

July 9, 1963

LEGISLATIVE HISTORY OF R. S. 47:1A-1 et seq.
(Examination and Copies of Public Records)

copy 2

For background information on this problem see:

- J323.44 Young, J. R.
- Y73 Public records in New Jersey; old and new problems affecting accession. 1955.

Previous bills introduced on accession to public records were:

- 1958 - S-194 - Died in committee
- 1959 - S-151 - Died in committee
- 1960 - S-64 - Died in committee
- A-358 - Passed Assembly; Died in Senate Committee
- 1961 - A-536 - Introduced March 27, 1961 by Beadleston, Barkalow, Musto, Davis and Batemen (Identical with S-64 of 1960, except this bill omits Section 5 of S-64.) Passed Assembly; Died in Senate Committee.
- 1962 - A-560 - Passed Assembly; 2d reading in Senate
- 1963 - A-43 - In Committee
- S-95 - Passed Senate; in Assembly Committee

Attorney General
See memorandum Opinion P-13
M. 26, 1958 P-14
and
Ap. 9, 1958

(Copies of above bills, except A-536 of 1961, enclosed.)

The bill which became Law was:

1963, Chapter 73 - A-344

- March 18 - Assembly passed, amended
- April 22 - Passed Senate
- May 6 - Returned by Governor with recommendations (copy enclosed)
- May 6 - Amended and reenacted in Assembly
- May 13 - Reenacted in Senate

Sponsor's statement
Gov'n message

For newspaper accounts of the progress of this legislation, see enclosed list. Clippings are on file at State Library and may be photostated.

On June 21, 1963, Governor Hughes issued Executive Order No. 7 (copy enclosed) postponing the effect of this act.

899

RS/jnk

POSITORY COPY
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7, 1962
 er 16, 1962
 October 24, 1962
 November 4, 1962
 December 18, 1962
 December 19, 1962
 January 22, 1963
 February 4, 1963
 March 15, 1963
 March 19, 1963
 March 20, 1963
 March 19, 1963
 March 22, 1963
 March 26, 1963
 April 2, 1963
 April 13, 1963
 April 22, 1963
 April 23, 1963
 April 24, 1963
 May 6, 1963
 May 7, 1963
 May 7, 1963
 May 8, 1963
 May 14, 1963
 May 14, 1963
 June 7, 1963
 June 7, 1963
 June 11, 1963
 June 12, 1963
 June 22, 1963
 June 27, 1963
 June 28, 1963
 June 28, 1963

GOP Wins Photocopy Court Suit - Trenton Evening Times
 Supreme Court OKs Photos of Public Records -- lower court ruling to prevail while case is reviewed - Philadelphia Inquirer
 Record Photocopy Right Demanded - Newark Evening News
 Open Record Bill Fails in Senate - Trenton Evening Times
 Court Modifies Record Restraint - Newark Evening News
 Top Court Bars Citizens From Record Copying - Philadelphia Inquirer
 Right to Know Bills Studied -- Senate, Assembly would make public records more accessible - Newark Evening News
 Serving the Public's Right to Know - Camden Courier-Post
 Schlicher Urges Bills on Access to Public Files - Philadelphia Inquirer
 Assembly OKs Inspection of Public Records - Philadelphia Inquirer
 A Good Bill - Trenton Evening Times
 Beadleston Chides House on Right-to-Know Action - Newark Evening News
 Unanimity on Public's Right to Know - Camden Courier-Post
 Public Records Bill Faces Senate Action - Newark Evening News
 Senate Passes Own Right-to-Know Bill - Newark Evening News
 Open Public Records - Trentonian
 Would Bare Documents -- Jones introduces bill affirming right of inspection - Newark Evening News
 Open Records Bill Approved -- right-to-know proposal goes to Governor for action - Newark Evening Times
 Public Records Bill Passes - The Herald-News
 Copy Bill Returned by Hughes - Trenton Evening Times
 Change OKd in Copy Bill - Philadelphia Inquirer
 Assembly Votes New 'Right to Know' Bill - Newark Evening News
 On the Threshold - Trenton Evening Times
 Records Bill Passed Again -- photographing of public papers approved in Senate - Newark Evening News
 Photocopy Bill, Once Called Negative, Redeveloped, Sent Back to Governor - Trenton Evening Times
 Hughes Signs Bill Allowing Access to Data - Philadelphia Inquirer
 Hughes' Pen Opens Files to People - Trenton Evening Times
 State Weighs What Secrets to Keep - Newark Evening News
 The Right to Know and the Need to Ask - Bergen Evening Record
 Officials to List Exceptions in Law on Open Records -- Hughes delays effective date of 'freedom of information' - Phila. Inquirer
 New Avenues for the Right to Know - Camden Courier-Post
 Broad Veto Power on Right-to-Know - Newark Evening News
 Governor Warns Officials on Veiling of Public Records -- will study lists of exclusions in check on abuse of authority - Philadelphia Inquirer

CHAPTER 73 LAWS OF N. J. 19 63

APPROVED MAY 31-1963
[FOURTH OFFICIAL COPY REPRINT]

ASSEMBLY, No. 344

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1963

By Assemblymen BEADLESTON, MUSTO, GROSS and BATEMAN

Referred to Committee on Judiciary

AN ACT concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, and conferring jurisdiction upon the Superior Court in respect to such examination.

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

1 1. The Legislature finds and declares it to be the public policy of this
2 State that public records shall be readily accessible for examination by the
3 citizens of this State, with certain exceptions, for the protection of the pub-
4 lic interest.

1 2. Except as otherwise provided in this act or by any other statute, reso-
2 lution of either or both houses of the Legislature, executive order of the
3 Governor, rule of court, any Federal law, regulation or order, or by any
4 regulation promulgated under the authority of any statute or executive order
5 of the Governor, all records which are required by law to be made, main-
6 tained or kept on file by any board, body, agency, department, commission
7 or official of the State or of any political subdivision thereof or by any pub-
8 lic board, body, commission or authority created pursuant to law by the State

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

9 or any of its political subdivisions, or by any official acting for or on behalf
 10 thereof (each of which is hereinafter referred to as the "custodian" thereof)
 11 shall, for the purposes of this act, be deemed to be public records. Every
 12 citizen of this State, during the regular business hours maintained by the
 13 custodian of any such records, shall have the right to inspect such records.
 14 Every citizen of this State shall also have the right, during such regular
 15 business hours and under the supervision of a representative of the custo-
 16 dian, to copy such records by hand [or, if approved by the custodian, by a
 17 photographic process specified by the custodian. The custodian of any such
 18 records may, to prevent the risk of damage or mutilation thereof, refuse to
 19 permit a citizen to photograph records, provided such custodian agrees to
 20 make and supply photographic copies thereof to the citizen upon payment of
 21 a [reasonable] fee therefor, [*to be fixed by regulation of the board, body,*
 22 *agency, department, commission, authority or officer having such records*
 23 *which [shall] approximate actual cost and which*], except as otherwise speci-
 24 fied by law, shall not exceed 50 cents per page or part thereof *for single*
 25 *copies; lower fees not to exceed 40 cents per page or part page may be fixed*
 26 *for 10 or more copies.] which, except as otherwise provided by law, is fixed*
 27 *at 50 cents per page or part page; a fee of 40 cents per page or part page*
 28 *for 10 or more copies of the same page or part page may be fixed by regula-*
 29 *tion of the officer or department head, or by resolution of the board, body,*
 30 *agency, commission or authority, having such records.] and shall also have*
 31 *the right to purchase copies of such records. Copies of records shall be made*
 32 *available upon the payment of such price as shall be established by law. If a*
 33 *price has not been established by law for copies of any records, the cus-*
 34 *todian of such records shall make and supply copies of such records upon*
 35 *the payment of the following fees which shall be based upon the total number*
 36 *of pages or parts thereof to be purchased without regard to the number of*
 37 *records being copied:*

38	<i>First page to tenth page</i>	<i>\$0.50 per page,</i>
39	<i>Eleventh page to twentieth page</i>	<i>0.25 per page,</i>
40	<i>All pages over 20</i>	<i>0.10 per page,</i>

41 *If the custodian of any such records shall find that there is no risk of*
42 *damage or mutilation of such records and that it would not be incompatible*
43 *with the economic and efficient operation of the office and the transaction of*
44 *public business therein, he may permit any citizen who is seeking to copy more*
45 *than 100 pages of records to use his own photographic process, approved by*
46 *the custodian, upon the payment of a reasonable fee, considering the equip-*
47 *ment and the time involved, to be fixed by the custodian of not less than \$5.00*
48 *or more than \$25.00 per day.*

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission, board, au-
4 thority or official, the right of examination herein provided for may be de-
5 nied if the inspection, copying or publication of such record or records shall
6 be inimical to the public interest; provided, however, that this provision
7 shall not be construed to prohibit any such body, agency, commission, board,
8 authority or official from opening such record or records for public examina-
9 tion if not otherwise prohibited by law.

1 4. Any such citizen of this State who has been or shall have been denied
2 for any reason the right to inspect, copy or obtain a copy of any such record
3 as provided in this act may apply to the Superior Court of New Jersey by a
4 proceeding in lieu of prerogative writ for an order requiring the custodian
5 of the record to afford inspection, the right to copy or to obtain a copy
6 thereof, as provided in this act.

1 5. This act shall take effect [immediately] 30 days following the date of
2 approval.

ASSEMBLY, No. 344

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1963

By Assemblymen BEADLESTON, MUSTO, GROSS and BATEMAN

Referred to Committee on Judiciary

AN ACT concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, and conferring jurisdiction upon the Superior Court in respect to such examination.

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

1 1. The Legislature finds and declares it to be the public policy of this
2 State that public records shall be readily accessible for examination by the
3 citizens of this State, with certain exceptions, for the protection of the pub-
4 lic interest.

1 2. Except as otherwise provided in this act or by any other statute, reso-
2 lution of either or both houses of the Legislature, executive order of the
3 Governor, rule of court, any Federal law, regulation or order, or by any
4 regulation promulgated under the authority of any statute or executive order
5 of the Governor, all records which are required by law to be made, main-
6 tained or kept on file by any board, body, agency, department, commission
7 or official of the State or of any political subdivision thereof or by any pub-
8 lic board, body, commission or authority created pursuant to law by the State
9 or any of its political subdivisions, or by any official acting for or on behalf
10 thereof (each of which is hereinafter referred to as the "custodian" thereof)
11 shall, for the purposes of this act, be deemed to be public records. Every

12 citizen of this State, during the regular business hours maintained by the
13 custodian of any such records, shall have the right to inspect such records.
14 Every citizen of this State shall also have the right, during such regular
15 business hours and under the supervision of a representative of the custo-
16 dian, to copy such records by hand or, if approved by the custodian, by a
17 photographic process specified by the custodian. The custodian of any such
18 records may, to prevent the risk of damage or mutilation thereof, refuse to
19 permit a citizen to photograph records, provided such custodian agrees to
20 make and supply photographic copies thereof to the citizen upon payment of
21 a reasonable fee therefor which shall approximate actual cost and which, ex-
22 cept as otherwise specified by law, shall not exceed 50 cents per page or part
23 thereof.

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission, board, au-
4 thority or official, the right of examination herein provided for may be de-
5 nied if the inspection, copying or publication of such record or records shall
6 be inimical to the public interest; provided, however, that this provision
7 shall not be construed to prohibit any such body, agency, commission, board,
8 authority or official from opening such record or records for public examina-
9 tion if not otherwise prohibited by law.

1 4. Any such citizen of this State who has been or shall have been denied
2 for any reason the right to inspect, copy or obtain a copy of any such record
3 as provided in this act may apply to the Superior Court of New Jersey by a
4 proceeding in lieu of prerogative writ for an order requiring the custodian
5 of the record to afford inspection, the right to copy or to obtain a copy
6 thereof, as provided in this act.

1 5. This act shall take effect immediately.

STATEMENT

The purpose of this bill is in the furtherance of freedom of information to the public of the transaction of governmental business by insuring to the citizens of this State the right to examine public records. There have been many instances of illegal and arbitrary denial of the right to such inspection.

This bill is a revision of 1962 Assembly Bill No. 560, incorporating significant provisions indicated by the opinion of the Supreme Court in the case of Moore et als. vs. The Board of Freeholders of Mercer County, decided December 18, 1962.

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 344

STATE OF NEW JERSEY

ADOPTED FEBRUARY 4, 1963

Amend page 2, section 2, line 21, after "therefor", insert ", to be fixed by regulation of the board, body, agency, department, commission, authority or officer having such records"; after "which" omit "shall approximate actual cost and which".

Amend page 2, section 2, line 23, after "thereof", insert "for single copies; lower fees not to exceed 40 cents per page or part page may be fixed for 10 or more copies".

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 344

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1963

By Assemblymen BEADLESTON, MUSTO, GROSS and BATEMAN

Referred to Committee on Judiciary

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2 *Jersey:*

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2 State that public records shall be readily accessible for examination by the
3 citizens of this State, with certain exceptions, for the protection of the pub-
4 lic interest.

1 2. Except as otherwise provided in this act or by any other statute, reso-
2 lution of either or both houses of the Legislature, executive order of the
3 Governor, rule of court, any Federal law, regulation or order, or by any
4 regulation promulgated under the authority of any statute or executive order
5 of the Governor, all records which are required by law to be made, main-
6 tained or kept on file by any board, body, agency, department, commission
7 or official of the State or of any political subdivision thereof or by any pub-
8 lic board, body, commission or authority created pursuant to law by the State
9 or any of its political subdivisions, or by any official acting for or on behalf
10 thereof (each of which is hereinafter referred to as the "custodian" thereof)
11 shall, for the purposes of this act, be deemed to be public records. Every

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13 custodian of any such records, shall have the right to inspect such records.
14 Every citizen of this State shall also have the right, during such regular
15 business hours and under the supervision of a representative of the custo-
16 dian, to copy such records by hand or, if approved by the custodian, by a
17 photographic process specified by the custodian. The custodian of any such
18 records may, to prevent the risk of damage or mutilation thereof, refuse to
19 permit a citizen to photograph records, provided such custodian agrees to
20 make and supply photographic copies thereof to the citizen upon payment of
21 a reasonable fee therefor, *to be fixed by regulation of the board, body, agency,*
22 *department, commission, authority or officer having such records* which [shall
23 approximate actual cost and which], except as otherwise specified by law,
24 shall not exceed 50 cents per page or part thereof *for single copies; lower*
25 *fees not to exceed 40 cents per page or part page may be fixed for 10 or more*
26 *copies.*

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission, board, au-
4 thority or official, the right of examination herein provided for may be de-
5 nied if the inspection, copying or publication of such record or records shall
6 be inimical to the public interest; provided, however, that this provision
7 shall not be construed to prohibit any such body, agency, commission, board,
8 authority or official from opening such record or records for public examina-
9 tion if not otherwise prohibited by law.

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2 for any reason the right to inspect, copy or obtain a copy of any such record
3 as provided in this act may apply to the Superior Court of New Jersey by a
4 proceeding in lieu of prerogative writ for an order requiring the custodian
5 of the record to afford inspection, the right to copy or to obtain a copy
6 thereof, as provided in this act.

1 5. This act shall take effect immediately.

ASSEMBLY AMENDMENT TO
ASSEMBLY, No. 344
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED FEBRUARY 11, 1963

Amend page 2, section 2, line 21, omit "reasonable".

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 344

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1963

By Assemblymen BEADLESTON, MUSTO, GROSS and BATEMAN

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AN Act concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, and conferring jurisdiction upon the Superior Court in respect to such examination.

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2 State that public records shall be readily accessible for examination by the
3 citizens of this State, with certain exceptions, for the protection of the pub-
4 lic interest.

1 2. Except as otherwise provided in this act or by any other statute, reso-
2 lution of either or both houses of the Legislature, executive order of the
3 Governor, rule of court, any Federal law, regulation or order, or by any
4 regulation promulgated under the authority of any statute or executive order
5 of the Governor, all records which are required by law to be made, main-
6 tained or kept on file by any board, body, agency, department, commission
7 or official of the State or of any political subdivision thereof or by any pub-
8 lic board, body, commission or authority created pursuant to law by the State
9 or any of its political subdivisions, or by any official acting for or on behalf
10 thereof (each of which is hereinafter referred to as the "custodian" thereof)
11 shall, for the purposes of this act, be deemed to be public records. Every

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12 citizen of this State, during the regular business hours maintained by the
13 custodian of any such records, shall have the right to inspect such records.
14 Every citizen of this State shall also have the right, during such regular
15 business hours and under the supervision of a representative of the custo-
16 dian, to copy such records by hand or, if approved by the custodian, by a
17 photographic process specified by the custodian. The custodian of any such
18 records may, to prevent the risk of damage or mutilation thereof, refuse to
19 permit a citizen to photograph records, provided such custodian agrees to
20 make and supply photographic copies thereof to the citizen upon payment of
21 a [reasonable] fee therefor, *to be fixed by regulation of the board, body,*
22 *agency, department, commission, authority or officer having such records*
23 *which [shall approximate actual cost and which], except as otherwise speci-*
24 *fied by law, shall not exceed 50 cents per page or part thereof for single*
25 *copies; lower fees not to exceed 40 cents per page or part page may be fixed*
26 *for 10 or more copies.*

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission, board, au-
4 thority or official, the right of examination herein provided for may be de-
5 nied if the inspection, copying or publication of such record or records shall
6 be inimical to the public interest; provided, however, that this provision
7 shall not be construed to prohibit any such body, agency, commission, board,
8 authority or official from opening such record or records for public examina-
9 tion if not otherwise prohibited by law.

1 4. Any such citizen of this State who has been or shall have been denied
2 for any reason the right to inspect, copy or obtain a copy of any such record
3 as provided in this act may apply to the Superior Court of New Jersey by a
4 proceeding in lieu of prerogative writ for an order requiring the custodian
5 of the record to afford inspection, the right to copy or to obtain a copy
6 thereof, as provided in this act.

1 5. This act shall take effect immediately.

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 344
[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED MARCH 11, 1963

Amend page 2, section 2, line 21, after "therefor," omit remainder of line.

Amend page 2, section 2, lines 22 to 26, omit and insert "which, except as otherwise provided by law, is fixed at 50 cents per page or part page; a fee of 40 cents per page or part page for 10 or more copies of the same page or part page may be fixed by regulation of the officer or department head, or by resolution of the board, body, agency, commission or authority, having such records."

[THIRD OFFICIAL COPY REPRINT]

ASSEMBLY, No. 344

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1963

By Assemblymen BEADLESTON, MUSTO, GROSS and BATEMAN

Referred to Committee on Judiciary

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1 2. Except as otherwise provided in this act or by any other statute, reso-
2 lution of either or both houses of the Legislature, executive order of the
3 Governor, rule of court, any Federal law, regulation or order, or by any
4 regulation promulgated under the authority of any statute or executive order
5 of the Governor, all records which are required by law to be made, main-
6 tained or kept on file by any board, body, agency, department, commission
7 or official of the State or of any political subdivision thereof or by any pub-
8 lic board, body, commission or authority created pursuant to law by the State

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10 thereof (each of which is hereinafter referred to as the "custodian" thereof)
11 shall, for the purposes of this act, be deemed to be public records. Every
12 citizen of this State, during the regular business hours maintained by the
13 custodian of any such records, shall have the right to inspect such records.
14 Every citizen of this State shall also have the right, during such regular
15 business hours and under the supervision of a representative of the custo-
16 dian, to copy such records by hand or, if approved by the custodian, by a
17 photographic process specified by the custodian. The custodian of any such
18 records may, to prevent the risk of damage or mutilation thereof, refuse to
19 permit a citizen to photograph records, provided such custodian agrees to
20 make and supply photographic copies thereof to the citizen upon payment of
21 a [reasonable] fee therefor, [*to be fixed by regulation of the board, body,*
22 *agency, department, commission, authority or officer having such records*
23 *which [shall approximate actual cost and which], except as otherwise speci-*
24 *fied by law, shall not exceed 50 cents per page or part thereof for single*
25 *copies; lower fees not to exceed 40 cents per page or part page may be fixed*
26 *for 10 or more copies.] which, except as otherwise provided by law, is fixed*
27 *at 50 cents per page or part page; a fee of 40 cents per page or part page*
28 *for 10 or more copies of the same page or part page may be fixed by regula-*
29 *tion of the officer or department head, or by resolution of the board, body,*
30 *agency, commission or authority, having such records.*

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission, board, au-
4 thority or official, the right of examination herein provided for may be de-
5 nied if the inspection, copying or publication of such record or records shall
6 be inimical to the public interest; provided, however, that this provision
7 shall not be construed to prohibit any such body, agency, commission, board,
8 authority or official from opening such record or records for public examina-
9 tion if not otherwise prohibited by law.

1 4. Any such citizen of this State who has been or shall have been denied
2 for any reason the right to inspect, copy or obtain a copy of any such record
3 as provided in this act may apply to the Superior Court of New Jersey by a
4 proceeding in lieu of prerogative writ for an order requiring the custodian
5 of the record to afford inspection, the right to copy or to obtain a copy
6 thereof, as provided in this act.

1 5. This act shall take effect immediately.

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 344
[THIRD OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED MAY 6, 1963

Amend page 2, section 2, line 16, delete "or, if approved by the custodian, by a".

Amend page 2, section 2, lines 17 through 30, delete these lines in their entirety and insert in lieu thereof: "and shall also have the right to purchase copies of such records. Copies of records shall be made available upon the payment of such price as shall be established by law. If a price has not been established by law for copies of any records, the custodian of such records shall make and supply copies of such records upon the payment of the following fees which shall be based upon the total number of pages or parts thereof to be purchased without regard to the number of records being copied:

First page to tenth page	\$0.50 per page,
Eleventh page to twentieth page	0.25 per page,
All pages over 20	0.10 per page,

"If the custodian of any such records shall find that there is no risk of damage or mutilation of such records and that it would not be incompatible with the economic and efficient operation of the office and the transaction of public business therein, he may permit any citizen who is seeking to copy more than 100 pages of records to use his own photographic process, approved by the custodian, upon the payment of a reasonable fee, considering the equipment and the time involved, to be fixed by the custodian of not less than \$5.00 or more than \$25.00 per day."

Amend page 3, section 5, line 1, delete "immediately", and insert in lieu thereof "30 days following the date of approval".

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

May 6, 1963

ASSEMBLY BILL NO. 344

To the General Assembly:

Pursuant to Article V, Section I, paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 344, with my objections, for reconsideration.

Assembly Bill No. 344, in part, provides that all "public records shall be readily accessible for examination by the citizens of this State, with certain exceptions, for the protection of the public interest" and further provides that such records may be copied by hand.

I am in full agreement with this aspect of the bill. Any member of the general public should have the unobstructed opportunity to review the public records that are kept and maintained by our State and local governments unless the disclosure of such documents should impair the ability of the State to operate or expose to needless scrutiny confidential information about our citizens such as that contained in tax returns and similar reports.

There is, however, an aspect of this bill that requires clarification. Assembly Bill No. 344 provides that any person can photocopy, with his own equipment, any or all of the public records of government unless the custodian shall find that there is a risk of damage or mutilation of such records in which case copies must be made and supplied to such person at the rate of \$0.50 per page with a lower rate for quantity purchases. This places on the custodian the unreasonable burden of accommodating as many persons and their equipment as may wish to reproduce public records unless he can sustain a finding that such equipment constitutes a risk to such documents. In addition, it would encourage commercial enterprises to reproduce governmental material and information in wholesale quantities because of the low cost involved. Much of this data undoubtedly would have been obtained at great

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 344

- 2 -

cost to the governmental agency involved. It is not necessary to the stated public purposes of this bill to so disregard the rights and responsibilities of governmental officials.

I have returned this bill to the Legislature today in the hope that it can be reconsidered before the spring recess. The general purpose of this legislation deserves the full support of everyone.

For this reason, I herewith return Assembly Bill No. 344 for reconsideration, with the recommendation that it be amended as follows:

On page 2, section 2, line 16, delete "or, if approved by the custodian, by a".

On page 2, section 2, lines 17 through 30, delete these lines in their entirety and insert in lieu thereof:

"and shall also have the right to purchase copies of such records. Copies of records shall be made available upon the payment of such price as shall be established by law. If a price has not been established by law for copies of any records, the custodian of such records shall make and supply copies of such records upon the payment of the following fees which shall be based upon the total number of pages or parts thereof to be purchased without regard to the number of records being copied:

First page to tenth page	\$0.50 per page,
Eleventh page to twentieth page	0.25 per page,
All pages over 20	0.10 per page,

"If the custodian of any such records shall find that there is no risk of damage or mutilation of such records and that it would not be incompatible with the economic and efficient operation of the office and the transaction of public business therein, he may permit any citizen who is seeking to copy more than 100 pages of records to use his own photographic process, approved by the custodian, upon the payment of a reasonable fee, considering the equipment and the time involved, to be fixed by the custodian of not less than \$5.00 or more than \$25.00 per day."

On page 3, section 5, line 1, delete "immediately" and insert in lieu thereof "30 days following the date of approval".

Respectfully,

RICHARD J. HUGHES

GOVERNOR

[SEAL]

Attest:

LAWRENCE BILDER

Acting Secretary to the Governor

A 100
1120

June 28, 1963

To the Municipal Clerk:

There is enclosed herewith for your information a copy of Executive Order No. 7, with accompanying press release, issued by Governor Richard J. Hughes on June 21, 1963, with respect to chapter 73, P. L. 1963.

The purpose and intendment of chapter 73 is to make readily available to the general public certain records which are required by law to be made, maintained or kept on file by State and local governmental agencies and to assure to the public the right to inspect and obtain copies of those records.

Chapter 73, P. L. 1963, does not, however, overrule any other statute, resolution of either or both Houses of the Legislature, executive order of the Governor, rule of court or any Federal law, regulation or order restricting the availability of any such records or providing for the payment of a specific fee to obtain copies of such records.

In addition, chapter 73, P. L. 1963 specifically provides:

1. That the right of examination provided by the statute may be denied as to records pertaining to an investigation in progress, if inspection, copying or publication of such records would be inimical to the public interest; and

2. That certain records which would otherwise be deemed to be public records, subject to inspection and examination and available for copying, may be excluded therefrom by Executive Order of the Governor or by any regulation promulgated under the authority of an Executive Order of the Governor.

Executive Order No. 7 confers upon certain State and local officials the authority to adopt and promulgate, from time to time, regulations setting forth which records under their jurisdiction, required by law to be made, maintained or kept on file, should not be deemed to be public records, subject to inspection and examination and available for copying.

The authority to exclude such documents, however, is intended to be exercised only where it would not be in the interest of the public to permit indiscriminate disclosure or copying of certain records. Officials upon whom this authority is conferred are cautioned to exercise the power of exclusion sparingly and only to the extent required by the public interest.

Additionally, it would appear that a high degree of uniformity should obtain. County Boards of Freeholders, municipal governing bodies, county superintendents of schools and superintendents of schools in our various school districts are, by and large, required by law to make, maintain and keep essentially the same records. At each of these levels, exclusion of certain such records from the operation of chapter 73, P. L. 1963 should be prompted by an equivalent regard for the public interest.

It should be specifically noted that chapter 73, P. L. 1963 does not apply to any of the various papers, documents, worksheets, files or records which a given official might keep as an aid to the efficient operation of his office but which are not required by law to be made, maintained or kept. Therefore, regulations promulgated under the authority of this Executive Order should not list any such document or record inasmuch as they are already excluded by statute from the definition of public records.

In order to permit an orderly and appropriate exercise of the authority conferred, Executive Order No. 7 provides that no records which would otherwise be deemed, by operation of chapter 73, P. L. 1963, to be public records shall

be subject to inspection and examination and available for copying until August 1, 1963. The Order further requires that regulations promulgated under the authority it confers shall be published at least once in a newspaper of general circulation in the State or in the applicable county, and that a copy of any such regulation shall be placed on file in the office of the Secretary of State.

In order that we may coordinate and maintain control over the classification and exclusion of any public records, you are requested to file a copy of any regulation you propose to promulgate under the authority of Executive Order No. 7 with the Secretary of State at least one week prior to the scheduled date of any publication.

William L. Kirchner, Jr.
Counsel to the Governor

FROM: OFFICE OF THE GOVERNOR

Governor Richard J. Hughes today issued the attached Executive Order concerning the public records law, Chapter 73, P. L. 1963, together with the following statement:

"I have today exercised the authority granted to me in the public records law to permit those State and local officials having jurisdiction over governmental records to promulgate regulations setting forth which of those records under their control shall not be subject to the provisions of Chapter 73. A careful review of the numerous types of records made and maintained by the various governmental agencies in this State has made it apparent that the custodian of such records should decide initially which, if any, should remain free of the provisions of this law.

"The purpose of Chapter 73, however, is to make readily available to the general public certain official records of government with the right to inspect and obtain copies of those records. The power to exclude documents therefrom is intended to be exercised only where it would not be in the interest of the public to permit indiscriminate disclosure or copying of certain records. Therefore, I would caution the officials granted authority under this order to exercise this authority sparingly and only to the extent required by the public interest. In order to maintain control over the operation of this program, I am requiring all regulations to be published and filed with the Secretary of State's Office before they can take effect. If a review of these regulations should demonstrate that the method for implementing Chapter 73, P. L. 1963, which is set forth in the Executive Order is not suitable, it may become necessary to reconsider the scope and application of the Order's provisions."

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EXECUTIVE ORDER NO. 7

WHEREAS, Chapter 73, P. L. 1963, finds and declares it to be the public policy of this State that public records shall be readily accessible for examination by the citizens of this State for the protection of the public interests, except as otherwise provided in said law; and

WHEREAS, said law provides that all records which are required by law to be made, maintained or kept on file by State and local governmental agencies are to be deemed to be public records, subject to inspection and examination and available for copying, pursuant to said law; and

WHEREAS, said law provides that records which would otherwise be deemed to be public records, subject to inspection and examination and available for copying, pursuant to the provisions of Chapter 73, P. L. 1963, may be excluded therefrom by Executive Order of the Governor or by any regulation promulgated under the authority of any Executive Order of the Governor; and

WHEREAS, it is in the public interest to exercise the authority granted to the Governor under the provisions of Chapter 73, P. L. 1963;

NOW, THEREFORE, I, RICHARD J. HUGHES, Governor of the State of New Jersey, by virtue of the authority vested in me by Chapter 73, P. L. 1963, do hereby order and direct:

1. (a) The following State and local officials are hereby authorized and empowered to adopt and promulgate, from time to time, regulations setting forth which records under their jurisdiction shall not be deemed to be public records, subject to inspection and examination and available for copying, pursuant to the provisions of Chapter 73, P. L. 1963:

- (1) The head or principal executive of each principal department of State government with respect to the records of his department and any agencies, authorities and commissions assigned or allocated to such department;
- (2) The Board of Chosen Freeholders in each of the counties of the State with respect to the records of the county and any agencies, authorities and commissions created by said board;

- (3) The governing body in each of the municipalities of the State with respect to the records of the municipality and any agencies, authorities or commissions created by said governing body;
- (4) The county superintendent of schools in each of the counties of the State with respect to the records of his office and any schools and other institutions under his care and supervision; and
- (5) The superintendent of schools of any school district of the State with respect to the records of the school district and any schools or other institutions under the care and supervision of the school district.

(b) Any regulation adopted and promulgated pursuant to the provisions of this Executive Order shall be published at least once in a newspaper of general circulation in the State or in the applicable county, as the case may be, and a copy of any such regulation shall be placed on file in the Secretary of State's Office. No regulation shall be effective until it has been so published and filed.

2. All records, other than records which are the subject of a regulation adopted and promulgated pursuant to the provisions of section 2 hereof or otherwise excluded under and pursuant to the provisions of Chapter 73, P. L. 1963, which specifically are required by statute to be made, maintained or kept by any State or local governmental agency shall be public records, subject to inspection and examination and available for copying, pursuant to the provisions of Chapter 73, P. L. 1963. All other records of such State and local governmental agencies shall not be deemed to be public records, subject to inspection and examination and available for copying, pursuant to the provisions of Chapter 73, P. L. 1963, but such records shall be subject to such other provisions of law and regulations as shall be applicable thereto and this provision shall in no way be interpreted as to preclude the appropriate State or local officials from using or making available such records for any of the purposes for which such records are made, maintained or kept.

3. For the purpose of allowing the officers herein empowered to adopt and promulgate regulations the opportunity to take such action in an orderly manner, all records which are deemed to be public records, subject to inspection and examination and available for copying, under the provisions of section 2 of this Executive Order shall not be deemed to be public records, subject to inspection and examination and available for copying, pursuant to the provisions of Chapter 73, P. L. 1963, until August 1, 1963.

4. This Executive Order shall take effect immediately.

GIVEN, under my hand and seal this
21st day of June,
in the year of Our Lord, one
thousand, nine hundred and
sixty-three, and of the Independence
of the United States, the one
hundred and eighty-eighth.

/s/ RICHARD J. HUGHES
GOVERNOR

Attest:

/s/ LAWRENCE BILDER

Acting Secretary to the Governor

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 8

WHEREAS, Executive Order No. 7 authorized certain State and local governmental officials to adopt and promulgate regulations setting forth which records under their jurisdiction were not to be deemed public records, subject to inspection and examination and available for copying pursuant to the provisions of Chapter 73, P. L. 1963; and

WHEREAS, said Executive Order provided that, for the purpose of allowing such officials the opportunity to adopt and promulgate regulations in an orderly manner, all records specified in section 2 of such Order which would otherwise be deemed to be public records under and pursuant to Chapter 73, P. L. 1963, should not be subject to inspection and examination and available for copying pursuant to said Chapter 73 only until August 1, 1963; and

WHEREAS, despite such extension of time, numerous officials and members of the press and the general public have expressed concern over the difficulty of establishing which records are to be public records under the provisions of Chapter 73, P. L. 1963; and

WHEREAS, only 12 municipalities and two departments of State Government have adopted regulations pursuant to the provisions of Executive Order No. 7 as of this date; and

WHEREAS, the New Jersey Press Association, a prime leader in the effort to achieve passage of Chapter 73, P. L. 1963, among others, has requested additional time so as to be afforded an opportunity to review and object to any exceptions to the public's right to inspect, examine and copy records that might be contemplated in regulations proposed to be adopted under the authority of Executive Order No. 7; and

WHEREAS, similar requests for additional time have been received from numerous local government officials for the purpose of giving all interested parties an opportunity to review and discuss the application of Chapter 73,

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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and to propose appropriate regulations which may, under the provisions of Chapter 73, be promulgated pursuant to Executive Order No. 7; and

WHEREAS, it is my opinion that an additional period of time could be beneficially utilized to carefully scrutinize exceptions to the public's right to know which may be proposed and to fully consider the need to balance the right to know of the public in a democracy against the risk of unintentional harm or injustice to individuals that might be occasioned by full and indiscriminate exposure of certain records containing data of a sensitive or personal nature without regard to the motivation of those seeking to inspect or copy; and

WHEREAS, the public's right to examine and copy public records, which presently exists under the common law and by statute, remains inviolate even without the benefit of the provisions of Chapter 73, P. L. 1963;

NOW, THEREFORE, I, RICHARD J. HUGHES, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by Chapter 73, P. L. 1963, do hereby order and direct:

1. All records which would otherwise be deemed to be public records, subject to inspection and examination and available for copying under the provisions of Chapter 73, P. L. 1963, shall not be deemed to be public records pursuant to said Chapter 73 until October 1, 1963.
2. No regulation heretofore or hereafter adopted and promulgated by any State or local official pursuant to the provisions of Executive Order No. 7, or any amendment or supplement thereto, shall be of any force and effect until October 1, 1963. The application and effect of any such regulation upon public records may be limited, at any time, by an executive statement, filed by the Governor with the Secretary of State's office, setting forth the nature and extent of the limitations imposed upon such regulations. A copy

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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of such executive statement shall be delivered in person or sent by certified or registered mail to the appropriate State or local official.

3. This Executive Order and Executive Order No. 7 shall in no way be interpreted to replace or affect the right that the general public has, by common law, judicial decision, statute or otherwise, to examine and copy public records and shall be limited in its application to the provisions of Chapter 73, P. L. 1963.
4. Any provisions of Executive Order No. 7 which are inconsistent herewith are hereby revoked and vacated.
5. This Executive Order shall take effect immediately.

GIVEN, under my hand and seal this
1st day of August in the year
of Our Lord, one thousand, nine
hundred and sixty-three, and of
the Independence of the United
States, the one hundred and
eighty-eighth.

[SEAL]

/s/ RICHARD J. HUGHES
GOVERNOR

Attest:

/s/ LAWRENCE BILDER

Acting Secretary to the Governor

STATE OF NEW JERSEY
Executive Department

EXECUTIVE ORDER NO. 9

WHEREAS, Chapter 73, P. L. 1963, finds and declares it to be the public policy of this State that public records shall be readily accessible for examination by the citizens of this State for the protection of the public interest except as otherwise provided in said law; and

WHEREAS, said Chapter 73 provides that all records which are required by law to be made, maintained or kept on file by State and local governmental agencies are to be deemed to be public records, subject to inspection and examination and available for copying, pursuant to said law; and

WHEREAS, said Chapter 73 provides that records which would otherwise be deemed to be public records, subject to inspection and examination and available for copying, pursuant to the provisions of said law, may be excluded therefrom by Executive Order of the Governor or by any regulation promulgated under the authority of any Executive Order of the Governor; and

WHEREAS, Executive Orders Nos. 7 and 8 authorize certain State and local governmental officials to adopt and promulgate regulations specifying which public records under their jurisdiction are not to be subject to inspection and examination and available for copying pursuant to said Chapter 73; and

WHEREAS, as of this date, only 65 local governmental units have adopted and promulgated regulations under the authority conferred upon them by said Executive Orders; and

WHEREAS, review and examination of these regulations demonstrates a lack of uniformity with respect to the treatment proposed to be accorded public records; and

WHEREAS, the public interest requires that the public records which are excluded from the application of Chapter 73 be excluded on a uniform and State-wide basis with full regard for the need to balance the right, in a democracy, of the public to know, against the risk of unintentional harm or injustice to individuals that might be occasioned by indiscriminate exposure of certain records

STATE OF NEW JERSEY
Executive Department

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containing data of a sensitive or personal nature without regard to the motivation or justification of those seeking to inspect or copy records; and

WHEREAS, Chapter 73 represents a right supplemental to the existing right of the public to examine and copy public records, which right has been established under the common law and by statute and remains inviolate even without the benefit of the provisions of said Chapter 73; and

WHEREAS, some limitation upon the otherwise unqualified and unrestricted right to examine and copy records provided by Chapter 73 is essential and not detrimental to the public interest since the existing common law and statutory right to examine records remains upon the satisfaction of the requirements imposed by such laws;

NOW, THEREFORE, I, RICHARD J. HUGHES, Governor of the State of New Jersey, by virtue of the authority vested in me by Chapter 73, P. L. 1963, do hereby order and direct:

1. All records, other than records set forth in section 3 hereof or records the subject of a regulation adopted and promulgated pursuant to the provisions of section 2 hereof or otherwise excluded under and pursuant to the provisions of Chapter 73, P. L. 1963, which specifically are required by statute to be made, maintained or kept by any State or local governmental agency shall be public records, subject to inspection and examination and available for copying, pursuant to the provisions of Chapter 73, P. L. 1963. All other records of such State and local governmental agencies shall not be deemed to be public records, subject to inspection and examination and available for copying, pursuant to the provisions of Chapter 73, P. L. 1963, but such records shall remain subject to such other provisions of law and regulations as shall be applicable thereto and this provision shall in no way be interpreted as to preclude the appropriate State or local officials from (i) using or making available such records for any of the purposes for which such records are made, maintained or kept or (ii) permitting any person who demonstrates a legitimate reason for wishing to do so to examine

STATE OF NEW JERSEY
Executive Department

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such records where such official shall find it is not contrary to the public interest or an undue interference with the operation of the office to permit such an examination.

2. (a) The head or principal executive of each principal department of State government, with respect to the records of his department and any agencies, authorities and commissions assigned or allocated to such department or under the supervision or regulation of such department, is hereby authorized and empowered to adopt and promulgate, from time to time, regulations setting forth which records under his jurisdiction shall not be deemed to be public records, subject to inspection and examination and available for copying, pursuant to the provisions of Chapter 73, P. L. 1963.

(b) The text of any regulation adopted after October 1, 1963 pursuant to the provisions of this Executive Order shall be published at least 15 days prior to the proposed effective date of such regulation in at least 10 newspapers published in the State and a copy of any such regulation, with the approval of the Governor endorsed thereon, shall be placed on file in the Office of the Secretary of State. No such regulation shall be effective until it has been so published, approved and filed.

(c) Any regulation which has been heretofore adopted and promulgated by the head or principal executive of a principal department of the State government pursuant to the provisions of Executive Orders Nos. 7 or 8 shall remain in force and effect until modified or rescinded in accordance with the provisions of this Executive Order.

(d) Any regulation which shall be adopted by the head or principal executive of a principal department of the State government on or before October 1, 1963 shall be fully effective, without the necessity of publication, if a copy of such regulation, with the approval of the Governor endorsed thereon, has been placed on file in the Office of the Secretary of State on or before October 1, 1963.

STATE OF NEW JERSEY
Executive Department

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3. The following records shall not be deemed to be public records subject to inspection and examination and available for copying pursuant to the provisions of Chapter 73, P. L. 1963:

(a) Questions on examinations required to be conducted by any State or local governmental agency;

(b) Personnel and pension records which are required to be made, maintained or kept by any State or local governmental agency;

(c) Records concerning morbidity, mortality and reportable diseases of named persons required to be made, maintained or kept by any State or local governmental agency;

(d) Records which are required to be made, maintained or kept by any State or local governmental agency which would disclose information concerning illegitimacy;

(e) Fingerprint cards, plates and photographs and other similar criminal investigation records which are required to be made, maintained or kept by any State or local governmental agency;

(f) Criminal records required to be made, maintained and kept pursuant to the provisions of R. S. 53:1-20.1 and R. S. 53:1-20.2;

(g) Personal property tax returns required to be filed under the provisions of Chapter 4 of Title 54 of the Revised Statutes; and

(h) Records relating to petitions for executive clemency.

4. This Executive Order shall in no way be interpreted to replace or affect the right that the general public has, by common law, judicial decision, statute or otherwise, to examine and copy public records and shall be limited in its application to the provisions of Chapter 73, P. L. 1963.

5. Executive Orders Nos. 7 and 8 are hereby rescinded and any regulations adopted and promulgated thereunder shall be null and void except to the extent provided in Section 2 of this Executive Order.

STATE OF NEW JERSEY
Executive Department

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6. This section and Section 2 of this Executive Order shall take effect immediately and the remainder of the Executive Order shall take effect on October 1, 1963.

GIVEN, under my hand and seal this
30th day of September in the
year of Our Lord, one thousand,
nine hundred and sixty-three,
and in the Independence of the
United States, the one hundred
and eighty-eighth.

[SEAL]

/s/ RICHARD J. HUGHES
GOVERNOR

Attest:

/s/ LAWRENCE BILDER

Acting Secretary to the Governor

EXECUTIVE ORDER NO. 11

WHEREAS, Chapter 73, P. L. 1963, finds and declares it to be the public policy of this State that public records shall be readily accessible for examination by the citizens of this State for the protection of the public interest except as otherwise provided by said law; and

WHEREAS, said Chapter 73 provides that all records which are required by law to be made, maintained or kept on file by State and local governmental agencies are to be deemed to be public records, subject to inspection and examination and available for copying, pursuant to said law; and

WHEREAS, said Chapter 73 provides that records which would otherwise be deemed to be public records, subject to inspection and examination and available for copying, pursuant to the provisions of said law, may be excluded therefrom by Executive Order of the Governor or by any regulation promulgated under the authority of any Executive Order of the Governor; and

WHEREAS, Section 3(b) of Executive Order No. 9 issued by Governor Richard J. Hughes in 1963, states that "personnel and pension records which are required to be made, maintained or kept by any State or local governmental agency...shall not be deemed to be public records subject to inspection and examination and available for copying pursuant to the provisions of Chapter 73, P. L. 1963;" and

WHEREAS, disclosure of the name, title and position of persons receiving pensions and of the type and amount of pension being received, is an insignificant invasion of privacy outweighed by the public's right to know who it is employing, what jobs they are filling and the identities of those receiving government pensions;

NOW, THEREFORE, I, BRENDAN BYRNE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and statutes of this State, do hereby order and direct:

1. Section 3(b) of Executive Order No. 9 of Governor Richard J. Hughes is rescinded and any regulations adopted and promulgated thereunder shall be null and void.

2. Except as otherwise provided by law or when essential to the performance of official duties or when authorized by a person in interest, an instrumentality of government shall not disclose to anyone other than a person duly authorized by this

State or the United States to inspect such information in connection with his official duties, personnel or pension records of an individual, except that the following shall be public:

a. An individual's name, title, position, salary, payroll record, length of service in the instrumentality of government and in the government, date of separation from government service and the reason therefor; and the amount and type of pension he is receiving;

b. 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 in no event shall detailed medical or psychological information be released;

3. This Executive Order shall take effect immediately.

GIVEN, under my hand and seal this
15 day of Nov.
in the year of our Lord,
one thousand nine hundred
and seventy-four, of the
Independence of the United
States, the one hundred and
ninety-ninth.

[seal]

/s/ Brendan Byrne
GOVERNOR

Attest:

Donald Lan

Executive Secretary to the Governor

SENATE, No. 194

STATE OF NEW JERSEY

INTRODUCED APRIL 21, 1958

By Senator JONES

Referred to Committee on Judiciary

AN ACT concerning public records and their examination by citizens of the State, providing certain exceptions to the right to examine public records, conferring jurisdiction upon the Superior Court in respect thereto and making certain violations misdemeanors.

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

1 1. The Legislature finds and declares it to be the public policy of this
2 State to have public records readily accessible to examination by the citi-
3 zens of this State with certain exceptions for the protection of the public in-
4 terests.

1 2. Except as otherwise provided by this act or by any other statute of
2 this State, or by any Federal law, or by any regulation promulgated under
3 authority of law, statutory or otherwise, all records made, maintained or
4 kept on file by any executive, administrative, legislative or judicial body,
5 agency, commission or official of the State or of any political subdivision
6 thereof, whether or not such records are required by law to be made, main-
7 tained or kept on file, shall, for the purposes of this act, be deemed to be
8 public records. Every citizen of, and resident in, this State shall have the
9 right to inspect or copy, manually or by any harmless photographic device,
10 any such records during the regular business hours maintained by the cus-
11 todian of any such records.

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NEW JERSEY STATE LIBRARY

1 3. Notwithstanding the provisions of this act, the body, agency, commis-
2 sion or official who has custody or control of any such public record may
3 refuse permission to so inspect or copy such record or records if in the
4 opinion of the custodial agent such inspection or copying would adversely
5 affect the public security or the financial interest of the State or of its
6 political subdivisions.

1 4. Any such citizen of this State who has been denied for any reason
2 the right to inspect or copy any such record as provided in this act, may
3 apply to the Superior Court of New Jersey in the vicinage of said court
4 wherein said record is located for an order requiring the custodian of the
5 record to afford inspection and the right to copy as provided in this act. The
6 said Superior Court shall have jurisdiction to hear and determine any such
7 application in a summary manner and may issue an order in respect thereto
8 according to the discretion of the judge of the Superior Court who shall be
9 hearing the application. The Supreme Court may make and promulgate rules
10 governing the practice and procedure in respect to such applications. Ap-
11 peals may be taken from any such order as in the case of appeals in proceed-
12 ings in lieu of prerogative writs or as the rules of the Supreme Court shall
13 provide. The time within which to make any such application or take any
14 such appeal shall be as in the case of proceedings in lieu of prerogative
15 writs or as otherwise provided by rules of the Supreme Court.

1 5. Any public official who shall willfully violate any provision of this
2 act shall be guilty of a misdemeanor.

1 6. This act shall take effect immediately.

(CORRECTED COPY)

SENATE, No. 151

STATE OF NEW JERSEY

INTRODUCED MARCH 9, 1959

By Senators JONES and COWGILL

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, conferring jurisdiction upon the Superior Court in respect thereto, and providing that violations shall be misdemeanors.

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

- 1 1. The Legislature finds and declares it to be the public policy of this
2 State to have public records readily accessible to examination by the citizens
3 of this State with certain exceptions, for the protection of the public interest.
- 1 2. Except as otherwise provided by this act or by any other statute,
2 Senate or General Assembly resolution, executive order of the Governor,
3 rule of court or by any Federal law, or by any regulation promulgated under
4 the authority of any statute or executive order of the Governor, all official
5 records made, maintained or kept on file by any executive, administrative,
6 legislative or judicial body, agency, commission or official of the State or of
7 any political subdivision thereof, whether or not such records are required
8 by law to be made, maintained or kept on file, shall for the purposes of this
9 act, be deemed to be public records. Every citizen of this State, during the
10 regular business hours maintained by the custodian of any such records, shall
11 have the right to inspect such records, or copy such records manually or by
12 any photographic device which shall not damage or mutilate any records to
13 be so photographed.

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission or official,
4 the right of inspection herein provided for may be denied if the publication
5 of such record or records shall be inimical to the public interest; provided,
6 however, that this provision shall not be construed to prohibit any such body,
7 agency, commission or official from opening such record or records for public
8 examination if not otherwise prohibited by law.

1 4. Any such citizen of this State who has been or shall have been denied
2 for any reason the right to inspect or copy any such record as provided in
3 this act may apply to the Superior Court of New Jersey by a proceeding in
4 lieu of prerogative writ for an order requiring the custodian of the record to
5 afford inspection and the right to copy as provided in this act.

1 5. Any person who shall willfully violate any provision of this act shall
2 be guilty of a misdemeanor.

1 6. This act shall take effect immediately.

STATEMENT

The purpose of this bill is in the furtherance of freedom of information to the public of the transaction of governmental business by insuring to the citizens of this State the right to examine public records. There have been many instances of illegal and arbitrary denial of the right to such inspection.

(CORRECTED COPY)
SENATE, No. 64

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1960

By Senators JONES, COWGILL and CRANE

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, conferring jurisdiction upon the Superior Court in respect thereto, and providing that violations shall be misdemeanors.

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

1 1. The Legislature finds and declares it to be the public policy of this
2 State to have public records readily accessible to examination by the citizens
3 of this State with certain exceptions, for the protection of the public interest.

1 2. Except as otherwise provided by this act or by any other statute,
2 Senate or General Assembly resolution, executive order of the Governor,
3 rule of court or by any Federal law, or by any regulation promulgated under
4 the authority of any statute or executive order of the Governor, all official
5 records made, maintained or kept on file by any executive, administrative,
6 legislative or judicial body, agency, commission or official of the State or of
7 any political subdivision thereof, whether or not such records are required
8 by law to be made, maintained or kept on file, shall for the purposes of this
9 act, be deemed to be public records. Every citizen of this State, during the
10 regular business hours maintained by the custodian of any such records, shall
11 have the right to inspect such records, or copy such records manually or by
12 any photographic device which shall not damage or mutilate any records to
13 be so photographed.

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission or official,
4 the right of inspection herein provided for may be denied if the publication
5 of such record or records shall be inimical to the public interest; provided,
6 however, that this provision shall not be construed to prohibit any such body,
7 agency, commission or official from opening such record or records for public
8 examination if not otherwise prohibited by law.

1 4. Any such citizen of this State who has been or shall have been denied
2 for any reason the right to inspect or copy any such record as provided in
3 this act may apply to the Superior Court of New Jersey by a proceeding in
4 lieu of prerogative writ for an order requiring the custodian of the record to
5 afford inspection and the right to copy as provided in this act.

1 5. Any person who shall willfully violate any provision of this act shall
2 be guilty of a misdemeanor.

1 6. This act shall take effect immediately.

STATEMENT

The purpose of this bill is in the furtherance of freedom of information to the public of the transaction of governmental business by insuring to the citizens of this State the right to examine public records. There have been many instances of illegal and arbitrary denial of the right to such inspection.

ASSEMBLY, No. 358

STATE OF NEW JERSEY

INTRODUCED JANUARY 25, 1960

By Assemblymen BEADLESTON, DEAMER, MUSTO and HYLAND

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, conferring jurisdiction upon the Superior Court in respect thereto, and providing that violations shall be misdemeanors.

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

1 1. The Legislature finds and declares it to be the public policy of this
2 State to have public records readily accessible to examination by the citizens
3 of this State with certain exceptions, for the protection of the public interest.

1 2. Except as otherwise provided by this act or by any other statute,
2 Senate or General Assembly resolution, executive order of the Governor,
3 rule of court or by any Federal law, or by any regulation promulgated under
4 the authority of any statute or executive order of the Governor, all official
5 records made, maintained or kept on file by any executive, administrative,
6 legislative or judicial body, agency, commission or official of the State or of
7 any political subdivision thereof, whether or not such records are required
8 by law to be made, maintained or kept on file, shall for the purposes of this
9 act, be deemed to be public records. Every citizen of this State, during the
10 regular business hours maintained by the custodian of any such records, shall
11 have the right to inspect such records, or copy such records manually or by
12 any photographic device which shall not damage or mutilate any records to
13 be so photographed.

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission or official,
4 the right of inspection herein provided for may be denied if the publication
5 of such record or records shall be inimical to the public interest; provided,
6 however, that this provision shall not be construed to prohibit any such body,
7 agency, commission or official from opening such record or records for public
8 examination if not otherwise prohibited by law.

1 4. Any such citizen of this State who has been or shall have been denied
2 for any reason the right to inspect or copy any such record as provided in
3 this act may apply to the Superior Court of New Jersey by a proceeding in
4 lieu of prerogative writ for an order requiring the custodian of the record to
5 afford inspection and the right to copy as provided in this act.

1 5. Any person who shall willfully violate any provision of this act shall
2 be guilty of a misdemeanor.

1 6. This act shall take effect immediately.

STATEMENT

The purpose of this bill is in the furtherance of freedom of information to the public of the transaction of governmental business by insuring to the citizens of this State the right to examine public records. There have been many instances of illegal and arbitrary denial of the right to such inspection.

ASSEMBLY, No. 536

STATE OF NEW JERSEY

INTRODUCED MARCH 27, 1961

By Assemblymen BEADLESTON, BARKALOW, MUSTO,
DAVIS and BATEMAN

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, and conferring jurisdiction upon the Superior Court in respect thereto.

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

1 1. The Legislature finds and declares it to be the public policy of this
2 State to have public records readily accessible to examination by the citizens
3 of this State with certain exceptions, for the protection of the public interest.

1 2. Except as otherwise provided by this act or by any other statute,
2 Senate or General Assembly resolution, executive order of the Governor,
3 rule of court or by any Federal law, or by any regulation promulgated under
4 the authority of any statute or executive order of the Governor, all official
5 records made, maintained or kept on file by any executive, administrative,
6 legislative or judicial body, agency, commission or official of the State or of
7 any political subdivision thereof, whether or not such records are required
8 by law to be made, maintained or kept on file, shall for the purposes of this
9 act, be deemed to be public records. Every citizen of this State, during the
10 regular business hours maintained by the custodian of any such records, shall
11 have the right to inspect such records, or copy such records manually or by
12 any photographic device which shall not damage or mutilate any records to
13 be so photographed.

1 3. Notwithstanding the provisions of this act, where it shall appear that
 2 the record or records which are sought to be examined shall pertain to an
 3 investigation in progress by any such body, agency, commission or official,
 4 the right of inspection herein provided for may be denied if the publication
 5 of such record or records shall be inimical to the public interest; provided,
 6 however, that this provision shall not be construed to prohibit any such body,
 7 agency, commission or official from opening such record or records for public
 8 examination if not otherwise prohibited by law.

1 4. Any such citizen of this State who has been or shall have been denied
 2 for any reason the right to inspect or copy any such record as provided in
 3 this act may apply to the Superior Court of New Jersey by a proceeding in
 4 lieu of prerogative writ for an order requiring the custodian of the record to
 5 afford inspection and the right to copy as provided in this act.

1 5. This act shall take effect immediately.

STATEMENT

The purpose of this bill is in the furtherance of freedom of information to the public of the transaction of governmental business by insuring to the citizens of this State the right to examine public records. There have been many instances of illegal and arbitrary denial of the right to such inspection.

ASSEMBLY, No. 560

STATE OF NEW JERSEY

INTRODUCED MARCH 26, 1962

By Assemblymen MUSTO, BEADLESTON, GROSS, GIMSON
and BATEMAN

Referred to Committee on Judiciary

AN ACT concerning public records and their examination by citizens of this State,
providing certain exceptions to the right to examine public records, and
conferring jurisdiction upon the Superior Court in respect thereto.

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

1 1. The Legislature finds and declares it to be the public policy of this
2 State to have public records readily accessible to examination by the citizens
3 of this State with certain exceptions, for the protection of the public interest.

1 2. Except as otherwise provided by this act or by any other statute,
2 Senate or General Assembly resolution, executive order of the Governor,
3 rule of court, any Federal law, regulation or order, or by any regulation
4 promulgated under the authority of any statute or executive order of the
5 Governor, all records which are required by law to be made, maintained or
6 kept on file by any body, agency, commission or official of the State or of any
7 political subdivision thereof or by any public board, body, commission or
8 authority created pursuant to law by the State or any of its political sub-
9 divisions, or by any official acting for or on behalf thereof, shall, for the
10 purposes of this act, be deemed to be public records. Every citizen of this
11 State, during the regular business hours maintained by the custodian of any
12 such records, shall have the right to inspect such records, or copy such records

13 manually or by any photographic device which shall not damage or mutilate
14 any records to be so copied.

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission, board, au-
4 thority or official, the right of inspection herein provided for may be denied
5 if the publication of such record or records shall be inimical to the public
6 interest; provided, however, that this provision shall not be construed to pro-
7 hibit any such body, agency, commission, board, authority or official from
8 opening such record or records for public examination if not otherwise pro-
9 hibited by law.

1 4. Any such citizen of this State who has been or shall have been denied
2 for any reason the right to inspect or copy any such record as provided in
3 this act may apply to the Superior Court of New Jersey by a proceeding in
4 lieu of prerogative writ for an order requiring the custodian of the record
5 to afford inspection and the right to copy as provided in this act.

1 5. This act shall take effect immediately.

STATEMENT

The purpose of this bill is in the furtherance of freedom of information to the public of the transaction of governmental business by insuring to the citizens of this State the right to examine public records. There have been many instances of illegal and arbitrary denial of the right to such inspection.

This bill is a revision of 1961 Assembly Bill No. 536; the following significant changes have been made in the new proposal:

(1) It has been made clear that the provisions of the bill apply to public authorities and authority-like agencies. (It does not, however, include bi-state agencies, such as the New York Port Authority.)

(2) Last year's bill would apply to all records, except the specified exemptions, "whether or not such records are required by law to be made, maintained or kept on file." The enclosed draft has deleted this clause and substituted therefor the clause "which are required by law to be made, maintained or kept on file."

ASSEMBLY, No. 43

STATE OF NEW JERSEY

INTRODUCED JANUARY 14, 1963

By Assemblymen MUSTO and GROSS

Referred to Committee on Judiciary

AN ACT concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, and conferring jurisdiction upon the Superior Court in respect thereto.

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

1 1. The Legislature finds and declares it to be the public policy of this
2 State to have public records readily accessible to examination by the citizens
3 of this State with certain exceptions, for the protection of the public interest.

1 2. Except as otherwise provided by this act or by any other statute,
2 Senate or General Assembly resolution, executive order of the Governor,
3 rule of court, any Federal law, regulation or order, or by any regulation
4 promulgated under the authority of any statute or executive order of the
5 Governor, all records which are required by law to be made, maintained or
6 kept on file by any body, agency, commission or official of the State or of any
7 political subdivision thereof or by any public board, body, commission or
8 authority created pursuant to law by the State or any of its political sub-
9 divisions, or by any official acting for or on behalf therefor shall, for the
10 purposes of this act, be deemed to be public records. Every citizen of this
11 State, during the regular business hours maintained by the custodian of any
12 such records, shall have the right to inspect such records, or copy such records

13 manually or by any photographic device which shall not damage or mutilate
14 any records to be so copied.

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission, board, au-
4 thority or official, the right of inspection herein provided for may be denied
5 if the publication of such record or records shall be inimical to the public
6 interest; provided, however, that this provision shall not be construed to pro-
7 hibit any such body, agency, commission, board, authority or official from
8 opening such record or records for public examination if not otherwise pro-
9 hibited by law.

1 4. Any such citizen of this State who has been or shall have been denied
2 for any reason the right to inspect or copy any such record as provided in
3 this act may apply to the Superior Court of New Jersey by a proceeding in
4 lieu of prerogative writ for an order requiring the custodian of the record
5 to afford inspection and the right to copy as provided in this act.

1 5. This act shall take effect immediately.

STATEMENT

The purpose of this bill is in the furtherance of freedom of information to the public of the transaction of governmental business by insuring to the citizens of this State the right to examine public records. There have been many instances of illegal and arbitrary denial of the right to such inspection.

This bill is a revision of 1961 Assembly Bill No. 536; the following significant changes have been made in the new proposal:

(1) It has been made clear that the provisions of the bill apply to public authorities and authority-like agencies. (It does not, however, include bi-state agencies, such as the New York Port Authority.)

(2) Last year's bill would apply to all records, except the specified exemptions, "whether or not such records are required by law to be made, maintained or kept on file." The enclosed draft has deleted this clause and substituted therefor the clause "which are required by law to be made, maintained or kept on file."

[OFFICIAL COPY REPRINT]

SENATE, No. 96

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1963

By Senators STAMLER, FOX, DEAMER and DUMONT

Referred to Committee on Judiciary

AN ACT concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, and conferring jurisdiction upon the Superior Court in respect to such examination.

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

1 1. The Legislature finds and declares it to be the public policy of this
2 State that public records shall be readily accessible for examination by the
3 citizens of this State, with certain exceptions, for the protection of the pub-
4 lic interest.

1 2. Except as otherwise provided in this act or by any other statute, reso-
2 lution of either or both houses of the Legislature, executive order of the
3 Governor, rule of court, any Federal law, regulation or order, or by any
4 regulation promulgated under the authority of any statute or executive or-
5 der of the Governor, all records which are required by law to be made, main-
6 tained or kept on file by any board, body, agency, department, commission
7 or official of the State or of any political subdivision thereof or by any pub-
8 lic board, body, commission or authority created pursuant to law by the
9 State or any of its political subdivisions, or by any official acting for or on
10 behalf thereof (each of which is hereinafter referred to as the "custodian"
11 thereof) shall, for the purposes of this act, be deemed to be public records.

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

12 Every citizen of this State, during the regular business hours maintained by
13 the custodian of any such records, shall have the right to inspect such rec-
14 ords. Every citizen of this State shall also have the right, during such regu-
15 lar business hours and under the supervision of a representative of the cus-
16 todian, to copy such records by hand or, if approved by the custodian, by a
17 photographic process specified by the custodian. The custodian of any such
18 records may, to prevent the risk of damage or mutilation thereof, refuse to
19 permit a citizen to photograph records, provided such custodian agrees to
20 make and supply photographic copies thereof to the citizen upon payment of
21 a [reasonable] fee therefor [which shall approximate actual cost and which,
22 except as otherwise specified by law, shall not exceed 50 cents per page or part
23 thereof.] *which, except as otherwise provided by law, is fixed at 50 cents*
24 *per page or part page; a fee of 40 cents per page or part page for 10 or more*
25 *copies of the same page or part page may be fixed by regulation of the officer,*
26 *or department head, or by resolution of the board, body, agency, commission*
27 *or authority, having such records.*

1 3. Notwithstanding the provisions of this act, where it shall appear that
2 the record or records which are sought to be examined shall pertain to an
3 investigation in progress by any such body, agency, commission, board, au-
4 thority or official, the right of examination herein provided for may be de-
5 nied if the inspection, copying or publication of such record or records shall
6 be inimical to the public interest; provided, however, that this provision
7 shall not be construed to prohibit any such body, agency, commission, board,
8 authority or official from opening such record or records for public exam-
9 ination if not otherwise prohibited by law.

1 4. Any such citizen of this State who has been or shall have been de-
2 nied for any reason the right to inspect, copy or obtain a copy of any such
3 record as provided in this act may apply to the Superior Court of New Jersey
4 by a proceeding in lieu of prerogative writ for an order requiring the custo-
5 dian of the record to afford inspection, the right to copy or to obtain a copy
6 thereof, as provided in this act.

1 5. This act shall take effect immediately.

The last stated rule was applied in the *Todd* case, *supra*, to exclude from coverage of the act an employee who spent only about 1/10 of 1 per cent of his time on Federally financed activities.

We advise you that, under the conclusive standards set forth in the above cited United States Civil Service Commission rules and decisions, the employees of the Maintenance Division are not subject to the Hatch Act prohibition against political activity and that other officers and employees of the State Highway Department must be held to be governed by the Hatch Act, unless the particular circumstances of their employment fit within the two exceptions recognized in *In the Matter of Joseph L. Todd and the State of Illinois*.

Very truly yours,

HAROLD KOLOVSKY
Acting Attorney General

By: DAVID D. FURMAN
Deputy Attorney General

MARCH 26, 1958

HON. CARL HOLDERMAN, *Commissioner*
Department of Labor and Industry
20 West Front Street
Trenton, New Jersey

MEMORANDUM OPINION—P-13

DEAR COMMISSIONER HOLDERMAN:

You have asked whether the Division of Workmen's Compensation can refuse to permit the search of its records by Accident Index Bureau, Inc., a New Jersey corporation organized:

"to prepare and maintain records of accidents and such other information as may be of interest to employers, insurers, and insurance companies; and to issue reports thereof whenever necessary, and such other services as might be rendered by any natural persons to business or industry."

Accident Index Bureau, Inc., in a publication entitled "How Much Do You Really Know About the Man You Are About To Hire?" states:

"* * * All too often the employer finds that he has unwittingly put on his payroll a workmen's compensation 'professional'. It is only when an injury is reported and a claim filed that the hapless employer finds that he has 'been taken'. Then it's too late. (In New Jersey alone last year, 81% of claims paid were for 'permanent partial disabilities'. In innumerable cases, no time or pay was lost. You pay for this in your premium. Many other States show similar liberal tendencies to give away the employers' money, through his insurance companies, money which he eventually re-pays in higher premiums.)

"The time to prevent these costly mistakes is before you put any person on your payroll, as a permanent employee, and he automatically becomes your responsibility.

"Pre-employment physical examinations—which cannot always detect 'low back injuries' and the like—and private investigations, have proved too costly.

"There is only one sure, economical method to obtain the information to which you are entitled: That is by membership in the Accident Index Bureau which is being increasingly utilized by employers. From the Bureau's files and from its other sources, you will receive a complete history of previous injuries and claims by any individual.

"Your annual membership fee is only \$25.00.

"The charge for each report on an individual is only \$5.00. * * *

You have indicated that Accident Index Bureau, Inc. seeks inspection of the card index (R.S. 34:15-59) containing petitioners' names arranged alphabetically and referring the searcher to a report concerning the date of claim, nature of injury, name of employer, and determination. The corporation seeks this information on a petitioner by petitioner basis, each search being made as a result of a specific request either by an insurance company involved in litigation or an employer interested in prospective employees. The inspection involves no interference with the performance of official duties of the Division.

Legislation governing the functioning of the Division of Workmen's Compensation, R.S. 34:15-1, et seq., provides for the keeping of records pertaining to the Division's operations. R.S. 34:15-58 (decisions, awards and rules for judgment or orders approving settlements); R.S. 34:15-96, 97, 98 (reports of accidents by employers and insurance carriers); R.S. 34:15-100 (insurance medical reports).

Certain records are required to "be open to the inspection of the public," pursuant to R.S. 34:15-59, which imposes an obligation to maintain a card index of the record of each case as well as the Division's dockets in which are to be entered the title of each cause, the record of the official conducting the hearing, the date of determination thereof, the date of appeal, if any, and the date on which the record, in case of appeal, was transmitted to the appellant. Certain other records "shall not be made public, and shall not be open to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require," pursuant to R.S. 34:15-99 which deals with the first reports of accidents.

The records required by law to be kept by the Division and not restrained by statute from public access are public records. In *Josefowicz v. Porter*, 32 N.J. Super. 585, 591 (App. Div. 1954) the court stated:

"'Public Record' has been defined as * * * 'one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, * * * or a writing filed in a public office.'"

See also P.L. 1953, c. 410.

The right of a citizen to inspect records is a practice to cases in which the records are sought by the petitioner. *Key v. State*, 100 Ct. 1907).

"In time, as happens in litigation, courts are reluctant to grant such a right with some reluctance. In litigation was the case of *Key v. State*, 100 Ct. Jersey and Vermont, 100 Ct. p. 26 (1953).

In the leading case of *Key v. State*, the right to inspect records was denied. The analysis of the authority of the taxpayer had such an interest in the charter for licensing of its protection; in order to be in a position to serve the motives shown in that case. Attorney General's Office.

This limited right of inspection was granted in *Key v. State*, 74 N.J.L. 158 (Sup. Ct. mandamus to secure records). The only interest was as a matter of fact might be an aid. But the motives of the petitioner do not mean the national purpose not adverse to the records. *Cross, The State*. In *re Freeman*, supra, the candidate 21 years prior.

"When, as in the case of one of the general offices of proper conduct to that end, it ought to lead to the information sought by the petitioner's motion.

"* * * he has a desire solely to.

The propriety of the records discussed in *Key v. State*, 74 N.J.L. Div. 1949) and the former case the records submitted inspection of the Division's demand for.

See also P.L. 1953, c. 410 (N.J.S.A. 47:3-16).

The right of a citizen to inspect public records was limited under the English practice to cases in which inspection was necessary as an aid in litigation maintainable by the petitioner. *Rex v. Shelley*, 3 T.R. 141; *In re Freeman*, 75 N.J.L. 329 (S. Ct. 1907).

"In time, as inspection came to be sought for purposes other than use in litigation, courts in England and the United States began to depart, albeit with some reluctance and resort to pretext, from the narrow view that use in litigation was the only sufficient special interest. In that departure New Jersey and Vermont * * * were notable." *Cross, The People's Right to Know*, p. 26 (1953).

In the leading case of *Ferry v. Williams*, 41 N.J.L. 332 (Sup. Ct. 1879), the right to inspect recommendations for saloon licenses was vindicated after a careful analysis of the authorities upon the ground that any citizen in his capacity as a taxpayer had such an interest in the proper observance of the provisions of the city charter for licensing saloons, that he might, under certain circumstances, litigate for its protection; in order to ascertain whether those circumstances existed so as to be in a position to serve the public convenience, he was entitled, when actuated by the motives shown in that case, to the inspection sought. See Memorandum Opinions of Attorney General—dated September 25, 1915 and September 29, 1915.

This limited right of inspection was extended further in *Higgins v. Lockwood*, 74 N.J.L. 158 (Sup. Ct. 1906) where it was held that a voter was entitled to a *mandamus* to secure an inspection of registered lists for an election, although his only interest was as a voter and no litigation was intended to which the inspection might be an aid. Both the *Ferry* and *Higgins* cases recognized the necessity that the motives of the petitioner be proper. The effect of these cases, although such is by no means the nationwide view, is that a requirement of lawful, proper, and legitimate purpose not adverse to the public interest is inherent in the right to inspect public records. *Cross, The People's Right to Know*, p. 36 (1953). Thus, the court in *In re Freeman*, *supra*, at p. 332, in denying inspection of affidavits filed against a candidate 21 years prior to his candidacy, in an abortive disbarment proceeding, stated:

"When, as in this case, the only right of the petitioner is his interest as one of the general public in securing the nomination and election to public office of proper men, he ought to show that the issue of the writ would conduce to that end and that he himself is actuated by proper motives. The courts ought to lend their aid in such a case, but they ought not to lend it where the information sought cannot be helpful for the ostensible purpose or where the petitioner's motive is partisan hostility or personal ill will.

"* * * he was actuated rather by the zeal of the partisan rather than by a desire solely for the public weal."

The propriety of the motives of the one seeking an inspection was further discussed in *Taxpayers Association v. City of Cape May*, 2 N.J. Super. 27 (App. Div. 1949) and *Casey v. MacPhail*, 2 N.J. Super. 619 (Law Div. 1949). In the former case the court held valid the motives of a Taxpayers Association and permitted inspection of tax records for information which might support the Association's demand for increased governmental efficiency in the face of a proposed increase

in the tax rate. In the *MacPhail* case, a candidate was permitted inspection of the names and addresses of registered voters since he had a legitimate interest in ascertaining that only those that have a right to vote in the election shall vote in that election. See also *In re Caswell*, 18 R.I. 835, 29A. 259 (S. Ct. 1893) denying newspaper access to divorce proceedings where proposed use would be harmful to public interest.

The right to inspect public records is further qualified in this State in two respects. The inspection may not interfere with the performance of official duties. *Taxpayers Association v. City of Cape May*, supra; *Casey v. MacPhail*, supra; *Memorandum Opinion of Attorney General* dated February 21, 1957. The inspection cannot be an indiscriminate one which has as its purpose the general abstraction of public records in order to carry on the business of furnishing such abstracts to the public. *Barber v. West Jersey Title and Guaranty Company*, 53 N.J. Eq. 158 (E. & A. 1895).

The operation of Accident Index Bureau, Inc. indicates neither interference with the performance of official duties of the Division of Workmen's Compensation, nor the indiscriminate use of its files prohibited in the *Barber* case, supra. Access must then be granted unless it is sought for an unlawful, improper, or illegitimate purpose adverse to the public convenience or welfare.

"* * * The right to inspect a public record does not attach to all persons or to every situation. He who asserts that right must have some interest in the record in which he seeks inspection, and the inspection must be for a legitimate purpose. There is no right of inspection of a public record when the inspection is sought to satisfy a person's mere whim or fancy, to engage in a pastime, to create scandal, to degrade another, to injure public morals, or to further any improper or useless end or purpose * * *"

State v. Harrison, 130 W. Va. 246, 230, 43 S.E. 2nd, 214, 218 (S. Ct. of App. 1947). See also 53 C.J. Records § 40.

Acts which are considered harmful to the public and contrary to the public good are determined by the public policy enunciated through legislative enactments. *Schaffer v. Federal Trust Co.*, 132 N.J. Eq. 235 (Ch. 1944). The purpose of our Workmen's Compensation Act is:

"* * * to shoulder on industry the expense incident to the hazards of industry; to lift from the public the burden to support those incapacitated by industry and to ultimately pass on to the consumers of the products of industry such expense * * *"

Morris v. Hermann Forwarding Company, 18 N.J. 195, 197, 198 (1955). In order to accomplish this purpose, employees must be free to file claims without fear of retribution. They should not be made to feel that the filing of a claim will have a detrimental effect upon prospects for future employment. To instill that fear would be to defeat the objects of our Workmen's Compensation Legislation.

It is also the policy of this State to vocationally rehabilitate our physically handicapped for placement in remunerative employment. P.L. 1955, c. 64. (N.J.S.A. 34:16-20, et seq.). In order to encourage employment of the handicapped the One Percent Fund (Second Injury Fund) was originated. R.S. 34:16-94 et seq. The intent of this portion of our Workmen's Compensation Law has been clearly

established. As was stated in p. 196:

"* * * This intent is where a compensable disability is the result of a prior disability of an employee permanently and totally disabled by the employer of the undue burden of the disability arising in the past. The burden the previous employer was found to impose upon the employee. *Observer*, 95 N.J.L. 43; *National Trunk and Bag Co., Inc.*

By this act the Legislature has placed an obligation upon an employer to provide for an employee if he had hired a person permanently and totally disabled. *Trunk and Bag Co., Inc.*, 119 N.J.L. 43.

"* * * we clearly desire to see the full force and effect of the law to meet the needs of the State, namely, to make it a useful reality. It is in cooperation. The State is the direct beneficiary of the honorable and gainful cooperation? * * *"

"Many employers will raise their workmen's compensation through the insurance industry education to insure employees premium rates. See, for example, *Penalty* (published by the National Association of Manufacturers, New York, New York); and *National Association of Manufacturers*.

Insurance companies Compensation Insurance for the industry concerned; and the employee. Physically handicapped workers could only influence the workers without handicapped workers shown that, when proposed good as or often better than of Labor, p. 9.

Whatever the cause of the handicapped citizens want to be employed; to support the has recognized this fact and encourage such employment.

established. As was stated in *In re Glennon*, 18 N.J. Misc. 196 (Co. Ct. 1940) at p. 196:

"* * * This intent is (1) to insure to the employee full compensation, where a compensable disability succeeds, but has no causative connection with, the results of a prior disability, the combination of the two leaving the employee permanently and totally disabled. Its purpose is (2) to relieve the employer of the undue burden of a prior disability, with which, or its results, the disability arising in his employ had no causative connection, but which burden the previous broad provisions of the Workmen's Compensation Act were found to impose upon him. *Combination Rubber Manufacturing Co. v. Obser*, 95 N.J.L. 43; 96 Id. 544; 115 Atl. Rep. 138; *Richardson v. Essex National Trunk and Bag Co., Inc.*, 119 N.J.L. 47; 194 Atl. Rep. 622."

By this act the Legislature evinced a clear intent not to impose any greater obligation upon an employer who hires or employs a person previously injured than if he had hired a person previously not injured. In *Richardson v. Essex National Trunk and Bag Co., Inc.*, 119 N.J.L. 47 (E. & A. 1937), the court stated at p. 52 that:

"* * * we clearly discern * * * a continued and progressive development of the law to meet unforeseen contingencies as they arise to the end that full force and effect be given to the objective sought to be accomplished by the State, namely, to make its plan of rehabilitating injured persons workable and a useful reality. That goal can only be accomplished if all affected act in cooperation. The State has done, and is doing, its part; the employee—the direct beneficiary—undoubtedly welcomes the opportunity of engaging in honorable and gainful occupation; but how was the employer to be induced to cooperate? * * *"

Many employers will not hire handicapped workers because they believe it will raise their workmen's compensation costs. This attitude and this belief persists even though the insurance industry itself has for many years, engaged in a widespread education to insure employers that handicapped workers do not cost them more in premium rates. See, for example, *The Physically Impaired Can Be Insured Without Penalty* (published by The Association of Casualty and Surety Companies, New York, New York); and also *The Job for the Handicapped Man* (published by the National Association of Mutual Casualty Companies, Chicago, Illinois).

Insurance companies have, for example, publicized the fact that Workmen's Compensation Insurance rates are based primarily on: (1) The hazards inherent in the industry concerned; and (2) the accident experience of the individually insured employee. Physically handicapped workers cannot possibly affect the first factor and could only influence the second if they were prone to have more accidents than workers without handicaps. Research studies conducted by various groups have shown that, when properly placed, handicapped workers have accident experience as good as or often better than that of other persons. B.L.S. Bulletin 923, U.S. Dept. of Labor, p. 9.

Whatever the cause or nature of their disability, the State's physically handicapped citizens want to lead normal, productive lives; do a good day's work of useful employment; to support themselves and their families. The State of New Jersey has recognized this fact and acting in the interest of all its citizens, has sought to encourage such employment.

No person can lawfully do that which has a tendency to be injurious to the public or against the public good. *Driver v. Smith*, 89 N.J. Eq. 339 (Ch. 1918); *Brooks v. Cooper*, 50 N.J. Eq. 761 (E. & A. 1893). The service as outlined by Accident Index Bureau, Inc. is designed to discourage the employment of the handicapped and would frustrate the efforts of the Department of Labor and Industry to effectuate the policy of this State concerning industrial injuries and employment of the handicapped.

Consequently, it is our opinion, and you are accordingly advised, that the Division of Workmen's Compensation can refuse to permit the search of its records by Accident Index Bureau, Inc. where the purpose of the search is to provide employers with information concerning prospective employees.

Verly truly yours,

DAVID D. FURMAN
Acting Attorney General

By: MARTIN L. GREENBERG
Legal Assistant

APRIL 9, 1958

HONORABLE JOSEPH E. McLEAN
*Commissioner of Conservation and
Economic Development*
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—P-14

DEAR COMMISSIONER McLEAN:

You have requested our opinion as to whether or not you may designate a representative to serve in your place on the Board of Review established by N.J.S.A. 18:5-1.6. That section is part of the statute governing the creation of new school districts, and the function of the board in question is to review the petition for the creation of a new school district and to grant or deny the same after considering the effect of the proposed separation upon the educational and financial situations of both the new and the remaining districts. Section 18:5-1.6 provides that the Board of Review shall "consist of the Commissioner of Education as Chairman, the Commissioner of the Department of Conservation and Economic Development, and the Director of the Division of Local Government in the Department of the Treasury."

It is our opinion that your function as a member of such Board of Review involves the exercise of discretion and judgment and therefore cannot be delegated except as specifically allowed by statute. 43 Am. Jur. "Public Officers" §461; 67 C.J.S. "Officers," §104; see also cases cited in Attorney General's Memorandum Opinion P-2, rendered to the State Treasurer March 26, 1954. We find no statute authorizing you to make such delegation.

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Hon. Joseph
Department
Trenton, N.J.

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