23 "active investigation" includes information compiled by a public  
24 agency in the course of conducting an ongoing criminal or civil  
25 investigation which is continuing with a reasonable expectation of  
26 securing an arrest or prosecution in the foreseeable future. However,  
27 certain information would have to be publicly available within 24  
28 hours. This would include information about the circumstances of a  
29 crime, any arrest, certain victim and defendant information, the  
30 charges or indictment, and law enforcement personnel involved.

31 Section 6: The bill provides that the custodian of a government  
32 record must permit the record to be inspected, examined and copied  
33 by any person during regular business hours, unless the record is  
34 exempt from access by statute, legislative resolution (in regard to  
35 legislative records), regulation, Executive Order, Court Rule, or  
36 federal law. Provision is made for certain smaller public agencies to  
37 permit access during not less than six hours over three days per week  
38 or the agency's regular business hours, whichever is less. Prior to  
39 allowing access to a government record, the custodian is directed to  
40 redact from the record the Social Security number, credit card number,  
41 unlisted telephone number, or driver license number of any person. An  
42 agency regulation cannot be used to deny a request for access which  
43 was already pending when the regulation was adopted. The per page  
44 fee for the purchase of a copy of a government record is set forth in  
45 the bill. Different fees for the purchase of a copy of a record may be  
46 established by another statute or by regulation. An agency may charge  
47 the actual cost of duplicating a record when the actual cost exceeds

1 the rates set forth in the bill. Additional charges may apply when  
2 copying involves an extraordinary expenditure of time and effort.

3 The bill provides that ordinarily immediate access will be granted  
4 to the following records: budgets, bills, vouchers, contracts, and public  
5 employee salary and overtime information.

6 It requires each custodian to adopt a form for use by a requestor.  
7 Anonymous requests are permitted, although a deposit may be  
8 required. A request for access to a record must be in writing and  
9 delivered to the custodian of the record. Ordinarily, access to the  
10 record will be provided within seven business days if the record is  
11 currently available and does not exceed 100 pages. If a custodian in  
12 unable to comply with a request for access, the custodian must explain  
13 in writing the reason for the delay. A custodian must redact any  
14 portions of a record which the custodian believes are exempt from  
15 access.

16 The bill requires a custodian to prepare, periodically update, and  
17 post in public view a list of "government records" under the  
18 custodian's control.

19 Section 7: The bill provides that a person who is denied access to  
20 a government record may file an action in the special civil part of  
21 Superior Court or file a complaint with the Government Records  
22 Council established by section 8 of the bill. In either case, the public  
23 agency will have the burden of proving that the denial of access is  
24 authorized by law, except that in the case of a public agency which is  
25 a victims' rights agency the applicable burdens and presumptions shall  
26 continue to be those which applied prior to the bill's effective date. An  
27 action to obtain access to an active or inactive investigatory file or to  
28 a government record of a victims' rights agency must be filed in  
29 Superior Court. If it is determined that access has been improperly  
30 denied, the court or council must order that access be allowed.

31 Section 8: The bill establishes a Government Records Council in the  
32 Department of Community Affairs. The council will consist of the  
33 Commissioner of Community Affairs, the Commissioner of Education  
34 and three public members appointed by the Governor, with the advice  
35 and consent of the Senate, not more than two of whom may be of the  
36 same political party.

37 The council will:

38 establish an informal mediation program to facilitate the resolution  
39 of disputes regarding access to government records;

40 receive, hear, review and adjudicate a complaint filed by any person  
41 concerning a denial of access to a government record by a records  
42 custodian;

43 issue advisory opinions, on its own initiative, as to whether  
44 particular type of record is a government record which is accessible to  
45 the public;

46 prepare guidelines and an informational pamphlet for use by records  
47 custodians in complying with the law governing access to public



1 records;

2 prepare an informational pamphlet explaining the public's right of  
3 access to government records which records custodians must make  
4 available to persons requesting access to a government record;

5 prepare guidelines for use by records custodians outlining the types  
6 of records in the possession of public agencies which are government  
7 records;

8 make training opportunities available for records custodians and  
9 other public officers and employees which explain the law governing  
10 access to public records; and

11 operate an informational website and a toll-free helpline staffed by  
12 knowledgeable employees of the council during regular business hours  
13 which will enable any person, including records custodians, to call for  
14 information regarding the law governing access to public records and  
15 allow any person to request mediation or to file a complaint with the  
16 counsel when access has been denied.

17 The council's mediation program will allow the parties in a dispute  
18 over access to a government record to attempt to mediate the dispute  
19 through an informal, nonadversarial process conducted by a mediator  
20 selected by the council. If mediation fails or if either party declines  
21 mediation, the council will initiate an investigation and make a  
22 determination regarding a record's accessibility. The council is  
23 authorized to conduct hearings and to impose penalties on a custodian  
24 in appropriate circumstances. The council's decisions would not have  
25 precedential value in an action for access to a record which is initiated  
26 in Superior Court. All proceedings of the council will be conducted  
27 as expeditiously as possible. The council will not have jurisdiction  
28 over the Judicial or Legislative Branches of State Government.

29 A requestor who prevails in any proceeding may be awarded a  
30 reasonable attorney's fee. The council will not charge any party a fee  
31 in connection with an action filed with the council. Meetings of the  
32 council will be open to the public except that the council may meet in  
33 closed session to protect the contents of a contested record.

34 Section 9: The bill provides that its provisions will not be  
35 construed as limiting the common law right of access.

36 Section 10: The bill provides that its provisions will "not abrogate  
37 any exemption of a public record or government record" previously  
38 made pursuant to N.J.S.A.47:1A-1 et seq.; any other statute;  
39 resolution of either or both Houses of the Legislature; regulation;  
40 Executive Order; Rules of court; or federal law. Furthermore, its  
41 provisions will "not abrogate or erode any executive or legislative  
42 privilege or grant of confidentiality" previously established by the  
43 State Constitution, statute, court rule or judicial case law, which  
44 privilege or grant of confidentiality may duly be claimed to restrict  
45 public access to a public record or government record.

46 Section 11: The bill exempts from public access the personnel and  
47 pension records held by a public agency, including records of a

1 grievance filed by or against any individual, except that the following  
2 information will be an accessible government record:

3 an individual's name, title, position, salary, payroll record, length of  
4 service, date of separation and the reason therefor, and the amount and  
5 type of any pension received;

6 personnel or pension records of any individual when required to be  
7 disclosed by another law, when disclosure is essential to the  
8 performance of official duties of a person duly authorized by this State  
9 or the United States, or when authorized by an individual in interest;  
10 and

11 data contained in information which disclose conformity with  
12 specific experiential, educational or medical qualifications required for  
13 government employment or for receipt of a public pension, but not  
14 including any detailed medical or psychological information.

15 Section 12: The bill provides that a public official, officer,  
16 employee, or custodian who "knowingly and willfully" violates the  
17 bill's provisions and is found to have "unreasonably denied access  
18 under the totality of the circumstances" will be subject to a civil fine  
19 of \$1,000 for an initial violation, \$2,500 for a second violation  
20 occurring within 10 years of an initial violation, and \$5,000 for a third  
21 violation occurring within 10 years of an initial violation. Appropriate  
22 disciplinary proceedings may also be initiated against a person upon  
23 whom a penalty is imposed.

24 Section 13: The bill provides that the New Jersey Supreme Court  
25 may adopt such court rules as may be necessary to effectuate the bill's  
26 purposes.

27 Section 14: The bill directs the Commissioner of Community  
28 Affairs to include in the annual budget of the department a request for  
29 sufficient funds for the operations of the Government Records  
30 Council.

31 Section 15: The bill repeals N.J.S.A.47:1A-2 which addresses the  
32 right of inspection of public records, how copies are to be provided  
33 and the fees that may be charged; N.J.S.A.47:1A-2.1 which deals with  
34 the right to receive printed copies of data or image processed  
35 documents; and N.J.S.A.47:1A-4 which concerns proceedings to  
36 enforce the right to inspect or copy records. These matters are  
37 addressed in the bill's new sections.

38 Section 16: The bill will take effect 180 days after enactment.

STATEMENT TO  
**SENATE, No. 2003**

with Senate Floor Amendments  
(Proposed By Senator MARTIN)

ADOPTED: MAY 3, 2001

These amendments provide that it is the intent of the Legislature that nothing contained in the "right to know law," N.J.S.A.47:1A-1 et seq., as amended and supplemented, will be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency. Victims' records held by a victims' rights agency will not be accessible under the statute, except that a victim of a crime would have access to the victim's own records. The amendments exempt criminal investigatory records of a law enforcement agency from the statutory right of access. However, a common law right of access could be asserted to these and other records not accessible under the statute.

The amendments establish a 13-member Privacy Study Commission to examine privacy issues raised by the collection, processing, use and dissemination of information by public agencies and recommend to the Governor and the Legislature specific measures to address these issues and safeguard individuals' privacy rights. The amended bill would appropriate \$95,000 to the commission for its purposes.

The amendments also: clarify that records received by a public officer or agency are government records when received in the course of official business; impose certain duties on an agency which, during an investigation, receives records from another agency; create an exception from the bill's prohibition on disclosure of certain personal information for information required by a government agency or its agents, necessary for the collection of child support payments and certain legitimate business purposes, or disclosable under the driver privacy protection statute; eliminate an exception which would have allowed a custodian more than seven business days to comply with a request for access when a record is in excess of 100 pages; allow certain otherwise disclosable criminal information to be withheld under certain circumstances; replace a requirement that records custodians compile lists of records in their possession with a provision requiring that the Government Records Council prepare lists for use by records custodians of the types of records in the possession of public agencies which are government records; and eliminate provisions requiring that a mediator selected by the Government Records Council must be an attorney and that a Superior Court Judge who hears a denial of access case must be selected by the Assignment Judge. As amended, the bill

would allow the council to appoint either attorneys or non-attorneys as mediators and would leave the method of selecting a judge up to the State Supreme Court.

In addition, the bill's effective date section is amended to provide that: the Privacy Study Commission would become effective immediately and expire upon submission of its report to the Governor and the Legislature; and government agencies may take anticipatory administrative action in advance of the bill's effective date (180 days after enactment).

[First Reprint]  
**SENATE, No. 2003**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED DECEMBER 14, 2000

**Sponsored by:**

**Senator ROBERT J. MARTIN**

**District 26 (Essex, Morris and Passaic)**

**Senator BYRON M. BAER**

**District 37 (Bergen)**

**Co-Sponsored by:**

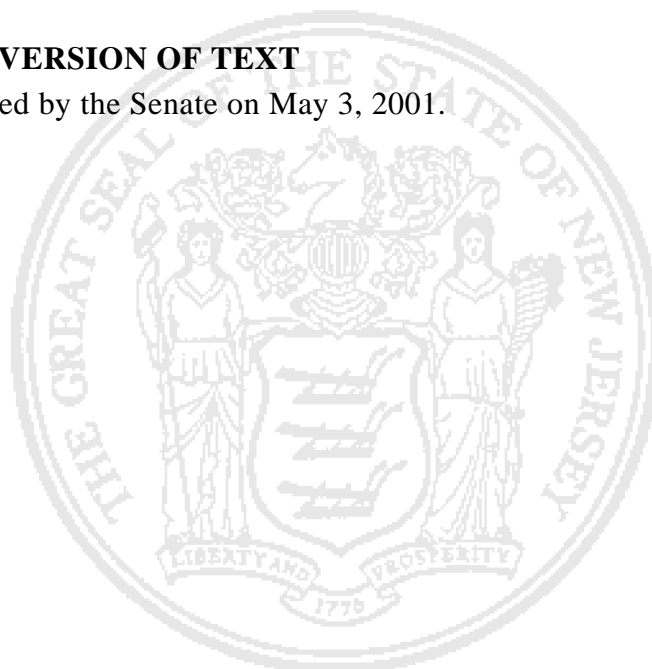
**Senators Vitale and Turner**

**SYNOPSIS**

Provides for public access to government records; protects certain government records from public disclosure; establishes Privacy Study Commission and appropriates \$95,000 to commission.

**CURRENT VERSION OF TEXT**

As amended by the Senate on May 3, 2001.



**(Sponsorship Updated As Of: 5/15/2001)**

1 AN ACT concerning public access to government records, amending  
2 and supplementing P.L.1963, c.73 (C.47:1A-1 et seq.), amending  
3 P.L.1995, c.23 and P.L.1998, c.17, <sup>1</sup> establishing a Privacy Study  
4 Commission and making an appropriation for the expenses thereof.<sup>1</sup>  
5 and repealing parts of the statutory law.

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

9  
10 1. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read as  
11 follows:

12 1. The Legislature finds and declares it to be the public policy of  
13 this State that **[public]**:

14 government records shall be readily accessible for inspection,  
15 copying, or examination by the citizens of this State, with certain  
16 exceptions for the protection of the public interest, and any limitations  
17 on the right of access accorded by P.L.1963, c.73 (C.47:1A-1 et seq.),  
18 as amended and supplemented, shall be construed in favor of the  
19 public's right of access;

20 all government records shall be subject to public access unless  
21 exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as  
22 amended and supplemented; any other statute; resolution of either or  
23 both houses of the Legislature; regulation promulgated under the  
24 authority of any statute or Executive Order of the Governor;  
25 Executive Order of the Governor; Rules of Court; any federal law,  
26 federal regulation, or federal order; <sup>1</sup>[and]<sup>1</sup>

27 a public agency has a responsibility and an obligation to safeguard  
28 from public access a citizen's personal information with which it has  
29 been entrusted when disclosure thereof would violate the citizen's  
30 reasonable expectation of privacy <sup>1</sup>; and

31 nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as  
32 amended and supplemented, shall be construed as affecting in any way  
33 the common law right of access to any record, including but not  
34 limited to criminal investigatory records of a law enforcement  
35 agency<sup>1</sup>.

36 (cf: P.L.1963, c.73, s.1)

37

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

40 1. As used in **[this act]** P.L.1963, c.73 (C.47:1A-1 et seq.) as  
41 amended and supplemented:

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate floor amendments adopted May 3, 2001.

1 "Biotechnology" means any technique that uses living organisms,  
2 or parts of living organisms, to make or modify products, to improve  
3 plants or animals, or to develop micro-organisms for specific uses;  
4 including the industrial use of recombinant DNA, cell fusion, and novel  
5 bioprocessing techniques.

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

10 "Government record" or "record" means:

11 <sup>1</sup>[in the case of a public agency which is a victims' rights agency,  
12 any record which is required by law to be made, maintained or kept on  
13 file; and

14 in the case of any public agency which is not a victims' rights  
15 agency] <sup>1</sup>any paper, written or printed book, document, drawing, map,  
16 plan, photograph, microfilm, data processed or image processed  
17 document, information stored or maintained electronically or by  
18 sound-recording or in a similar device, or any copy thereof, that has  
19 been made, maintained or kept on file in the course of his or its official  
20 business by any officer, commission, agency or authority of the State  
21 or of any political subdivision thereof, including subordinate boards  
22 thereof, or that has been received <sup>1</sup>in the course of his or its official  
23 business <sup>1</sup>by any such officer, commission, agency, or authority of the  
24 State or of any political subdivision thereof, including subordinate  
25 boards thereof. The terms shall not include inter-agency or intra-  
26 agency advisory, consultative, or deliberative material.

27 A government record shall not include the following information  
28 which is deemed to be <sup>1</sup>[privileged and] <sup>1</sup>confidential <sup>1</sup>for the  
29 purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
30 supplemented <sup>1</sup>:

31 <sup>1</sup>criminal investigatory records;

32 victims' records, except that a victim of a crime shall have access to  
33 the victim's own records; <sup>1</sup>

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

38 any record within the attorney-client privilege. This paragraph shall  
39 not be construed as exempting from access attorney or consultant bills  
40 or invoices except that such bills or invoices may be redacted to  
41 remove any information protected by the attorney-client privilege;

42 administrative or technical information regarding computer  
43 hardware, software and networks which, if disclosed, would jeopardize  
44 computer security;

45 emergency or security information or procedures for any buildings  
46 or facility which, if disclosed, would jeopardize security of the building

1 or facility or persons therein;  
2 security measures and surveillance techniques which, if disclosed,  
3 would create a risk to the safety of persons, property, electronic data  
4 or software;  
5 information which, if disclosed, would give an advantage to  
6 competitors or bidders;  
7 information generated by or on behalf of public employers or public  
8 employees in connection with any sexual harassment complaint filed  
9 with a public employer or with any grievance filed by or against an  
10 individual or in connection with collective negotiations, including  
11 documents and statements of strategy or negotiating position;  
12 information which is a communication between a public agency and  
13 its insurance carrier<sup>1</sup>, administrative service organization or risk  
14 management office<sup>1</sup>;  
15 information which is to be kept confidential pursuant to court  
16 order; and  
17 that portion of any document which discloses the social security  
18 number, credit card number, unlisted telephone number or driver  
19 license number of any person<sup>1</sup>; except for use by any government  
20 agency, including any court or law enforcement agency, in carrying out  
21 its functions, or any private person or entity acting on behalf thereof,  
22 or any private person or entity seeking to enforce payment of court-  
23 ordered child support; except with respect to the disclosure of driver  
24 information by the Division of Motor Vehicles as permitted by section  
25 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social security  
26 number contained in a record required by law to be made, maintained  
27 or kept on file by a public agency shall be disclosed when access to the  
28 document or disclosure of that information is not otherwise prohibited  
29 by State or federal law, regulation or order or by State statute,  
30 resolution of either or both houses of the Legislature, Executive Order  
31 of the Governor, rule of court or regulation promulgated under the  
32 authority of any statute or executive order of the Governor<sup>1</sup> .  
33 A government record shall not include, with regard to any public  
34 institution of higher education, the following information which is  
35 deemed to be privileged and confidential:  
36 pedagogical, scholarly and/or academic research records and/or the  
37 specific details of any research project conducted under the auspices  
38 of a public higher education institution in New Jersey, including, but  
39 not limited to research, development information, testing procedures,  
40 or information regarding test participants, related to the development  
41 or testing of any pharmaceutical or pharmaceutical delivery system,  
42 except that a custodian may not deny inspection of a government  
43 record or part thereof that gives the name, title, expenditures, source  
44 and amounts of funding and date when the final project summary of  
45 any research will be available;  
46 test questions, scoring keys and other examination data pertaining



1 to the administration of an examination for employment or academic  
2 examination;

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

9 valuable or rare collections of books and/or documents obtained by  
10 gift, grant, bequest or devise conditioned upon limited public access;  
11 information contained on individual admission applications; and  
12 information concerning student records or grievance or disciplinary  
13 proceedings against a student to the extent disclosure would reveal the  
14 identity of the student.

15 ["Local agency" means a county or municipality, and includes a  
16 local health board or other local subdivision.

17 "State agency" means each of the principal departments in the  
18 Executive Branch of the State Government, and all boards, divisions,  
19 commissions, agencies, departments, councils, authorities, offices or  
20 officers within any such departments now existing or hereafter  
21 established.]

22 "Public agency" or "agency" means any of the principal departments  
23 in the Executive Branch of State Government, and any division, board,  
24 bureau, office, commission or other instrumentality within or created  
25 by such department; the Legislature of the State and any office, board,  
26 bureau or commission within or created by the Legislative Branch; and  
27 any independent State authority, commission, instrumentality or  
28 agency. The terms also mean any political subdivision of the State or  
29 combination of political subdivisions, and any division, board, bureau,  
30 office, commission or other instrumentality within or created by a  
31 political subdivision of the State or combination of political  
32 subdivisions, and any independent authority, commission,  
33 instrumentality or agency created by a political subdivision or  
34 combination of political subdivisions.

35 <sup>1</sup>"Law enforcement agency" means a public agency, or part thereof,  
36 determined by the Attorney General to have law enforcement  
37 responsibilities.

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

42 "Victims' record" means an individually-identifiable file or  
43 document held by a victims' rights agency which pertains directly to  
44 a victim of a crime except that a victim of a crime shall have access to  
45 the victim's own records.

46 "Victim of a crime" means a person who has suffered personal

1 physical or psychological injury or death or incurs loss of or injury to  
2 personal or real property as a result of a crime, or if such a person is  
3 deceased or incapacitated, a member of that person's immediate  
4 family.<sup>1</sup>

5 "Victims' rights agency" means a public agency, or part thereof,  
6 <sup>1</sup>[determined by the Attorney General to have responsibilities relating]  
7 the primary responsibility of which is providing services, including but  
8 not limited to food, shelter, or clothing, medical, psychiatric,  
9 psychological or legal services or referrals, information and referral  
10 services, counseling and support services, or financial services,<sup>1</sup> to  
11 victims of crimes, including victims of<sup>1</sup> sexual assault [or] <sup>1</sup> domestic  
12 violence <sup>1</sup>, violent crime, child endangerment, child abuse or child  
13 neglect,<sup>1</sup> and the Victims of Crime Compensation Board, established  
14 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.).

15 (cf: P.L.1995, c.23, s.1)

16  
17 3. Section 2 of P.L.1995, c.23 (C.47:1A-1.2) is amended to read  
18 as follows:

19 2. a. When federal law or regulation requires the submission of  
20 biotechnology trade secrets and related confidential information,  
21 **[State and local agencies]** a public agency shall not have access to this  
22 information except as allowed by federal law.

23 b. A **[State or local agency]** public agency shall not make any  
24 **[information]** biotechnology trade secrets and related confidential  
25 information it has access to under this act available to any other **[State**  
26 **or local agency]** public agency, or to the general public, except as  
27 allowed pursuant to federal law.

28 (cf: P.L.1995, c.23, s.2)

29  
30 4. Section 1 of P.L.1998, c.17 (C.47:1A-2.2) is amended to read  
31 as follows:

32 1. a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1  
33 et seq.) or the provisions of any other law to the contrary, where it  
34 shall appear that a person who is **[serving a term of imprisonment or**  
35 **is on parole or probation as the result of a conviction]** convicted of  
36 any indictable offense under the laws of this State, any other state or  
37 the United States is seeking **[public]** government records containing  
38 personal information pertaining to the person's victim or the victim's  
39 family, including but not limited to a victim's home address, home  
40 telephone number, work or school address, work telephone number,  
41 social security account number, medical history or any other  
42 identifying information, the right of **[examination herein]** access  
43 provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
44 supplemented shall be denied.

45 b. **[Public records]** A government record containing personal

1 identifying information which is protected under the provisions of this  
2 section may be released [to an inmate or his representative] only if the  
3 information is necessary to assist in the [inmate's own] defense of the  
4 requestor. A determination that the information is necessary to assist  
5 in the [inmate's] requestor's defense shall be made by the court upon  
6 motion by the [inmate] requestor or his representative.

7 c. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et  
8 seq.) as amended and supplemented, or any other law to the contrary,  
9 a custodian shall not comply with an anonymous request for a  
10 government record which is protected under the provisions of this  
11 section.

12 (cf: P.L.1998, c.17, s.1.)

13

14 5. Section 3 of P.L.1963, c.73 (C.47:1A-3) is amended to read as  
15 follows:

16 3. a. Notwithstanding the provisions of [this act] P.L.1963, c.73  
17 (C.47:1A-1 et seq.) as amended and supplemented, where it shall  
18 appear that the record or records which are sought to be inspected,  
19 copied, or examined shall pertain to an <sup>1</sup>[active]<sup>1</sup> investigation in  
20 progress by any [such body,] public agency, [commission, board,  
21 authority or official,] the right of [examination herein] access  
22 provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
23 supplemented may be denied if the inspection, copying or  
24 [publication] examination of such record or records shall be inimical  
25 to the public interest; provided, however, that this provision shall <sup>1</sup>[be  
26 subject to subsection b. of this section and shall]<sup>1</sup> not be construed to  
27 [prohibit any such body, agency, commission, board, authority or  
28 official from opening such record or records for public examination  
29 if not otherwise prohibited by law] allow any public agency to prohibit  
30 access to a record <sup>1</sup>of that agency <sup>1</sup>that was open for public  
31 inspection, examination, or copying before the investigation  
32 commenced. <sup>1</sup>Whenever a public agency, during the course of an  
33 investigation, obtains from another public agency a government record  
34 that was open for public inspection, examination or copying before the  
35 investigation commenced, the investigating agency shall provide the  
36 other agency with sufficient access to the record to allow the other  
37 agency to comply with requests made pursuant to P.L.1963, c.73  
38 (C.47:1A-1 et seq.).<sup>1</sup>

39 b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et  
40 seq.), as amended and supplemented, <sup>1</sup>[inactive investigatory files  
41 maintained by a law enforcement agency shall be open to inspection,  
42 copying or examination by any person unless exempt pursuant to  
43 section 1 of P.L.1995, c.23 (C.47:1A-1.1) or unless the disclosure of  
44 the information reveals the identity of a confidential source, discloses  
45 confidential investigative techniques and procedures or endangers the

1 life or physical safety of law enforcement personnel or others;  
2 provided, however, that this provision shall not be construed to allow  
3 any public agency to prohibit access to a record that was open for  
4 public inspection, examination or copying before the investigation  
5 commenced.

6 c. "Active investigation" for the purposes of this section is defined  
7 to include information compiled by a public agency in the course of  
8 conducting an ongoing criminal or civil investigation of a specific act  
9 or omission which is continuing with a reasonable good faith  
10 anticipation of securing an arrest or prosecution in the foreseeable  
11 future.]<sup>1</sup> the <sup>1</sup>[term shall not include the]<sup>1</sup> following <sup>1</sup>[which, under  
12 all circumstances,] information concerning a criminal investigation<sup>1</sup>  
13 shall be available to the public within 24 hours or as soon as  
14 practicable, of a request for such information:

15 where a crime has been reported but no arrest yet made,  
16 information as to the type of crime, time, location and type of weapon,  
17 if any;

18 if an arrest has been made, information as to the name, address and  
19 age of any victims unless there has not been sufficient opportunity for  
20 notification of next of kin of any victims of injury and/or death to any  
21 such victim or where the release of the names of any victim would be  
22 contrary to existing law or Court Rule. In deciding on the release of  
23 information as to the identity of a victim, the safety of the victim and  
24 the victim's family, and the integrity of any ongoing investigation, shall  
25 be considered;

26 if an arrest has been made, information as to the defendant's name,  
27 age, residence, occupation, marital status and similar background  
28 information and, the identity of the complaining party unless the  
29 release of such information is contrary to existing law or Court Rule;

30 information as to the text of any charges such as the complaint,  
31 accusation and indictment unless sealed by the court or unless the  
32 release of such information is contrary to existing law or court rule;

33 information as to the identity of the investigating and arresting  
34 personnel and agency and the length of the investigation;

35 information of the circumstances immediately surrounding the  
36 arrest, including but not limited to the time and place of the arrest,  
37 resistance, if any, pursuit, possession and nature and use of weapons  
38 and ammunition by the suspect and by the police; and

39 information as to circumstances surrounding bail, whether it was  
40 posted and the amount thereof.

41 <sup>1</sup>Notwithstanding any other provision of this subsection, where it  
42 shall appear that the information requested or to be examined will  
43 jeopardize the safety of any person or jeopardize any investigation in  
44 progress or may be otherwise inappropriate to release, such  
45 information may be withheld. This exception shall be narrowly  
46 construed to prevent disclosure of information that would be harmful

1 to a bona fide law enforcement purpose or the public safety.  
2 Whenever a law enforcement official determines that it is necessary to  
3 withhold information, the official shall issue a brief statement  
4 explaining the decision.<sup>1</sup>

5 (cf: P.L.1963, c.73, s.3)

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

44 b. A copy or copies of a government record may be purchased by  
45 any person upon payment of the fee prescribed by law or regulation,  
46 or if a fee is not prescribed by law or regulation, upon payment of the

1 actual cost of duplicating the record. Except as otherwise provided  
2 by law or regulation, the fee assessed for the duplication of a  
3 government record embodied in the form of printed matter shall not  
4 exceed the following: first page to tenth page, \$0.75 per page;  
5 eleventh page to twentieth page, \$0.50 per page; all pages over  
6 twenty, \$0.25 per page. The actual cost of duplicating the record shall  
7 be the cost of materials and supplies used to make a copy of the  
8 record, but shall not include the cost of labor or other overhead  
9 expenses associated with making the copy except as provided for in  
10 subsection c. of this section. If a public agency can demonstrate that  
11 its actual costs for duplication of a government record exceed the  
12 foregoing rates, the public agency shall be permitted to charge the  
13 actual cost of duplicating the record.

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

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

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

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

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

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

1 the record.

2 i. Unless a shorter time period is otherwise provided by statute,  
3 regulation, or executive order, a custodian of a government record  
4 shall grant access to a government record or deny a request for access  
5 to a government record as soon as possible, but not later than seven  
6 business days after receiving the request, provided that the record is  
7 currently available and not in storage or archived <sup>1</sup>[and the record  
8 consists of a total of 100 or fewer pages]<sup>1</sup>. In the event a custodian  
9 fails to respond within seven business days after receiving a request,  
10 the failure to respond shall be deemed a denial of the request, unless  
11 the requestor has elected not to provide a name, address or telephone  
12 number, or other means of contacting the requestor. If the requestor  
13 has elected not to provide a name, address or telephone number, or  
14 other means of contacting the requestor, the custodian shall not be  
15 required to respond until the requestor reappears before the custodian  
16 seeking a response to the original request. If the government record  
17 is in storage or archived <sup>1</sup>[or exceeds 100 pages]<sup>1</sup>, the requestor shall  
18 be so advised within seven business days after the custodian receives  
19 the request. The requestor shall be advised by the custodian when the  
20 record can be made available. If the record is not made available by  
21 that time, access shall be deemed denied.

22 j. A custodian shall <sup>1</sup>[prepare a list of the government records  
23 under the control or in the care or custody of the custodian to which  
24 any person has the right of access for inspection, examination, or  
25 copying or for the purchase of copies thereof. The custodian shall  
26 review the prepared list at least annually thereafter and shall revise it  
27 promptly whenever necessary to maintain its accuracy. Once  
28 prepared, the list shall be used thereafter by the custodian to determine  
29 if a person has the right of access to a requested record for inspection,  
30 examination, or copying or for purchase of copies thereof. A copy of  
31 the most current version of the list shall be provided to any person  
32 upon request. A copy of the most current version of the list shall be  
33 posted] post<sup>1</sup> prominently in public view in the part or parts of the  
34 office or offices of the custodian that are open to or frequented by the  
35 public <sup>1</sup>[. The copy of the list provided to any person and posted in  
36 public view shall contain]<sup>1</sup> a statement that sets forth in clear, concise  
37 and specific terms the right to appeal a denial of, or failure to provide,  
38 access to <sup>1</sup>a government record by<sup>1</sup> any person for inspection,  
39 examination, or copying or for purchase of copies thereof and the  
40 procedure by which an appeal may be filed. <sup>1</sup>[The failure of a  
41 custodian for any reason to include a government record on the list  
42 shall not in anyway affect the right of access to that record.]<sup>1</sup>

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



1 7. (New section) A person who is denied access to a government  
2 record by the custodian of the record, at the option of the  
3 requestor, may :

4 institute a proceeding to challenge the custodian's decision by filing  
5 an action in <sup>1</sup>[the special civil part of]<sup>1</sup> Superior Court which shall be  
6 heard in the vicinage where it is filed by a Superior Court Judge who  
7 has been designated <sup>1</sup>[by the Assignment Judge]<sup>1</sup> to hear such cases  
8 because of that judge's knowledge and expertise in matters relating to  
9 access to government records; or

10 in lieu of filing an action in Superior Court, file a complaint with the  
11 Government Records Council established pursuant to section 8 of  
12 P.L. , c. (C. ) (now pending before the Legislature as this bill)<sup>1</sup>;

13 except that an action to obtain access to an active or inactive  
14 investigatory file pursuant to section 3 of P.L.1963, c.73 (C.47:1A-3)  
15 or to a government record of a victims' rights agency, as defined in  
16 section 1 of P.L.1995, c.23 (C.47:1A-1.1), shall be filed in Superior  
17 Court in the manner provided by this section]<sup>1</sup>.

18 The right to institute any proceeding under this section shall be  
19 solely that of the requestor. Any such proceeding shall proceed in a  
20 summary or expedited manner. The public agency shall have the  
21 burden of proving that the denial of access is authorized by law <sup>1</sup>[  
22 except that in the case of a public agency which is a victims' rights  
23 agency, as defined in section 1 of P.L.1995, c.23 (C.47:1A-1.1), the  
24 applicable burdens and presumptions shall continue to be those which  
25 applied prior to the effective date of P.L. , c. (C. ) (now pending  
26 before the Legislature as this bill)]<sup>1</sup>. If it is determined that access has  
27 been improperly denied, the court or agency head shall order that  
28 access be allowed. A requestor who prevails in any proceeding shall  
29 be entitled<sup>1</sup> to a reasonable attorney's fee.

30  
31 8. (New section) a. There is established in the Department of  
32 Community Affairs a Government Records Council. The council shall  
33 consist of the Commissioner of Community Affairs or the  
34 commissioner's designee, the Commissioner of Education or the  
35 commissioner's designee, and three public members appointed by the  
36 Governor, with the advice and consent of the Senate, not more than  
37 two of whom shall be of the same political party. The three public  
38 members shall serve during the term of the Governor making the  
39 appointment and until the appointment of a successor. A public  
40 member shall not hold any other State or local elected or appointed  
41 office or employment while serving as a member of the council. A  
42 public member shall not receive a salary for service on the council but  
43 shall be reimbursed for reasonable and necessary expenses associated  
44 with serving on the council and may receive such per diem payment as  
45 may be provided in the annual appropriations act. <sup>1</sup>[The appointment  
46 of a] A<sup>1</sup> member may be <sup>1</sup>[revoked] removed<sup>1</sup> by the Governor for

1 cause. Vacancies among the public members shall be filled in the same  
2 manner in which the original appointment was made. The members of  
3 the council shall choose one of the public members to serve as the  
4 council's chair. The council may employ an executive director and  
5 such professional and clerical staff as it deems necessary and may call  
6 upon the Department of Community Affairs for such assistance as it  
7 deems necessary and may be available to it.

8 b. The Government Records Council shall:  
9 establish an informal mediation program to facilitate the resolution  
10 of disputes regarding access to government records;  
11 receive, hear, review and adjudicate a complaint filed by any person  
12 concerning a denial of access to a government record by a records  
13 custodian;  
14 issue advisory opinions, on its own initiative, as to whether a  
15 particular type of record is a government record which is accessible to  
16 the public;  
17 prepare guidelines and an informational pamphlet for use by records  
18 custodians in complying with the law governing access to public  
19 records;  
20 prepare an informational pamphlet explaining the public's right of  
21 access to government records and the methods for resolving disputes  
22 regarding access, which records custodians shall make available to  
23 persons requesting access to a government record;  
24 prepare <sup>1</sup>[guidelines] lists<sup>1</sup> for use by records custodians  
25 <sup>1</sup>[outlining] of<sup>1</sup> the types of records in the possession of public  
26 agencies which are government records;  
27 make training opportunities available for records custodians and  
28 other public officers and employees which explain the law governing  
29 access to public records; and  
30 operate an informational website and a toll-free helpline staffed by  
31 knowledgeable employees of the council during regular business hours  
32 which shall enable any person, including records custodians, to call for  
33 information regarding the law governing access to public records and  
34 allow any person to request mediation or to file a complaint with the  
35 counsel when access has been denied;

36 In implementing the provisions of subsections d. and e. of this  
37 section, the council shall: act, to the maximum extent possible, at the  
38 convenience of the parties; utilize teleconferencing, faxing of  
39 documents, e-mail and similar forms of modern communication; and  
40 when in-person meetings are necessary, send representatives to meet  
41 with the parties at a location convenient to the parties.

42 c. At the request of the council, a public agency shall produce  
43 documents and ensure the attendance of witnesses with respect to the  
44 council's investigation of any complaint or the holding of any hearing.

45 d. Upon receipt of a written complaint signed by any person  
46 alleging that a custodian of a government record has improperly

1 denied that person access to a government record, the council shall  
2 offer the parties the opportunity to resolve the dispute through  
3 mediation. Mediation shall enable a person who has been denied  
4 access to a government record and the custodian who denied or failed  
5 to provide access thereto to attempt to mediate the dispute through a  
6 process whereby a neutral mediator, who shall be <sup>1</sup>[an attorney]  
7 trained in mediation<sup>1</sup> selected by the council, acts to encourage and  
8 facilitate the resolution of the dispute. Mediation shall be an informal,  
9 nonadversarial process having the objective of helping the parties  
10 reach a mutually acceptable, voluntary agreement. The mediator shall  
11 assist the parties in identifying issues, foster joint problem solving, and  
12 explore settlement alternatives.

13 e. If any party declines mediation or if mediation fails to resolve  
14 the matter to the satisfaction of all parties, the council shall initiate an  
15 investigation concerning the facts and circumstances set forth in the  
16 complaint. The council shall make a determination as to whether the  
17 complaint is within its jurisdiction or frivolous or without any  
18 reasonable factual basis. If the council shall conclude that the  
19 complaint is outside its jurisdiction, frivolous or without factual basis,  
20 it shall reduce that conclusion to writing and transmit a copy thereof  
21 to the complainant and to the records custodian against whom the  
22 complaint was filed. Otherwise, the council shall notify the records  
23 custodian against whom the complaint was filed of the nature of the  
24 complaint and the facts and circumstances set forth therein. The  
25 custodian shall have the opportunity to present the board with any  
26 statement or information concerning the complaint which the custodian  
27 wishes. If the council is able to make a determination as to a record's  
28 accessibility based upon the complaint and the custodian's response  
29 thereto, it shall reduce that conclusion to writing and transmit a copy  
30 thereof to the complainant and to the records custodian against whom  
31 the complaint was filed. If the council is unable to make a  
32 determination as to a record's accessibility based upon the complaint  
33 and the custodian's response thereto, the council shall conduct a  
34 hearing on the matter in conformity with the rules and regulations  
35 provided for hearings by a state agency in contested cases under the  
36 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
37 seq.), in so far as they may be applicable and practicable. The council  
38 shall, by a majority vote of its members, render a decision as to  
39 whether the record which is the subject of the complaint is a  
40 government record which must be made a available for public access  
41 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
42 supplemented. If the council determines, by a majority vote of its  
43 members, that a custodian has knowingly and willfully violated  
44 P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented,  
45 and is found to have unreasonably denied access under the totality of  
46 the circumstances, the council may impose the penalties provided for

1 in section 12 of P.L. , c. (C. ) (now pending before the  
2 Legislature as this bill). A decision of the council may be appealed to  
3 the Appellate Division of Superior Court. A decision of the council  
4 shall not have value as a precedent for any case initiated in Superior  
5 Court pursuant to section 7 of P.L. , c. (C. ) (now pending before  
6 the Legislature as this bill). All proceedings of the council pursuant  
7 to this subsection shall be conducted as expeditiously as possible.

8 f. The council shall not charge any party a fee in regard to actions  
9 filed with the council. The council shall be subject to the provisions  
10 of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6),  
11 except that the council may go into closed session during that portion  
12 of any proceeding during which the contents of a contested record  
13 would be disclosed. A requestor who prevails in any proceeding shall  
14 be entitled to a reasonable attorney's fee.

15 g. The council shall not have jurisdiction over the Judicial or  
16 Legislative Branches of State Government or any agency, officer, or  
17 employee of those branches.

18

19 9. (New section) Nothing contained in P.L.1963, c.73 (C.47:1A-1  
20 et seq.), as amended and supplemented, shall be construed as limiting  
21 the common law right of access to a government record <sup>1</sup>, including  
22 criminal investigatory records of a law enforcement agency<sup>1</sup> .

23

24 10. (New Section) a. The provisions of this act, P.L. , c.  
25 (C. ) (now pending before the Legislature as this bill), shall not  
26 abrogate any exemption of a public record or government record from  
27 public access heretofore made pursuant to P.L.1963, c.73 (C.47:1A-1  
28 et seq.); any other statute; resolution of either or both Houses of the  
29 Legislature; regulation promulgated under the authority of any statute  
30 or Executive Order of the Governor; Executive Order of the  
31 Governor; Rules of Court; any federal law, federal regulation, or  
32 federal order.

33 b. The provisions of this act, P.L. , c. (C. ) (now pending  
34 before the Legislature as this bill), shall not abrogate or erode any  
35 executive or legislative privilege or grant of confidentiality heretofore  
36 established or recognized by the Constitution of this State, statute,  
37 court rule or judicial case law, which privilege or grant of  
38 confidentiality may duly be claimed to restrict public access to a public  
39 record or government record.

40

41 11. (New section) Notwithstanding the provisions of P.L.1963,  
42 c.73 (C.47:1A-1 et seq.) or any other law to the contrary, the  
43 personnel or pension records of any individual in the possession of a  
44 public agency, including but not limited to records relating to any  
45 grievance filed by or against an individual, shall not be considered a  
46 government record and shall not be made available for public access,

1 except that:

2 an individual's name, title, position, salary, payroll record, length of  
3 service, date of separation and the reason therefor, and the amount and  
4 type of any pension received shall be a government record;

5 personnel or pension records of any individual shall be accessible  
6 when required to be disclosed by another law, when disclosure is  
7 essential to the performance of official duties of a person duly  
8 authorized by this State or the United States, or when authorized by  
9 an individual in interest; and

10 data contained in information which disclose conformity with  
11 specific experiential, educational or medical qualifications required for  
12 government employment or for receipt of a public pension, but not  
13 including any detailed medical or psychological information, shall be  
14 a government record.

15

16 12. (New section) A public official, officer, employee or custodian  
17 who knowingly and willfully violates P.L.1963, c.73 (C.47:1A-1 et  
18 seq.), as amended and supplemented, and is found to have  
19 unreasonably denied access under the totality of the circumstances,  
20 shall be subject to a civil penalty of \$1,000 for an initial violation,  
21 \$2,500 for a second violation that occurs within 10 years of an initial  
22 violation, and \$5,000 for a third violation that occurs within 10 years  
23 of an initial violation. This penalty shall be collected and enforced in  
24 proceedings in accordance with the "Penalty Enforcement Law of  
25 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court  
26 governing actions for the collection of civil penalties. The Superior  
27 Court shall have jurisdiction of proceedings for the collection and  
28 enforcement of the penalty imposed by this section.

29 Appropriate disciplinary proceedings may be initiated against a  
30 public official, officer, employee or custodian against whom a penalty  
31 has been imposed.

32

33 13. (New section) The New Jersey Supreme Court may adopt such  
34 court rules as it deems necessary to effectuate the purposes of this  
35 act.

36

37 14. (New section) The Commissioner of Community Affairs shall  
38 include in the annual budget request of the Department of Community  
39 Affairs a request for sufficient funds to effectuate the purposes of  
40 section 8 of P.L. , c. (C. ) (now pending before the Legislature as  
41 this bill).

42

43 <sup>1</sup>15. (New section) a. There is established a temporary Privacy  
44 Study Commission which shall consist of 13 members. The President  
45 of the Senate, the Minority Leader of the Senate, the Speaker of the  
46 General Assembly and the Minority Leader of the General Assembly

1 shall each appoint one public member. The Governor shall appoint  
2 nine members and shall designate one of the commission's members to  
3 serve as chair of the commission. In making appointments to the  
4 commission, legislative leaders and the Governor shall cooperate and  
5 coordinate to ensure that the representatives of the following groups  
6 and organizations are represented among the commission's  
7 membership and that the membership represents a balance between  
8 groups which advocate citizen privacy interests and groups which  
9 advocate increased public access to government records: State and  
10 local law enforcement agencies, State and local government officers  
11 and employees, attorneys practicing in the field of individual privacy  
12 rights, public interest groups with a record of activity with respect to  
13 openness in government, crime victim advocates, members of the news  
14 media, and at least one retired member of the State Judiciary.  
15 Vacancies in the membership of the commission shall be filled in the  
16 same manner as the original appointments were made.

17 b. The commission shall organize within 14 days after the  
18 appointment of a majority of its members.

19 c. The commission shall meet at the call of the chair and hold  
20 hearings at such places as the chair shall designate during the sessions  
21 and recesses of the Legislature. The commission shall comply with the  
22 provisions of the "Open Public Meetings Act," P.L.1975, c.231  
23 (C.10:4-6 et seq.).

24 d. The commission shall be entitled to call to its assistance and  
25 avail itself of the services of the employees of any State, county, or  
26 municipal department, board, bureau, commission or agency, as it may  
27 require and as may be available for its purposes, and to employ  
28 stenographic and clerical assistance and incur traveling and other  
29 miscellaneous expenses as may be necessary in order to perform its  
30 duties, within the limits of funds appropriated or otherwise made  
31 available to it for its purposes.

32 e. The commission shall study the privacy issues raised by the  
33 collection, processing, use and dissemination of information by public  
34 agencies, in light of the recognized need for openness in government,  
35 and recommend specific measures, including legislation, the  
36 commission may deem appropriate to deal with these issues and  
37 safeguard the privacy rights of individuals. In the course of its study,  
38 the commission shall review the current and proposed means used for  
39 the collection, processing, use and dissemination of information by  
40 State and local government agencies.

41 f. The commission shall report its findings and recommendations  
42 to the Governor and the Legislature within 18 months of the effective  
43 date of P.L. , c. (C. ) (now pending before the Legislature as this  
44 bill) and may accompany the same with any legislative bills which it  
45 may desire to recommend for adoption by the Legislature.<sup>1</sup>

1 <sup>1</sup>16. There is appropriated \$95,000 from the General Fund to the  
2 Privacy Study Commission established pursuant to section 15 of P.L. ,  
3 c. (C. ) (now pending before the Legislature as this bill).<sup>1</sup>

4

5 <sup>1</sup>~~[15.] 17.~~<sup>1</sup> Section 2 of P.L.1963, c.73 (C.47:1A-2), section 8 of  
6 P.L.1994, c.140 (C.47:1A-2.1) and section 4 of P.L.1963, c.73  
7 (C.47:1A-4) are repealed.

8

9 <sup>1</sup>~~[16.] 18.~~<sup>1</sup> <sup>1</sup>~~[This]~~ Sections 15 and 16 of this <sup>1</sup>act shall take  
10 effect <sup>1</sup>immediately and expire upon the date that the Privacy Study  
11 Commission submits its report to the Governor and the Legislature  
12 and the remainder of this act shall take effect<sup>1</sup> on the 180th day after  
13 enactment <sup>1</sup>, except that public agencies may take such anticipatory  
14 administrative action in advance as shall be necessary for the  
15 implementation of the act<sup>1</sup>.



## *State of New Jersey*

Office of the Governor

125 WEST STATE STREET  
PO Box 001  
TRENTON NJ 08625-0001

JAMES E. MCGREEVEY  
*Governor*

On Tuesday, August 13, 2002, I was pleased to join with the New Jersey Press Association, and some of New Jersey's leading open press activists to announce our strong support for the state's Open Public Records Act. We all share an unwavering commitment to this critically important law.

Our new Open Public Records Act took effect last month. This law makes it clear – records made by local and state government officials are presumed to be available for inspection and copying by citizens. The law establishes narrow exemptions for victims' records, emergency and security information, criminal investigatory records and other appropriate areas that warrant confidentiality. The law will challenge government to be responsive, accountable and open, and that is as it should be. Our citizens deserve nothing less.

To make these goals a reality I have signed Executive Order No. 26. This Executive Order is the byproduct of a lengthy positive, productive, and collaborative process. In recent weeks, Attorney General David Samson and I worked closely with editors of some of New Jersey's leading newspapers, as well as well as the League of Women Voters, Common Cause, Sierra Club, the Foundation for Open Government, Citizen Action and the New Jersey Public Interest Research Group.

We worked together to review the original Executive Order, and to review proposals made by state agencies to exempt certain records from disclosure. My staff, cabinet members and the Press Association reviewed these proposed exemptions, and we dramatically reduced them. There were 583 exemptions originally proposed, and in the end we cut that down to 75 – 52 of



which were narrowed and 23 that were not changed. The full list of our action is available on the web, at [www.nj.gov/opra](http://www.nj.gov/opra), and citizens will be invited to comment on these changes.

This is how our process is designed to work. When government proposes regulations through the Administrative Procedures Act, those proposals are open to comment from the public. Where changes are appropriate, changes are made.

Throughout this process, we struck a balance between the need for open government and the need to ensure the security and safety of our citizens. The Executive Order modifies a previous order by clarifying language and ensuring full compliance with the Act.

My Executive Order also addresses serious security matters that are of concern to all of us. Information can be exempted from disclosure if it would “substantially interfere” with the state’s ability to protect our citizens, or would “materially increase” the risk of acts of terrorism. This is a high standard to meet, and the Attorney General is already engaged in developing detailed regulations to ensure security concerns are addressed. We will keep the Press Association and public interest groups engaged in this process as we move forward. We all share a common interest in protecting the security and safety of our citizens, and that common interest was reflected in the discussions of the past few weeks.

Another byproduct of these discussions is was a line by line review with these organizations of the regulations proposed by individuals departments. In July, departments had proposed 583 exemptions to the Open Public Records Act. The law specifically provides departments with the authority to make additional exemptions.

My commitment to open government will not waver. Here are some other programs my administration is working on:

- We have set up a groundbreaking project, the Government Records Council ([www.nj.gov/grc](http://www.nj.gov/grc)), which is an independent agency that oversees compliance with OPRA. Citizens can call a toll-free number ((866) 850-0511) to ask questions, address problems with access to records on a local or state level, or receive free dispute resolution services.

- We have established a central web site to explain the law and assist citizens in making records requests. [www.nj.gov/opra](http://www.nj.gov/opra).
- Last week, Attorney General Samson issued a directive to local and county law enforcement to ensure public access to appropriate police information.
- We are establishing a Privacy Study Commission to examine privacy issues over the next 18 months.
- State agencies are working throughout government to greatly expand Internet access to key documents. For example, the Department of Environmental Protection has an innovative web site ([www.state.nj.us/dep](http://www.state.nj.us/dep)), which will soon be expanded to increase access to key documents with the click of a mouse.

Justice Marshall said that public records are essential “to ensure an informed citizenry” and are “vital to the functioning of a democratic society, need to check against corruption and to hold the governors accountable to the governed.” I encourage every New Jersey citizen to visit our web sites, learn more about how government is addressing real problems faced by our society, and comment on our rule proposals. Together, we will all make New Jersey State government more accessible and more accountable, and give government back to the people.

James E. McGreevey,  
Governor