From:	Galland, Kevin
To:	Diane Pflugfelder (municipalclerksanj@gmail.com); Gore, Eileen (egore@hamiltonnj.com); kimwhite203@gmail.com; Ddcafone0803@gmail.com; clerk@alexandrianj.gov; joelpopkin@optonline.net; TProl@lcrlaw.com; lbuckelew@njlm.org
Subject:	FW: Updated OPRA Amendments
Date:	Tuesday, June 4, 2019 7:09:05 PM
Attachments:	N209_0001.pdf

Please see page 24 of the attachment.

From: Galland, Kevin
Sent: Tuesday, June 04, 2019 7:02 PM
To: 'SMitchell@njleg.org'
Subject: FW: Updated OPRA Amendments

Thank you Shane and please thank the Senator for me. The revision is certainly a compromise and that's what makes our meetings worthwhile.

As you are aware I believe the proposed Committee should take on this task now, but a 24 month delay needs to be seen as a half-a-loft is better than none.

Best regards and enjoy your summer,

Kevin Galland
Administrator/Municipal Clerk
Borough of Woodland Park
5 Brophy Lane
Woodland Park, NJ 07424
973-345-8100 ext. 201
Fax 973-345-8194

From: Mitchell, Shane [mailto:SMitchell@njleg.org]
Sent: Tuesday, June 04, 2019 4:18 PM
To: Galland, Kevin
Subject: Updated OPRA Amendments

Hey Kevin,

Hope you're doing well! As mentioned, we're putting in a study commission to review the law and make recommendations. Otherwise, this should be the same as the last document I sent. Senator Weinberg is going to try to move this through Senate Budget Committee this month (perhaps as early as the 13th), but is not going to try to move the bill on the floor until at least the fall.

Happy to discuss any time!

Best,

--
Shane Mitchell
Legislative Director
Senator Loretta Weinberg
Senate Majority Leader
(201) 928-0100

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ss.15-16: C.52:18A-234.8 et seq.
s.17: C.40A:14-118.3

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

A M E N D M E N T S

to

[First Reprint]

SENATE, No. 107

(Sponsored by Senators WEINBERG and PENNACCHIO)

REPLACE TITLE TO READ:

AN ACT concerning access to certain government records and establishment of a program for developing public websites, amending and supplementing P.L.1963, c.73, supplementing Title 52 of the Revised Statutes [2]and chapter 14 of Title 40A of the New Jersey Statutes[2], amending P.L.1995, c.23 and P.L.2001, c.404, and making an appropriation.

REPLACE SECTION 2 TO READ:

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

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

government records shall be readily accessible for inspection, copying, [2]electronic transmission,[2] or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access;

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

a public agency has a responsibility and an obligation to safeguard from public access a 【citizen's】 person's personal information with which it has been entrusted when disclosure thereof would violate the 【citizen's】 person's reasonable expectation of privacy; and nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common

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law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.
(cf: P.L.2001, c.404, s.1)

REPLACE SECTION 3 TO READ:

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

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

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

"Commercial purpose" means the direct or indirect use of any part of a government record for sale, resale, [2][solicitation,][2] rent or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee. "Commercial purpose" shall not include using, distributing, gathering, procuring, transmitting, compiling, editing, disseminating, or publishing of information or data by the news media, or any parent, subsidiary, or affiliate of any news media, as defined by section 2 of P.L.1977, c.253 (C.2A:84A-21a), or by any news, journalistic, educational, scientific, scholarly, or governmental organization.

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

[2]"Deputy custodian" means, in the case of a municipality, the officer or employee, or officers or employees, of that municipality designated or appointed by the governing body thereof who acts on the custodian's behalf for any request for access to a record in the custody of the deputy custodian's particular office or unit.[2]

"Government record" or "record" means any paper, written, electronic, or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by [sound-recording] video or audio recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file, or is required by law to be made, maintained or kept on file, [2][in the course of his or its official business] or that has been received,[2] by any [officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof] public employee or public agency [2][, or that has been received][2] in the course of [2][his or its] that employee's or agency's[2] official business [2][by any such [officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards

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thereof] public employee or public agency]². Any video or audio recordings made of those portions of meetings from which the public was not excluded pursuant to subsection b. of section 7 of P.L.1975, c.231 (C.10:4-12), including emergency meetings held pursuant to subsection b. of section 4 of P.L.1975, c.231 (C.10:4-9), shall be available in unedited form. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

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

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

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

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

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

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

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

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

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

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criminal investigatory records;

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

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

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

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

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, including location, of private [2]and public[2] alarm systems and surveillance cameras;

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;

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

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

any copy of an oath of allegiance, oath of office or any affirmation taken upon assuming the duties of any public office, or that oath or affirmation, taken by a current or former officer or employee in any public office or position in this State or in any county or municipality of this State, including members of the Legislative Branch, Executive Branch, Judicial Branch, and all law enforcement entities, except that the full name, title, and oath date of that person contained therein shall not be deemed confidential;

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

[A] a list of persons identifying themselves as being in need of special assistance in the event of an emergency maintained by a municipality for public safety purposes pursuant to section 1 of P.L.2017, c.266 (C.40:48-2.67); [and

A] a list of persons identifying themselves as being in need of special assistance in the event of an emergency maintained by a county for public safety purposes pursuant to section 6 of P.L.2011, c.178 (C.App.A:9-43.13);

cell phone numbers, unless the cell phone number is listed as a home telephone number;

electronic-mail addresses provided to the public agency as contact information for the purpose of receiving official public notifications;

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electronic-mail addresses provided to the public agency as contact information on any official government form; and

that portion of any document that requires and would disclose personal identifying information of persons under the age of 18 years, except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver information to any insurer or insurance support organization, or a self-insured entity, or its agents, employees, or contractors, for use in connection with claims investigation activities, antifraud activities, rating or underwriting.

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.

"Personal firearms record" means any information contained in a background investigation conducted by the chief of police, the county prosecutor, or the Superintendent of State Police, of any applicant for a permit to purchase a handgun, firearms identification card license, or firearms registration; any application for a permit to purchase a handgun, firearms identification card license, or firearms registration; any document reflecting the issuance or denial of a permit to purchase a handgun, firearms identification card license, or firearms registration; and any permit to purchase a handgun, firearms identification card license, or any firearms license, certification,

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certificate, form of register, or registration statement. For the purposes of this paragraph, information contained in a background investigation shall include, but not be limited to, identity, name, address, social security number, phone number, fax number, driver's license number, email address, social media address of any applicant, licensee, registrant or permit holder.

The term "government record" shall include allowances sold at auction pursuant to P.L.2007, c.340 (C.26:2C-45 et seq.) or any similar greenhouse gas initiative, together with the auction clearing price for each allowance, the identity of the winning bidder, and the quantity of allowances obtained by each bidder, and of which none shall be considered to be a trade secret within the scope of this act, P.L.1963, c.73 (C.47:1A-1 et seq.). The term shall also include records containing the names of reviewers of grants, donations, gifts or applications made to a public agency including the names of reviewers of charter school applications, which names shall not be redacted, and EZ pass records, or substantially similar records, for vehicles owned by the State and any other public entities, other than those reflecting law enforcement usage notwithstanding any other law to the contrary.

"Public agency" or "agency" means any of the principal departments in the Executive Branch of State Government, and any division, agency, authority, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms shall also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions. The term shall also include a school district, special district, an educational information resource center established pursuant to P.L.1983, c.186 (C.18A:6-95.1 et seq.), or charter school, quasi-governmental agency, or public employee. The term shall also mean and include, by way of example but not limitation, the New Jersey State League of Municipalities, the New Jersey Association of Counties, the New Jersey School Boards Association, and the New Jersey State Interscholastic Athletic Association, and a substantially similar successor organization or association, a joint insurance group or fund for political subdivisions of this State, and bi-State agencies. The term shall not mean a volunteer fire company or a volunteer fire department established pursuant to N.J.S.40A:14-68, or a volunteer first aid, rescue or ambulance squad as defined in section 3 of P.L.1987, c.284 (C.27:5F-20).

"Quasi-governmental agency" means any association, commission, agency, authority, organization, public-private entity, or any other entity, in which one or more public agencies exercise substantial

control, or as determined by the Government Records Council or a court of law, by considering factors including but not limited to: whether a public agency exercises control over the quasi-government agency or the public agency maintains the ability to review, approve, or reject the quasi-governmental agency's proposals or plans, holds a beneficial interest in the quasi-governmental agency's assets, is the primary source of funding of, or is indebted to, or is a creditor of, or guarantor of the debts of, the quasi-governmental agency. The term shall not include any entity involving the Legislature or any organization organized under paragraph (3) of subsection [2][c.] (c)[2] of section 501 of the federal Internal Revenue Code (26 U.S.C.s.501) that was not created by, or with the approval of, a public agency primarily for the purpose of assisting that public agency or any labor organization or any contractor providing goods or services to a public agency except as otherwise provided by this subsection. However, nothing contained herein shall affect the application of P.L.1963, c.73 (C.47:1A-1 et seq.) to entities that otherwise fall within the definition of "public agency." The term shall not mean a volunteer fire company or a volunteer fire department established pursuant to N.J.S.40A:14-68, or a volunteer first aid, rescue or ambulance squad as defined in section 3 of P.L.1987, c.284 (C.27:5F-20).

"Public employee" means any person who occupies any office, position or employment in a public agency, as defined in this section, but only to the extent that he or she acts in an official capacity. This term shall also include, but shall not be limited to, an elected or appointed person.

"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,

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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.) and continued as the Victims of Crime Compensation Office pursuant to P.L.2007, c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.[1]
(cf: P.L.2017, c.266, s.4)

REPLACE SECTION 4 TO READ:

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

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

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

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

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

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

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

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

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

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

Notwithstanding any other provision of this subsection, if the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, the custodian shall redact from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record. If the custodian of a government record redacts information from a copy of the record, the custodian shall provide the requestor with a redacted version of the document and one [2][affidavit or certified] written[2] statement for the entire request that states the date of the record, the originator or author of the record, the subject matter or title of the record, the number of pages with redactions, and the specific statutory provision or other lawful basis for each such redaction. The custodian shall redact any such information by deleting or obscuring only that information and shall not alter in any manner the space in the government record formerly occupied by such redacted information. This provision shall only apply to documents redacted on or after the effective date of P.L. , c. (pending before the Legislature as this bill).

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.

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

REPLACE SECTION 5 TO READ:

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

6. a. The custodian of a government record shall permit the record to be inspected, examined, and copied by any person during regular business hours; or in the case of a municipality having a population of 5,000 or fewer according to the most recent federal decennial census, a board of education having a total district enrollment of 500 or fewer, or a public authority having less than $10 million in assets, during not less than six regular business hours over not less than three business days per week or the entity's regularly-scheduled business hours, whichever is less; unless a government record is exempt from public access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order. Prior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, personal debit card number, personal bank account information, [2]month and day of birth,[2] unlisted telephone number, or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver information to any insurer or insurance support organization, or a self-insured entity, or its agents, employees, or contractors, for use in connection with claims investigation activities, antifraud activities, rating or underwriting; and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor. Except where an agency can demonstrate an emergent need, a regulation that limits access to government records shall not be retroactive in effect or applied to deny a request for access to a government record that is pending before the agency, the council or a court at the time of the adoption of the regulation.

If the custodian of a government record redacts information from a copy of the record, the custodian shall provide the requestor with a redacted version of the document and one [2][affidavit or certified] written[2] statement for the entire request that states the date of the

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record, the originator or author of the record, the subject matter or title of the record, the number of pages with redactions, and the specific statutory provision or other lawful basis for each such redaction. The custodian shall redact any such information by deleting or obscuring only that information and shall not alter in any manner the space in the government record formerly occupied by such redacted information. This provision shall only apply to documents redacted on or after the effective date of P.L. , c. (pending before the Legislature as this bill).

b. (1) A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. Except as otherwise provided by law or regulation and except as provided in paragraph (2) of this subsection, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be $0.05 per letter size page or smaller, and $0.07 per legal size page or larger. If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section. A public agency may charge the fee for each copy made in the process of responding to a government record request made during the redaction process.

Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs.

(2) No fee shall be charged to a victim of a crime for a copy or copies of a record to which the crime victim is entitled to access, as provided in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

(3) If a public agency maintains the record in an electronic format or medium that can be electronically mailed without charge to the requestor, [2][it shall] and unless the requestor has requested the record be provided in the form of printed matter, the public agency may[2] make the requestor aware [2]of the electronic availability of the record[2] and [2]may[2] allow for delivery of the record in such [2]electronic[2] format or medium. [2][The] Upon transmission of such notification, the[2] requestor shall have seven business days to respond to the custodian, otherwise the request is deemed fulfilled. [1]A requestor who requests the duplication of a government record in the form of printed matter after being apprised of its existence in an electronic format or medium may be charged a special service charge as provided in subsection c. of this section.[1]

When a requestor has not specified his or her chosen method for receipt of records and if the government record is on the public agency website, the custodian shall advise the requester to obtain the record

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from the agency website as long as the custodian provides the website address, identifies each responsive document and the specific location on the website of each identified responsive document. If the requester prefers to purchase copies from the public agency, he or she shall be permitted to purchase such copies from the records custodian, in accordance with the provisions of this act, P.L.1963, c.73 (C.47:1A-1 et seq.) [1]and may be charged a special service charge as provided in subsection c. of this section[1] . The requestor shall have seven business days to respond to the custodian specifying that he or she prefers to purchase the copies, otherwise the request may be deemed fulfilled.

[2][If a public agency maintains a government record in a format or medium that can be inspected without charge to the requestor, it shall inform the requestor of the place and time that the record will be available for inspection in such format or medium. If the requestor prefers to purchase copies from the public agency, the requester shall be permitted to purchase such copies from the records custodian, in accordance with the provisions of this act, P.L.1963, c.73 (C.47:1A-1 et seq.). The requestor shall have seven business days to respond to the custodian specifying that he or she prefers to purchase the copies, otherwise the request may be deemed fulfilled.][2]

c. Whenever the nature, format, medium, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, [1]or whenever a requestor requests duplication in printed form of a record maintained in an electronic format or on an agency's website as provided in paragraph (3) of subsection b. of this section,[1] the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge [that]. A special service charge shall be reasonable and shall be based upon the actual, direct cost of providing the copy or copies [; provided, however, that]. Special service charge rates, 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. When a request is for a commercial purpose, the public agency may charge, in addition to the actual cost of duplicating the record, a special administrative charge. A special administrative charge shall be reasonable and related to ongoing operational expenses, and shall be for expenditures eligible for inclusion in the special administrative charge based upon the criteria and parameters set forth by the Government Records Council.

For purposes hereof, the actual, direct costs shall mean those expenditures that an agency actually incurs in searching for and duplicating documents to respond to a request, which includes basic rate of pay for the employee. Direct costs shall not include overhead expenses such as costs of space and heating or lighting the facility in

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which the records are stored. The requestor shall have the opportunity to review and object to the charge prior to it being incurred. During such review, the public agency shall provide the requestor, without charge, a detailed breakdown of how the special service charge was assessed including, at a minimum, reasonable estimates categorizing the hours needed to identify, copy or prepare for inspection, and to produce and return the requested documents, and the number of pages to be produced. Special service charges shall not be assessed for requests for budgets, bills, vouchers, contracts and public employee salary and overtime information unless the request is deemed voluminous.

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

e. Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information for the current, prior, and upcoming fiscal year. Immediate access shall mean by the close of business or 5 P.M., whichever is earlier, unless otherwise provided by law or regulation. If the request is received at noon or if received after noon, the request shall be fulfilled by noon the following day, unless otherwise provided by law or regulation.

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] telephone number of the requestor and a brief description of the government record sought. The form shall also include space for a [2][commercial][2] requestor to certify that the information will be used for a commercial purpose. 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

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period within which the public agency is required by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, to make the record available; (4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal; (5) space for the custodian to list reasons if a request is denied in whole or in part; (6) space for the requestor to sign and date the form; (7) space for the custodian to sign and date the form if the request is fulfilled or denied. The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the information thus requested will cost in excess of $5 to reproduce.

If a request for information is made in writing on a document other than the form adopted by the public agency and the request contains the requisite information prescribed in this subsection, the custodian shall treat the request as if made on the form adopted by the public agency. The document shall also indicate and provide criminal background information, similar to what is required on an adopted government record request form.

A response on any form providing criminal background information on the requestor, whether in the affirmative or negative, shall be confidential and shall be redacted prior to disclosure of any such request. If a requestor does not provide criminal background information, the custodian shall attempt to contact the requestor to obtain such information, and shall not deny the request for failure to provide such information unless attempts are made by the custodian to obtain such information and the requestor refuses or cannot be contacted.

g. A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, including by electronic mail, transmitted by facsimile when no more than four pages in length, or otherwise conveyed to the appropriate custodian. A request that is intended for a commercial purpose shall be certified to that fact in the request. The public agency may require a requestor to state whether the requested records are for a commercial purpose, but the agency shall not require the requestor to provide the exact purpose of the commercial use. A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. If a record is missing or damaged, or the custodian is unable to comply with or denies a request for access, the custodian shall indicate the specific basis therefor [2][on the request form][2] and promptly [2][return it] transmit a written statement specifying the foregoing[2] to the requestor. The custodian shall sign and date the [2][form] statement[2] 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

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custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.

If the custodian of a government record redacts information from a copy of the record, the custodian shall provide the requestor with a redacted version of the document and one [2][affidavit or certified] written[2] statement for the entire request that states the date of the record, the originator or author of the record, the subject matter or title of the record, the number of pages with redactions, and the specific statutory provision or other lawful basis for each such redaction. The custodian shall redact any such information by deleting or obscuring only that information and shall not alter in any manner the space in the government record formerly occupied by such redacted information. This provision shall only apply to documents redacted on or after the effective date of P.L. , c. (pending before the Legislature as this bill).

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 [2]or deputy custodian, as appropriate,[2] of the record or direct the requestor to the custodian [2]or deputy custodian, as appropriate,[2] of the record.

In the case of a municipality, [2][a custodian, in response to a request for access forwarded by another officer or employee or received directly by the custodian, may direct any officer or employee of that municipality having custody of a record to] the governing body thereof may designate or appoint one or more deputy custodians who shall[2] act on the custodian's behalf [2]for any request for access to a record in the custody of the deputy custodian's particular office or unit[2] and make the record available for inspection, examination, [2]electronic transmission,[2] copying, or the purchase of copies [2]as set forth herein[2] . Such [2][direction] designation or appointment[2] shall [2][not relieve the custodian of any] confer to the deputy custodian the[2] responsibility [2]accorded to records custodians[2] under P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented [2], for each such request[2].

i. Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, [2][including] beginning

with[2] the business day [2][on] after[2] which the request was received by the records custodian, [2][if received by noon,][2] 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.

[2][A request received after 12 p.m. shall be deemed as received on the next business day.][2]

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

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

k. The files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.

l. A public agency shall adopt policies and procedures to ensure that records exempt from disclosure are not inadvertently or deliberately disclosed by the use of technology.

[2][A public agency shall adopt procedures to have computer systems and computer applications collect, but not disclose, information exempt from access but maintained as electronic records.][2]

Public agencies shall notify the public that the information provided on official forms may be disclosed [2][,][2] unless otherwise exempt by law.

(cf: P.L.2014, c.19, s.3)

REPLACE SECTION 6 TO READ:

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

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

institute a proceeding to challenge the custodian's decision [2][or] ,[2] seek injunctive relief [2], or both,[2] by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records; or

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

The right to institute any proceeding under this section shall be solely that of the requestor. Any such proceeding shall proceed in a summary or expedited manner. The public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee award. However, in actions involving a record required by law to be made, maintained or kept on file and that does not exist at the time of the request, the prevailing requestor shall not be entitled to an attorney's fee award if both: (1) the failure to make, maintain, or keep the record is due to mere negligence or no fault on the part of the public [2][entity] agency[2] ; and (2) the requestor was informed in [2][writing by formal certification or affidavit] a written statement[2] by the records custodian [2][prior to the filing of the complaint] pursuant to subsection g. of section 6 of P.L.2001, c.404 (C.47:1A-5) [2] that the record does not exist or no longer exists, the specific efforts taken to obtain the record and why the record could not be produced. Under appropriate circumstances, the rules of court and section 1 of P.L.1988, c.46 (C. 2A:15-59.1), shall apply for frivolous causes of action.

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

REPLACE SECTION 7 TO READ:

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

8. a. There is established in, but not of, the Department of Community Affairs a Government Records Council. The council shall

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consist of [2]:[2] [the Commissioner of Community Affairs or the commissioner's designee, the Commissioner of Education or the commissioner's designee, and three] [2][four] two[2] public members appointed by the Governor, with the advice and consent of the Senate, [2][not more than two of whom] who[2] shall [2]not[2] be of the same political party, one of whom shall have experience with the news media [2][, one of whom shall be a member of the Municipal Clerks' Association of New Jersey, one of whom shall be a member of the New Jersey Press Association,][2] and one of whom shall have experience with State government as a public records custodian; and [2][three] five[2] members appointed by the Governor, one upon the recommendation of the Senate President, one upon the recommendation of the Speaker of the General Assembly, [2][and][2] one upon the [2][joint][2] recommendation of the [2][Senate President and Speaker of the General Assembly,] Municipal Clerks' Association of New Jersey, and one upon the recommendation of the New Jersey Press Association,[2] no more than [2][two] three[2] of whom shall be of the same political party. The [three public] members appointed by the Governor 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] Upon the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), two members shall serve for a term of four years, two members shall serve for a term of three years, three members shall serve for a term of two years. No member while serving shall be an officer with the New Jersey Press Association, the New Jersey State League of Municipalities, the Municipal Clerks' Association of New Jersey, or a substantially similar organization.

No member while serving as a member of the council shall be able to hold a State or local elected or appointed office or employment [while serving as a member of the council] unless it relates to the experience required for 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 only for cause upon notice and opportunity to be heard. 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 Governor shall appoint one of the seven members to serve as the chair of the council, and, once appointed, that member shall serve on the council and be chair of the council from the date of appointment until the end of the term of office of the member or until a successor is appointed and qualified. The chair may be removed by the Governor only for cause upon notice and opportunity to be heard. The council may employ an

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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. The terms of the members serving on the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) are terminated as of that effective date.

b. The Government Records Council shall:

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

[2]establish an informal mediation program to facilitate the resolution of disputes regarding access to government records;[2]

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

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

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

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

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

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

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

post the recommendations that the Government Records Council will consider for each case online twenty-four hours before the meeting, to the extent known;

have paper copies available at the meeting at which the case will be heard, with any changes or additions that were not present when the information was posted online; 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

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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. Each party shall have the opportunity to provide to the council any documents or information necessary for the adjudication of the case.

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 [2][pursuant to section 13 of P.L. , c. (C.) (pending before the Legislature as this bill)][2]. 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,] [2], who shall be trained in mediation selected by the council,[2] 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.] [2]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.[2]

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] an opportunity to [present] answer the complaint by presenting the board with a signed and dated affidavit containing the same information provided to the complainant pursuant to subsection a. of section 6 of P.L.2001, c.404 (C.47:1A-5), if applicable, and any other statement or information concerning the complaint which the custodian wishes. The complainant shall have an opportunity to offer a brief reply affidavit that addresses any claims or defenses in the custodian's answer. The complainant shall not set forth therein any new allegations that do not address the custodian's

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claims or defense. 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] answer, and the complainant's reply, 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] answer, and the complainant's reply, 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] [2]knowingly and[2] willfully denied access or [2]has[2] been grossly negligent, as defined by section 12 of P.L.2001, c.404 (C.47:1A-11), and violated P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in section 12 of P.L.2001, c.404 (C.47:1A-11). A decision of the council may be appealed to the [Appellate Division of the] Appellate Division of the Superior Court. A decision of the council shall not have value as a precedent for any case initiated in Superior Court pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6). All proceedings of the council pursuant to this subsection shall be conducted as expeditiously as possible.

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

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

h. The council shall make available on its website a searchable index of its opinions [2], which index shall indicate, to the extent possible, whether or not an opinion has been superseded by statute or invalidated by a court of competent jurisdiction[2].

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

REPLACE SECTION 9 TO READ:

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

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

A requestor who is found to have intentionally failed to certify that a records request is for commercial purposes shall be subject to a civil penalty of $500 [2]for the first offense, $1,000 for the second offense, and $2,000 for each subsequent offense[2].

Penalties may be imposed by the courts or the Government Records Council. A penalty imposed pursuant to P.L.1963, c.43 (C.47:1A-1 et seq.) shall be paid by the individual found to have committed the violation out of the individual's personal funds. Under no circumstances shall public funds, or contributions as defined in subsection b. of section 3 of P.L.1973, c.83 (C.19:44A-3) of "The New Jersey Campaign Contributions and Expenditures Reporting Act", be used to pay a penalty or to reimburse a person who has paid, or will pay, a penalty for the cost of that penalty.

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

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

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

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

OMIT SECTION 13 IN ITS ENTIRETY

RENUMBER SECTIONS 14 THROUGH 16 AS SECTIONS 13 THROUGH 15

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INSERT NEW SECTION 16 TO READ:

[2]16. (New section) a. There is established a commission, to be known as the Open Public Records and Transparency Act Study Commission, to consist of 11 members.

The Commissioner of the Department of Community Affairs and the Executive Director of the Government Records Council, or their designees, shall serve as ex-officio members.

The Senate President shall appoint three members, no more than two of whom shall be members of the same political party, one of whom shall have experience with the news media, one of whom shall have experience with the powers, functions, or duties of a municipal clerk, and one of whom shall be a member of the general public with an interest in an open and transparent government.

The Speaker of the General Assembly shall appoint three members, no more than two of whom shall be members of the same political party, one of whom shall be a member of the New Jersey Press Association, one of whom shall have experience with State government as a government records custodian, and one of whom shall be a member of the general public with experience in State government.

Three members shall be appointed by the Governor, no more than two of whom shall be members of the same political party, one of whom shall be a member of the general public interested in an open and transparent government, and two of whom shall be attorneys licensed in the State of New Jersey with knowledge and experience with the law concerning the "Martin O'Shea Open Public Records and Transparency Act," P.L.1963, c.73 (C.47:1A-1 et seq.), one of whom shall have experience as an attorney in matters affecting primarily local governments and one of whom shall have experience as an attorney in matters affecting primarily the State government.

A vacancy in the membership of the commission shall be filled in the same manner in which the original appointment was made.

The members of the commission shall be appointed and shall hold their initial organizational meeting on the first day of the month occurring 24 months after the effective date of this act, P.L. , c. (pending before the Legislature as this bill). The members shall elect one of the members to serve as chair and one of the members to serve as vice-chair. The chair may appoint a secretary, who need not be a member of the commission. The members of the commission shall serve without compensation, but shall be eligible for reimbursement for necessary and reasonable expenses incurred in the performance of their official duties within the limits of funds appropriated or otherwise made available to the commission.

b. The commission shall meet at the call of the chair, but a meeting of the commission may be called at the request of six of the commission's members. The commission shall hold at least three public hearings in different parts of the State and elicit testimony from

the public at such times and places as the chair shall designate. Six members of the commission shall constitute a quorum.

c. It shall be the duty of the commission to, at a minimum:

(1) review implementation of the changes to the "Martin O'Shea Open Public Records and Transparency Act," P.L.1963, c.73 (C.47:1A-1 et seq.), pursuant to this act, P.L. , c. (pending before the Legislature as this bill), and the results of such implementation; and

(2) make recommendations for legislation or such other action as it deems appropriate with regard to improving, expanding, or facilitating the "Martin O'Shea Open Public Records and Transparency Act."

The commission may consider any other issues relating to the "Martin O'Shea Open Public Records and Transparency Act as the commission may deem appropriate.

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 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 the commission.

e. The commission shall submit a report containing its findings and recommendations to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and the Governor within one year of its initial organizational meeting and shall expire 30 days after such submission.[2]

REPLACE SECTION 17 TO READ:

17. (New section) There is appropriated from the General Fund to the Department of the Treasury such sums as may be necessary, but not to exceed $100,000, as shall be determined by the Director of the Division of Budget and Accounting in the Department of the Treasury, to effectuate the purposes of the program established in accordance with section [2]**[**15**]** 14[2] of P.L. , c. (C.) (pending before the Legislature as this bill).

INSERT NEW SECTION 18 TO READ:

[2]18. (New Section) The Attorney General shall adopt a policy governing the use and retention of any mobile video recording system, as that term is defined in section 3 of P.L.2014, c.54 (C.40A:14-118.2).[2]

REPLACE SECTION 18 TO READ:

[2]**[**18.**]** 19.[2] This bill shall take effect [2]**[**120**]** 180[2] days following enactment.

PROPOSED

REPLACE SYNOPSIS TO READ:

Makes certain access changes to open public records act; requires inclusion of certain State financial information on open data website; creates program for development of local websites; makes appropriation.

PROPOSED