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*1977-2021

October 20, 2023

Steve

Opra+request-54275-13480d73 @requests.opramachine.com

RE: OPRA Request Dated October 18, 2023

Dear Steve:

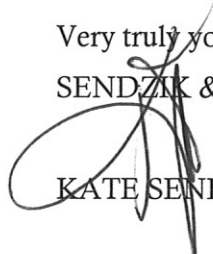
The South Brunswick Board of Fire Commissioners for the South Brunswick Fire District No. 3 received your Open Public Records Act (OPRA) request sent on October 18, 2023. This response is being provided to you on October 20, 2023. Your OPRA request sought access to the following: "Please produce the District's police on fulfilling OPRA requests."

No written policy exists. The South Brunswick Fire District No. 3 policy is to comply with N.J.S.A. 47A:1A-1 through N.J.S.A. 47A:1A-12, Court decisions, Executive Orders of the Governor of New Jersey, and administrative decisions regarding OPRA. See annexed statutes.

If you believe that your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at (866) 850-0511, by mail at P.O. Box 819, Trenton, New Jersey 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The GRC can also answer other questions about the law. All questions regarding complaints filed in the Superior Court should be directed to the Court Clerk in your county.

Very truly yours,

SENDZIK & SENDZIK, P.C.



KATE SENDZIK HAINES, ESQ.

KSH:jj

Enclosures

cc: board@sbfiredistrict3.com (w/o encl.)

New Jersey Statutes Annotated

Title 47. Public Records (Refs & Annos)

Chapter 1A. Examination and Copies of Public Records (Refs & Annos)

N.J.S.A. 47:1A-1.1

47:1A-1.1. Definitions

Effective: January 12, 2022

Currentness

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

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

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

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

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

information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including, but not limited to, information

in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit;

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

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

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

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

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

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

criminal investigatory records;

the portion of any criminal record concerning a person's detection, apprehension, arrest, detention, trial or disposition for unlawful manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c. 101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c. 327 (C.2C:35-7.1) for distributing, dispensing, or possessing, or having under control with intent to distribute or dispense, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or for a violation

of any of those provisions and a violation of N.J.S.2C:36-2 for using or possessing with intent to use drug paraphernalia with that marijuana or hashish;

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

information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by

or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position;

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

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

any copy of form DD-214, NGB-22, 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, unlisted telephone number or driver license number of any person, or, in accordance with section 2 of P.L.2021, c. 371 (C.47:1B-2), that portion of any document which discloses the home address, whether a primary or secondary residence, of any active, formerly active, or retired judicial officer, prosecutor, or law enforcement officer, or, as defined in section 1 of P.L.2021, c. 371 (C.47:1B-1), any immediate family member thereof; 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 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 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).

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 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, 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.

“Public agency” or “agency” means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

“Law enforcement agency” means a public agency, or part thereof, determined by the Attorney General to have law enforcement responsibilities.

“Law enforcement officer” means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

“Constituent” means any State resident or other person communicating with a member of the Legislature.

“Judicial officer” means any active, formerly active, or retired federal, state, county, or municipal judge, including a judge of the Tax Court and any other court of limited jurisdiction established, altered, or abolished by law, a judge of the Office of Administrative Law, a judge of the Division of Workers' Compensation, and any other judge established by law who serves in the executive branch.

“Member of the Legislature” means any person elected or selected to serve in the New Jersey Senate or General Assembly.

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

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

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

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

Credits

L.1995, c. 23, § 1. Amended by L.2001, c. 404, § 2; L.2005, c. 170, § 1, eff. Aug. 5, 2005; L.2013, c. 116, § 1, eff. Aug. 8, 2013; L.2014, c. 19, § 2, eff. Nov. 1, 2014; L.2015, c. 59, § 1, eff. May 11, 2015; L.2017, c. 266, § 4, eff. Jan. 8, 2018; L.2019, c. 255, § 4, eff. Aug. 23, 2019; L.2020, c. 125, § 1, eff. Dec. 10, 2021, operative June 10, 2023; L.2021, c. 19, § 18 (contingent effective date); L.2021, c. 24, § 1, eff. Feb. 22, 2021, retroactive to Nov. 20, 2020; L.2021, c. 371, § 10, eff. Jan. 12, 2022, retroactive to Dec. 10, 2021.

N. J. S. A. 47:1A-1.1, NJ ST 47:1A-1.1

Current with laws through L.2023, c. 107 and J.R. No. 11.

New Jersey Statutes Annotated

Title 47. Public Records (Refs & Annos)

Chapter 1A. Examination and Copies of Public Records (Refs & Annos)

N.J.S.A. 47:1A-1

47:1A-1. Legislative findings and declarations

Effective: July 7, 2002

Currentness

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

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

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

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

Credits

L.1963, c. 73, § 1. Amended by L.2001, c. 404, § 1.

N. J. S. A. 47:1A-1, NJ ST 47:1A-1

Current with laws through L.2023, c. 107 and J.R. No. 11.

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New Jersey Statutes Annotated

Title 47. Public Records (Refs & Annos)

Chapter 1A. Examination and Copies of Public Records (Refs & Annos)

N.J.S.A. 47:1A-2.2

47:1A-2.2. Access to public records by inmates; victim's personal identifying information

Effective: July 7, 2002

Currentness

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

b. A government record containing personal identifying information which is protected under the provisions of this section may be released only if the information is necessary to assist in the defense of the requestor. A determination that the information is necessary to assist in the requestor's defense shall be made by the court upon motion by the requestor or his representative.

c. Notwithstanding the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented, or any other law to the contrary, a custodian shall not comply with an anonymous request for a government record which is protected under the provisions of this section.

Credits

L.1998, c. 17, § 1, eff. May 6, 1998. Amended by L.2001, c. 404, § 4.

N. J. S. A. 47:1A-2.2, NJ ST 47:1A-2.2

Current with laws through L.2023, c. 107 and J.R. No. 11.

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New Jersey Statutes Annotated

Title 47. Public Records (Refs & Annos)

Chapter 1A. Examination and Copies of Public Records (Refs & Annos)

N.J.S.A. 47:1A-3

47:1A-3. Records of investigations in progress

Effective: July 7, 2002

Currentness

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

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

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

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

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

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

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

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

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

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

Credits

L.1963, c. 73, § 3. Amended by L.2001, c. 404, § 5.

N. J. S. A. 47:1A-3, NJ ST 47:1A-3

Current with laws through L.2023, c. 107 and J.R. No. 11.

New Jersey Statutes Annotated

Title 47. Public Records (Refs & Annos)

Chapter 1A. Examination and Copies of Public Records (Refs & Annos)

N.J.S.A. 47:1A-5

47:1A-5. Custodian of government records to permit inspection,
examination and copying; certain information to be redacted;
purchase of records; immediate access in certain circumstances

Effective: January 12, 2022

Currentness

a. The custodian of a government record shall permit the record to be inspected, examined, and copied by any person during regular business hours; or in the case of a municipality having a population of 5,000 or fewer according to the most recent federal decennial census, a board of education having a total district enrollment of 500 or fewer, or a public authority having less than \$10 million in assets, during not less than six regular business hours over not less than three business days per week or the entity's regularly-scheduled business hours, whichever is less; unless a government record is exempt from public access by: P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order. Prior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person, or, in accordance with section 2 of P.L.2021, c. 371 (C.47:1B-2), the home address, whether a primary or secondary residence, of any active, formerly active, or retired judicial officer, prosecutor, or law enforcement officer, or, as defined in section 1 of P.L.2021, c. 371 (C.47:1B-1), any immediate family member thereof; 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. Except where an agency can demonstrate an emergent need, a regulation that limits access to government records shall not be retroactive in effect or applied to deny a request for access to a government record that is pending before the agency, the council or a court at the time of the adoption of the regulation.

b. (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. 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).

c. Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies; provided, however, that in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance. The requestor shall have the opportunity to review and object to the charge prior to it being incurred.

d. A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record: (1) in a medium not routinely used by the agency; (2) not routinely developed or

maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

e. Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.

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

g. A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. If the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof. If the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented, the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record. If the government record requested is temporarily unavailable because it is in use or in storage, the custodian shall so advise the requestor

and shall make arrangements to promptly make available a copy of the record. If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.

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

i. (1) Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived. In the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request, unless the requestor has elected not to provide a name, address or telephone number, or other means of contacting the requestor. If the requestor has elected not to provide a name, address, or telephone number, or other means of contacting the requestor, the custodian shall not be required to respond until the requestor reappears before the custodian seeking a response to the original request. If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives the request. The requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied.

(2) During a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph (1) of this subsection or subsection e. of this section shall not apply, provided, however, that the custodian of a government record shall make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven business days or as soon as possible thereafter.

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

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

Credits

L.2001, c. 404, § 6. Amended by L.2010, c. 75, § 5, eff. Sept. 10, 2010, operative Nov. 9, 2010; L.2014, c. 19, § 3, eff. Nov. 1, 2014; L.2020, c. 10, § 1, eff. March 20, 2020; L.2020, c. 125, § 2, eff. Dec. 10, 2021, operative June 10, 2023; L.2021, c. 24, § 2, eff. Feb. 22, 2021, retroactive to Nov. 20, 2020; L.2021, c. 371, § 11, eff. Jan. 12, 2022, retroactive to Dec. 10, 2021.

N. J. S. A. 47:1A-5, NJ ST 47:1A-5

Current with laws through L.2023, c. 107 and J.R. No. 11.

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New Jersey Statutes Annotated

Title 47. Public Records (Refs & Annos)

Chapter 1A. Examination and Copies of Public Records (Refs & Annos)

N.J.S.A. 47:1A-6

47:1A-6. Proceeding to challenge access denial; hearing

Effective: July 7, 2002

Currentness

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

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

in lieu of filing an action in Superior Court, file a complaint with the Government Records Council established pursuant to section 8 of P.L.2001, c. 404 (C.47:1A-7).

The right to institute any proceeding under this section shall be solely that of the requestor. Any such proceeding shall proceed in a summary or expedited manner. The public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

Credits

L.2001, c. 404, § 7.

N. J. S. A. 47:1A-6, NJ ST 47:1A-6

Current with laws through L.2023, c. 107 and J.R. No. 11.

New Jersey Statutes Annotated

Title 47. Public Records (Refs & Annos)

Chapter 1A. Examination and Copies of Public Records (Refs & Annos)

N.J.S.A. 47:1A-7

47:1A-7. Government Records Council; powers and duties; jurisdiction

Effective: July 7, 2002

Currentness

a. There is established in the Department of Community Affairs a Government Records Council. The council shall consist of the Commissioner of Community Affairs or the commissioner's designee, the Commissioner of Education or the commissioner's designee, and three public members appointed by the Governor, with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The three public members shall serve during the term of the Governor making the appointment and until the appointment of a successor. A public member shall not hold any other State or local elected or appointed office or employment while serving as a member of the council. A public member shall not receive a salary for service on the council but shall be reimbursed for reasonable and necessary expenses associated with serving on the council and may receive such per diem payment as may be provided in the annual appropriations act. A member may be removed by the Governor for cause. Vacancies among the public members shall be filled in the same manner in which the original appointment was made. The members of the council shall choose one of the public members to serve as the council's chair. The council may employ an executive director and such professional and clerical staff as it deems necessary and may call upon the Department of Community Affairs for such assistance as it deems necessary and may be available to it.

b. The Government Records Council shall:

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

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

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

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

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

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

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

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

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

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

d. Upon receipt of a written complaint signed by any person alleging that a custodian of a government record has improperly denied that person access to a government record, the council shall offer the parties the opportunity to resolve the dispute through mediation. Mediation shall enable a person who has been denied access to a government record and the custodian who denied or failed to provide access thereto to attempt to mediate the dispute through a process whereby a neutral mediator, who shall be trained in mediation selected by the council, acts to encourage and facilitate the resolution of the dispute. Mediation shall be an informal, nonadversarial process having the objective of helping the parties reach a mutually acceptable, voluntary agreement. The

mediator shall assist the parties in identifying issues, foster joint problem solving, and explore settlement alternatives.

e. If any party declines mediation or if mediation fails to resolve the matter to the satisfaction of all parties, the council shall initiate an investigation concerning the facts and circumstances set forth in the complaint. The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the council shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed. Otherwise, the council shall notify the records custodian against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein. The custodian shall have the opportunity to present the board with any statement or information concerning the complaint which the custodian wishes. If the council is able to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed. If the council is unable to make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto, the council shall conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a State agency in contested cases under the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), insofar as they may be applicable and practicable. The council shall, by a majority vote of its members, render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented. If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated P.L.1963, c. 73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in section 12 of P.L.2001, c. 404 (C.47:1A-11). A decision of the council may be appealed to the Appellate Division of the Superior Court. A decision of the council shall not have value as a precedent for any case initiated in Superior Court pursuant to section 7 of P.L.2001, c. 404 (C.47:1A-6). All proceedings of the council pursuant to this subsection shall be conducted as expeditiously as possible.

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

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

Credits

L.2001, c. 404, § 8.

N. J. S. A. 47:1A-7, NJ ST 47:1A-7

Current with laws through L.2023, c. 107 and J.R. No. 11.

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New Jersey Statutes Annotated

Title 47. Public Records (Refs & Annos)

Chapter 1A. Examination and Copies of Public Records (Refs & Annos)

N.J.S.A. 47:1A-8

47:1A-8. Common law right of access

Effective: July 7, 2002

Currentness

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

Credits

L.2001, c. 404, § 9.

N. J. S. A. 47:1A-8, NJ ST 47:1A-8

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New Jersey Statutes Annotated

Title 47. Public Records (Refs & Annos)

Chapter 1A. Examination and Copies of Public Records (Refs & Annos)

N.J.S.A. 47:1A-10

47:1A-10. Personnel or pension records not considered government records; exceptions

Effective: July 7, 2002

Currentness

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

an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;

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

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

Credits

L.2001, c. 404, § 11.

N. J. S. A. 47:1A-10, NJ ST 47:1A-10

Current with laws through L.2023, c. 107 and J.R. No. 11.

New Jersey Statutes Annotated

Title 47. Public Records (Refs & Annos)

Chapter 1A. Examination and Copies of Public Records (Refs & Annos)

N.J.S.A. 47:1A-11

47:1A-11. Violations

Effective: July 7, 2002

Currentness

a. A public official, officer, employee or custodian who knowingly and willfully violates P.L.1963, c. 73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty of \$1,000 for an initial violation, \$2,500 for a second violation that occurs within 10 years of an initial violation, and \$5,000 for a third violation that occurs within 10 years of an initial violation. This penalty shall be collected and enforced in proceedings in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.), and the rules of court governing actions for the collection of civil penalties. The Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the penalty imposed by this section.

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

Credits

L.2001, c. 404, § 12.

N. J. S. A. 47:1A-11, NJ ST 47:1A-11

Current with laws through L.2023, c. 107 and J.R. No. 11.