

[First Reprint]

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

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

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ADOPTED MARCH 5, 2012

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator BARBARA BUONO**

**District 18 (Middlesex)**

**Co-Sponsored by:**

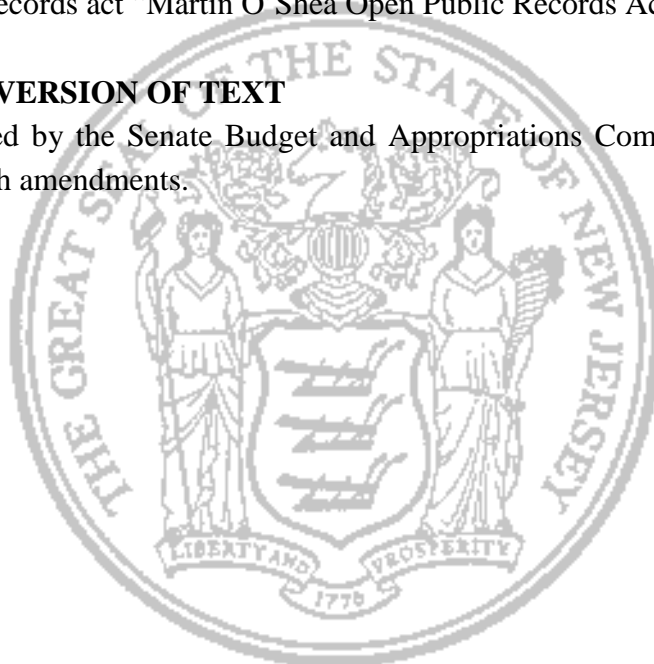
**Senator Turner**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on June 21, 2012, with amendments.



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

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

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

7  
8 1. (New section) This act, P.L.1963, c.73 (C.47:1A-1 et seq.),  
9 shall be known and may be cited as the "Martin O'Shea Open  
10 Public Records Act."

11  
12 2. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read  
13 as follows:

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

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

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

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

38 <sup>1</sup>**【Nothing contained herein shall constitute an exception under**  
39 **the law.】**<sup>1</sup>

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

41  
42 3. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to  
43 read as follows:

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SBA committee amendments adopted June 21, 2012.

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

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

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

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

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

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

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

1 any telephone record whatsoever, unless it is information the  
2 constituent is required by law to transmit;

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

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

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

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

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

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

26 criminal investigatory records;

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

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

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

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

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

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

1 information which, if disclosed, would give an advantage to  
2 competitors or bidders;  
3 information generated by or on behalf of public employers or  
4 public employees in connection with any sexual harassment  
5 complaint filed with a public employer or with any grievance filed  
6 by or against an individual or in connection with collective  
7 negotiations, including documents and statements of strategy or  
8 negotiating position;  
9 information which is a communication between a public agency  
10 and its insurance carrier, administrative service organization or risk  
11 management office;  
12 information which is to be kept confidential pursuant to court  
13 order;  
14 any copy of form DD-214, or that form, issued by the United  
15 States Government, or any other certificate of honorable discharge,  
16 or copy thereof, from active service or the reserves of a branch of  
17 the Armed Forces of the United States, or from service in the  
18 organized militia of the State, that has been filed by an individual  
19 with a public agency, except that a veteran or the veteran's spouse  
20 or surviving spouse shall have access to the veteran's own records;  
21 **[and]**  
22 that portion of any document which discloses the social security  
23 number, credit card number, unlisted telephone number or driver  
24 license number of any person; except for use by any government  
25 agency, including any court or law enforcement agency, in carrying  
26 out its functions, or any private person or entity acting on behalf  
27 thereof, or any private person or entity seeking to enforce payment  
28 of court-ordered child support; except with respect to the disclosure  
29 of driver information by the New Jersey Motor Vehicle  
30 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-  
31 3.4); and except that a social security number contained in a record  
32 required by law to be made, maintained or kept on file by a public  
33 agency shall be disclosed when access to the document or  
34 disclosure of that information is not otherwise prohibited by State  
35 or federal law, regulation or order or by State statute, resolution of  
36 either or both houses of the Legislature, Executive Order of the  
37 Governor, rule of court or regulation promulgated under the  
38 authority of any statute or executive order of the Governor; <sup>1</sup>**[and]**<sup>1</sup>  
39 that portion of the electronic-mail addresses of any individual  
40 provided to the government entity for the sole purpose of receiving  
41 emergency notifications<sup>1</sup>; and  
42 that portion of any document which discloses personal  
43 information of persons under the age of 18 years<sup>1</sup>.  
44 A government record shall not include, with regard to any public  
45 institution of higher education, the following information which is  
46 deemed to be privileged and confidential:

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

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

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

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

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

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

42 "Public agency" or "agency" means any of the principal  
43 departments in the Executive Branch of State Government, and any  
44 division, agency, authority, board, bureau, office, commission or  
45 other instrumentality within or created by such department; the  
46 Legislature of the State and any office, board, bureau or  
47 commission within or created by the Legislative Branch; and any

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

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

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

41 <sup>1</sup>“Privacy” means the confidentiality and privilege protections  
42 to information and materials.

43 “Reasonable” means that which the average person would  
44 believe to be fair and just.]<sup>1</sup>

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

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

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

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

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

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

23 "Victims' rights agency" means a public agency, or part thereof,  
24 the primary responsibility of which is providing services, including  
25 but not limited to food, shelter, or clothing, medical, psychiatric,  
26 psychological or legal services or referrals, information and referral  
27 services, counseling and support services, or financial services to  
28 victims of crimes, including victims of sexual assault, domestic  
29 violence, violent crime, child endangerment, child abuse or child  
30 neglect, and the Victims of Crime Compensation Board, established  
31 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.).  
32 (cf: P.L.2005, c.170, s.1)  
33

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

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



1 investigation, obtains from another public agency a government  
2 record that was open for public inspection, examination or copying  
3 before the investigation commenced, the investigating agency shall  
4 provide the other agency with sufficient access to the record to  
5 allow the other agency to comply with requests made pursuant to  
6 P.L.1963, c.73 (C.47:1A-1 et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

27

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

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

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

22 If a custodian of a government record redacts information from  
23 any record, the custodian shall inform the requestor of the  
24 redaction, why the information was deleted or excised, and shall  
25 specify the total number of pages deleted or excised<sup>1</sup> in their  
26 entirety<sup>1</sup>. The custodian shall note in writing specifically why the  
27 record was redacted. If the custodian of a government record  
28 redacts information from a copy of the record, the custodian shall  
29 provide the requestor with a redacted version of the document and  
30 one affidavit for the entire request that states the date of the record,  
31 the originator or author of the record, the subject matter or title of  
32 the record, and the specific statutory provision or other lawful basis  
33 for each such redaction. This provision shall only apply to  
34 information redacted on or after the effective date of P.L. , c.  
35 (pending before the Legislature as this bill). If a document was  
36 redacted prior to the effective date of P.L. , c. (pending before the  
37 Legislature as this bill), a service charge for time may be assessed  
38 to the requestor for information as to why a document was redacted.

39 b. A copy or copies of a government record may be purchased  
40 by any person upon payment of the fee prescribed by law or  
41 regulation. Except as otherwise provided by law or regulation, the  
42 fee assessed for the duplication of a government record embodied in  
43 the form of printed matter shall be \$0.05 per letter size page or  
44 smaller, and \$0.07 per legal size page or larger. If a public agency  
45 can demonstrate that its actual costs for duplication of a government  
46 record exceed the foregoing rates, the public agency shall be  
47 permitted to charge the actual cost of duplicating the record. The

1 actual cost of duplicating the record, upon which all copy fees are  
2 based, shall be the cost of materials and supplies used to make a  
3 copy of the record, but shall not include the cost of labor or other  
4 overhead expenses associated with making the copy except as  
5 provided for in subsection c. of this section. Access to electronic  
6 records and non-printed materials shall be provided free of charge,  
7 but the public agency may charge for the actual costs of any needed  
8 supplies such as computer discs.

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

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

20 c. Whenever the nature, format, medium, manner of collation,  
21 or volume of a government record embodied in the form of printed  
22 matter to be inspected, examined, or copied pursuant to this section  
23 is such that the record cannot be reproduced by ordinary document  
24 copying equipment in ordinary business size or involves an  
25 extraordinary expenditure of time and effort to accommodate the  
26 request, the public agency may charge, in addition to the actual cost  
27 of duplicating the record, a special service charge that shall be  
28 reasonable and shall be based upon the actual direct cost of  
29 providing the copy or copies; provided, however, that **¶**in the case  
30 of a municipality, rates for the duplication of particular records  
31 when the actual cost of copying exceeds the foregoing rates shall be  
32 established in advance by ordinance. **¶**The requestor shall have  
33 the opportunity to review and object to the charge prior to it being  
34 incurred. During such review, the public agency shall provide the  
35 requestor, without charge, <sup>1</sup>[an index generally describing the  
36 responsive government records to be provided. To the greatest  
37 extent possible, the index shall include the name of each record or  
38 brief description of each record or general categories of the records  
39 to be provided, the approximate number of pages of each record or  
40 categories of records; and] <sup>1</sup> a detailed breakdown of how the  
41 special service charge was assessed. <sup>1</sup>[If there are responsive  
42 government records known to be exempt in whole or in part, the  
43 agency shall also provide a description of the documents or the  
44 portions deemed exempt.] <sup>1</sup> Special service charges shall not be  
45 assessed for requests for budgets, bills, vouchers, contracts and  
46 public employee salary and overtime information unless the request  
47 is deemed voluminous.

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

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

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

1 through an anonymous request whenever the custodian anticipates  
2 that the information thus requested will cost in excess of \$5 to  
3 reproduce.

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

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

25 If the custodian of a government record redacts information from  
26 a copy of the record, the custodian shall inform the requestor of the  
27 deletion or excision, why the information was deleted or excised,  
28 and shall specify the total number of pages deleted or excised<sup>1</sup> in  
29 their entirety<sup>1</sup>. The custodians shall note in writing specifically  
30 why the record was redacted. If the custodian of a government  
31 record redacts information from a copy of the record, the custodian  
32 shall provide the requestor with a redacted version of the document  
33 and one affidavit for the entire request that states the date of the  
34 record, the originator or author of the record, the subject matter or  
35 title of the record, and the specific statutory provision or other  
36 lawful basis for each such redaction. This provision shall only  
37 apply to information redacted on or after the effective date of  
38 P.L. , c. (pending before the Legislature as this bill). If a  
39 document was redacted prior to the effective date of  
40 P.L. , c. (pending before the Legislature as this bill), a service  
41 charge for time may be assessed to the requestor for information as  
42 to why a document was redacted.

43 If the government record requested is temporarily unavailable  
44 because it is in use or in storage, the custodian shall so advise the  
45 requestor and shall make arrangements to promptly make available  
46 a copy of the record. If a request for access to a government record  
47 would substantially disrupt agency operations, the custodian may

1 deny access to the record after attempting to reach a reasonable  
2 solution with the requestor that accommodates the interests of the  
3 requestor and the agency.

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

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

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

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

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

45 k. The files maintained by the Office of the Public Defender  
46 that relate to the handling of any case shall be considered

1 confidential and shall not be open to inspection by any person  
2 unless authorized by law, court order, or the State Public Defender.  
3 (cf: P.L.2010, c.75, s.5)

4  
5 6. Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read  
6 as follows:

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

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

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

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

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

40  
41 7. Section 8 of P.L.2001, c.404 (C.47:1A-7) is amended to read  
42 as follows:

43 8. a. There is established in, but not of, the Department of  
44 Community Affairs a Government Records Council. The council  
45 shall consist of <sup>1</sup>the Commissioner of Community Affairs or the  
46 commissioner's designee, the Commissioner of Education or the  
47 commissioner's designee, the Attorney General or the Attorney



1 General's designee, the president of the Municipal Clerks'  
2 Association or the president's designee.】<sup>1</sup> 【and】 <sup>1</sup>【three】 four<sup>1</sup>  
3 public members appointed by the Governor, with the advice and  
4 consent of the Senate, not more than two of whom shall be of the  
5 same political party, <sup>1</sup>one of whom shall be a municipal clerk or  
6 former municipal clerk, one of whom shall have knowledge of or  
7 experience with the news media, one of whom is a representative of  
8 local government, and one whom shall be a member of the general  
9 public;<sup>1</sup> and <sup>1</sup>【four】 three<sup>1</sup> public members appointed by the  
10 Governor, one upon the recommendation of the Senate President,  
11 【one upon the recommendation of the Senate Minority Leader,】<sup>1</sup>  
12 one upon the recommendation of the Speaker of the General  
13 Assembly, 【and one upon the recommendation of the General  
14 Assembly Minority Leader】 and one upon the joint  
15 recommendation of the Senate President and Speaker of the General  
16 Assembly, no more than two of whom shall be of the same political  
17 party<sup>1</sup>. The 【three】 seven public members appointed by the  
18 Governor shall serve during the term of the Governor making the  
19 appointment and until the appointment of a successor<sup>1</sup>, except as  
20 otherwise provided for the chair<sup>1</sup>. <sup>1</sup>【The two public members  
21 appointed by the Governor from among the recommendations of the  
22 Senate President and the General Assembly Minority Leader shall  
23 be representative of local government. The two public members  
24 appointed by the Governor from among the recommendations of the  
25 Speaker of the General Assembly and the Senate Minority Leader  
26 shall be persons with knowledge of or experience with news  
27 media.】<sup>1</sup> 【A public member shall not hold any other】 Only the  
28 public 【members】 member<sup>1</sup> who 【are】 is<sup>1</sup> representative of local  
29 government shall be able to hold a State or local elected or  
30 appointed office or employment while serving as a member of the  
31 council. A public member shall not receive a salary for service on  
32 the council but shall be reimbursed for reasonable and necessary  
33 expenses associated with serving on the council and may receive  
34 such per diem payment as may be provided in the annual  
35 appropriations act. A member may be removed by the Governor  
36 only<sup>1</sup> for cause upon notice and opportunity to be heard<sup>1</sup>.  
37 Vacancies among the public members shall be filled in the same  
38 manner in which the original appointment was made. <sup>1</sup>【The  
39 members of the council shall choose one of the public members to  
40 serve as the council's chair】 The Governor shall appoint one of the  
41 seven members to serve as the chair of the council, and, once  
42 appointed, that member shall serve on the council and be chair of  
43 the council for a term of six years from the date of appointment and  
44 until a successor is appointed and qualified. The chair may be  
45 removed by the Governor only for cause upon notice and  
46 opportunity to be heard<sup>1</sup> . The council may employ an executive

1 director and such professional and clerical staff as it deems  
2 necessary and may call upon the Department of Community Affairs  
3 for such assistance as it deems necessary and may be available to it.

4 b. The Government Records Council shall:

5 establish an informal mediation program to facilitate the  
6 resolution of disputes regarding access to government records;  
7 receive, hear, review and adjudicate a complaint filed by any  
8 person concerning a denial of access to a government record by a  
9 records custodian;

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

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

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

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

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

24 make training opportunities available for records custodians and  
25 other public officers and employees which explain the law  
26 governing access to public records; <sup>1</sup>**and**

27 post the executive director's recommendations for each case  
28 online twenty-four hours before the meeting, to the extent known;  
29 have paper copies available at the meeting at which the case will  
30 be heard, with any changes or additions that were not present when  
31 the information was posted online; and<sup>1</sup>

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

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

44 c. At the request of the council, a public agency shall produce  
45 documents and ensure the attendance of witnesses with respect to  
46 the council's investigation of any complaint or the holding of any  
47 hearing. <sup>1</sup>Each party shall have one opportunity to provide to the

1 council any documents or information necessary for the  
2 adjudication of the case.<sup>1</sup>

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

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

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

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

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

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

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

27

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

30 11. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-  
31 1 et seq.) or any other law to the contrary, the personnel or pension  
32 records of any individual in the possession of a public agency,  
33 including but not limited to records relating to any grievance filed  
34 by or against an individual, shall not be considered a government  
35 record and shall not be made available for public access, except  
36 that:

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

42 personnel or pension records of any individual shall be  
43 accessible when required to be disclosed by another law, when  
44 disclosure is essential to the performance of official duties of a  
45 person duly authorized by this State or the United States, or when  
46 authorized by an individual in interest; **【and】**

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

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

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

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

14  
15 9. Section 12 of P.L.2001, c.404 (C.47:1A-11) is amended to  
16 read as follows:

17 12. a. A public official, officer, employee or custodian who  
18 **【knowingly and willfully】** violates P.L.1963, c.73 (C.47:1A-1 et  
19 seq.), as amended and supplemented, and is found **【to have**  
20 **unreasonably】** grossly negligent by having denied access under the  
21 totality of the circumstances, shall be subject to a civil penalty of  
22 \$1,000 for an initial violation, \$2,500 for a second violation that  
23 occurs within 10 years of an initial violation, and \$5,000 for a third  
24 violation that occurs within 10 years of an initial violation. No  
25 public official, officer, employee or custodian shall be subject to a  
26 civil penalty for any unavailable record that is required by law to be  
27 made, maintained or kept on file unless the unavailability of the  
28 record is a result of the willful actions or gross negligence of such  
29 person.

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

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

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

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

45  
46 10. Section 14 of P.L.2001, c.404 (C.47:1A-13) is amended to  
47 read as follows:

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

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

7  
8 11. (New section) Any authority contained herein to exempt  
9 records from public access by regulation or Executive Order of the  
10 Governor shall be expressly limited to the designation of specific  
11 records that are exempt from access pursuant to any exemptions set  
12 forth in this act, P.L.1963, c.73 (C.47:1A-1 et seq.), and shall not be  
13 construed as a grant or delegation of authority to exempt records  
14 from public access not otherwise exempt by the provisions this act.

15  
16 <sup>1</sup>12. (New Section) a. Notwithstanding any other law or  
17 rule or regulation to the contrary, whenever it is made to appear by  
18 verified petition to the Superior Court of the county in which a  
19 requestor for government records under P.L.1963, c.73 (C.47:1A-1  
20 et seq.) resides or has a primary place of business, the court may  
21 issue a protective order limiting the number and scope of requests a  
22 requestor may make. The court may issue the protective order if it  
23 determines that the requestor has sought records under P.L.1963,  
24 c.73 (C.47:1A-1 et seq.) for an improper purpose, which includes,  
25 but is not limited to, the harassment of a public agency or its  
26 employees. The petition shall be accompanied by a declaration of  
27 facts by the public agency withholding the records demonstrating  
28 that it has complied with P.L.1963, c.73 (C.47:1A-1 et seq.) and has  
29 made a good faith effort to reach an informal resolution of the  
30 issues relating to the records request.

31 b. The order specified in subsection a. of this section may limit,  
32 or in appropriate circumstances, eliminate, the public agency's duty  
33 to respond to government records requests from the requestor in the  
34 future.

35 c. Upon entry of an order pursuant to this section, the order of  
36 the court shall be immediately reviewable by petition to the  
37 appellate court. A party shall, in order to obtain review of the  
38 order, file a petition within 20 days after service upon him or her of  
39 a written notice of entry of the order, or within further time not  
40 exceeding an additional 20 days as the court may for good cause  
41 allow. If the notice is served by mail, the period within which to  
42 file the petition shall be increased by five days. A stay of an order  
43 or judgment shall not be granted unless the petitioning party  
44 demonstrates that it will otherwise sustain irreparable damage and  
45 probable success on the merits. Any person who fails to obey the  
46 order of the court shall be cited to show cause why he or she is not  
47 in contempt of court.

1        d. For the purposes of this section, the “county of residence”  
2        shall include any address listed on the request for the government  
3        records.<sup>1</sup>

4  
5        <sup>1</sup>~~12.~~ 13.<sup>1</sup> This act shall take effect in 120 days following  
6        enactment.