

SENATE, No. 788

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

SYNOPSIS

Exempts law enforcement camera and 9-1-1 recordings from State's open public records law.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain recordings and amending P.L.1995,
2 c.23.

3

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

6

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

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

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

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

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

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

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

44 any memorandum, correspondence, notes, report or other
45 communication prepared by, or for, the specific use of a member of

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 the Legislature in the course of the member's official duties, except
2 that this provision shall not apply to an otherwise publicly-
3 accessible report which is required by law to be submitted to the
4 Legislature or its members;

5 any copy, reproduction or facsimile of any photograph, negative
6 or print, including instant photographs and videotapes of the body,
7 or any portion of the body, of a deceased person, taken by or for the
8 medical examiner at the scene of death or in the course of a post
9 mortem examination or autopsy made by or caused to be made by
10 the medical examiner except:

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

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

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

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

22 criminal investigatory records;

23 law enforcement camera recordings, except for use by any
24 person authorized by law to have access to the recordings or for use
25 by any government agency, including any court or law enforcement
26 agency, for purposes of the administration of justice;

27 9-1-1 audio recordings or transcripts of a 9-1-1 call;

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

30 any written request by a crime victim for a record to which the
31 victim is entitled to access as provided in this section, including,
32 but not limited to, any law enforcement agency report, domestic
33 violence offense report, and temporary or permanent restraining
34 order;

35 personal firearms records, except for use by any person
36 authorized by law to have access to these records or for use by any
37 government agency, including any court or law enforcement
38 agency, for purposes of the administration of justice;

39 personal identifying information received by the Division of Fish
40 and Wildlife in the Department of Environmental Protection in
41 connection with the issuance of any license authorizing hunting
42 with a firearm. For the purposes of this paragraph, personal
43 identifying information shall include, but not be limited to, identity,
44 name, address, social security number, telephone number, fax
45 number, driver's license number, email address, or social media
46 address of any applicant or licensee;

47 trade secrets and proprietary commercial or financial information
48 obtained from any source. For the purposes of this paragraph, trade

1 secrets shall include data processing software obtained by a public
2 body under a licensing agreement which prohibits its disclosure;
3 any record within the attorney-client privilege. This paragraph
4 shall not be construed as exempting from access attorney or
5 consultant bills or invoices except that such bills or invoices may be
6 redacted to remove any information protected by the attorney-client
7 privilege;
8 administrative or technical information regarding computer
9 hardware, software and networks which, if disclosed, would
10 jeopardize computer security;
11 emergency or security information or procedures for any
12 buildings or facility which, if disclosed, would jeopardize security
13 of the building or facility or persons therein;
14 security measures and surveillance techniques which, if
15 disclosed, would create a risk to the safety of persons, property,
16 electronic data or software;
17 information which, if disclosed, would give an advantage to
18 competitors or bidders;
19 information generated by or on behalf of public employers or
20 public employees in connection with any sexual harassment
21 complaint filed with a public employer or with any grievance filed
22 by or against an individual or in connection with collective
23 negotiations, including documents and statements of strategy or
24 negotiating position;
25 information which is a communication between a public agency
26 and its insurance carrier, administrative service organization or risk
27 management office;
28 information which is to be kept confidential pursuant to court
29 order;
30 any copy of form DD-214, or that form, issued by the United
31 States Government, or any other certificate of honorable discharge,
32 or copy thereof, from active service or the reserves of a branch of
33 the Armed Forces of the United States, or from service in the
34 organized militia of the State, that has been filed by an individual
35 with a public agency, except that a veteran or the veteran's spouse
36 or surviving spouse shall have access to the veteran's own records;
37 any copy of an oath of allegiance, oath of office or any
38 affirmation taken upon assuming the duties of any public office, or
39 that oath or affirmation, taken by a current or former officer or
40 employee in any public office or position in this State or in any
41 county or municipality of this State, including members of the
42 Legislative Branch, Executive Branch, Judicial Branch, and all law
43 enforcement entities, except that the full name, title, and oath date
44 of that person contained therein shall not be deemed confidential;
45 and
46 that portion of any document which discloses the social security
47 number, credit card number, unlisted telephone number or driver
48 license number of any person; except for use by any government

1 agency, including any court or law enforcement agency, in carrying
2 out its functions, or any private person or entity acting on behalf
3 thereof, or any private person or entity seeking to enforce payment
4 of court-ordered child support; except with respect to the disclosure
5 of driver information by the New Jersey Motor Vehicle
6 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-
7 3.4); and except that a social security number contained in a record
8 required by law to be made, maintained or kept on file by a public
9 agency shall be disclosed when access to the document or
10 disclosure of that information is not otherwise prohibited by State
11 or federal law, regulation or order or by State statute, resolution of
12 either or both houses of the Legislature, Executive Order of the
13 Governor, rule of court or regulation promulgated under the
14 authority of any statute or executive order of the Governor.

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

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

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

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

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

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

45 "Personal firearms record" means any information contained in a
46 background investigation conducted by the chief of police, the
47 county prosecutor, or the Superintendent of State Police, of any
48 applicant for a permit to purchase a handgun, firearms identification

1 card license, or firearms registration; any application for a permit to
2 purchase a handgun, firearms identification card license, or firearms
3 registration; any document reflecting the issuance or denial of a
4 permit to purchase a handgun, firearms identification card license,
5 or firearms registration; and any permit to purchase a handgun,
6 firearms identification card license, or any firearms license,
7 certification, certificate, form of register, or registration statement.
8 For the purposes of this paragraph, information contained in a
9 background investigation shall include, but not be limited to,
10 identity, name, address, social security number, phone number, fax
11 number, driver's license number, email address, social media
12 address of any applicant, licensee, registrant or permit holder.

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

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

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

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

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

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

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

47 "Victims' rights agency" means a public agency, or part thereof,
48 the primary responsibility of which is providing services, including

1 but not limited to food, shelter, or clothing, medical, psychiatric,
2 psychological or legal services or referrals, information and referral
3 services, counseling and support services, or financial services to
4 victims of crimes, including victims of sexual assault, domestic
5 violence, violent crime, child endangerment, child abuse or child
6 neglect, and the Victims of Crime Compensation Board, established
7 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
8 the Victims of Crime Compensation Office pursuant to P.L.2007,
9 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
10 (cf: P.L.2015, c.59, s.1)

11

12 2. This act shall take effect immediately.

13

14

15 STATEMENT

16

17 This bill creates an exemption to the State's open public records
18 law for law enforcement camera recordings and 9-1-1 audio
19 recordings or transcripts.

20 Specifically, the bill provides that law enforcement camera
21 recordings and 9-1-1 audio recordings or transcripts of a 9-1-1 call
22 are not included as government records under the Open Public
23 Records Act (OPRA) and, therefore, would not be available to the
24 public.

25 The law enforcement camera recordings would be available,
26 however, for use by any person authorized by law to have access to
27 the recordings or for use by any government agency, including any
28 court or law enforcement agency, for purposes of the administration
29 of justice.