

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

AMENDMENTS

to

[First Reprint]

**SENATE, No. 2930**

(Sponsored by Senators SARLO and BUCCO)

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REPLACE SECTION 1 TO READ:

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

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

government records shall be readily accessible for inspection, copying, 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, or information that might reasonably lead to disclosure of a person's personal information, when disclosure thereof would violate the citizen's reasonable expectation of privacy, or when the public agency has reason to believe that disclosure of such personal information may result in <sup>2</sup>[harassment, unwanted solicitation,]<sup>2</sup> identity theft <sup>2</sup>[, or opportunities for other criminal acts]<sup>2</sup>; 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. (cf: P.L.2001, c.404, s.1)

REPLACE SECTION 2 TO READ:

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

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

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

"Child protective investigator in the Division of Child Protection and Permanency" means an employee of the Division of Child Protection and Permanency in the Department of Children and Families whose primary duty is to investigate reports of child abuse and neglect, or any other employee of the Department of Children and

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Families whose duties include investigation, response to, or review of allegations of child abuse and neglect.

“Commercial purpose” means the direct or indirect use of any part of a government record for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee. “Commercial purpose” shall not include <sup>2</sup>[using, distributing, gathering, procuring, transmitting, compiling, editing, disseminating, or publishing of information or data] the use of a government record for any purpose<sup>2</sup> by <sup>2</sup>:

(1)<sup>2</sup> the news media, or any parent company, subsidiary, or affiliate of any news media, as defined by section 2 of P.L.1977, c.253 (C.2A:84A-21a)<sup>2</sup>[, or by] ;

(2)<sup>2</sup> any news, journalistic, educational, scientific, scholarly, or governmental organization <sup>2</sup>[, or by] ;

(3)<sup>2</sup> any person authorized to act on behalf of a candidate committee, joint candidate committee, political committee, continuing political committee, political party committee, or legislative leadership committee, as defined by section 3 of P.L.1973, c.83 (C.19:44A-3), registered with the New Jersey Election Law Enforcement Commission <sup>2</sup>;

(4) any labor organization as defined by section 2 of P.L.2020, c.65 (C.34:11-56.73);

(5) any contract signatory to a collective bargaining agreement seeking information material to the enforcement of State or federal statutes or regulations regarding, but not limited to, wage and hour protections, workplace safety, or public procurement and public bidding, including, but not limited to, requests for certified payrolls or information about all bids submitted in response to a public procurement process subsequent to the deadline for the submission of all bids for that solicitation;

(6) any employee, agent, contractor, or affiliates of any entities in paragraphs (1) through (5) of this section; or

(7) any non-profit entity, including organizations or individuals qualified for exemption from federal taxation pursuant to section 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C.s.501(c)(3) and section 501(c)(4) of the federal Internal Revenue Code, 26 U.S.C.s.501(c)(4) ) when the entity does not sell, resell, solicit, rent, or lease a government record to an unaffiliated third party in a way in which the entity expects a fee<sup>2</sup>.

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

"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.

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"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.

<sup>2</sup>["Data broker" means a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship.]<sup>2</sup>

"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] <sup>2</sup>or<sup>2</sup> deliberative <sup>2</sup>[, or draft]<sup>2</sup> material <sup>2</sup>[, including notes generated and used to prepare final reports, documents, or records]<sup>2</sup>.

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 <sup>2</sup>[:

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

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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 a legal next of kin, a legal representative, or an attending physician of the deceased person, for use as a court of this State permits, or<sup>2</sup> 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];

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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, applications, and code 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, tablets, telephones, <sup>2</sup>[and] electronic computing<sup>2</sup> devices, <sup>2</sup>[or]<sup>2</sup> software <sup>2</sup>[,]<sup>2</sup> applications, and networks [which, if disclosed, would jeopardize computer security] <sup>2</sup>or devices which operate on or as a part of a computer network or related technologies within the same, which includes system logs, event logs, transaction logs, tracing logs, or any logs which are reasonably construed to be similar to the same and generated by the devices or servers covered within this paragraph, which, if disclosed, could jeopardize computer security<sup>2</sup> , or related technologies;

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;

security alarm system activity and access reports, including video footage, for any public building, facility, or grounds unless the request identifies a specific incident that occurred, <sup>2</sup>or<sup>2</sup> a specific date <sup>2</sup>[,]<sup>2</sup> and <sup>2</sup>[a]<sup>2</sup> limited time period at a particular public building, facility, or grounds <sup>2</sup>, and is deemed not to compromise the integrity of the security system by revealing capabilities and vulnerabilities of the system<sup>2</sup> ;

information which, if disclosed, would give an advantage to competitors or bidders, including detailed or itemized cost estimates prior to bid opening;

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;

<sup>2</sup>[information related to strategies or negotiating positions that would unfairly prejudice or impair contract negotiations:]<sup>2</sup>

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;

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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] debit card number, bank account information, month and day of birth, <sup>2</sup>any personal<sup>2</sup> email address <sup>2</sup>required by a public agency for government <sup>2</sup>applications<sup>2</sup>, services, or programs,<sup>2</sup> any 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, law enforcement officer, child protective investigator in the Division of Child Protection and Permanency, or prosecutor, 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); except with respect to the disclosure of information included in records and documents maintained by the Department of the Treasury in connection with the State's business registry programs; 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;

that portion of any document that discloses the personal identifying information of any person provided to a public agency for the sole purpose of receiving official notifications;

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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 their personal identifying information; [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), and their personal identifying information;

that portion of any document that requires and would disclose personal identifying information of persons under the age of 18 years, including names, except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver information to any insurer or insurance support organization, or a self-insured entity, or its agents, employees, or contractors, for use in connection with claims investigation activities, antifraud activities, rating, or underwriting, and except with respect to the disclosure of voter information on voter and election records pursuant to section 11 of P.L. , c. (C. ) (pending before the Legislature as this bill);

personal identifying information disclosed on domestic animal permits, licenses, and registration;

structured reference data that helps to sort and identify attributes of the information it describes, referred to as metadata, or any extrapolation or compilation thereof, <sup>2</sup>which includes the SMTP header properties of emails,<sup>2</sup> except that portion that identifies authorship, identity of editor, and time of change;

New Jersey State Firemen's Association financial relief applications;

owner and maintenance manuals;

data classified under the "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191;

<sup>2</sup>[logs of telephone calls, emails, or texts;]<sup>2</sup> and

<sup>2</sup>[electronic or paper calendars for individuals]

any indecent or graphic images of a person's intimate parts, as defined in section 13 of P.L. , c. (C. )(pending before the Legislature as this bill), that are captured in a photograph or video recording without the prior written consent of the subject of the photograph or video footage, as defined in section 13 of P.L. , c. (C. )(pending before the Legislature as this bill)<sup>2</sup>.

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

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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.

<sup>2</sup>Nothing in this section shall be construed to limit the requirements to provide and make publicly available the information pursuant to section 5 of P.L.1963, c.150 (C.34:11-56.29) and section 5 of P.L.1999, c.238 (C.34:11-56.52).<sup>2</sup>

"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.

"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.

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

"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

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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] telephone number, fax number, driver's license number, email address, or social media address of any applicant, licensee, registrant or permit holder.

<sup>2</sup>["Personal identifying information" means information that may be used, alone or in conjunction with any other information, to identify a specific individual. For purposes of this act, personal identifying information shall include, but shall not be limited to, the following data elements: name, social security number, credit card number, debit card number, bank account information, month and day of birth, email address, any telephone number, the street address portion of any person's primary or secondary home address, or driver license number of any person.]<sup>2</sup>

"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.

"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.

"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.

"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

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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.

<sup>2</sup>As used in this section, “personal identifying information” means information that may be used, alone or in conjunction with any other information, to identify a specific individual. Personal identifying information shall include, but shall not be limited to, the following data elements: name, social security number, credit card number, debit card number, bank account information, month and day of birth, any personal email address required by a public agency for government applications, services, or programs, personal telephone number, the street address portion of any person’s primary or secondary home address, or driver license number of any person. Personal identifying information shall not include any street address, mailing address, email address, or telephone number of a public agency. Personal identifying information shall not include the email address of a governmental affairs agent.<sup>2</sup>

(cf: P.L.2023, c.113, s.1)

REPLACE SECTION 3 TO READ:

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

6. a. The custodian of a government record shall permit the record to be inspected, examined, and copied by any person during regular business hours; or in the case of a municipality having a population of 5,000 or fewer according to the most recent federal decennial census, a board of education having a total district enrollment of 500 or fewer, or a public authority having less than \$10 million in assets, during not less than six regular business hours over not less than three business days per week or the entity's regularly-scheduled business hours, whichever is less; unless a government record is exempt from public access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order. Prior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, [unlisted] <sup>2</sup>personal<sup>2</sup> 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, law enforcement officer, or child protective investigator in the Division of Child Protection and Permanency, 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

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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. Prior to allowing access to any government record, the custodian shall redact from that record any information which discloses, or which might reasonably lead to disclosure of the <sup>2</sup>personal<sup>2</sup> telephone number, <sup>2</sup>any personal<sup>2</sup> email address <sup>2</sup>required by a public agency for government applications, services, or programs<sup>2</sup>, or any medical, financial, or personal information of a member of the public when the disclosure thereof would violate the citizen's reasonable expectation of privacy or when the public agency has a reason to believe that disclosure of such personal information may result in <sup>2</sup>[harassment, unwanted solicitation,]<sup>2</sup> identity theft <sup>2</sup>[, or opportunities for other criminal acts]<sup>2</sup>. 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. No fee shall be charged if the request is completed by directing the requestor

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to the requested government record that is available on the public agency's website or the website of another public agency.

(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], and such special service charge shall be <sup>2</sup>[presumed to be]<sup>2</sup> reasonable. <sup>2</sup>The custodian shall provide the requestor with an explanation for or an itemized list of the fees or charges.<sup>2</sup> The requestor shall have the opportunity to review and object to [the] any fee or charge prior to it being incurred. <sup>2</sup>There shall be a rebuttable presumption that the fees or charges presented by the custodian are reasonable. If the requestor objects to the fees or charges, the burden of proof shall be on the requestor to demonstrate that the fees or charges are unreasonable.<sup>2</sup>

d. A custodian shall permit access to a government record and provide a copy thereof in the medium or format requested if the public agency maintains the record in that medium or format. If the public agency does not maintain the record in the medium or format requested, the custodian [shall] <sup>2</sup>[, at the custodian's discretion, may] shall<sup>2</sup> either convert the record to the medium or format requested <sup>2</sup>[or provide a copy in some other meaningful medium or format.]<sup>2</sup> [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.] <sup>2</sup>, if the medium or format is available to the public agency and does not require<sup>2</sup> a substantial amount of manipulation or programming of information technology <sup>2</sup>, or the services of a third party vendor. If the public agency converts the record to the medium or format requested<sup>2</sup>, the agency may charge, in addition to the actual cost of duplication, a special <sup>2</sup>[charge] service fee<sup>2</sup> that shall be

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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. If the public agency does not maintain the record in the electronic medium or format requested, <sup>2</sup>and the medium or format is not available to the public agency without a substantial amount of manipulation or programming of information technology,<sup>2</sup> the custodian shall be under no obligation to convert the record to the electronic medium or format requested but shall, at a minimum, provide a copy in the <sup>2</sup>electronic<sup>2</sup> format maintained by the public agency.

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. Immediate access to government records shall not be required to be granted for documents over <sup>2</sup>[12] <sup>24</sup> months old.

Government records shall be made available to the public on a publicly available website to the extent feasible. A public agency may enter into shared services agreements for providing certain government records electronically.

If the government record <sup>2</sup>in a complete and unabridged form<sup>2</sup> is readily available on a public agency's website, the custodian may require the requestor to obtain the record from the website, which shall contain a search bar feature on its home page. The custodian shall provide the requestor with directions to assist in finding the record on the website, including providing the website URL address and the location on the website of the search bar, menu button, tab, link, landing page or equivalent, which contains the requested record. <sup>1</sup>[The request shall be deemed fulfilled upon notification by the custodian to the requestor of the availability and location on the website of the requested information.] If the requestor does not respond to the custodian within seven days of the custodian providing information about a record on the public agency's website, the request shall be deemed fulfilled <sup>2</sup>, unless the version of the government record on the public agency's website fails to contain non-protected information contained in the original record, in which case the custodian shall produce the original version of the record, subject to any redactions required by law<sup>2</sup>. If, after the custodian has provided instructions on how to find a record on a public agency's website, the requestor is unable to find the record upon making a good faith effort to locate the record on the website, the requestor shall notify the custodian within seven days of the custodian providing the information. Upon receiving such a request for assistance from a requestor, the custodian shall make a reasonable attempt to assist the requestor in finding the record on the website within seven days of the requestor notifying the custodian.<sup>1</sup> <sup>2</sup>If the requestor is still unable to

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locate the record and requests a physical copy, the custodian shall provide the requestor with a physical copy of the record, for a fee not exceeding two times the cost of the production of the document. The custodian shall provide the requestor with the physical copy of the record within seven days of the request for a physical copy.<sup>2</sup>

f. The custodian of a public agency shall adopt <sup>2</sup>[a] the<sup>2</sup> form <sup>2</sup>adopted by the Government Records Council pursuant to subsection b. of section 8 of P.L.2001, c.404 (C.47:1A-7),<sup>2</sup> 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, email address and [phone] telephone number of the requestor and a brief description of the government record sought. A request shall be submitted by a requestor in the form adopted by the custodian and the custodian may deny a request that is <sup>2</sup>[not submitted in the form adopted by the custodian] incomplete. A completed form adopted by the <sup>2</sup>[Government Records Council or by the]<sup>2</sup> custodian, a letter, or an email from a requestor including all of the information required on the adopted form shall suffice in place of a completed form as a valid government record request. If the letter or email from a requestor includes substantially more information than required on the adopted form and requires more than reasonable effort to clarify the information, the custodian may deny the request. If a letter or an email from a requestor does not include all of the information required on the adopted form, the custodian may deny the record request<sup>2</sup>. A request may be submitted anonymously provided, however, that anonymous requestors shall not be permitted to institute proceedings pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6).

The form also shall include space for a requestor to certify whether the government record will be used by that requestor or another person for a commercial purpose, and the requestor shall be required to provide this information for the request to be fulfilled.

<sup>2</sup>[All requests by a data broker or a requestor who is making a request on behalf of and for the use of a data broker shall be denied. The form also shall include space for a requestor to certify that the requestor is not a data broker or is not making the request on behalf of or for the use of a data broker, and the requestor shall be required to provide this information for the request to be fulfilled.

Data obtained through a records request shall not be sold.]<sup>2</sup>

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

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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] a request whenever the custodian anticipates that the information thus requested will cost in excess of \$5 to reproduce.

Custodians <sup>2</sup>who have adopted electronic government record request forms<sup>2</sup> shall provide directions on how to submit requests for government records, including any required forms, on the public agency's website.

Custodians shall be permitted to provide an electronic response to any electronic records request if government records are available electronically.

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 public agency may make available to the public on its website an online form, portal, or software for transmitting requests electronically. <sup>2</sup>The form established by the Government Records Council, pursuant to section 5 of (P.L. \_\_, c. \_\_) (pending before the Legislature as this bill), may be submitted electronically or by fax. Each submission of a government record request form or an email record request shall be made to the custodian of not more than one public agency. Submission of repeated requests to multiple custodians in the same public agency for the same record, while an identical or substantially similar request is pending, shall permit the custodian to deny the request and the requestor shall be subject to section 8 of P.L. \_\_, c. \_\_ (C. \_\_) (pending before the Legislature as this bill).<sup>2</sup>

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

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informing the requestor of the potential disruption to agency operations and attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.

A party to a legal proceeding may not request a government record if the record sought is the subject of a court order [in the legal proceeding or if compliance would otherwise be unreasonable, oppressive, or duplicative of already pending discovery request made in that legal proceeding] , including a pending discovery request, and a custodian shall not be required to complete such a request. The requestor shall be required to certify whether the government record is being sought in connection with a legal proceeding and identify the proceeding for the request to be fulfilled. For purposes of this provision, a party to a legal proceeding shall include a party [in interest] subject to order, any attorney representing that party, and any person acting as an agent for or on behalf of that party. Nothing in this paragraph shall bar a request for a government record filed by a labor organization as defined by section 5 of P.L.2020, c.65 (C.34:11-56.73), or by a contract signatory to a collective bargaining agreement seeking information material to the enforcement of State or federal statutes or regulations regarding but not limited to wage and hour protections, workplace safety, or public procurement and public bidding, including, but not limited to, requests for certified payrolls or information about all bids submitted in response to a public procurement process subsequent to the deadline for the submission of all bids for that solicitation, when the request by the labor organization is not sought in connection with or in furtherance of discovery requests in a court proceeding.

A custodian shall not be required to complete a request including for, but not limited to, mail, email, text messages, correspondence, or social media postings and messages, if the request does not identify a specific job title and accounts to be searched and is not confined to a [discrete and limited] reasonable time period [and] , or a specific job title or individuals and accounts to be searched regarding a specific subject matter, or if the custodian determines that the request would require research and the collection of information from the contents of government records and the creation of new government records setting forth that research and information. It shall be sufficient for a requestor to identify specific individuals by the individual's job title and position.

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. The request shall not be considered submitted until it is received by the custodian of records.

i. (1) Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government

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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, or 14 business days if the request is for a commercial purpose or if the records have to be reviewed by the public agency for the purpose of the agency's compliance with P.L.2020, c.125 (C.47:1B-1 et seq.), but the custodian shall notify the requestor of the additional response time within seven business days, provided that the record is currently available and not in storage or archived. The response time periods of seven or 14 business days, as established in this subsection, shall be an additional seven business days longer if the public agency is a fire district which employs one or fewer full-time employees who serve as custodians. <sup>2</sup>If a commercial requestor would like to receive the record within seven business days, as established in subsection i. of P.L. \_\_\_\_\_, c. (pending before the Legislature as this bill), the custodian shall provide the requestor with a copy of the record and may charge <sup>2a</sup>a special service fee<sup>2</sup> not exceeding two times the cost of the production of the record.

In the event a records custodian is unable to fulfill a records request due to unforeseen circumstances or circumstances that otherwise reasonably necessitate additional time to fulfill the records request, the custodian shall be entitled to a reasonable extension of any response deadline and shall notify the requestor of the time extension within seven business days after receiving the request.

In the event a custodian fails to respond within seven business days or 14 business days, as appropriate, after receiving a request, the failure to respond shall be deemed a denial of the request, unless the requestor has elected not to accurately identify themselves or to provide [a name,] an accurate address, email address, or telephone number [, or other means of contacting the requestor]. If the requestor has elected not to accurately identify themselves or to provide [a name,] an accurate address, email address, or telephone number, [or other means of contacting the requestor,] the custodian shall not be required to respond until the requestor [reappears before] contacts 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 or 14 business days, as appropriate, after the custodian receives the request. The requestor shall be advised by the custodian when the record can be made available, which shall be no more than 21 business days from the date the requestor is so advised. If the record is not made available by that time, access shall be deemed denied.

A public agency shall not be considered to be in possession of a public record that is created <sup>2</sup>[or] <sup>2</sup> maintained <sup>2</sup>, or received<sup>2</sup> by another public agency and made available to the public agency either by remote access to a computer network or by distribution as a courtesy copy <sup>2</sup>, unless the agency that <sup>2</sup>created [or] <sup>2</sup> maintained <sup>2</sup>, or

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received<sup>2</sup> the record resides within the judicial branch of the State Government<sup>2</sup> . A records custodian of a public agency that receives a request for such a record, shall not be obligated to provide the record to the requestor <sup>2</sup>[and] . In the event the custodian does not provide the record, the custodian<sup>2</sup> shall direct the requestor within seven business days to the public agency that, to the best of their knowledge, created <sup>2</sup>[or] ,<sup>2</sup> maintains <sup>2</sup>, or received<sup>2</sup> the requested record, at which time the request shall be considered completed.

The custodian shall not be required to complete an identical request for access to a government record from the same requestor if the information has not changed.

A requestor shall have 14 business days to retrieve the government records following notice from the custodian that the request has been completed and the records are available.

(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 14 business days, as appropriate, 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]~~ include information on the public agency's website and public records request form regarding a requestor's 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, which shall include the website address and toll-free information line phone number of the Government Records Council.

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.

(cf: P.L.2023, c.113, s.2)

REPLACE SECTION 4 TO READ:

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

7. A person who is denied access to a government record by the custodian of the record, at the option of the requestor who is accurately identified by name, may, within 45 days of the date of denial:

institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage

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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] Government Records Council shall order that access be allowed. A requestor who prevails in any proceeding [shall] may be entitled to a reasonable attorney's fee. ~~<sup>2</sup>[In determining whether to award attorney's fees, the court or the Government Records Council may consider whether the public agency is found to have knowingly and willfully violated P.L.1963, c.73 (C.47:1A-1 et seq.), or to have unreasonably denied access.]~~ If the public agency has been determined to have acted in bad faith, then the court or Government Records Council shall award attorney's fees.<sup>2</sup>

If the records sought are produced by the public agency within seven business days of service of an action in Superior Court or a complaint before the Government Records Council, <sup>1</sup>upon notification to the Superior Court or the Government Records Council,<sup>1</sup> the matter shall be dismissed without prejudice and the requestor may be entitled to a reasonable attorney's fee if the custodian knew or should have known that the denial of access violated P.L.1963, c.73 (C.47:1A-1 et seq.).

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

REPLACE SECTION 5 TO READ:

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

8. a. (1) 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] who shall serve as Chair, and eight public members appointed as follows: four appointed by the Governor with the advice and consent of the Senate <sup>1</sup>, no more than two of whom shall be members of the same political party<sup>1</sup> ; two directly appointed by the Governor from persons recommended by the President of the Senate <sup>1</sup>, no more than one of whom shall be a member of the same

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political party<sup>1</sup> ; and two directly appointed by the Governor from persons recommended by the Speaker of the General Assembly <sup>1</sup>, no more than one of whom shall be a member of the same political party<sup>1</sup>. Each public member shall serve for a term of five years and until a successor is appointed and qualified.

(2) Notwithstanding <sup>1</sup>[any provision of subsection a. (1) of this section] the provisions of paragraph (1) of this subsection<sup>1</sup> , or any other law, rule, or regulation to the contrary, within 90 days following the enactment date of P.L. , c. (pending before the Legislature as this bill), the Governor shall directly appoint eight public members to the council, each of whom shall serve for a term of three years and until a successor is appointed and qualified, as follows: two from persons recommended by the President of the Senate, <sup>1</sup>no more than one of whom shall be a member of the same political party;<sup>1</sup> two from persons recommended by the Speaker of the General Assembly, <sup>1</sup>no more than one of whom shall be a member of the same political party;<sup>1</sup> and four appointed at the sole discretion of the Governor <sup>1</sup>, no more than two of whom shall be members of the same political party<sup>1</sup>. The terms of office of the members of the council serving on the date of enactment of P.L. , c(pending before the Legislature as this bill), shall expire upon the Governor's direct appointment of the new members pursuant to this subsection.

(3) 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] receive a salary equivalent to that provided by law for a public member of the Local Finance Board of the Division of Local Government Services in the Department of Community Affairs. 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.] by appointment by the Governor, according to the provisions of subsection a. of this section, and for the remainder of the unexpired term. 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;

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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;

<sup>2</sup>promulgate rules and regulations to establish a uniform government record request form for all government record requests permitted for use by any public agency, that includes the required form components as set forth in subsection f. of section 6 of P.L.2001, c.404 (C.47:1A-5). The form shall include certification that a party to a legal proceeding may not request a government record if the record sought is the subject of a court order or a pending discovery request. The council shall make the form available electronically and in print and shall make the form available to incarcerated individuals;<sup>2</sup> 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 video conferencing, teleconferencing, faxing of documents, e-mail and similar forms of modern communication; conduct virtual meetings and hearings, when practical and at the discretion of the council; and when in-person meetings are necessary, send representatives to meet with the parties at a location convenient to the parties.

The council shall periodically review the information and format of its website and make such adjustments as shall be deemed necessary to ensure that the information is clearly presented, accessible, and useful for the general public. The council shall conduct such an initial review within six months following the effective date of P.L. , c. (pending before the Legislature as this bill).

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.

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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 public agency that employs the records 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. The council may assign staff attorneys to conduct the investigation, present findings, and make recommendations to the council. 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 public agency that employs the records custodian against whom the complaint was filed. Otherwise, the council shall notify the public agency that employs the records custodian against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein.

The public agency that employs the records custodian shall have the opportunity to present the board with any statement or information concerning the complaint which the [custodian] agency wishes. If the council is able to make a determination as to a record's accessibility based upon the complaint and the [custodian's] agency's response thereto, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the public agency that employs 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] agency'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

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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] is found to have 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) on the public agency that employs the custodian.

A decision of the council may be appealed to the Appellate Division of the Superior Court. Such appeals shall be filed within 2[30] 45<sup>2</sup> days from the date the council renders a decision. 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.

Beginning 18 months following the effective date of P.L. \_\_\_\_\_, c. (pending before the Legislature as this bill), the council shall adjudicate all complaints that come before it within 90 days of the complaint's filing, with the ability to extend for 2[30] 45<sup>2</sup> days for good cause, exclusive of any time period during which the parties are engaged in a mediation process pursuant to this section. The council shall make such organizational adjustments and modify its procedures as it deems necessary to ensure that complaints are adjudicated in such a timeframe.

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.] 2A requestor who prevails in any proceeding may be entitled to a reasonable attorney's fee as provided for in section 4 of P.L. \_\_\_\_\_, c. (pending before the Legislature as this bill.)<sup>2</sup>

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

h. The Superior Court shall provide the Government Records Council a list of all actions which have been brought before the courts filed pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the open public records act, which have been settled by the parties thereto. Such a list shall provide the docket number and names of the parties to the action. The council shall compile a database comprised of the data provided by the Superior Court.

The Administrative Office of the Courts, on behalf of the Superior Court of New Jersey, shall provide the Government Records Council a report at the end of each court year of all cases filed pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.). The report shall be grouped by

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agency and county and shall include a comprehensive list of all cases filed with a summary judgement regarding P.L.1963, c.73 (C.47:1A-1 et seq.), statewide, itemized by the following factors:

- a. Case caption
- b. County of venue
- c. Docket number
- d. Counsel of records
- e. Case disposition
- f. Fees paid or waived

The Government Records Council shall provide the Legislature a report biannually of all government record requests filed pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.). The report shall include a comprehensive list of all requests, itemized by the following factors:

- a. Name of Requestor
- b. Name of Agency to which request was made
- c. Date of Request
- d. Record Request Information provided
- e. Cost Deposit made by Requestor
- f. Disposition date
- g. Summary of Documents Provided
- h. Cost of Completed Request to Agency

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

REPLACE SECTION 6 TO READ:

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

12. a. [A] If a public official, officer, employee, or custodian [who] is found to have knowingly and willfully [violates] 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 public agency that employs the custodian, officer, employee, or official 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] The penalties authorized pursuant to this subsection may be imposed by the courts or by the Government Records Council.

b. A requestor <sup>2</sup>[who is found to have sold the data obtained by a records request,]<sup>2</sup> who is found to have intentionally failed to certify that a records request is for a commercial purpose, <sup>2</sup>[who is a data broker, or who is making the request on behalf of and for the use of a data broker, and is found to have intentionally certified that the requestor is not a data broker or is not making the request on behalf of and for the use of a data broker,]<sup>2</sup> shall be subject to a civil penalty of \$1,000 for the first offense, \$2,500 for the second offense, and \$5,000 for each subsequent offense. The penalties may be imposed by the courts.

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

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

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

REPLACE SECTION 8 TO READ:

8. (New section) a. Notwithstanding any other law or rule or regulation to the contrary, whenever there is filed a verified complaint to the Superior Court of the county in which the request for access to government records was made under P.L.1963, c.73 (C.47:1A-1 et seq.) alleging that a requestor has sought records ~~2[thereunder for the purpose to harass a public agency, or to]~~ with the intent to<sup>2</sup> substantially ~~2[interrupt]~~ impair the performance of<sup>2</sup> government function, the court may issue a protective order limiting the number and scope of requests the requestor may make or order such other relief as it deems appropriate, including referral of the matter to mediation ~~2or a waiver of the required response time~~<sup>2</sup>. The court may issue the protective order if it finds ~~2by clear and convincing evidence~~<sup>2</sup> that the requestor has sought records under P.L.1963, c.73 (C.47:1A-1 et seq.) ~~2[for the purpose of harassing the public agency, or to]~~ with the intent to<sup>2</sup> substantially ~~2[interrupt]~~ impair the performance of<sup>2</sup> government function ~~2[, as the term harass is defined in N.J.S.2C:33-4]~~<sup>2</sup>. The complaint shall be accompanied by a declaration of facts by the public agency withholding the records demonstrating that it has complied with P.L.1963, c.73 (C.47:1A-1 et seq.) and has made a good faith effort to reach an informal resolution of the issues relating to the records requests.

The requestor shall have notice and an opportunity to answer the allegations set forth in the petition submitted by the public agency.

The public agency shall have the burden of proof by clear and convincing evidence.

The court's consideration of a public agency's complaint for relief shall proceed in a summary or expedited manner.

b. The order specified in subsection a. of this section may limit, or, in appropriate circumstances, eliminate the public agency's duty to respond to government records requests from the requestor in the future. ~~2If the court limits or eliminates the duty, the court shall limit and eliminate the duty for all public agencies in the same manner for that requestor.~~<sup>2</sup>

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<sup>2</sup>c. Requests for government records filed by a labor organization as defined by P.L.2020, c.65 (C.34:11-56.73), or by a contract signatory to a collective bargaining agreement seeking information material to the enforcement of State or federal statutes or regulations regarding but not limited to wage and hour protections, workplace safety, or public procurement and public bidding, including but not limited to requests for certified payrolls or information about all bids submitted in response to a public procurement process subsequent to the deadline for the submission of all bids for that solicitation, where the request by the labor organization is not sought in connection to or in furtherance of discovery requests in a court proceeding, shall not be considered to be intended interrupt government functions, and shall not form the basis for the filing of complaint under this section.<sup>2</sup>

OMIT SECTIONS 9 AND 10 IN THEIR ENTIRETY

REPLACE SECTION 12 TO READ:

<sup>2</sup>[12.] 10.<sup>2</sup> (New section) a. <sup>2</sup>[The provisions of section 1 of P.L.1963, c.73 (C.47:1A-1), section 1 of P.L.1995, c.23 (C.47:1A-1.1), sections 6, 7, and 8 of P.L.2001, c.404 (C.47:1A-5 through 47:1A-7), and section 2 of P.L.2021, c.371 (C.47:1B-2), as amended by sections 1 through 5 and section 7 of P.L. , c. (pending before the Legislature as this bill), shall apply retroactively to all complaints and appeals pending before the Government Records Council, the Superior Court or the Supreme Court of New Jersey filed prior to the effective date of P.L. , c. (pending before the Legislature as this bill), provided, however, that nothing in this section shall be construed as to retroactively reduce the statute of limitations governing any complaint or appeal pending before the Government Records Council, the Superior Court or the Supreme Court of New Jersey.

b.]<sup>2</sup> All complaints and appeals pending before the Government Records Council or the Superior Court filed prior to the effective date of P.L. , c. (pending before the Legislature as this bill), either anonymously or using a fictitious name or identity, may be dismissed with prejudice upon a motion by the public agency, unless the complainant files an amendment to their complaint that accurately identifies their name and mailing address within 90 days of the effective date of P.L. , c. (pending before the Legislature as this bill).

<sup>2</sup>[c.] b.<sup>2</sup> The parties to any complaint or appeal pending before the Government Records Council, the Superior Court or the Supreme Court of New Jersey filed prior to the effective date of P.L. , c. (pending before the Legislature as this bill), shall be permitted to file an amendment to their respective complaints and answers

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within 90 days of the effective date of P.L. , c. (pending before the Legislature as this bill).

INSERT NEW SECTION 11 TO READ:

<sup>2</sup>11. (New section) a. A person who has obtained a photograph or video recording pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), and who is not a subject of the photograph or video footage, shall not disclose any indecent or graphic images of the subject's intimate parts, captured by the photograph or recording, without the prior written consent of the subject of the photograph or video footage or written consent of the legal next of kin if the subject is deceased.

b. A person who knowingly violates the provisions of subsection a. of this section shall be guilty of a disorderly persons offense.

c. As used in this section:

"Disclose" means to sell, manufacture, give, provide, lend, mail, deliver, transfer, publish, post, distribute, circulate, disseminate, present, exhibit, advertise, offer, share, or make available through the Internet or by any other means, whether or not for pecuniary gain.

"Indecent or graphic" means images depicting exposed intimate parts in a manner that would be clearly visible to a reasonable person.

"Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock, or breast of a person.

"Subject of the photograph or video footage" means a person who appears in the photograph or video recording.<sup>2</sup>

REPLACE SECTION 13 TO READ:

<sup>2</sup>[13.] <sup>2</sup>12. a. There is hereby appropriated \$4,000,000 from the State General Fund to the Department of Community Affairs to provide grants to political subdivisions of the State for the purpose of making government records that are accessible under P.L.1963, c.73 (C.47:1A-1 et seq.) available electronically, including through the use of shared services agreements.

b. There is hereby appropriated \$4,000,000 from the State General Fund to the Department of Community Affairs for the Government Records Council.

<sup>2</sup>c. There is hereby appropriated \$2,000,000 from the State General Fund to the Department of Community Affairs for the Government Records Council to effectuate the purposes of section 5 of this act.<sup>2</sup>

REPLACE SECTION 14 TO READ:

<sup>2</sup>[14.] <sup>2</sup>13. This act shall take effect <sup>2</sup>[30] <sup>2</sup>90 days following the date of enactment <sup>2</sup>[, except as otherwise provided for in this act,

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and except that section 9 and section 11 shall take effect eight months following the date of enactment. The Attorney General, Department of Community Affairs, the Government Records Council, the Department of the Treasury, and the Department of State may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act]<sup>2</sup>.

RENUMBER SECTION 11 AS SECTION 10

REPLACE SYNOPSIS TO READ:

Makes various changes to process for access to government records; appropriates \$10 million.

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