

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1452, 465 and 546**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

ADOPTED MARCH 5, 2012

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator BARBARA BUONO**

**District 18 (Middlesex)**

**Co-Sponsored by:**

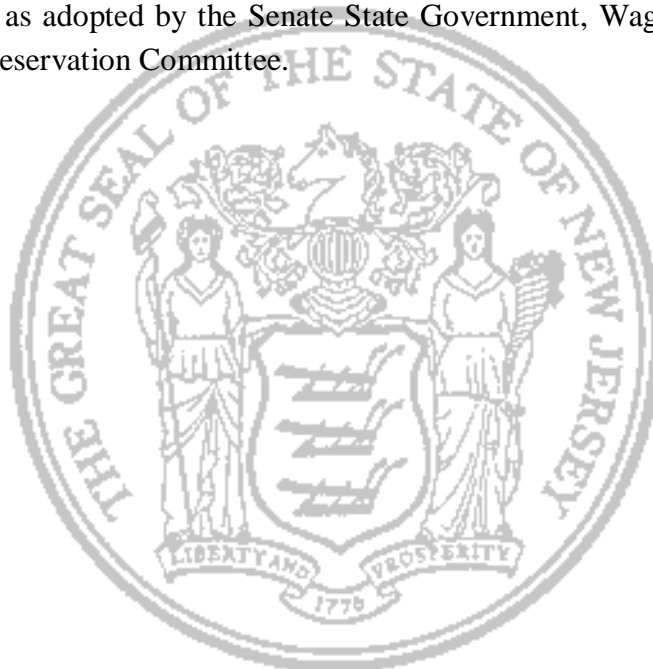
**Senator Turner**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate State Government, Wagering, Tourism & Historic Preservation Committee.



**(Sponsorship Updated As Of: 3/9/2012)**

1 AN ACT concerning access to government records, amending and  
2 supplementing P.L.1963, c.73, and amending P.L.1995, c.23 and  
3 P.L.2001, c.404.  
4

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

8 1. (New section) This act, P.L.1963, c.73 (C.47:1A-1 et seq.),  
9 shall be known and may be cited as the "Martin O'Shea Open  
10 Public Records Act."  
11

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

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

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

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

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

38 Nothing contained herein shall constitute an exception under the  
39 law.

40 (cf: P.L.2001, c.404, s.1)  
41

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

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

**Matter underlined thus is new matter.**

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

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

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

13 "Government record" or "record" means any paper, written or  
14 printed book, document, drawing, map, plan, photograph,  
15 microfilm, data processed or image processed document,  
16 information stored or maintained electronically or by sound-  
17 recording or in a similar device, or any copy thereof, that has been  
18 made, maintained or kept on file, or is required by law to be made,  
19 maintained or kept on file, in the course of [his or] its official  
20 business by any [officer, commission, agency or authority of the  
21 State or of any political subdivision thereof, including subordinate  
22 boards thereof,] public agency, or that has been received in the  
23 course of [his or] its official business by any such [officer,  
24 commission, agency, or authority of the State or of any political  
25 subdivision thereof, including subordinate boards thereof] public  
26 agency. Any video or audio recordings of public meetings should  
27 be available in unedited form. The terms shall not include inter-  
28 agency or intra-agency advisory, consultative, or deliberative  
29 material.

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

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

43 information received by a member of the Legislature from a  
44 constituent or information held by a member of the Legislature  
45 concerning a constituent, including but not limited to information in  
46 written form or contained in any e-mail or computer data base, or in

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

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

3 information generated by or on behalf of public employers or  
4 public employees in connection with any sexual harassment  
5 complaint filed with a public employer or with any grievance filed  
6 by or against an individual or in connection with collective  
7 negotiations, including documents and statements of strategy or  
8 negotiating position;

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

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

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

21 **[and]**

22 that portion of any document which discloses the social security  
23 number, credit card number, unlisted telephone number or driver  
24 license number of any person; except for use by any government  
25 agency, including any court or law enforcement agency, in carrying  
26 out its functions, or any private person or entity acting on behalf  
27 thereof, or any private person or entity seeking to enforce payment  
28 of court-ordered child support; except with respect to the disclosure  
29 of driver information by the New Jersey Motor Vehicle  
30 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-  
31 3.4); and except that a social security number contained in a record  
32 required by law to be made, maintained or kept on file by a public  
33 agency shall be disclosed when access to the document or  
34 disclosure of that information is not otherwise prohibited by State  
35 or federal law, regulation or order or by State statute, resolution of  
36 either or both houses of the Legislature, Executive Order of the  
37 Governor, rule of court or regulation promulgated under the  
38 authority of any statute or executive order of the Governor; and  
39 that portion of the electronic-mail addresses of any individual  
40 provided to the government entity for the sole purpose of receiving  
41 emergency notifications.

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

45 pedagogical, scholarly and/or academic research records and/or  
46 the specific details of any research project conducted under the  
47 auspices of a public higher education institution in New Jersey,

1 including, but not limited to research, development information,  
2 testing procedures, or information regarding test participants,  
3 related to the development or testing of any pharmaceutical or  
4 pharmaceutical delivery system, except that a custodian may not  
5 deny inspection of a government record or part thereof that gives  
6 the name, title, expenditures, source and amounts of funding and  
7 date when the final project summary of any research will be  
8 available;

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

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

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

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

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

39 "Public agency" or "agency" means any of the principal  
40 departments in the Executive Branch of State Government, and any  
41 division, agency, authority, board, bureau, office, commission or  
42 other instrumentality within or created by such department; the  
43 Legislature of the State and any office, board, bureau or  
44 commission within or created by the Legislative Branch; and any  
45 independent State authority, commission, instrumentality or agency.  
46 The terms shall also mean any political subdivision of the State or  
47 combination of political subdivisions, and any division, board,

1 bureau, office, commission or other instrumentality within or  
2 created by a political subdivision of the State or combination of  
3 political subdivisions, and any independent authority, commission,  
4 instrumentality or agency created by a political subdivision or  
5 combination of political subdivisions. The term shall also include a  
6 school district, special district, or charter school, quasi-  
7 governmental agency, or public employee. The term shall also  
8 mean and include, by way of example but not limitation, the New  
9 Jersey State League of Municipalities, the New Jersey Association  
10 of Counties, the New Jersey School Boards Association, and the  
11 New Jersey State Interscholastic Athletic Association, and a  
12 substantially similar successor organization or association, and a  
13 joint insurance group or fund for political subdivisions of this State.

14 “Quasi-governmental agency” means any association,  
15 commission, agency, authority, organization, public-private entity,  
16 or any other entity, in which one or more public agencies exercise  
17 substantial control, or as determined by the Government Records  
18 Council or a court of law, by considering factors including but not  
19 limited to: whether a public agency exercises control over the quasi-  
20 government agency or the public agency maintains the ability to  
21 review, approve, or reject the quasi-governmental agency’s  
22 proposals or plans, holds a beneficial interest in the quasi-  
23 governmental agency’s assets, is the primary source of funding of,  
24 or is indebted to, or is a creditor of, or guarantor of the debts of, the  
25 quasi-governmental agency. The term shall not include any entity  
26 involving the Legislature or any organization organized under  
27 paragraph (3) of subsection c. of section 501 of the federal Internal  
28 Revenue code (26 U.S.C.s.501) that was not created by, or with the  
29 approval of, a public agency solely for the purpose of assisting that  
30 public agency.

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

38 “Privacy” means the confidentiality and privilege protections to  
39 information and materials.

40 “Reasonable” means that which the average person would  
41 believe to be fair and just.

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

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

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

3 "Criminal investigatory record" means a record which is not  
4 required by law to be made, maintained or kept on file that is held  
5 by a law enforcement agency which pertains to any criminal  
6 investigation or related civil enforcement proceeding.  
7 Notwithstanding anything contained herein to the contrary, this  
8 provision shall not be construed to allow any public agency to  
9 prohibit access to a record that was open for public inspection,  
10 examination, or copying, before any criminal investigation or  
11 related civil enforcement proceeding commenced.

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

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

21 "Victims' rights agency" means a public agency, or part thereof,  
22 the primary responsibility of which is providing services, including  
23 but not limited to food, shelter, or clothing, medical, psychiatric,  
24 psychological or legal services or referrals, information and referral  
25 services, counseling and support services, or financial services to  
26 victims of crimes, including victims of sexual assault, domestic  
27 violence, violent crime, child endangerment, child abuse or child  
28 neglect, and the Victims of Crime Compensation Board, established  
29 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.).  
30 (cf: P.L.2005, c.170, s.1)

31

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

34 3. a. Notwithstanding the provisions of P.L.1963, c.73  
35 (C.47:1A-1 et seq.) as amended and supplemented, where it shall  
36 appear that the record or records which are sought to be inspected,  
37 copied, or examined shall pertain to an investigation in progress by  
38 any public agency, the right of access provided for in P.L.1963,  
39 c.73 (C.47:1A-1 et seq.) as amended and supplemented may be  
40 denied if the inspection, copying or examination of such record or  
41 records shall be inimical to the public interest; provided, however,  
42 that this provision shall not be construed to allow any public agency  
43 to prohibit access to a record of that agency that was open for  
44 public inspection, examination, or copying before the investigation  
45 commenced. Whenever a public agency, during the course of an  
46 investigation, obtains from another public agency a government  
47 record that was open for public inspection, examination or copying



1 before the investigation commenced, the investigating agency shall  
2 provide the other agency with sufficient access to the record to  
3 allow the other agency to comply with requests made pursuant to  
4 P.L.1963, c.73 (C.47:1A-1 et seq.).

5 b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-  
6 1 et seq.), as amended and supplemented, records containing the  
7 following information concerning a criminal investigation shall be  
8 available to the public within 24 hours or as soon as practicable, of  
9 a request for such information:

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

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

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

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

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

31 information of the circumstances immediately surrounding the  
32 arrest, including but not limited to the time and place of the arrest,  
33 resistance, if any, pursuit, possession and nature and use of  
34 weapons and ammunition by the suspect and by the police; and

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

37 Notwithstanding any other provision of this subsection, if the  
38 custodian of a government record asserts that part of a particular  
39 record is exempt from public access pursuant to P.L.1963, c.73  
40 (C.47:1A-1 et seq.), as amended and supplemented, the custodian  
41 shall redact from a copy of the record that portion which the  
42 custodian asserts is exempt from access and shall promptly permit  
43 access to the remainder of the record. If the custodian of a  
44 government record redacts information from a copy of the record,  
45 the custodian shall inform the requestor of the deletion or excise,  
46 why the information was deleted or excised, and shall specify the  
47 total number of pages deleted or excised. The custodian shall note

1 in writing specifically why the record was redacted. If the custodian  
2 of a government record redacts information from a copy of the record,  
3 the custodian shall provide the requestor with a redacted version of the  
4 document and one affidavit for the entire request that states the date of  
5 the record, the originator or author of the record, the subject matter or  
6 title of the record, and the specific statutory provision or other lawful  
7 basis for each such redaction. This provision shall only apply to  
8 information redacted on or after the effective date of P.L. , c.  
9 (pending before the Legislature as this bill). If a document was  
10 redacted prior to the effective date of P.L. , c. (pending before the  
11 Legislature as this bill), a service charge for time may be assessed  
12 to the requestor for information as to why a document was redacted.

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

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

24

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

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

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

19 If a custodian of a government record redacts information from  
20 any record, the custodian shall inform the requestor of the  
21 redaction, why the information was deleted or excised, and shall  
22 specify the total number of pages deleted or excised. The custodian  
23 shall note in writing specifically why the record was redacted. If  
24 the custodian of a government record redacts information from a copy  
25 of the record, the custodian shall provide the requestor with a redacted  
26 version of the document and one affidavit for the entire request that  
27 states the date of the record, the originator or author of the record, the  
28 subject matter or title of the record, and the specific statutory provision  
29 or other lawful basis for each such redaction. This provision shall  
30 only apply to information redacted on or after the effective date of  
31 P.L. , c. (pending before the Legislature as this bill). If a  
32 document was redacted prior to the effective date of P.L. , c.  
33 (pending before the Legislature as this bill), a service charge for  
34 time may be assessed to the requestor for information as to why a  
35 document was redacted.

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

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

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

11 If the government record is readily available on the public  
12 agency website, the custodian shall advise the requester to obtain  
13 the record from the agency website. If the requester does not have  
14 access to a computer, the request shall be made and fulfilled  
15 pursuant to the provisions of this act, P.L.1963, c.73 (C.47:1A-1 et  
16 seq.).

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

44 d. A custodian shall permit access to a government record and  
45 provide a copy thereof in the medium or format requested if the  
46 public agency maintains the record in that medium or format. If the  
47 public agency does not maintain the record in the medium or format

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

13 e. Immediate access ordinarily shall be granted to budgets,  
14 bills, vouchers, contracts, including collective negotiations  
15 agreements and individual employment contracts, and public  
16 employee salary and overtime information and any other document  
17 that is readily available. When possible, immediate access shall  
18 mean by 5 p.m., or close of the entity's business day whichever  
19 occurs first, if the appropriate records custodian has received the  
20 request by noon. Otherwise, if the request was received after noon,  
21 the records shall be made available to the requestor by noon the  
22 following business day. In no event, shall the records be made  
23 available any later than noon on the business day following the day  
24 of the request.

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

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

6 g. A request for access to a government record shall be in  
7 writing and hand-delivered, mailed, transmitted electronically,  
8 including by electronic mail, transmitted by facsimile when no more  
9 than four pages in length, or otherwise conveyed to the appropriate  
10 custodian. A custodian shall promptly comply with a request to  
11 inspect, examine, copy, or provide a copy of a government record.  
12 If the custodian is unable to comply with a request for access, the  
13 custodian shall indicate the specific basis therefor on the request  
14 form and promptly return it to the requestor. The custodian shall  
15 sign and date the form and provide the requestor with a copy  
16 thereof. If the custodian of a government record asserts that part of  
17 a particular record is exempt from public access pursuant to  
18 P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented,  
19 the custodian shall delete or excise from a copy of the record that  
20 portion which the custodian asserts is exempt from access and shall  
21 promptly permit access to the remainder of the record.

22 If the custodian of a government record redacts information from  
23 a copy of the record, the custodian shall inform the requestor of the  
24 deletion or excision, why the information was deleted or excised,  
25 and shall specify the total number of pages deleted or excised. The  
26 custodians shall note in writing specifically why the record was  
27 redacted. If the custodian of a government record redacts information  
28 from a copy of the record, the custodian shall provide the requestor  
29 with a redacted version of the document and one affidavit for the entire  
30 request that states the date of the record, the originator or author of the  
31 record, the subject matter or title of the record, and the specific  
32 statutory provision or other lawful basis for each such redaction. This  
33 provision shall only apply to information redacted on or after the  
34 effective date of P.L. , c. (pending before the Legislature as this  
35 bill). If a document was redacted prior to the effective date of  
36 P.L. , c. (pending before the Legislature as this bill), a service  
37 charge for time may be assessed to the requestor for information as  
38 to why a document was redacted.

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

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

5 i. Unless a shorter time period is otherwise provided by  
6 statute, regulation, or executive order, a custodian of a government  
7 record shall grant access to a government record or deny a request  
8 for access to a government record as soon as possible, but not later  
9 than seven business days after receiving the request, including the  
10 business day on which the request was received by the records  
11 custodian, if received by noon, provided that the record is currently  
12 available and not in storage or archived. In the event a custodian  
13 fails to respond within seven business days after receiving a  
14 request, the failure to respond shall be deemed a denial of the  
15 request, unless the requestor has elected not to provide a name,  
16 address or telephone number, or other means of contacting the  
17 requestor. If the requestor has elected not to provide a name,  
18 address, or telephone number, or other means of contacting the  
19 requestor, the custodian shall not be required to respond until the  
20 requestor reappears before the custodian seeking a response to the  
21 original request. If the government record is in storage or archived,  
22 the requestor shall be so advised within seven business days after  
23 the custodian receives the request. The requestor shall be advised  
24 by the custodian when the record can be made available. If the  
25 record is not made available by that time, access shall be deemed  
26 denied.

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

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

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

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

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

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

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

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

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

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

36

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

39       8. a. There is established in, but not of, the Department of  
40 Community Affairs a Government Records Council. The council  
41 shall consist of the Commissioner of Community Affairs or the  
42 commissioner's designee, the Commissioner of Education or the  
43 commissioner's designee, the Attorney General or the Attorney  
44 General's designee, the president of the Municipal Clerks'  
45 Association or the president's designee, [and] three public  
46 members appointed by the Governor, with the advice and consent of  
47 the Senate, not more than two of whom shall be of the same



1 political party, and four public members appointed by the Governor,  
2 one upon the recommendation of the Senate President, one upon the  
3 recommendation of the Senate Minority Leader, one upon the  
4 recommendation of the Speaker of the General Assembly, and one  
5 upon the recommendation of the General Assembly Minority  
6 Leader. The ~~three~~ seven public members appointed by the  
7 Governor shall serve during the term of the Governor making the  
8 appointment and until the appointment of a successor. The two  
9 public members appointed by the Governor from among the  
10 recommendations of the Senate President and the General Assembly  
11 Minority Leader shall be representative of local government. The  
12 two public members appointed by the Governor from among the  
13 recommendations of the Speaker of the General Assembly and the  
14 Senate Minority Leader shall be persons with knowledge of or  
15 experience with news media. [A public member shall not hold any  
16 other] Only the public members who are representative of local  
17 government shall be able to hold a State or local elected or  
18 appointed office or employment while serving as a member of the  
19 council. A public member shall not receive a salary for service on  
20 the council but shall be reimbursed for reasonable and necessary  
21 expenses associated with serving on the council and may receive  
22 such per diem payment as may be provided in the annual  
23 appropriations act. A member may be removed by the Governor for  
24 cause. Vacancies among the public members shall be filled in the  
25 same manner in which the original appointment was made. The  
26 members of the council shall choose one of the public members to  
27 serve as the council's chair. The council may employ an executive  
28 director and such professional and clerical staff as it deems  
29 necessary and may call upon the Department of Community Affairs  
30 for such assistance as it deems necessary and may be available to it.

31 b. The Government Records Council shall:  
32 establish an informal mediation program to facilitate the  
33 resolution of disputes regarding access to government records;  
34 receive, hear, review and adjudicate a complaint filed by any  
35 person concerning a denial of access to a government record by a  
36 records custodian;  
37 render a decision on all disputes and complaints within 150  
38 calendar days of the filing of the complaint;  
39 issue advisory opinions, on its own initiative, as to whether a  
40 particular type of record is a government record which is accessible  
41 to the public;  
42 prepare guidelines and an informational pamphlet for use by  
43 records custodians in complying with the law governing access to  
44 public records;  
45 prepare an informational pamphlet explaining the public's right  
46 of access to government records and the methods for resolving

1 disputes regarding access, which records custodians shall make  
2 available to persons requesting access to a government record;  
3 prepare lists for use by records custodians of the types of records  
4 in the possession of public agencies which are government records;  
5 make training opportunities available for records custodians and  
6 other public officers and employees which explain the law  
7 governing access to public records; and  
8 operate an informational website and a toll-free helpline staffed  
9 by knowledgeable employees of the council during regular business  
10 hours which shall enable any person, including records custodians,  
11 to call for information regarding the law governing access to public  
12 records and allow any person to request mediation or to file a  
13 complaint with the council when access has been denied;

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

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

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

38 e. If any party declines mediation or if mediation fails to  
39 resolve the matter to the satisfaction of all parties, the council shall  
40 initiate an investigation concerning the facts and circumstances set  
41 forth in the complaint. The council shall make a determination as  
42 to whether the complaint is within its jurisdiction or frivolous or  
43 without any reasonable factual basis. If the council shall conclude  
44 that the complaint is outside its jurisdiction, frivolous or without  
45 factual basis, it shall reduce that conclusion to writing and transmit  
46 a copy thereof to the complainant and to the records custodian  
47 against whom the complaint was filed. Otherwise, the council shall

1 notify the records custodian against whom the complaint was filed  
2 of the nature of the complaint and the facts and circumstances set  
3 forth therein. The custodian shall have the opportunity to present  
4 the board with any statement or information concerning the  
5 complaint which the custodian wishes. If the council is able to  
6 make a determination as to a record's accessibility based upon the  
7 complaint and the custodian's response thereto, it shall reduce that  
8 conclusion to writing and transmit a copy thereof to the  
9 complainant and to the records custodian against whom the  
10 complaint was filed. If the council is unable to make a  
11 determination as to a record's accessibility based upon the  
12 complaint and the custodian's response thereto, the council shall  
13 conduct a hearing on the matter in conformity with the rules and  
14 regulations provided for hearings by a State agency in contested  
15 cases under the "Administrative Procedure Act," P.L.1968, c.410  
16 (C.52:14B-1 et seq.), insofar as they may be applicable and  
17 practicable. The council shall, by a majority vote of its members,  
18 render a decision as to whether the record which is the subject of  
19 the complaint is a government record which must be made available  
20 for public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as  
21 amended and supplemented. If the council determines, by a  
22 majority vote of its members, that a custodian has **【knowingly and**  
23 **willfully】** been grossly negligent, as defined by section 12 of  
24 P.L.2001, c.404 (C.47:1A-11), and violated P.L.1963, c.73  
25 (C.47:1A-1 et seq.), as amended and supplemented, and is found to  
26 have unreasonably denied access under the totality of the  
27 circumstances, the council may impose the penalties provided for in  
28 section 12 of P.L.2001, c.404 (C.47:1A-11). A decision of the  
29 council may be appealed to the **【Appellate Division of the】**  
30 Superior Court. A decision of the council shall not have value as a  
31 precedent for any case initiated **【in Superior Court】** pursuant to  
32 section 7 of P.L.2001, c.404 (C.47:1A-6). All proceedings of the  
33 council pursuant to this subsection shall be conducted as  
34 expeditiously as possible.

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

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

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

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

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

3       11. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-  
4 1 et seq.) or any other law to the contrary, the personnel or pension  
5 records of any individual in the possession of a public agency,  
6 including but not limited to records relating to any grievance filed  
7 by or against an individual, shall not be considered a government  
8 record and shall not be made available for public access, except  
9 that:

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

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

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

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

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

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

33

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

36       12. a. A public official, officer, employee or custodian who  
37 **[knowingly and willfully]** violates P.L.1963, c.73 (C.47:1A-1 et  
38 seq.), as amended and supplemented, and is found **[to have**  
39 **unreasonably]** grossly negligent by having denied access under the  
40 totality of the circumstances, shall be subject to a civil penalty of  
41 \$1,000 for an initial violation, \$2,500 for a second violation that  
42 occurs within 10 years of an initial violation, and \$5,000 for a third  
43 violation that occurs within 10 years of an initial violation. No  
44 public official, officer, employee or custodian shall be subject to a  
45 civil penalty for any unavailable record that is required by law to be  
46 made, maintained or kept on file unless the unavailability of the

1 record is a result of the willful actions or gross negligence of such  
2 person.

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

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

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

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

18

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

21 14. The Commissioner of Community Affairs shall include in  
22 the annual budget request of the Department of Community Affairs  
23 **[a]** the request submitted by the Government Records Council for  
24 sufficient funds to effectuate the purposes of section 8 of P.L.2001,  
25 c.404 (C.47:1A-7).

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

27

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

35

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