



## **Access To Public Records: A Primer on the New Public Records Law**



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NEW JERSEY STATE LEAGUE OF MUNICIPALITIES

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## INTRODUCTION

The League is pleased to publish this revision of **Access to Public Records: A Primer**. On January 8, 2002, Acting Governor Donald DiFrancesco signed PL 2001, c. 404, a sweeping revision to the public records law. This new law, effective July 8, 2002 affects every aspect of local government and will affect how every municipality in the State conducts its business.

While this publication is not a comprehensive examination of the Right-to-Know law and common law access, it does provide an overview of the issue for municipal governments.

The League would like to acknowledge and thank the following for their contributions for this publication:

- **William J. Kearns** is the General Counsel for the League of Municipalities. His contributions for the publication included the article "New Jersey's Open Public Records Law" and the sample access forms.
- **Michael A. Pane** is the General Counsel for the New Jersey Municipal Clerks' Associations. Mr. Pane contributed the article "Municipal Responsibilities for Providing Access to Governmental Records Under L. 2002, C. 404."
- **Deborah Kole**, Staff Attorney for the New Jersey State League of Municipalities, researched the exceptions to OPRA not specifically stated in the new law.
- **Kristina P. Hadinger** is a partner with Mason, Griffin and Pierson in Princeton, Associate Counsel to the League and President of the New Jersey Institute of Municipal Attorneys.
- **Karen J. Nowicki**, formerly Research Associate for the League of Municipalities, played an instrumental role in organizing the early drafts of this publication.

We hope you find this publication to be useful and informative.

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# **New Jersey's Open Public Records Law**

by  
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After many years of discussion and after many amendments to the proposed legislation, a new law was approved by the Legislature and signed into law by the Acting Governor on January 8, 2002, as P.L. 2001, c. 404 which makes significant changes in the law governing public records.

Just as New Jersey has an Open Public Meetings Law (OPML) it now has an equivalent law dealing with the opening of public records and setting the standards by which the public can see those records. Referred to, for convenience, as the Open Public Records Act (OPRA), to avoid confusion with the "Right to Know Law" which governs disclosure of hazardous chemicals, the law follows the pattern of the Open Public Meetings Law in that it declares the records to be public unless they fall within certain exceptions.

The changes are significant and will require local officials to reconsider the approaches to public records and the means by which those records are made available to the public. The most significant revision is that the Municipal Clerk is designated as the Custodian of Records, so that the requests for records will be submitted to the Clerk and the Clerk will be responsible for responding to requests. This change will require most municipalities to develop an internal system for cooperation so that when a document is requested that is in the possession of a specific department (Police, Land Use, Public Works, Finance, etc.) there will be a responsibility

for the department to respond to the Clerk in a timely manner so that the Clerk may, in turn, respond to the applicant for the information within the seven days required by P.L. 2001, c. 404, §6 i.

While in most cases the Municipal Clerk has been the actual custodian of many records, such as ordinances, resolutions, contracts, dog licenses, etc., under the new law the Municipal Clerk is the Custodian of all municipal records. That does not mean that all of the records must be physically transferred to the Clerk's office, nor does it mean that someone seeking a police accident report cannot go to the police department for the information, but it will require that the records request form be completed and that the time requirements be met and the Clerk will be responsible for meeting the provisions of the statute.

It must be noted that P.L. 2001, c. 404, § 6 e requires immediate access ordinarily for "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information."

The Custodian of the Records is required by P.L. 2001, c. 404, §6 f to adopt a form to be used when applying for a copy of a record. A sample form is being developed by the League and will be available on the League's web site, <http://www.njslom.com> for consideration by Municipal Clerks.

In order to understand the changes in the law as the result of the enactment of P.L. 2001, c. 404, which takes effect on July 8, 2002, it is necessary to understand the existing law and consider the changes.

Under current law, any record which is required by law to be made, maintained or kept on file is deemed to be a public record. The statutory language provides that:

Except as otherwise provided in this act or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of the Governor, all records which are required by law to be made, maintained or kept on file by any board, body, agency, department, commission or official of the State or of any political subdivision thereof or by any public board, body, commission or authority created pursuant to law by the State or any of its political subdivisions, or by any official acting for or on behalf thereof (each of which is hereinafter referred to as the “custodian” thereof) shall for the purposes of this act, be deemed to be public records.

In addition to the statutory provisions, there is what is referred to as the “Common Law Right-to-Know” which developed as the result of judicial decisions where the Court would weigh the reasons for making a record public against the reason for maintaining its confidentiality.

Under the body of case law, a number of records were not subject to public disclosure. Although there is a general rule that existing case law is applicable, the provisions of P.L. 2001, c. 404 do make some specific revisions.

- Attorney bills, internally generated legal billing documents and legal submissions were not subject to disclosure as public records under the old Right to Know Law since they are not explicitly required to be made, kept or maintained on file, however, they are common law public records because they are created by or at the request of public officers in the exercise of a public function. The common law balancing test was applied to determine whether the attorney bills or internally generated legal billing documents should be disclosed. The basic rule was that the bills themselves were public records, but any information included in the bills that would breach the attorney-client confidentiality should be excised from the bill. The provisions of P.L. 2001, c. 404 clarify that provision

by the language providing the exception for “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;”

- Police reports and files regarding matters under investigation are specifically exempted from the definition of “public records,” however, if a record was a public record before the investigation commenced, it remains as a public record. For example, there might be an investigation over a specific contract and payments to a contractor. The fact of the investigation would not render the contract itself or the records of payments to be confidential, since they would have been public records before the investigation commenced.
- It was held by a Court that the Casino Control Commission did not have the authority to provide a newspaper with investigatory information and data about a license and registration applicant’s criminal record, family and background. The information was confidential and could not be disclosed except upon the lawful order of a court of competent jurisdiction or on the authority of the Attorney General to a duly authorized law enforcement agency. *Petition of Atlantic City Press Requesting Certain Files of the Casino Control Commission*, 277 N.J.Super. 433 (App.Div. 1994)
- Autopsy photographs were not required by law to be made and therefore did not constitute a public record subject to release under the decision in *Shuttleworth v. City of Camden*, 258 N.J. Super. 573 (App. Div. 1992). The provisions of P.L. 2001, c. 404, make that exemption specific:

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.

Basically, the new law changes the standard from “records required to be made or maintained” to a standard where there is a presumption that a document is a public record unless it falls within one of the exceptions set forth in P.L. 2001, c. 404 or some other statute, regulation, Executive Order or judicial decision.

If an applicant is denied a record, then they can appeal that decision to the Public Records Council which is established under the new law or to the New Jersey Superior Court. The burden will be on the Custodian of Records to demonstrate why the record should not be made available and the public agency may have to pay the attorney’s fees for the applicant and civil penalties can be imposed between \$1,000 and \$5,000 for willful violations of the law.

The statute recognizes that citizens have reasonable expectations of privacy:

a public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’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.

further the statute specifically provides an exemption for:



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 Division of Motor Vehicles 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.

In addition, the concern over privacy is recognized by the establishment of a Privacy Study Commission which will be required to submit a report to the Legislature within 18 months on privacy related issues.

Other exceptions set forth in P.L. 2001, c. 404 include:

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.

While those two exceptions appear to address privacy concerns, it should be noted that they apply only to members of the legislature and would not provide similar protection for any constituent who is corresponding with a Mayor, Governing Body Member, Municipal Manager,

School Board Member, School Superintendent, or even the Governor, all of which might well include more personal information than a piece of correspondence to a Legislator. Those exceptions were inserted into the legislation in the final stage of consideration by the Assembly.

Other exceptions include:

- 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 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; 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 Division of Motor Vehicles 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.

With regard to the costs which may be charged for the copies, the statute sets the following maximum charges:

- c) A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation, or if a fee is not prescribed by law or regulation, upon payment of the actual cost of duplicating the record. 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 not exceed the following: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page. The actual cost of duplicating the record 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. 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.
- c) Whenever the nature, format, 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 requestor shall have the opportunity to review and object to the charge prior to it being incurred.

One of the most significant changes requires that the record be provided in the medium requested by the applicant:

- d) A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record: (1) in a medium 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.

So, if you have the record in electronic format, the applicant can have the record in the electronic format. Additionally, since the law requires that you convert the record to the medium requested, you may have to convert a document from your word processing program into the word processing program requested by the applicant. Fortunately there are inexpensive programs which make conversion relatively easy.

While the changes in the law are significant and will require that both officials and the public understand the requirements and the procedures that are to be followed, the transition to the new law should not be especially difficult where there is an understanding of the law and cooperation among the various departments of local government so that responses can be provided in a timely manner.

# Municipal Responsibilities for Providing Access to Government Records

by:

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## Introduction

C. 404 represents a re-codification of New Jersey's law as to public access to government records. It expands statutes to hold most of the case decisions of the past years although, in some limited respects, it would appear to abrogate some of their holdings. The overall effect of the law, however, is to provide a greater degree of citizen access and means for providing compliance and for obtaining faster results for those seeking government records in situations where they have been denied such records.<sup>1</sup>

After a decade or more of litigation decisions, substantial pressure built in the Legislature for major amendments to the 1963 Right-to-Know Law. After two full years of intensive legislative debate in both Houses, the amendments were enacted. The need to balance full access with maintenance of privacy rights and security concerns is expressed in the Legislative Declaration at the beginning of bill.

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 of Executive Order of the Governor; Executive Order of the Governor; Rules of Court; and federal law, or federal order;

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable

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<sup>1</sup> See sections 5.12 et seq., *infra*.

expectations 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.<sup>2</sup>

What must a local government due to provide adequate access to government records?

The preface says there is a presumption that citizens have a right to access. In any instance in which access is being denied, it is incumbent on the government to establish an adequate public interest reason for the denial.

In fact, in some cases the law is specific in stating that immediate access should be granted in certain instances.

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.<sup>3</sup>

The definition of government records has been broadened. Whereas previously analysis in case decisions focused on the question as to whether documents were required to be kept, or simply kept, this has now been clarified to provide for broader coverage, in general, but the last sentence specifically protects many memoranda dealing with analysis of policy issues from automatic disclosure.

“Government record” or “record” mean any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency, or authority of the State or any political subdivision thereof, including subordinate boards thereof, 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. The terms shall not include inter-agency or intra-agency advisory, consultative or deliberative material.<sup>4</sup>

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<sup>2</sup> L 2001, C 404, Section 1

<sup>3</sup> L 2001, C 404, Section 6

<sup>4</sup> L 2001, C404, Section 2



Another issue which had caused some procedural concerns over the years was the identity of the person from whom records could be sought. The amendments clarify who is the custodian of government records in municipalities.

“Custodian of a government record” or “custodian” mean in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency’s director or governing body, as the case may be.<sup>5</sup>

The 2001 amendments include a number of substantial changes and clarifications as to the exceptions to the Law. A series of last minute amendments provide that virtually all communication between constituents and members of the State Legislature (but not municipal governing bodies) are to deemed confidential.

- Autopsy photos and other medical evidence, with certain exceptions by court order, or for criminal investigation purposes.
- information regarding criminal investigatory records;
- victims’ records;
- trade secrets;
- attorney-client privilege documents, but not consultant bills or invoices, except that same may be redacted as to confidential information;
- proprietary information as to computers;
- any information that the disclosure of which would result in loss of security or jeopardize property 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 or in connection with collective negotiations, including documents and

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<sup>5</sup> L 2001, C404, Section 2

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;
- individual social security numbers, credit cards numbers, unlisted phone numbers or driver license numbers, except under certain circumstances;
- a number of records kept by institutions of higher education; and
- the act is fairly specific as to the types of information as to crimes which may be released and when it may be released.

In addition to the foregoing, the 2001 amendments retain all those exemptions previously provided by the following sources.<sup>6</sup>

The provisions of this act, P.L.2001, c. 404 (C.47:1A-1 et al.) shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L. 1963, c.73 (C.47:1A-1 et seq.); any other statute; resolution of either or both Houses of 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 government; or federal order.

The provisions of this act, P.L.2001, c. 404 (C.47:1A-1 et al.) shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

### **Time For Compliance with Requests**

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

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<sup>6</sup> L 2001, C 404, Section 10

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.<sup>7</sup>

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, 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.<sup>8</sup>

As a means of tracking requests for information:

The custodian of a public agency shall adopt a form for the use of any person who request 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

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<sup>7</sup> L 2001, C 404, Section 6

<sup>8</sup> L 2001, C 404, Section 6

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.

A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, 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 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 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 interest of the requestor and the agency.

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.

It would appear, in most instances, that the law simply requires an answer to the request within seven business days. As long as the answer is not a denial, but a reasonable statement as to when the information will be available if it is not currently available, it would appear that the custodian would be in compliance with the requirements of the law.

### **Government Records Council Created**

As part of the 2001 amendments to the Right-to-Know Law, the Legislature established a Government Records Council.

The Council was established to undertake several important tasks:

1. to provide technical assistance to local governments on compliance with

the law; and

2. to provide a method for mediating disputes between request orders for information and custodians of records who has denied the information requested.<sup>9</sup>

The council will consist of three (3) public members and the Commissioners of Education and Community Affairs or their designees. The tasks of the Commission are as follows:

- 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;
- 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;

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<sup>9</sup> L 2001, C 404, Section 8

- 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 counsel when access has been denied.

Beyond mediation, the Commission has the ability to hear and decide cases, and to refer them to an administrative law judge. Appeals from decisions of the Commission go to Appellate Division.

### **Fees Under C. 404**

The old rules as to fees have changed in two respects:

1. There is a specific statement in the law that simple copy requests should be charged at basic rates which are exclusive of labor and overhead costs;
2. If extraordinary time and effort are required to accommodate a request, the agency may charge a special service charge, *but this fee must be set in advance by ordinance*.

A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation, or if a fee is not prescribed by law or regulation, upon payment of the actual cost of duplicating the record. 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 not exceed the following: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page. The actual cost of duplicating the record 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. 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.

Whenever the nature, format, 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 requestor shall have the opportunity to review and object to the charge prior to it being incurred.

A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the medium requested or provide a copy in some other meaningful medium. If a request is for a record: (1) in a medium 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.

### **Appeal of Access Denial**

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 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 the P.L. 2001, c. 404 (C.47:1A-7).

The right to institute any proceedings 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.

The amendments provide clear alternatives, including mediation, and also provide that a requestor that has been denied, may receive reasonable attorney's fees, whereas the prior statute limited attorney fees to \$500.00.

### **Penalties for Non-compliance**

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 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. 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.

This test is clearly aimed at penalizing the willing wrongdoer. Be warned.

### **Remaining Issues**

Another issue which remains unchanged is that there is no conceptual or legal difference between commercial enterprises seeking government records and individuals interested in obtaining the same information.<sup>10</sup>

Another thing that appears not to have changed under the 2001 amendments is the fact that the custodian of records is not required to summarize or analyze public records, or "[p]roduce new information even if the documents under the Right-to-Know Law and the common law are unresponsive to a citizen's inquiry."<sup>11</sup> There are several issues which are clear from the text of the statute, as amended; and several which remain open to question. First, there is no question that the basic intent in the Legislature is that small number of copies should be made available for the rate specified in the statute with no extra charge for labor or other overhead costs.

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<sup>10</sup> *Techniscan v. Passaic Valley Water Commission*, 113 N.J. 233, (App. Div. 1988).

<sup>11</sup> *Southern N.J. Newspapers v. Township of Mt. Laurel*, 141 N.J. 56, 68-69, 660 A.2d 1173, 1179-1181 (1995) (dictum).



The exceptions to this rule deal with unusual circumstances or heavy volume. A local government can charge more than the statutory amount in those circumstances, but it must do so by rates which have been calculated in advance for such contingencies and set by ordinance. The statute thus gives the requestor the opportunity to review and object to the charges before they are incurred.

Another issue of concern, which appears not to be covered in the 2001 amendments, nor in the 1963 Act itself, is the cost of supervision. If a requestor desires to examine several years worth of minute books or vouchers, the requestor cannot be left alone with those books because the custodian has an obligation to ensure that they are not tampered with. Therefore, under some circumstances it requires that some official or municipal employee sit with the requestor while he or she is doing their research. This kind of staff time may be extremely costly to the municipality and the tax payer. There would appear to be no reason why, if a requestor is going to spend three hours looking through old municipal records, that he or she should not pay a reasonable fee for the time involved of the employee in question. Not only is the municipality and, thus, the taxpayer paying for that person's time, but that employee is unable to do the work that he or she would otherwise be doing in many cases. Obviously a simple request to see a particular item is one thing; a random search conducted by anyone for hours on end is another. In the latter case, it would seem reasonable to provide for a fee.<sup>12</sup>

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<sup>12</sup> *Home News Publishing v. State Department of Health*, 239 N.J. Super. 172, (App. Div. 1990).

# **The Exceptions: A Summary of Items That Are Not Considered "Government Records" Under the Act, or Are Otherwise Excepted From Disclosure Under the Act**

Presented at:  
NEW JERSEY LEAGUE OF MUNICIPALITIES SEMINAR  
ACCESS TO RECORDS AMENDMENT, P.L.2001, C. 404

Prepared by:  
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1. Inter-agency or intra-agency advisory, consultative, or deliberative material. (See definition of "Government record," N.J.S.A.47:1A-1.)
2. Information received by member of State Senate or Assembly regarding a constituent. (See definition of "Government record," N.J.S.A.47:1A-1.)
3. Memoranda, letters, notes, reports and any other communication prepared for the use of a member of the State Senate or Assembly. (See definition of "Government record," N.J.S.A.47:1A-1.)
4. Photographs, negatives and copies thereof, or videotapes, of a decedent relating to a post mortem examination or autopsy. (See definition of "Government record," N.J.S.A.47:1A-1, and note that there are exceptions to this exception.)
5. Records maintained by a law enforcement agency that are not required by law to be made and which pertain to a criminal investigation or related civil enforcement proceedings. (See definition of "Government record," N.J.S.A.47:1A-1, and note that there are exceptions to this exception as set forth in N.J.S.A.47:1A-3.b.)
6. Records held by a victim rights organization, such as a domestic violence shelter, pertaining to the victim of a crime, except that the victim may have access to his/her own records. (See definition of "Government record," N.J.S.A.47:1A-1.)
7. Trade secrets; proprietary commercial or financial information. This includes data processing software obtained pursuant to a licensing agreement prohibiting disclosure. (See definition of "Government record," N.J.S.A.47:1A-1.)
8. Records within the attorney-client privilege. (See definition of "Government record," N.J.S.A.47:1A-1.)
9. "Administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security." (See definition of "Government record," N.J.S.A.47:1A-1.)

10. Buildings and facilities emergency procedures and security information. (See definition of "Government record," N.J.S.A.47:1A-1.)
11. Security and surveillance measures which, if disclosed, would create safety risks for persons, property, electronic data or software. (See definition of "Government record," N.J.S.A.47:1A-1.)
12. Information that would give an advantage to competitors or bidders. (See definition of "Government record," N.J.S.A.47:1A-1.)
13. Information pertaining to sexual harassment complaints filed with public employers. (See definition of "Government record," N.J.S.A.47:1A-1.)
14. Information pertaining to any grievance . (See definition of "Government record," N.J.S.A.47:1A-1.)
15. Information pertaining to collective negotiations, including documents containing negotiating strategies. (See definition of "Government record," N.J.S.A.47:1A-1, and note that it is assumed "collective negotiations" means "collective bargaining negotiations.")
16. Communications with the public agency's insurance carrier, administrative service organization or risk management office. (See definition of "Government record," N.J.S.A.47:1A-1.)
17. Information to be kept confidential pursuant to court order. (See definition of "Government record," N.J.S.A.47:1A-1.)
18. The portion of any document disclosing social security, credit card, unlisted phone or driver license numbers. (See definition of "Government record," N.J.S.A.47:1A, but note that there are numerous exceptions to this exception.)
19. Various records of public institutions of higher education. (See definition of "Government record," N.J.S.A.47:1A-1 for more specific list.)
20. Biotechnology trade secrets as restricted by federal law. (See N.J.S.A.47:1A-1.2).
21. Personal information regarding the victim of a crime when the information is being sought by the convict who wronged the victim or by anonymous request. (See N.J.S.A.47:1A-2.2.)
22. Records of an investigation in progress where release is inimical to the public interest. (See N.J.S.A.47:1A-3.a, and note that there are exceptions to this exception.)
23. Files maintained by the Office of the Public Defender that relate to the handling of a case. (See N.J.S.A.47:1A-5.k.)

24. Records heretofore exempt from disclosure under any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under authority of any statute or Executive Order; Executive Order; Rules of Court or; federal law, regulation or order. (See N.J.S.A.47:1A-9.a.)
25. Records heretofore exempt from disclosure pursuant to any executive or legislative privilege or grant of confidentiality established by State Constitution, statute, court rule or case law. (See N.J.S.A.47:1A-9.b.)
26. Personnel and pension records, including records relating to grievances filed by or against an individual. (See N.J.S.A.47:1A-10, and note that are numerous exceptions to this exception. Without limitation, an employee's salary, date of separation and reason for separation are accessible.)

P.L.2001, c. 404 represents a lengthy and comprehensive revision of New Jersey laws governing public access. The above list should not be construed as legal advice. The reader is advised (1) to consult directly with his or her own attorney on specific questions the reader may have regarding the Act, and (2) to read the Act in full.

## New Jersey State League of Municipalities

### Frequently Asked Questions Regarding Access to Government Records

- Q *Does the new law mean that anyone can get access to the personnel files of public employees?*
- A **No. Personnel files and pension records of any individual, including records of grievances filed by or against an individual, are not classified as public records and shall not be made available, except that an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record.**
- Q *Under the public records law, can anyone come in and get copies of birth and marriage certificates?*
- A **No. Under Executive Order No. 18, which was issued by Governor James E. McGreevey on April 24, 2002, a State or local Registrar may issue a certified copy of a vital record only to persons who establish themselves as the subject of the vital record, the subject's parent, legal guardian or legal representative, spouse, child, grandchild or sibling and the Registrar is required to authenticate the identity of the requestor and his or her relationship with the subject of the vital record. Additional regulations are expected to be issued by the Commissioner of the Department of Health and Senior Services to define who may obtain copies of those vital records. The Executive Order was issued in response to recommendations from the New Jersey Domestic Security Preparedness Task Force.**
- Q *A citizen has asked for copies of all minutes of the governing body and the Planning Board where there was any discussion of a particular development. That project was under off and on discussion for over 5 years and the only way that I could determine the meetings at which it was discussed would be to go and read all of the minutes for those years. Do I have to do that research?*
- A **No. The new law is about providing access to government records that have been requested. It does not require that the Custodian of Records become a researcher for the person making the request. The requestor needs to identify the record which is being requested and the Custodian of Records needs to provide access to that specific record, unless it is exempted under the provisions of the law.**
- Q *A public library is a governmental entity. Does the new public records law mean that I can review the records of my neighbor and find out what books and videotapes my neighbor is borrowing?*
- A **No. Library records which contain the names or other personally identifying details regarding the users of libraries are confidential and shall not be disclosed**

except where necessary for the proper operation of the library or where disclosure is requested by the user; or disclosure is required pursuant to a subpoena issued by a court or a court order. *N.J.S. 18A:73-43.2*

Q *Our municipality has adopted an ordinance which establishes a fee of \$10 for copies of police accident reports. Is that fee permissible since it was adopted by ordinance?*

A **No.** That fee was invalid before the adoption of the new Access to Public Records Law. Under the provisions of *N.J.S.A. 39:4-131* written reports required to be forwarded by law enforcement officers and the information contained therein shall not be privileged or held confidential. Every citizen of this State shall have the right, during regular business hours and under supervision, to inspect and copy such reports and shall also have the right in person to purchase copies of the reports at the same fee established by section 2 of P.L.1963, c. 73 (C.47:1A-2). Those are the fees which remain in effect under the Access to Public Records Law and begin at \$.75 per page and drop down to \$.25 per page, based on the number of pages copied. If copies of reports are requested other than in person, an additional fee of up to \$5.00 for the first three pages and \$1.00 per page thereafter may be added to cover the administrative costs of the report. Under the specific provisions of *N.J.S.A. 39:4-131.1*, any rule, regulation, resolution or ordinance inconsistent with that statute or establishing a fee in excess of the fee permitted by section 2 of P.L.1963, c. 73 (C. 47:1A-2) is superseded insofar as it is inconsistent or to the extent that it exceeds the fee so established. That has been the law since February, 1980.

Q *Does the new law change the requirements on access to records involving juveniles?*

A **No.** The new law specifically provides that records that are confidential under any other statute, executive order, regulation, court rule or court order remain confidential. Social, medical, psychological, legal and other records of the court and probation division, and records of law enforcement agencies, pertaining to juveniles charged as a delinquent or found to be part of a juvenile-family crisis, shall be strictly safeguarded from public inspection. The statute provides for limited availability to official agencies and by court order. *N.J.S. 2A:4A-60*. Proceedings before the Juvenile Conference Committee appointed by the Court in each county or in a municipality are also confidential. *N.J.S. 2A:4A-75*.

Q *What about records of domestic violence complaints?*

A Various statutes require that information the victims of sexual abuse or assault, including any report, statement, photograph, court document, complaint or any other public record which states the name, address and identity of a victim shall be confidential and unavailable to the public. *N.J.S. 2A:61B-1* and *N.J.S. 2A:82-46*. Applications for relief under the Prevention of Domestic Violence Act are confidential. *N.J.S. 2C:25-33*.

Q *What about the property record cards maintained by the Tax Assessor?*

A **It appears that those records will be available under the new law.** There is no statute or regulation which makes those records confidential, although it is

possible that a regulation may be adopted to declare some of that information to be confidential. Tax Assessors have been able to rely on some old cases that determined that the Assessor was not required by law to have a property record card and that they were not, therefore, public records. That standard is changed by the new law that is much broader in the language declaring government records to be available to the public for inspection and copying.

Q *I am the Zoning Officer for my municipality and have exchanged e-mail messages with a business in the municipality on various issues relating to expanding their place of business. Are those e-mail messages public records?*

A **While the statute does not specifically mention e-mail messages, the experience in other States with broad open public records laws shows a pattern of treating e-mail messages in the same manner as letters and other correspondence. In that case, they would be public records, unless they fall within some specific exemption.**

Q *I am the municipal Administrator and a citizen has asked for my budget notes and my draft budget even before I provide my recommendations to the governing body. Do I have to provide that information and, if so, when?*

A **You do not have to provide that raw information. That would fall under the specific exemption for inter-agency or intra-agency advisory, consultative, or deliberative material that is not a public record under the law.**

Q *What impact does the new law have on access to police records and investigatory reports?*

A **The new law does not make any significant changes with regard to the records of law enforcement agencies. Generally, records maintained by a law enforcement agency that are not required by law to be made and which pertain to a criminal investigation or related civil enforcement proceeding are not public records. As with most other exceptions, however, there are exceptions to the exceptions and the language of the statute should be carefully reviewed with respect to any specific request for access to records.**

Q *We have some of our records in a database which was developed for municipal use. Someone has asked for the data in the database and wants it in electronic format. While we can copy the data to a disk, they will not be able to use it without the software that operates the database. Do we have to provide them with a copy of the software so that they can read the data?*

A **Absolutely not. That software is proprietary and is protected by copyright. You may not provide that software without violating the rights of the copyright holder. It may be possible, however, for you to provide the data in a generic format that the requestor could access with some other software program. However, you have to be very cautious that you do not provide information in the database which is otherwise confidential, such as social security numbers, driver's license numbers, credit card numbers, unlisted telephone numbers. It would be dangerous to simply copy the database and provide it to the requestor without deleting the confidential information. With respect to requests for data in electronic format it**

**will be important to discuss the means by which the data can be provided with your information technology consultant to make certain that you respond with the information that is public, but do not provide information that is private or confidential.**

*Q I have read the new law several times and I think that it is confusing. What do I do if I think that a particular document being requested may fall under one of the exceptions?*

**A As with any new law, there will be circumstances where people will have good faith disagreements over the application of the law. The first step to attempting to resolve that disagreement would be to consult with the municipal attorney who would ultimately have to defend any decision to treat a government record as a confidential record. If access to the requested document is denied, the requestor will have the option of appealing to the New Jersey Superior Court or to the newly established Government Records Council. Unfortunately, the Government Records Council has not yet been appointed and the procedures for an appeal to the Government Records Council have not been established.**

*Q Are there going to be more exceptions to the classification of a government record as a public record?*

**A There will be most certainly be more exceptions which will be established either by other laws, by Executive Orders issued by the Governor or by regulations adopted by the various State agencies. That has been the experience in other states with broad access to public records statutes. It will be important to be aware of those new statutes, executive orders and regulations as they are adopted.**

*Q Is all of the information included in a license or permit application available to the public under the new law?*

**A No, applications for various types of licenses will be presumed confidential, to encourage openness and candor by applicants. Among the information which would be treated as confidential would be applications for and police investigations regarding firearms permits, casino licenses, private detective licenses, alcoholic beverage licenses, hazardous waste licenses, etc.**

*Q I understand that attorney-client communications are privileged under the statute. Are there other communications that are considered to be privileged and would remain confidential?*

**A Yes. Communications between a psychologist and the patient are confidential under N.J.S.A. 45-14B-28. Communications between a cleric and a penitent are confidential under N.J.S.A. 2A: 84-A-23.**

*Q Since the mediator in public labor disputes are appointed by a public agency, the Public Employment Relations Commission, are their files, correspondence, notes and research public records that are available on request?*



- A **No. Records of a mediator are confidential under the regulations adopted by PERC. N.J.A.C. 19:12-3.4.**
- Q *The new law provides an exception for "information that would give an advantage to competitors or bidders." Who decides whether the exception applies to a particular set of information?*
- A **The determination would have to be made at the outset by the municipality and probably by the municipal attorney using a reasonableness standard and based on advice from its professionals, depending on the nature of the bid project (engineer, special consultant, etc.) The easiest example is where you are about to go out to bid on a project and you have the estimates provided by your engineer or other professional. Knowing what you expect the project to cost will give an advantage to a bidder. On the other hand, you could not hold back information on underground conditions that might significantly impact the amount of work required on a project.**
- Q *After the rejection of the first round of bids, does a contracting unit have to make the estimates available to the general public?*
- A **No. The estimates would still require some confidentiality as the contracting unit might be going out for new bids based on the estimates or might be going out for modified bids. The information in the estimates would give someone who had the estimates an unfair advantage in the bidding process.**
- Q *If a contracting unit decides to abandon a project or after rejecting bids on two separate occasions are the bid documents as well as the estimates public?*
- A **The bid specifications are public documents as soon as they are issued, so it would not matter whether a project is abandoned or not. Anyone who requests access to the specifications would be able to see them.  
In a similar manner, the bids packages submitted by a bidder are public documents, except as to information that is otherwise treated as confidential, such as proprietary and financial data on the bidder. The bid estimates prepared for the contracting unit would probably no longer be entitled to confidentiality if a project is truly abandoned. However, just because the bids have been rejected twice does not mean that a project is abandoned, since the project might be simply postponed until circumstances were deemed better for the bidding process or might be slightly modified to address a particular aspect of the project that has a high cost. In that case, the estimates might still provide an unfair advantage to a prospective bidder and would be entitled to confidentiality. The decision would have to be based on the specific circumstances of the particular project.**

## **New Jersey's Public Access Law Chapter 404**

**An Act** concerning public access to government records, amending and supplementing P.L.1963, c.73 (C.47:1A-1 et seq.) , amending P.L.1995, c.23 and P.L.1998, c.17, establishing a Privacy Study Commission and making an appropriation for the expenses thereof, and repealing parts of the statutory law.

**Be It Enacted** by the Senate and General Assembly of the State of New Jersey:

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

C.47:1A-1 Legislative findings, declarations.

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 personal information with which it has been entrusted when disclosure thereof would violate the citizen'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.

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

C.47:1A-1.1 Definitions. 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.

"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 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 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, 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. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

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 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; 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 Division of Motor Vehicles 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.

"Public agency" or "agency" means any of the principal departments in the Executive Branch of State Government, and any division, 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 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.

"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.).

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

C.47:1A-1.2 Restricted access to biotechnology trade secrets.

- a. When federal law or regulation requires the submission of biotechnology trade secrets and related confidential information, a public agency shall not have access to this information except as allowed by federal law.
- b. A public agency shall not make any biotechnology trade secrets and related confidential information it has access to under this act available to any other public agency, or to the general public, except as allowed pursuant to federal law.

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

C.47:1A-2.2 Access to certain information by convict prohibited; exceptions.

1. a. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or the provisions of any other law to the contrary, where it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information, the right of access provided for in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented shall be denied.

- b. A government record containing personal identifying information which is protected under the provisions of this section may be released only if the information is necessary to assist in the defense of the requestor. A determination that the information is necessary to assist in the requestor's defense shall be made by the court upon motion by the requestor or his representative.
- c. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, or any other law to the contrary, a custodian shall not comply with an anonymous request for a government record which is protected under the provisions of this section.

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

C.47:1A-3 Access to records of investigation in progress.

- 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, 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, where it shall appear that the information 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 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, the official shall issue a brief statement explaining the decision.

C.47:1A-5 Times during which records may be inspected, examined, copied; access; copy fees.

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 Division of Motor Vehicles 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.

- 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, or if a fee is not prescribed by law or regulation, upon payment of the actual cost of duplicating the record. 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 not exceed the following: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page. The actual cost of duplicating the record 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. 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.
- c. Whenever the nature, format, 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 requestor shall have the opportunity to review and object to the charge prior to it being incurred.
- d. A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record:
  - (1) in a medium 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.
  - 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.
  - g. A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, 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 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.
- h. 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, 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.
- 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.
- 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.

#### C.47:1A-6 Proceeding to challenge denial of access to record.

- 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 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).

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.

#### C.47:1A-7 Government Records Council.

8. a. There is established in 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, 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. The three public members shall serve during the term of the Governor making the appointment and until the appointment of a successor. A public member shall not hold any other 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;
  - 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 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-6). 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.

#### C.47:1A-8 Construction of act.

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

#### C.47:1A-9 Other laws regulations, privileges unaffected.

- 10. a. The provisions of this act, P.L.2001, c.404 (C.47:1A-5 et al.), shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.); 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.

- b. The provisions of this act, P.L.2001, c.404 (C.47:1A-5 et al.), shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

C.47:1A-10 Personnel, pension records not considered public document; exceptions.

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, salary, payroll record, length of service, date of separation and the reason therefor, 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
  - 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.

C.47:1A-11 Violations, penalties, disciplinary proceeding.

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 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. 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.

#### C.47:1A-12 Court rules.

13. The New Jersey Supreme Court may adopt such court rules as it deems necessary to effectuate the purposes of this act.

#### C.47:1A-13 Annual budget request for the council.

14. The Commissioner of Community Affairs shall include in the annual budget request of the Department of Community Affairs a request for sufficient funds to effectuate the purposes of section 8 of P.L.2001, c.404 (C.47:1A-7).
15. a. There is established a temporary Privacy Study Commission which shall consist of 13 members. The President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly and the Minority Leader of the General Assembly shall each appoint one public member. The Governor shall appoint nine members and shall designate one of the commission's members to serve as chair of the commission. In making appointments to the commission, legislative leaders and the Governor shall cooperate and coordinate to ensure that the representatives of the following groups and organizations are represented among the commission's membership and that the membership represents a balance between groups which advocate citizen privacy interests and groups which advocate increased access to government records: State and local law enforcement agencies, State and local government officers and employees, attorneys practicing in the field of individual privacy rights, public interest groups with a record of activity with respect to openness in government, crime victim advocates, members of the news media, and at least one retired member of the State Judiciary. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.
- b. The commission shall organize within 14 days after the appointment of a majority of its members.
- c. The commission shall meet at the call of the chair and hold hearings at such places as the chair shall designate during the sessions and recesses of the Legislature. The



commission shall comply with the provisions of the "Open Public Meetings Act, P.L.1975, c.231 (C.10:4-6 et seq.).

- d. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, bureau, commission or agency, as it may require and as may be available for its purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.
  - e. The commission shall study the privacy issues raised by the collection, processing, use and dissemination of information by public agencies, in light of the recognized need for openness in government and recommend specific measures, including legislation, the commission may deem appropriate to deal with these issues and safeguard the privacy rights of individuals. In the course of its study, the commission shall review the current and proposed means used for the collection, processing, use and dissemination of information by State and local government agencies.
  - f. The commission shall report its findings and recommendations to the Governor and the Legislature within 18 months of the effective date of P.L.2001, c.404 (C.47:1A-5 et al.) and may accompany the same with any legislative bills which it may desire to recommend for adoption by the Legislature.
16. There is appropriated \$95,000 from the General Fund to the Privacy Study Commission established pursuant to section 15 of P.L.2001, c.404.

**Repealer.**

- 17. Section 2 of P.L.1963, c.73 (C.47:1A-2), section 8 of P.L.1994, c.140 (C.47:1A-2.1) and section 4 of P.L.1963, c.73 (C.47:1A-4) are repealed.
- 18. Sections 15 and 16 of this act shall take effect immediately and expire upon the date that the Privacy Study Commission submits its report to the Governor and the Legislature and the remainder of the act shall take effect on the 180th day after enactment , except that public agencies may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

**Approved January 8, 2002.**

# TOWNSHIP OF ANYTOWN

MUNICIPAL BUILDING  
1234 MAIN STREET  
ANYTOWN, NEW JERSEY 00000

## REQUEST FOR ACCESS TO GOVERNMENT RECORDS

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FOR MUNICIPAL USE ONLY

Date Received: \_\_\_\_\_ Date of Response: \_\_\_\_\_

SEE INSTRUCTIONS ON THE OTHER SIDE

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone [Day] \_\_\_\_\_

### Information Requested:

[\_\_\_\_\_] **Copy of Minutes** [specify board or entity, date, topic or other identifying information]

[\_\_\_\_\_] **Copy of Ordinance or Resolution** [specify date, number, or other identifying information]

[\_\_\_\_\_] **Police Accident Report** Fee: \_\_\_\_\_

Identify Accident: \_\_\_\_\_

[\_\_\_\_\_] **Other** [specify] \_\_\_\_\_

[\_\_\_\_\_] **License Information** [Specify] \_\_\_\_\_

**Information on a Specific Property** Address \_\_\_\_\_

Block \_\_\_\_\_ Lot \_\_\_\_\_

[\_\_\_\_\_] **Municipal Lien Search** Fee: \_\_\_\_\_ \$ 10.00

Municipal Lien Searches are provided by the designated search officer and will be provided within 15 days after the request is received and the fee paid, as provided in *N.J.S.A. 54:5-11*, et seq.

[\_\_\_\_\_]

**List of Property Owners within 200'**

Fee: \_\_\_\_\_

As provided in *N.J.S.A. 40:55D-12*, the fee is the greater of \$.25 per name or \$10.00

A request for access to or for a copy of Government Records should be submitted on this form which has been adopted by the Municipal Clerk as the Custodian of Records. Some records will be immediately available during normal business hours. Some records will require time to compile and to make the copies requested, but will normally be available during normal business hours and within seven (7) business days. If any document or copy which has been requested is not a public record or cannot be provided within the seven (7) business days, you will be provided with a response with that information within the seven (7) business days. Some records requested have specific fees or other response times established by statute. There is no fee involved in simply inspecting a document during normal business hours. This request may be filed electronically. In general:

- Immediate access is ordinarily available for to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information. Minutes of public meetings will be generally available immediately after the minutes have been approved.
- Records which are not readily available or which will require a search of records will be made available as soon as possible and the applicant will be provided with an interim report within seven [7] business days indicating the time which will be required to provide the records.
- Except as otherwise provided by law or regulation, the fee assessed for the duplication of a printed record shall be: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page; for a police accident report there is an additional fee when the request is not made in person of \$5.00 for the first 3 pages and \$1.00 for each additional page, as provided by *N.J.S.A. 39:4-131*.
- Where a request is for a copy in a format other than a photocopy, reasonable efforts will be made to provide the information in the format requested. The cost will be based on the costs of producing the format requested.
- Where a legal determination must be made as to whether records are "public records" as provided by law, the request will be reviewed by the Municipal Attorney.

The term "public records" generally includes those records determined to be public in accordance with *N.J.S.A. 47:1A-1*. The term does not include employee personnel files, police investigation records, public assistance files or other matters in which there is a right of privacy or confidentiality or inter-agency or intra-agency advisory, consultative, or deliberative material or other material which is specifically exempted by law.

**The Applicant hereby acknowledges receipt of a copy of this form with the date on which the information is expected to be available and the estimated cost. The applicant hereby certifies that he or she has not been convicted of any indictable offense under the laws of this State, any other state or the United States and is not seeking government records containing personal information pertaining the victim or the victim's family as provided by *N.J.S.A. 47:1A-1* et seq..**

**This form, when signed by the municipal official shall constitute a receipt for any deposit received.**

**The information requested will be ready on**

\_\_\_\_\_

**Estimated Number of Pages**

\_\_\_\_\_

**Estimated Cost**

\_\_\_\_\_

**Deposit**

[required where the anticipated cost of reproduction exceeds \$5.00]

\_\_\_\_\_

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Municipal Official

Date: \_\_\_\_\_

Date: \_\_\_\_\_

TOWNSHIP OF ANYTOWN

**PUBLIC RECORDS REQUEST RESPONSE**

TO: \_\_\_\_\_

DATE: \_\_\_\_\_

The document or documents listed below and requested by you are not being provided because the document or documents are not public records as provided by law, for the following reason (s):

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You have a right to appeal the decision that the document or documents are not public records. You may take your appeal to the Government Records Council or to the New Jersey Superior Court, as provided by N.J.S.A. 47:1A-1 et seq. If your request has been denied, a statement of the procedures for the appeal will be attached to this notification.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Municipal Clerk

**ACKNOWLEDGEMENT**

I hereby acknowledge that I have received the documents requested except for any documents specifically listed above on which a determination has been made that the documents will not be provided. If any documents have not been provided, I have received information on the procedures for any appeal of the determination.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant

# TOWNSHIP OF ANYTOWN

MUNICIPAL BUILDING • 1234 MAIN STREET • ANYTOWN, NEW JERSEY 00000

## REQUEST FOR ACCESS TO GOVERNMENT RECORDS

Date	Name	Address	Item Requested	Provided

# TOWNSHIP OF ANYTOWN

MUNICIPAL BUILDING  
1234 MAIN STREET  
ANYTOWN, NEW JERSEY 00000

## REQUEST FOR ACCESS TO POLICE DEPARTMENT RECORDS

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FOR MUNICIPAL USE ONLY

Date Request Received: \_\_\_\_\_ Date Response Provided: \_\_\_\_\_

SEE INSTRUCTIONS BELOW

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone [Day] \_\_\_\_\_

### Information Requested:

☐ **Police Accident Report**

Identify Accident: \_\_\_\_\_

☐ **Other** [specify] \_\_\_\_\_

A request for a copy of Government Records should be submitted on this form which has been adopted by the Custodian of Records for requests related to Police Department Records. Some records will be immediately available during normal business hours. Some records will require time to locate and to make the copies requested, but will normally be available during normal business hours and within seven (7) business days. If any document or copy which has been requested is not a public record or cannot be provided within the seven (7) business days, you will be provided with a response with that information within the seven (7) business days. Some records requested have specific fees or other response times established by statute. There is no fee involved in simply inspecting a document during normal business hours. This request may be filed electronically. In general:

- Except as otherwise provided by law or regulation, the fee assessed for the duplication of a printed record shall be: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page; for a police accident report there is an additional fee when the request is not made in person of \$5.00 for the first 3 pages and \$1.00 for each additional page, as provided by *N.J.S.A. 39:4-131*.
- Where a request is for a copy in a format other than a photocopy, reasonable efforts will be made to provide the information in the format requested. The cost will be based on the costs of producing the format requested.

- Where a legal determination must be made as to whether records are "public records" as provided by law, the request will be reviewed by the Municipal Attorney.

The term "public records" generally includes those records determined to be public in accordance with *N.J.S.A. 47:1A-1*. The term does not include employee personnel files, police investigation records, or other matters in which there is a right of privacy or confidentiality or which is specifically exempted by law.

**The Applicant hereby acknowledges receipt of a copy of this form with the date on which the information is expected to be available and the estimated cost. The applicant hereby certifies that he or she has not been convicted of any indictable offense under the laws of this State, any other state or the United States and is not seeking government records containing personal information pertaining the victim or the victim's family as provided by *N.J.S.A. 47:1A-1* et seq..**

**This form, when signed by the municipal official shall constitute a receipt for any deposit received.**

**The information requested will be ready on** \_\_\_\_\_

**Estimated Number of Pages** \_\_\_\_\_

**Estimated Cost** \_\_\_\_\_

**Deposit** \_\_\_\_\_  
[required where the anticipated cost of reproduction exceeds \$5.00]

Applicant \_\_\_\_\_ Municipal Official \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

## PUBLIC RECORDS REQUEST RESPONSE

**TO** : \_\_\_\_\_

**DATE** : \_\_\_\_\_

The document or documents listed below and requested by you are not being provided because the document or documents are not public records as provided by law, for the following reason:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

You have a right to appeal the decision that the document or documents are not public records. You may take your appeal to the Government Records Council or to the New Jersey Superior Court, as provided by *N.J.S.A. 47:1A-1* et seq.. If your request has been denied, a statement of the procedures for the appeal will be attached.

Date: \_\_\_\_\_  
Municipal Custodian of Records



### ACKNOWLEDGMENT

I hereby acknowledge that I have received the documents requested except for any documents specifically listed above on which a determination has been made that the documents will not be provided. If any documents have not been provided, I have received information on the procedures for any appeal of the determination.

Date: \_\_\_\_\_  
Applicant \_\_\_\_\_