

AN ACT concerning access to government records, amending and supplementing P.L.1963, c.73, and amending P.L.1995, c.23 and P.L.2001, c.404.

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

1. (New section) This act, P.L.1963, c.73 (C.47:1A-1 et seq.) shall be known and may be cited as the "Martin O'Shea Open Public Records Act."

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

1. The Legislature finds and declares it to be the public policy of this State that:

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

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

a public agency has a responsibility and an obligation to safeguard from public access a [citizen's] person's personal information with which it has been entrusted when disclosure thereof would violate the [citizen's] person's reasonable expectation of privacy; and nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

(cf: P.L.2001, c.404, s.1)

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

1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

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

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

Matter underlined thus is new matter.

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

"Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file, or is required by law to be made, maintained or kept on file, in the course of his or its official business by any [officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof,] public agency, or that has been received in the course of his or its official business by any such [officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof] public agency. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

"Advisory, consultative or deliberative material" means material that is used and relied upon during the consultative process prior to the completion of a competitive application or the adoption of an ordinance, rule, regulation, or policy by any public agency and that reflects personal opinions, recommendations, and deliberations comprising part of a process by which public agency decisions and policies are formulated, rather than factual or statistical data, information or the official policy of that body, and the release of which would be injurious to the consultative function of government.

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

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

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

any copy, reproduction or facsimile of any photograph, negative or print, including instant photographs and videotapes of the body, or any portion of the body, of a deceased person, taken by or for the medical examiner at the scene of death or in the course of a post

mortem examination or autopsy made by or caused to be made by the medical examiner except:

when used in a criminal action or proceeding in this State which relates to the death of that person,

for the use as a court of this State permits, by order after good cause has been shown and after written notification of the request for the court order has been served at least five days before the order is made upon the county prosecutor for the county in which the post mortem examination or autopsy occurred,

for use in the field of forensic pathology or for use in medical or scientific education or research, or

for use by any law enforcement agency in this State or any other state or federal law enforcement agency;

criminal investigatory records;

victims' records, except that a victim of a crime shall have access to the victim's own records;

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

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

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

emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein;

security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software;

information which, if disclosed, would give an advantage to competitors or bidders;

information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual, unless the individual who the grievance is filed against allows it and the issue does not involve sexual matters, or in connection with collective negotiations, including documents and statements of strategy or negotiating position;

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

information which is to be kept confidential pursuant to court order;

any copy of form DD-214, or that form, issued by the United States Government, or any other certificate of honorable discharge, or copy thereof, from active service or the reserves of a branch of the Armed Forces of the United States, or from service in the organized militia of the State, that has been filed by an individual with a public agency, except that a veteran or the veteran's spouse or surviving spouse shall have access to the veteran's own records; and

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

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

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

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

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

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

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

The term “government record” shall include allowances sold at auction pursuant to P.L.2007, c.340 (C.26:2C-45 et seq.) or any similar greenhouse gas initiative, together with the auction clearing price for each allowance, the identity of the winning bidder, and the quantity of allowances obtained by each bidder, and of which none shall be considered to be a trade secret within the scope of this act, P.L.1963, c.73 (C.47:1A-1 et seq.). The term shall also include all forms of electronic mail communication among members of a public body, excluding the Legislature, constituting an effective majority thereof, and which communication is otherwise consistent with the definition of “meeting” in section 3 of P.L.1975, c.231 (C.10:4-8); and the names of reviewers of grants, donations, gifts or applications made to a public agency including the names of reviewers of charter school applications.

"Public agency" or "agency" means any of the principal departments in the Executive Branch of State Government, and any division, agency, authority, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms shall also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions. The term shall also include a school district, special district, or charter school, quasi-governmental agency, or public employee. The term shall also mean and include the New Jersey State League of Municipalities, the New Jersey Association of Counties, the New Jersey School Boards Association, and the New Jersey State Interscholastic Athletic Association, and a substantially similar successor organization or association, and a joint insurance group or fund for political subdivisions of this State.

“Quasi-governmental agency” means any association, commission, agency, authority, organization, public-private entity, or any other entity, in which one or more public agencies exercise substantial control, or as determined by the Government Records Council or a court of law, by considering factors including but not limited to: whether a public agency exercises control over the quasi-

government agency or the public agency maintains the ability to review, approve, or reject the quasi-governmental agency's proposals or plans, holds a beneficial interest in the quasi-governmental agency's assets, is the primary source of funding of, or is indebted to, or is a creditor of, or guarantor of the debts of, the quasi-governmental agency. The term shall not include any entity involving the Legislature.

"Public employee" means any person who occupies any office, position or employment in the government of the State of New Jersey, except the Legislature, or any political subdivision of the State, or a school district, or any special district, or any authority, commission, board, or any instrumentality or agency performing a public function or public service. This term shall also include, but shall not be limited to, an elected and appointed person.

"Privacy" means the confidentiality and privilege protections to information and materials.

"Reasonable" means that which the average person would believe to be fair and just.

"Law enforcement agency" means a public agency, or part thereof, determined by the Attorney General to have law enforcement responsibilities.

"Constituent" means any State resident or other person communicating with a member of the Legislature.

"Member of the Legislature" means any person elected or selected to serve in the New Jersey Senate or General Assembly.

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

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

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

"Victims' rights agency" means a public agency, or part thereof, the primary responsibility of which is providing services, including but not limited to food, shelter, or clothing, medical, psychiatric, psychological or legal services or referrals, information and referral services, counseling and support services, or financial services to victims of crimes, including victims of sexual assault, domestic violence, violent crime, child endangerment, child abuse or child neglect, and the Victims of Crime Compensation Board, established pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.).

(cf: P.L.2005, c.170, s.1)

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

3. a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced. Whenever a public agency, during the course of an investigation, obtains from another public agency a government record that was open for public inspection, examination or copying before the investigation commenced, the investigating agency shall provide the other agency with sufficient access to the record to allow the other agency to comply with requests made pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, records containing the following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable, of a request for such information:

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

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

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

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

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

information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of

weapons and ammunition by the suspect and by the police; and information as to circumstances surrounding bail, whether it was posted and the amount thereof.

Notwithstanding any other provision of this subsection, if the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, the custodian shall redact from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record. If the custodian of a government record redacts information from a copy of the record, the custodian shall inform the requestor of the deletion or excise, why the information was deleted or excised, and shall specify the total number of pages deleted or excised. The custodian shall note in writing specifically why the record was redacted. This provision shall only apply to information redacted on or after the effective date of P.L. , c. (pending before the Legislature as this bill). If a document was redacted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), a service charge for time may be assessed to the requestor for information as to why a document was redacted.

Notwithstanding any other provision of this subsection, where it shall appear that the information and documents requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release, such information and documents may be withheld. This exception shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety. Whenever a law enforcement official determines that it is necessary to withhold information and documents, the official shall issue a brief statement explaining the decision.

(cf: P.L.2001, c.404, s.5)

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

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

Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order. Prior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor. Except where an agency can demonstrate an emergent need, a regulation that limits access to government records shall not be retroactive in effect or applied to deny a request for access to a government record that is pending before the agency, the council or a court at the time of the adoption of the regulation.

If a custodian of a government record redacts information from any record, the custodian shall inform the requestor of the redaction, why the information was deleted or excised, and shall specify the total number of pages deleted or excised. The custodian shall note in writing specifically why the record was redacted. This provision shall only apply to information redacted on or after the effective date of P.L. , c. (pending before the Legislature as this bill). If a document was redacted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), a service charge for time may be assessed to the requestor for information as to why a document was redacted.

b. A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger. If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other

overhead expenses associated with making the copy except as provided for in subsection c. of this section. Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs.

If a public agency maintains the record in an electronic format or medium and can demonstrate that the record can be electronically mailed without charge to the requestor, it shall make the requestor aware and allow for delivery of the record in such format or medium.

If the government record is readily available on the public agency website, the custodian may require the requestor to obtain the record from the agency website. If the requestor is unable to access the Internet or prefers to purchase copies from the public agency, he or she shall be permitted to purchase such copies from the record custodian.

c. Whenever the nature, format, medium, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies; provided, however, that [in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance. The] the requestor shall have the opportunity to review and object to the charge prior to it being incurred. During such review, the public agency shall provide the requestor, without charge, an index generally describing the responsive government records to be provided. To the greatest extent possible, the index shall include the name of each record or brief description of each record or general categories of the records to be provided, the approximate number of pages of each record or categories of records; and a detailed breakdown of how the special service charge was assessed. If there are responsive government records known to be exempt in whole or in part, the agency shall also provide a description of the documents or the portions deemed exempt. Special service charges shall not be assessed for requests for budgets, bills, vouchers, contracts and public employee salary and overtime information unless the request is deemed voluminous.

d. A custodian shall permit access to a government record and provide a copy thereof in the medium or format requested if the public agency maintains the record in that medium or format. If the public agency does not maintain the record in the medium or format requested, the custodian shall either convert the record to the medium or format requested or provide a copy in some other

meaningful medium or format. If a request is for a record: (1) in a medium or format not routinely used by the agency; (2) not routinely developed or maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

e. Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information and any other document that is readily available. When possible, immediate access shall mean by 5 p.m., or close of the entity's business day whichever occurs first, if the appropriate records custodian has received the request by noon. Otherwise, if the request was received after noon, the records shall be made available to the requestor by noon the following business day.

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

If a request for information is made in writing on a document other than the form adopted by the public agency and the request contains the requisite information prescribed in this subsection, the custodian shall treat the request as if made on the form adopted by the public agency.

g. A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically,

including by electronic mail, transmitted by facsimile when no more than four pages in length, or otherwise conveyed to the appropriate custodian. A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. If the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof. If the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.

If the custodian of a government record redacts information from a copy of the record, the custodian shall inform the requestor of the deletion or excision, why the information was deleted or excised, and shall specify the total number of pages deleted or excised. The custodians shall note in writing specifically why the record was redacted. This provision shall only apply to information redacted on or after the effective date of P.L. , c. (pending before the Legislature as this bill). If a document was redacted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), a service charge for time may be assessed to the requestor for information as to why a document was redacted.

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

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

i. Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, including the business day on which the request was received by the records custodian, if received by noon, provided that the record is currently available and not in storage or archived. In the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request, unless the requestor has elected not to provide a name, address or telephone number, or other means of contacting the

requestor. If the requestor has elected not to provide a name, address, or telephone number, or other means of contacting the requestor, the custodian shall not be required to respond until the requestor reappears before the custodian seeking a response to the original request. If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives the request. The requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied.

A request received after 12 p.m. shall be deemed as received on the next business day.

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

The custodian of a public agency that has a website shall, at a minimum, prominently post on the website the name, mailing address, electronic mailing address, phone number, and facsimile number for the custodian of records as well as a statement that information submitted to the agency may be a public record and available for public review.

k. The files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender. (cf: P.L.2010, c.75, s.5)

6. Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read as follows:

7. A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

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

in lieu of filing an action in Superior Court, file a complaint with the Government Records Council established pursuant to section 8 of P.L.2001, c.404 (C.47:1A-7). If the Government Records Council does not render a decision within the time period established pursuant to subsection b. of section 8 of P.L.2001, c.404 (C.47:1A-7), the requestor may institute a proceeding to challenge the custodian's decision by filing an action in Superior Court.

The right to institute any proceeding under this section shall be solely that of the requestor. Any such proceeding shall proceed in a summary or expedited manner. The public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee award. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee award. However, in actions involving a record required by law to be made, maintained or kept on file and that does not exist or no longer exists, the prevailing requestor shall not be entitled to an attorney's fee award if both: (1) the failure to make, maintain, or keep the record is due to mere negligence or no fault on the part of the government entity; and (2) the requestor was informed in writing by formal certification or affidavit by the records custodian prior to the filing of the complaint that the record does not exist or no longer exists, the efforts taken to obtain the record and why the record could not be produced.

(cf: P.L.2001, c.404, s.7)

7. Section 8 of P.L.2001, c.404 (C.47:1A-7) is amended to read as follows:

8. a. There is established in, but not of, the Department of Community Affairs a Government Records Council. The council shall consist of the Commissioner of Community Affairs or the commissioner's designee, the Commissioner of Education or the commissioner's designee, the Attorney General or the Attorney General's designee, the president of the Municipal Clerks' Association or the president's designee, [and] three public members appointed by the Governor, with the advice and consent of the Senate, not more than two of whom shall be of the same political party, and four public members appointed by the Governor, one upon the recommendation of the Senate President, one upon the recommendation of the Senate Minority Leader, one upon the recommendation of the Speaker of the General Assembly, and one upon the recommendation of the General Assembly Minority Leader. The [three] seven public members appointed by the Governor shall serve during the term of the Governor making the appointment and until the appointment of a successor. The two public members appointed by the Governor from among the recommendations of the Senate President and the General Assembly Minority Leader shall be representative of local government. The two public members appointed by the Governor from among the recommendations of the Speaker of the General Assembly and the Senate Minority Leader shall be persons with knowledge of or experience with news media. [A public member shall not hold any other] Only the public members who are representative of local government shall be able to hold a State or local elected or

appointed office or employment while serving as a member of the council. A public member shall not receive a salary for service on the council but shall be reimbursed for reasonable and necessary expenses associated with serving on the council and may receive such per diem payment as may be provided in the annual appropriations act. A member may be removed by the Governor for cause. Vacancies among the public members shall be filled in the same manner in which the original appointment was made. The members of the council shall choose one of the public members to serve as the council's chair. The council may employ an executive director and such professional and clerical staff as it deems necessary and may call upon the Department of Community Affairs for such assistance as it deems necessary and may be available to it.

b. The Government Records Council shall:

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

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

render a decision on all disputes and complaints within 150 calendar days of the filing of the complaint;

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

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

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

prepare lists for use by records custodians of the types of records in the possession of public agencies which are government records;

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

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

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

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

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

e. If any party declines mediation or if mediation fails to resolve the matter to the satisfaction of all parties, the council shall initiate an investigation concerning the facts and circumstances set forth in the complaint. The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the council shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed. Otherwise, the council shall notify the records custodian against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein. The custodian shall have the opportunity to present the board with any statement or information concerning the complaint which the custodian wishes. If the council is able to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed. If the council is unable to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, the council shall conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a State agency in contested cases under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), insofar as they may be applicable and practicable. The council shall, by a majority vote of its members, render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented. If the council determines, by a

majority vote of its members, that a custodian has [knowingly and willfully] been grossly negligent, as defined by Section 12 of P.L.2001, c.404 (C.47:1A-11), and violated P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in section 12 of P.L.2001, c.404 (C.47:1A-11). A decision of the council may be appealed to the [Appellate Division of the] Superior Court. A decision of the council shall not have value as a precedent for any case initiated [in Superior Court] pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6). All proceedings of the council pursuant to this subsection shall be conducted as expeditiously as possible.

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

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

h. The council shall make available on its website a searchable index of its opinions.

(cf: P.L.2001, c.404, s.8)

8. Section 11 of P.L.2001, c.404 (C.47:1A-10) is amended to read as follows:

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

an individual's name, title, position, educational and training background, salary, payroll record, length of service, date of separation and the reason therefor, work address and work telephone number, job description, and the amount and type of any pension received shall be a government record;

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

grievances shall be a government record when the individual who the grievance is filed against allows it and the issue does not involve sexual matters;

records pertaining to the factual basis for disciplinary action in which an employee is suspended, demoted, discharged, or resigned not in good standing, if it was due to the conviction of a crime, shall be a government record;

records pertaining to settlements of lawsuits or claims involving public agencies, public officials or employees shall be a government record; and

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

(cf: P.L.2001, c.404, s.11)

9. Section 12 of P.L.2001, c.404 (C.47:1A-11) is amended to read as follows:

12. a. A public official, officer, employee or custodian who [knowingly and willfully] violates P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and is found [to have unreasonably] grossly negligent by having denied access under the totality of the circumstances, shall be subject to a civil penalty of \$1,000 for an initial violation, \$2,500 for a second violation that occurs within 10 years of an initial violation, and \$5,000 for a third violation that occurs within 10 years of an initial violation. No public official, officer, employee or custodian shall be subject to a civil penalty for any unavailable record that is required by law to be made, maintained or kept on file unless the unavailability of the record is a result of the willful actions or gross negligence of such person.

This penalty shall be collected and enforced in proceedings in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court governing actions for the collection of civil penalties. The Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the penalty imposed by this section.

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

For the purposes of this act, P.L.1963, c.73 (C.47:1A-1 et seq.), "grossly negligent" shall mean engaging in conduct involving a gross deviation from the acceptable standards of conduct from the duties and responsibilities imposed by this act that a reasonable person would have observed in the actor's situation.

(cf: P.L.2001, c.404, s.12)

10. Section 14 of P.L.2001, c.404 (C.47:1A-13) is amended to read as follows:

14. The Commissioner of Community Affairs shall include in the annual budget request of the Department of Community Affairs

[a] the request submitted by the Government Records Council for sufficient funds to effectuate the purposes of section 8 of P.L.2001, c.404 (C.47:1A-7).

(cf: P.L.2001, c.404, s.14)

11. (New section) Any authority contained herein to exempt records from public access by regulation or Executive Order of the Governor shall be expressly limited to the designation of specific records that are exempt from access pursuant to any exemptions set forth in this act, P.L.1963, c.73 (C.47:1A-1 et seq.), and shall not be construed as a grant or delegation of authority to exempt records from public access not otherwise exempt by the provisions this act.

12. This act shall take effect in 120 days following enactment.

STATEMENT

This bill makes changes to the open public records act (OPRA).
The bill:

- *formally names OPRA as the “Martin O’Shea Open Public Records Act” in honor of Martin O’Shea, a tireless advocate for broad public access to government records;

- *allows an OPRA request to be made by anyone, not only residents of New Jersey;

- *includes the names of reviewers of grants, donations, gifts or applications made to a public agency, including the names of reviewers of charter school applications within the definition of a government record;

- *defines “reasonable” to mean that which the average person would believe to be fair and just;

- *defines “privacy” to mean the confidentiality and privilege protections to information and materials;

- *clarifies that “advisory, consultative, or deliberative material” means the recommendations, and deliberations comprising part of a process by which public agency decisions and policies are formulated;

- *provides that a government record will include documents concerning certain allowances sold at auction and certain electronic mail discussions of public agencies relating to public business;

- *includes associations and organizations engaged in service to the public for one or more municipalities, counties, or local school districts, such as the New Jersey State League of Municipalities, the New Jersey Association of Counties, the New Jersey School Boards Association and the New Jersey State Interscholastic Athletic Association, and joint insurance groups or funds for political subdivisions of the State within the definition of public agency;

- *defines public employee, and adds quasi-governmental agency to those entities covered by the open public records act;

*requires that documents containing certain information concerning criminal investigations be made available to the public within 24 hours, or as soon as practicable;

*provides that the custodian may require the requestor to obtain the record from the agency website if it is readily available online, unless the requestor does not have access to the Internet or specifically requests copies of the documents;

*provides that special service charges will not be assessed for requests for budgets, bills, vouchers, contracts and public employee salary and overtime information unless the request is deemed voluminous;

*requires the public agency to provide the requestor with a breakdown of how the special charges were assessed;

*allows the option of e-mailing the requested records without charge to the requestor when possible and the requestor agrees;

*allows the OPRA request to be e-mailed, or faxed when no more than four pages in length;

*requires the record custodian to accept a record request made on a document other than the adopted form if it contains a notice that it is an OPRA request and contains the information required on the adopted form;

*provides that if information is redacted from a record that the record custodian will notify the requestor why the information is redacted and to indicate the total number of records redacted;

*clarifies that the seven day response period includes the day the OPRA request is received;

*clarifies that if a request is received after 12 noon, it shall be deemed received on the next business day;

*provides definition of immediate access with regard to certain specified information;

*provides that only the public members who are representative of local government will be able to hold elected or appointed office;

*requires the Government Records Council to render decisions on all disputes and complaints within 150 calendar days;

*provides that if the Government Records Council does not render a decision within the time period, the requestor may file an action in Superior Court to challenge the denial of access to government records;

*requires the Government Records Council to post an index of searchable opinions on its website;

*requires contact information for the custodian of a public agency to be included on the agency website;

*requires a statement on an agency website that documents submitted to the agency may be a government record accessible by the public;

*provides that the work address and telephone number, job description and education and training background of a public employee is a government record;

*provides that grievances not relating to sexual matters are not exempt from OPRA requests when the individual the grievance is filed against allows it;

*provides that a personnel record containing certain disciplinary actions is not exempt from OPRA requests;

*provides that records pertaining to the factual basis for disciplinary action in which an employee is demoted, is discharged, or resigned not in good standing, if it was due to the conviction of a crime, is not exempt from OPRA requests;

*provides that records pertaining to settlements of lawsuits or claims involving public agencies, public officials or employees are not exempt from OPRA request;

* changes the knowingly and willfully standard for violations of the OPRA to a grossly negligent standard and defines it to mean conduct marked by a defiant disregard for the law or duties imposed by the position of custodian of a government record;

*adds the Attorney General and the president of the Municipal Clerks' Association as members of the Government Records Council;

*adds four additional public members to the Government Records Council, all appointed by the Governor, but one appointed upon the recommendation of the Senate President and one appointed upon the recommendation of the General Assembly Minority Leader, who are representative of local government, and one appointed upon the recommendation of the Speaker of the General Assembly and one appointed upon the recommendation of the Senate Minority Leader, who have knowledge of or experience with news media;

*permits public members of the Government Records Council to hold other State or local elected or appointed office or employment while serving on the council;

*changes the Government Records Council from being in the Department of Community Affairs to being in, but not of, the Department of Community Affairs;

*requires the Government Records Council to submit an annual budget request to the Commissioner of Community Affairs; and

*provides limitations to the Governor's ability to make certain records exempt from public access.

Makes certain access changes to open public records act; formally names open public records act "Martin O'Shea Open Public Records Act."