

**SENATE, No. 782**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator JOSEPH PENNACCHIO**

**District 26 (Essex, Morris and Passaic)**

**SYNOPSIS**

Makes certain access changes to open public records act; establishes State public finance website and creates program for development of local websites; makes appropriation.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning access to certain government records and  
2 establishment of a program for developing public websites,  
3 amending and supplementing P.L.1963, c.73, supplementing  
4 Title 52 of the Revised Statutes, amending P.L.1995, c.23 and  
5 P.L.2001, c.404, and making an appropriation.

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

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

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

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

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

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

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

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

41

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

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

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

**Matter underlined thus is new matter.**

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

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

11 "Government record" or "record" means any paper, written,  
12 electronic, or printed book, document, drawing, map, plan,  
13 photograph, microfilm, data processed or image processed  
14 document, information stored or maintained electronically or by  
15 **【sound-recording】** video or audio recording or in a similar device,  
16 or any copy thereof, that has been made, maintained or kept on file,  
17 or is required by law to be made, maintained or kept on file, in the  
18 course of **【his or】** its official business by any **【officer, commission,**  
19 **agency or authority of the State or of any political subdivision**  
20 **thereof, including subordinate boards thereof,】** public agency, or  
21 that has been received in the course of **【his or】** its official business  
22 by any such **【officer, commission, agency, or authority of the State**  
23 **or of any political subdivision thereof, including subordinate boards**  
24 **thereof】** public agency. Any video or audio recordings made of  
25 those portions of meetings from which the public was not excluded  
26 pursuant to subsection b. of section 7 of P.L.1975, c.231 (C.10:4-  
27 12), including emergency meetings held pursuant to subsection b. of  
28 section 4 of P.L.1975, c.231 (C.10:4-9), should be available in  
29 unedited form. The terms shall not include inter-agency or intra-  
30 agency advisory, consultative, or deliberative material.

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

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

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

1 any telephone record whatsoever, unless it is information the  
2 constituent is required by law to transmit;  
3 any memorandum, correspondence, notes, report or other  
4 communication prepared by, or for, the specific use of a member of  
5 the Legislature in the course of the member's official duties, except  
6 that this provision shall not apply to an otherwise publicly-  
7 accessible report which is required by law to be submitted to the  
8 Legislature or its members;  
9 any copy, reproduction or facsimile of any photograph, negative  
10 or print, including instant photographs and videotapes of the body,  
11 or any portion of the body, of a deceased person, taken by or for the  
12 medical examiner at the scene of death or in the course of a post  
13 mortem examination or autopsy made by or caused to be made by  
14 the medical examiner except:  
15 when used in a criminal action or proceeding in this State which  
16 relates to the death of that person,  
17 for the use as a court of this State permits, by order after good  
18 cause has been shown and after written notification of the request  
19 for the court order has been served at least five days before the  
20 order is made upon the county prosecutor for the county in which  
21 the post mortem examination or autopsy occurred,  
22 for use in the field of forensic pathology or for use in medical or  
23 scientific education or research, or  
24 for use by any law enforcement agency in this State or any other  
25 state or federal law enforcement agency;  
26 criminal investigatory records;  
27 victims' records, except that a victim of a crime shall have access  
28 to the victim's own records;  
29 trade secrets and proprietary commercial or financial information  
30 obtained from any source. For the purposes of this paragraph, trade  
31 secrets shall include data processing software obtained by a public  
32 body under a licensing agreement which prohibits its disclosure;  
33 any record within the attorney-client privilege. This paragraph  
34 shall not be construed as exempting from access attorney or  
35 consultant bills or invoices except that such bills or invoices may be  
36 redacted to remove any information protected by the attorney-client  
37 privilege;  
38 administrative or technical information regarding computer  
39 hardware, software and networks which, if disclosed, would  
40 jeopardize computer security;  
41 emergency or security information or procedures for any  
42 buildings or facility which, if disclosed, would jeopardize security  
43 of the building or facility or persons therein;  
44 security measures and surveillance techniques which, if  
45 disclosed, would create a risk to the safety of persons, property,  
46 electronic data or software;

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

3 information generated by or on behalf of public employers or  
4 public employees in connection with any sexual harassment  
5 complaint filed with a public employer or with any grievance filed  
6 by or against an individual or in connection with collective  
7 negotiations, including documents and statements of strategy or  
8 negotiating position;

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

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

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

21 **[and]**

22 that portion of any document which discloses the social security  
23 number, credit card number, unlisted telephone number or driver  
24 license number of any person; except for use by any government  
25 agency, including any court or law enforcement agency, in carrying  
26 out its functions, or any private person or entity acting on behalf  
27 thereof, or any private person or entity seeking to enforce payment  
28 of court-ordered child support; except with respect to the disclosure  
29 of driver information by the New Jersey Motor Vehicle  
30 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-  
31 3.4); and except that a social security number contained in a record  
32 required by law to be made, maintained or kept on file by a public  
33 agency shall be disclosed when access to the document or  
34 disclosure of that information is not otherwise prohibited by State  
35 or federal law, regulation or order or by State statute, resolution of  
36 either or both houses of the Legislature, Executive Order of the  
37 Governor, rule of court or regulation promulgated under the  
38 authority of any statute or executive order of the Governor;

39 that portion of the electronic-mail addresses provided to the  
40 government entity for the sole purpose of receiving official public  
41 notifications; and

42 that portion of any document that requires and would disclose  
43 personal identifying information of persons under the age of 18  
44 years, except with respect to the disclosure of driver information by  
45 the New Jersey Motor Vehicle Commission as permitted by section  
46 2 of P.L.1997, c.188 (C.39:2-3.4).

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

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

15 test questions, scoring keys and other examination data  
16 pertaining to the administration of an examination for employment  
17 or academic examination;

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

24 valuable or rare collections of books and/or documents obtained  
25 by gift, grant, bequest or devise conditioned upon limited public  
26 access;

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

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

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

1 Legislature of the State and any office, board, bureau or  
2 commission within or created by the Legislative Branch; and any  
3 independent State authority, commission, instrumentality or agency.  
4 The terms shall also mean any political subdivision of the State or  
5 combination of political subdivisions, and any division, board,  
6 bureau, office, commission or other instrumentality within or  
7 created by a political subdivision of the State or combination of  
8 political subdivisions, and any independent authority, commission,  
9 instrumentality or agency created by a political subdivision or  
10 combination of political subdivisions. The term shall also include a  
11 school district, special district, an educational information resource  
12 center established pursuant to P.L.1983, c.186 (C.18A:6-95.1 et  
13 seq.), or charter school, quasi-governmental agency, or public  
14 employee. The term shall also mean and include, by way of  
15 example but not limitation, the New Jersey State League of  
16 Municipalities, the New Jersey Association of Counties, the New  
17 Jersey School Boards Association, and the New Jersey State  
18 Interscholastic Athletic Association, and a substantially similar  
19 successor organization or association, a joint insurance group or  
20 fund for political subdivisions of this State, and bi-State agencies.

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

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

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

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

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

5 "Criminal investigatory record" means a record which is not  
6 required by law, statute, rule, regulation, or directive, general  
7 operating procedure from the New Jersey Attorney General or from  
8 the law enforcement agency in which the record is sought, or  
9 general order of the New Jersey Attorney General or of the law  
10 enforcement agency in which the record is sought, to be made,  
11 maintained or kept on file that is held by a law enforcement agency  
12 which pertains to any criminal investigation or related civil  
13 enforcement proceeding. Notwithstanding anything contained  
14 herein to the contrary, this provision shall not be construed to allow  
15 any public agency to prohibit access to a record that was open for  
16 public inspection, examination, or copying, before any criminal  
17 investigation or related civil enforcement proceeding commenced.

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

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

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

36 (cf: P.L.2005, c.170, s.1)

37

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

40 3. a. Notwithstanding the provisions of P.L.1963, c.73  
41 (C.47:1A-1 et seq.) as amended and supplemented, where it shall  
42 appear that the record or records which are sought to be inspected,  
43 copied, or examined shall pertain to an investigation in progress by  
44 any public agency, the right of access provided for in P.L.1963,  
45 c.73 (C.47:1A-1 et seq.) as amended and supplemented may be  
46 denied if the inspection, copying or examination of such record or  
47 records shall be inimical to the public interest; provided, however,



1 that this provision shall not be construed to allow any public agency  
2 to prohibit access to a record of that agency that was open for  
3 public inspection, examination, or copying before the investigation  
4 commenced. Whenever a public agency, during the course of an  
5 investigation, obtains from another public agency a government  
6 record that was open for public inspection, examination or copying  
7 before the investigation commenced, the investigating agency shall  
8 provide the other agency with sufficient access to the record to  
9 allow the other agency to comply with requests made pursuant to  
10 P.L.1963, c.73 (C.47:1A-1 et seq.).

11 b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-  
12 1 et seq.), as amended and supplemented, records containing the  
13 following information concerning a criminal investigation shall be  
14 available to the public within 24 hours or as soon as practicable, of  
15 a request for such information:

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

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

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

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

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

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

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

43 Notwithstanding any other provision of this subsection, if the  
44 custodian of a government record asserts that part of a particular  
45 record is exempt from public access pursuant to P.L.1963, c.73  
46 (C.47:1A-1 et seq.), as amended and supplemented, the custodian  
47 shall redact from a copy of the record that portion which the

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

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

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

26

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

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

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

21 If the custodian of a government record redacts information from  
22 a copy of the record, the custodian shall provide the requestor with  
23 a redacted version of the document and one affidavit for the entire  
24 request that states the date of the record, the originator or author of  
25 the record, the subject matter or title of the record, the number of  
26 pages with redactions, and the specific statutory provision or other  
27 lawful basis for each such redaction. This provision shall only  
28 apply to information redacted on or after the effective date of P.L.  
29 , c. (pending before the Legislature as this bill). If a document  
30 was redacted prior to the effective date of P.L. , c. (pending  
31 before the Legislature as this bill), a service charge for time may be  
32 assessed to the requestor for information as to why a document was  
33 redacted.

34 b. A copy or copies of a government record may be purchased  
35 by any person upon payment of the fee prescribed by law or  
36 regulation. Except as otherwise provided by law or regulation, the  
37 fee assessed for the duplication of a government record embodied in  
38 the form of printed matter shall be \$0.05 per letter size page or  
39 smaller, and \$0.07 per legal size page or larger. If a public agency  
40 can demonstrate that its actual costs for duplication of a government  
41 record exceed the foregoing rates, the public agency shall be  
42 permitted to charge the actual cost of duplicating the record. The  
43 actual cost of duplicating the record, upon which all copy fees are  
44 based, shall be the cost of materials and supplies used to make a  
45 copy of the record, but shall not include the cost of labor or other  
46 overhead expenses associated with making the copy except as  
47 provided for in subsection c. of this section. Access to electronic

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

4 If a public agency maintains the record in an electronic format or  
5 medium that can be electronically mailed without charge to the  
6 requestor, it shall make the requestor aware and allow for delivery  
7 of the record in such format or medium. The requestor shall have  
8 seven business days to respond to the custodian, otherwise the  
9 request is deemed fulfilled.

10 If the government record is on the public agency website, the  
11 custodian shall advise the requester to obtain the record from the  
12 agency website. If the requester prefers to purchase copies from the  
13 public agency, he or she shall be permitted to purchase such copies  
14 from the records custodian, in accordance with the provisions of  
15 this act, P.L.1963, c.73 (C.47:1A-1 et seq.). The requestor shall  
16 have seven business days to advise the custodian that he or she  
17 prefers to purchase the copies, otherwise the request may be  
18 deemed fulfilled.

19 c. Whenever the nature, format, medium, manner of collation,  
20 or volume of a government record embodied in the form of printed  
21 matter to be inspected, examined, or copied pursuant to this section  
22 is such that the record cannot be reproduced by ordinary document  
23 copying equipment in ordinary business size or involves an  
24 extraordinary expenditure of time and effort to accommodate the  
25 request, the public agency may charge, in addition to the actual cost  
26 of duplicating the record, a special service charge **[that]**. A special  
27 service charge may only be imposed when the time expended in  
28 responding to the request shall exceed a total of four hours. Such a  
29 charge shall be reasonable and shall be based upon the actual, direct  
30 cost of providing the copy or copies; provided, however, that [in  
31 the case of a municipality, rates for the duplication of particular  
32 records when the actual cost of copying exceeds the foregoing rates  
33 shall be established in advance by ordinance. The] in the case of a  
34 municipality, rates for the duplication of particular records when the  
35 actual cost of copying exceeds the foregoing rates shall be  
36 established in advance by ordinance. For purposes hereof, the  
37 actual, direct costs shall mean those expenditures that an agency  
38 actually incurs in searching for and duplicating documents to  
39 respond to a request, which includes basic rate of pay for the  
40 employee. Direct costs shall not include overhead expenses such as  
41 costs of space and heating or lighting the facility in which the  
42 records are stored. The requestor shall have the opportunity to  
43 review and object to the charge prior to it being incurred. During  
44 such review, the public agency shall provide the requestor, without  
45 charge, a detailed breakdown of how the special service charge was  
46 assessed including, at a minimum, reasonable estimates  
47 categorizing the hours needed to identify, copy or prepare for

1 inspection, and to produce and return the requested documents, and  
2 the number of pages to be produced. Special service charges shall  
3 not be assessed for requests for budgets, bills, vouchers, contracts  
4 and public employee salary and overtime information unless the  
5 request is deemed voluminous.

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

22 e. Immediate access ordinarily shall be granted to budgets,  
23 bills, vouchers, contracts, including collective negotiations  
24 agreements and individual employment contracts, and public  
25 employee salary and overtime information for the current fiscal  
26 year.

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

1 that the information thus requested will cost in excess of \$5 to  
2 reproduce.

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

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

24 If the custodian of a government record redacts information from  
25 a copy of the record, the custodian shall provide the requestor with  
26 a redacted version of the document and one affidavit for the entire  
27 request that states the date of the record, the originator or author of  
28 the record, the subject matter or title of the record, the number of  
29 pages with redactions, and the specific statutory provision or other  
30 lawful basis for each such redaction. This provision shall only  
31 apply to information redacted on or after the effective date of P.L.  
32 c. (pending before the Legislature as this bill). If a document was  
33 redacted prior to the effective date of P.L. , c. (pending before the  
34 Legislature as this bill), a service charge for time may be assessed  
35 to the requestor for information as to why a document was redacted.

36 If the government record requested is temporarily unavailable  
37 because it is in use or in storage, the custodian shall so advise the  
38 requestor and shall make arrangements to promptly make available  
39 a copy of the record. If a request for access to a government record  
40 would substantially disrupt agency operations, the custodian may  
41 deny access to the record after attempting to reach a reasonable  
42 solution with the requestor that accommodates the interests of the  
43 requestor and the agency.

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

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

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

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

32 The custodian of a public agency that has a website shall, at a  
33 minimum, prominently post on the website the name, mailing  
34 address, electronic mailing address, phone number, and facsimile  
35 number for the custodian of records as well as a statement that  
36 information submitted to the agency may be a public record and  
37 available for public review.

38 k. The files maintained by the Office of the Public Defender  
39 that relate to the handling of any case shall be considered  
40 confidential and shall not be open to inspection by any person  
41 unless authorized by law, court order, or the State Public Defender.  
42 (cf: P.L.2010, c.75, s.5)

43  
44 6. Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read  
45 as follows:

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

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

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

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

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

39  
40 7. Section 8 of P.L.2001, c.404 (C.47:1A-7) is amended to read  
41 as follows:

42 8. a. There is established in, but not of, the Department of  
43 Community Affairs a Government Records Council. The council  
44 shall consist of **【**the Commissioner of Community Affairs or the  
45 commissioner's designee, the Commissioner of Education or the  
46 commissioner's designee, and three**】** the president of the Municipal  
47 Clerks Association of New Jersey, or the president's designee, and



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

40 b. The Government Records Council shall:

41 **【establish an informal mediation program to facilitate the**  
42 **resolution of disputes regarding access to government records;】**

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

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

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

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

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

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

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

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

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

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

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

34 c. At the request of the council, a public agency shall produce  
35 documents and ensure the attendance of witnesses with respect to  
36 the council's investigation of any complaint or the holding of any  
37 hearing. Each party shall have the opportunity to provide to the  
38 council any documents or information necessary for the  
39 adjudication of the case.

40 d. Upon receipt of a written complaint signed by any person  
41 alleging that a custodian of a government record has improperly  
42 denied that person access to a government record, the council shall  
43 offer the parties the opportunity to resolve the dispute through  
44 mediation pursuant to section 13 of P.L. , c. (pending before the  
45 Legislature as this bill). Mediation shall enable a person who has  
46 been denied access to a government record and the custodian who  
47 denied or failed to provide access thereto to attempt to mediate the

1 dispute through a process whereby a neutral mediator【, who shall  
2 be trained in mediation selected by the council,】 acts to encourage  
3 and facilitate the resolution of the dispute. 【Mediation shall be an  
4 informal, nonadversarial process having the objective of helping the  
5 parties reach a mutually acceptable, voluntary agreement. The  
6 mediator shall assist the parties in identifying issues, foster joint  
7 problem solving, and explore settlement alternatives.】

8 e. If any party declines mediation or if mediation fails to  
9 resolve the matter to the satisfaction of all parties, the council shall  
10 initiate an investigation concerning the facts and circumstances set  
11 forth in the complaint. The council shall make a determination as  
12 to whether the complaint is within its jurisdiction or frivolous or  
13 without any reasonable factual basis. If the council shall conclude  
14 that the complaint is outside its jurisdiction, frivolous or without  
15 factual basis, it shall reduce that conclusion to writing and transmit  
16 a copy thereof to the complainant and to the records custodian  
17 against whom the complaint was filed. Otherwise, the council shall  
18 notify the records custodian against whom the complaint was filed  
19 of the nature of the complaint and the facts and circumstances set  
20 forth therein. The custodian shall have 【the】 an opportunity to  
21 【present】 answer the complaint by presenting the board with a  
22 signed and dated affidavit containing the same information provided  
23 to the complainant pursuant to subsection a. of section 6 of  
24 P.L.2001, c.404 (C.47:1A-5), if applicable, and any other statement  
25 or information concerning the complaint which the custodian  
26 wishes. The complainant shall have an opportunity to offer a brief  
27 reply affidavit that addresses any claims or defenses in the  
28 custodian's answer. The complainant shall not set forth therein any  
29 new allegations that do not address the custodian's claims or  
30 defense. If the council is able to make a determination as to a  
31 record's accessibility based upon the complaint 【and】 , the  
32 custodian's 【response thereto】 answer, and the complainant's reply,  
33 it shall reduce that conclusion to writing and transmit a copy thereof  
34 to the complainant and to the records custodian against whom the  
35 complaint was filed. If the council is unable to make a  
36 determination as to a record's accessibility based upon the  
37 complaint 【and】 , the custodian's 【response thereto】 answer, and  
38 the complainant's reply, the council shall conduct a hearing on the  
39 matter in conformity with the rules and regulations provided for  
40 hearings by a State agency in contested cases under the  
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
42 seq.), insofar as they may be applicable and practicable. The  
43 council shall, by a majority vote of its members, render a decision  
44 as to whether the record which is the subject of the complaint is a  
45 government record which must be made available for public access  
46 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and  
47 supplemented. If the council determines, by a majority vote of its

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

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

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

23 h. The council shall make available on its website a searchable  
24 index of its opinions.  
25 (cf: P.L.2001, c.404, s.8)

26  
27 8. Section 11 of P.L.2001, c.404 (C.47:1A-10) is amended to  
28 read as follows:

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

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

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

46 records pertaining to the factual basis for the final administrative  
47 determination of a disciplinary action in which an employee is

1 suspended, demoted, discharged, or resigned not in good standing,  
2 if it was due to the conviction of a crime, shall be a government  
3 record, except that specific factual details of incidents involving  
4 sexual harassment, sexual assault, domestic violence or rape by or  
5 against a public employee, and the identity of the victim of the  
6 misconduct alleged, may be deleted or excised if disclosure would  
7 violate any individual's reasonable expectation of privacy so long  
8 as the agency provides a statement that such records are being  
9 withheld pursuant to this particular exception;

10 records pertaining to settlements of lawsuits or claims involving  
11 public agencies, public officials or employees shall be a  
12 government record, except that specific factual details of incidents  
13 involving sexual harassment, sexual assault, domestic violence or  
14 rape by or against a public employee, and the identity of the victim  
15 of the misconduct alleged, may be deleted or excised if disclosure  
16 would violate any individual's reasonable expectation of privacy so  
17 long as the agency provides a statement that such records are being  
18 withheld pursuant to this particular exception. No public agency  
19 shall be liable for damages, pursuant to this subsection, for  
20 releasing settlements of lawsuits or claims involving public  
21 agencies, public officials or employees, entered into before the  
22 effective date of P.L. , c. (pending before the Legislature as this  
23 bill). The public agency shall make reasonable efforts to notify the  
24 affected parties of the release of the documents; and

25 factual or statistical data [contained in information] which  
26 disclose conformity with specific experiential, educational or  
27 medical qualifications required for government employment or for  
28 receipt of a public pension, but not including any detailed medical  
29 or psychological information, shall be a government record.

30 Nothing in this section exempts disclosure of disciplinary  
31 records otherwise required by law to be disclosed or made public.  
32 (cf: P.L.2001, c.404, s.11)

33  
34 9. Section 12 of P.L.2001, c.404 (C.47:1A-11) is amended to  
35 read as follows:

36 12. a. A public official, officer, employee or custodian who  
37 **[knowingly and willfully]** violates P.L.1963, c.73 (C.47:1A-1 et  
38 seq.), as amended and supplemented, and is found **[to have**  
39 **unreasonably]** grossly negligent by having denied access under the  
40 totality of the circumstances, shall be subject to a civil penalty of  
41 \$1,000 for an initial violation, \$2,500 for a second violation that  
42 occurs within 10 years of an initial violation, and \$5,000 for a third  
43 violation that occurs within 10 years of an initial violation. No  
44 public official, officer, employee or custodian shall be subject to a  
45 civil penalty for any unavailable record that is required by law to be  
46 made, maintained or kept on file unless the unavailability of the

1 record is a result of the willful actions or gross negligence of such  
2 person.

3 A fine imposed pursuant to P.L.1963, c.43 (C.47:1A-1 et seq.)  
4 shall be paid by the individual found to have committed the  
5 violation out of the individual's personal funds. Under no  
6 circumstances shall public funds be used to pay a fine or to  
7 reimburse a person who has paid, or will pay, a fine for the cost of  
8 that fine.

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

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

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

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

24  
25 10. Section 14 of P.L.2001, c.404 (C.47:1A-13) is amended to  
26 read as follows:

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

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

33  
34 11. (New section) Any authority contained herein to exempt  
35 records from public access by regulation or Executive Order of the  
36 Governor shall be expressly limited to the designation of specific  
37 records that are exempt from access pursuant to any exemptions set  
38 forth in this act, P.L.1963, c.73 (C.47:1A-1 et seq.), and shall not be  
39 construed as a grant or delegation of authority to exempt records  
40 from public access not otherwise exempt by the provisions this act.

41  
42 12. (New section) a. In exceptional circumstances, and  
43 notwithstanding any other law or rule or regulation to the contrary,  
44 whenever it is made to appear by verified petition to the Superior  
45 Court of the county in which the request for government records  
46 was made under P.L.1963, c.73 (C.47:1A-1 et seq.), the court may  
47 issue a protective order limiting the number and scope of requests a

1 requestor may make or such other relief as it deems appropriate,  
2 including referral of the matter to mediation. The court may issue  
3 the protective order if it determines that the requestor has sought  
4 records under P.L.1963, c.73 (C.47:1A-1 et seq.) for an improper  
5 purpose, such as to harass or to substantially interfere with the  
6 operation of a public agency or its employees. The petition shall be  
7 accompanied by a declaration of facts by the public agency  
8 withholding the records demonstrating that it has complied with  
9 P.L.1963, c.73 (C.47:1A-1 et seq.) and has made a good faith effort  
10 to reach an informal resolution of the issues relating to the records  
11 request. The requestor shall have notice and an opportunity to  
12 answer the allegations set forth in the petition submitted by the  
13 public agency. The public agency shall have the burden of proof by  
14 clear and convincing evidence. The court's consideration of a  
15 public agency's petition for relief shall proceed in a summary or  
16 expedited manner and shall include a formal hearing whenever the  
17 interest of justice so requires.

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

22 c. Upon entry of an order pursuant to this section, the order of  
23 the court shall be immediately reviewable by petition to the  
24 Appellate Division of the Superior Court. A party shall, in order to  
25 obtain review of the order, file a petition within 20 days after  
26 service upon him or her of a written notice of entry of the order, or  
27 within further time not exceeding an additional 20 days as the court  
28 may for good cause allow. If the notice is served by mail, the  
29 period within which to file the petition shall be increased by five  
30 days. A stay of an order or judgment shall not be granted unless the  
31 petitioning party demonstrates that it will otherwise sustain  
32 irreparable damage and probable success on the merits. Any person  
33 who fails to obey the order of the court shall be cited to show cause  
34 why he or she is not in contempt of court.

35  
36 13. (New section) The Office of Dispute Settlement, in the  
37 Office of The Public Defender, shall be available to mediate a  
38 dispute over records requests when both requestor and public  
39 agency consent thereto. However, mediation shall not alter the  
40 responsibility of the custodian to respond and provide documents  
41 within the timeframes set forth in this act, P.L.1963, c.73 (C.47:1A-  
42 1 et seq.).

43  
44 14. (New section) a. Notwithstanding the provisions of any  
45 other law to the contrary, the State Treasurer, in consultation with  
46 the Chief Technology Officer, shall design and develop, maintain  
47 and operate a single, searchable Internet website that is accessible

1 to the general public without charge for access, and that includes  
2 data or information concerning each of the following:

3 annual State agency expenditures, as determined by the State  
4 Treasurer and as may be available within the central accounting  
5 system and State payroll system, which shall include but not be  
6 limited to: disbursements by a State agency from funds established  
7 within the State treasury; bond debt services, including amounts of  
8 bond debt or interest paid and sources of funds for bond issues;  
9 salaries and wages including, compensation paid to employees of  
10 State agencies, including current contracts under which  
11 compensation is determined; contractual service purchases,  
12 including amounts paid to vendors; commodity purchases, including  
13 amounts paid to vendors; capital outlay and improvements,  
14 including amounts paid to vendors; aid to local units of government,  
15 including amounts paid to individual units of local government for  
16 aid programs; additional forms of assistance and benefits as  
17 determined by the State Treasurer; and the exact amount of each  
18 such expenditure and the name and address of each individual,  
19 organization, business or other entity receiving such monies;

20 annual State revenues, as determined by the State Treasurer and  
21 as may be available within the central accounting system, which  
22 shall include but not be limited to: receipts and deposits by a State  
23 agency into funds established within the State treasury; taxes,  
24 including any tax which is payable to or collectible by the Director  
25 of the Division of Taxation in the Department of the Treasury; State  
26 agency earnings, including amounts collected by each State agency  
27 for merchandise sold, services performed, and licenses and permits  
28 issued; revenue derived from the use of money and property,  
29 including amounts received for compensation for the use of State-  
30 owned money and property; gifts, donations, and federal grants,  
31 including amounts received from public and private entities to aid  
32 in support of a specific function or other governmental activity;  
33 other revenue, including receipts not classified elsewhere; and non-  
34 revenue receipts, including all receipts that do not constitute  
35 revenue;

36 annual State bonded indebtedness, as determined by the State  
37 Treasurer and as may be available within the central accounting  
38 system, which shall include but not be limited to: the amount of the  
39 total original obligation stated in terms of principal and interest; the  
40 term of the obligation; the source of funding for repayment of the  
41 obligation; the amount of principal and interest previously paid to  
42 reduce the obligation; the remaining balance of the obligation; data  
43 or information related to refinancing of the obligation; the cited  
44 statutory or constitutional authority to issue such bonds; the specific  
45 names of firms or individuals serving as bond counsel; and the  
46 names of the banks assisting in the sale of bonds;



1 annual State liabilities for pension and post-retirement medical  
2 benefits, as determined by the State Treasurer and as may be  
3 available within the central accounting system; and

4 any other data or information determined to be necessary and  
5 appropriated by the State Treasurer.

6 b. The Internet website designed and developed, maintained  
7 and operated by the State Treasurer in accordance with this section  
8 shall include all data and information enumerated in subsection a.  
9 of this section for State fiscal year 2013 and each State fiscal year  
10 thereafter. The data and information posted on the Internet website  
11 may be periodically updated, but shall not be subject to removal.

12 The data and information required to be posted on the Internet  
13 website that is based on or otherwise derived from data or  
14 information made available from the central accounting system or  
15 the State payroll system shall be made available on the Internet  
16 website as soon as practicable, but not later than 45 days after the  
17 last day of the preceding State fiscal year.

18 The State Treasurer shall not be required to provide data or  
19 information on the Internet website of the kind that is not available  
20 in the central accounting system or the State payroll system on the  
21 date the Internet website is first made available to the public.

22 The State Treasurer shall be entitled to receive from each State  
23 agency any assistance and information the State Treasurer  
24 determines to be necessary and appropriate to compile the data and  
25 information necessary to design and develop, maintain and operate  
26 the Internet website.

27 The State Treasurer shall not be required to disclose or otherwise  
28 make available on the Internet website data or information that is  
29 determined by the State Treasurer to be private, personal, or  
30 confidential in accordance with State or federal law, rules, or  
31 regulations.

32 c. Notwithstanding the provisions of the "Administrative  
33 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
34 contrary, the State Treasurer may adopt immediately upon filing  
35 with the Office of Administrative Law such rules and regulations as  
36 the State Treasurer determines to be necessary and appropriate to  
37 design and develop, maintain and operate the Internet website and  
38 to compile data and information in accordance with this section,  
39 which rules and regulations shall be effective for a period not to  
40 exceed 360 days following the effective date of  
41 P.L. , c. (pending before the Legislature as this bill) and may  
42 thereafter be amended, adopted, or readopted by the State Treasurer  
43 in accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).

44 d. As used in this section:

45 "Chief Technology Officer" means the person appointed by and  
46 serving at the pleasure of the Governor who is responsible for the

1 day-to-day operations of the Office of Information Technology in,  
2 but not of, the Department of the Treasury; and

3 “State agency” means any of the principal departments in the  
4 Executive Branch of State Government, and any division, board,  
5 bureau, office, commission, or other instrumentality within or  
6 created by such principal department; the Legislature of the State  
7 and any office, board, bureau, or commission within or created by  
8 the Legislative Branch of State Government; the Judiciary of the  
9 State and any office, board, bureau, or commission within or  
10 created by the Judicial Branch of State Government; and any  
11 independent State authority, commission, instrumentality, or  
12 agency.

13

14 15. (New section) a. There is established the New Jersey Local  
15 Public Finance Internet Website Development Program.

16 b. The program shall be under the jurisdiction of the  
17 Department of the Treasury, and shall be administered by the State  
18 Treasurer, the Chief Technology Officer, and any clerical,  
19 technical, and other professional staff or assistants as may be  
20 designated by the State Treasurer from among the personnel  
21 appointed and employed by the department.

22 c. The purpose of the program shall be to provide advice and  
23 technical assistance to units of local government that elect to design  
24 and develop, maintain and operate a single, searchable local public  
25 finance Internet website that has the capacity to display and retain  
26 data and information concerning the unit of local government’s (1)  
27 annual expenditures, including, bond debt services and interest,  
28 salaries and wages paid to employees, contractual service purchases  
29 including amounts paid to vendors, commodity purchases including  
30 amounts paid to vendors, capital outlays and improvements  
31 including amounts paid to vendors, and aid paid to subunits of the  
32 entity; (2) annual revenues, including, revenue derived from the  
33 receipts and deposits from any State agency, taxes including  
34 compulsory tolls or fees imposed by the public entity for the  
35 purpose of financing services, the amounts received as  
36 compensation for the use of property owned or used by the public  
37 entity, and gifts, donations and federal grants and other sources of  
38 revenue not classified elsewhere; (3) total bonded indebtedness,  
39 including the amount of the original obligation stated in terms of  
40 principal and interest, the terms of the obligation and the source of  
41 funding for the repayment thereof, the amounts of principal and  
42 interest previously paid to reduce the obligation and the remaining  
43 balance of the obligation, the data and information related to  
44 refinancing of the obligation, if such refinancing occurred, the  
45 statutory or constitutional authority to issue such bonds, the name  
46 of the firms or individuals serving as bond counsel, and the name of  
47 the banks assisting in the sale of bonds; and (4) outstanding

1 liabilities for pension and post-retirement medical benefits; and has  
2 the capacity to display and retain public notices, agendas,  
3 schedules, minutes, and other electronic documents required to be  
4 made available in accordance with P.L.1963, c.73 (C.47:1A-1 et  
5 seq.).

6 d. To effectuate the purposes of the program, the State  
7 Treasurer shall:

8 make and publish guidelines that may be used by local units of  
9 government to identify best practices in the design of a single,  
10 searchable local public finance Internet website;

11 procure and make available to local units of government a  
12 template and any prewritten or custom computer software that the  
13 State Treasurer determines to be necessary and appropriate to  
14 develop a single, searchable local public finance Internet website;  
15 and

16 direct the Chief Technology Officer to provide information  
17 technology support and services that may be determined by the  
18 Chief Technology Officer to be necessary and appropriate for a  
19 local unit of government to maintain and operate a single,  
20 searchable local public finance Internet website following its initial  
21 design and development.

22 e. The State Treasurer shall make an annual report regarding  
23 the implementation and administration of the program.

24 The report shall identify any guidelines that were made and  
25 published by the State Treasurer during the year immediately  
26 preceding the year in which the report is required to be made.

27 The report shall identify any templates and any prewritten or  
28 custom computer software that the State Treasurer determined to be  
29 necessary and appropriate to develop a single, searchable local  
30 public finance Internet website during the year immediately  
31 preceding the year in which the report is required to be made.

32 The report shall identify the information technology support and  
33 services provided by the Chief Technology Officer and any other  
34 clerical, technical, and other professional staff or assistants to each  
35 unit of local government that maintains and operates a single,  
36 searchable local public finance Internet website during the year  
37 immediately preceding the year in which the report is required to be  
38 made.

39 The report shall identify each local unit of government that used  
40 the guidelines, templates and software, or the information  
41 technology support and services made available through the  
42 program to design and develop, maintain and operate a single,  
43 searchable local public finance Internet website during the year  
44 immediately preceding the year in which the report is required to be  
45 made.

46 The report shall include any findings or recommendations that  
47 may be made by the State to improve the effectiveness of the

1 program during the year immediately preceding the year in which  
2 the report is required to be made.

3 The State Treasurer shall file the report required to be made in  
4 accordance with this section with the Governor and the Legislature,  
5 in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), on  
6 or before October 1, 2013 and on or before October 1 each year  
7 thereafter.

8 f. Notwithstanding the provisions of the "Administrative  
9 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
10 contrary, the State Treasurer may adopt immediately upon filing  
11 with the Office of Administrative Law such rules and regulations as  
12 the State Treasurer determines to be necessary and appropriate to  
13 effectuate the purposes of the program established in accordance  
14 with this section, which rules and regulations shall be effective for a  
15 period not to exceed 360 days following the effective date of  
16 P.L. , c. (pending before the Legislature as this bill) and may  
17 thereafter be amended, adopted, or readopted by the State Treasurer  
18 in accordance with P.L.1968, c.410 (C.52:14B-1 et seq.).

19 g. As used in this section:

20 "Chief Technology Officer" means the person appointed by and  
21 serving at the pleasure of the Governor who is responsible for the  
22 day-to-day operations of the Office of Information Technology in,  
23 but not of, the Department of the Treasury; and

24 "Local unit of government" includes a county, municipality,  
25 local authority, school board, or other local instrumentality of the  
26 State and any public agency or agency as defined by section 1 of  
27 P.L.1995, c.23 (C.47:1A-1.1).

28

29 16. (New section) There is appropriated from the General Fund  
30 to the Department of the Treasury such sums as may be necessary,  
31 but not to exceed \$100,000, as shall be determined by the Director  
32 of the Division of Budget and Accounting in the Department of the  
33 Treasury, to effectuate the purposes of the program established in  
34 accordance with section 15 of P.L. , c. (C. ) (pending before  
35 the Legislature as this bill).

36

37 17. This bill shall take effect 120 days following enactment.

38

39

40

#### STATEMENT

41

42 This bill revises the open public records act (OPRA). The bill  
43 formally names OPRA as the "Martin O'Shea Open Public Records  
44 Act" in honor of Martin O'Shea, a tireless advocate for broad public  
45 access to government records. The bill expands and clarifies various  
46 definitions and makes changes to the duties of record custodians  
47 and the Government Records Council. It also revises the

1 composition of the Government Records Council and changes the  
2 council from being in the Department of Community Affairs to  
3 being in, but not of, the Department of Community Affairs. It  
4 modifies the mediation process making the Office of Dispute  
5 Settlement in the Office of the Public Defender available to mediate  
6 disputes, changes the penalty provisions, and modifies access to the  
7 courts. It specifies that the fines imposed pursuant to OPRA cannot  
8 be paid out of public funds. The bill changes the public  
9 membership of the Government Records Council to six public  
10 members and the president of the Municipal Clerks Association of  
11 New Jersey.

12 In addition, the bill requires the State to create a public finance  
13 website and establish the New Jersey Local Public Finance Internet  
14 Website Development Program to provide advice and technical  
15 assistance to units of local government that elect to create a  
16 searchable local public finance Internet website.