



# **P.L. 2024, c. 16**

# **Open Public Records Act**

# **Modernization**

June 11, 2024

# Effective Date

- None of the changes take effect until September 3, 2024



# P.L. 2024, c. 16 Addresses



- Prevailing Attorney's Fees
- Commercial Records
- Privacy Issues
- Exemption Expansion
- Use of Public Agency's Website
- Special Service Charge
- Format of Government Records
- Relief for Abuses
- Immediate Access
- Use of Official Form
- Multiple/Similar Requests
- Disruption of Operations
- OPRA as Discovery
- Research
- Response Time & Extensions
- Possession of Records
- Denial of Access
- GRC Changes
- Violations of OPRA
- Daniel's Law
- Election Records

# Prevailing Attorney's Fees

- May be awarded for reasonable attorney's fees.
- However, prevailing attorney's fees shall be awarded if it is determined the public agency:
  - Unreasonably denied access.
  - Acted in bad faith.
  - Knowingly and willfully violated OPRA.
- If the records sought are produced within 7 business days of a complaint filed with the court or the GRC then the matter shall be dismissed without prejudice and the requestor may be entitled to reasonable attorney's fee if the custodian knew or should have known that the denial of access violated the law.
- [Sections of Bill](#): Section 3 (amends N.J.S.A. 47:1A-6), pg 20, lines 10-20

# Commercial Requests

- Defined as 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.
- Exempts the following from definition:
  - News
    - Journalistic, educational, scientific, scholarly, or government organizations.
    - Person authorized to act on behalf of candidate committee, etc.
    - Labor organization.
    - Labor organization part of a collective bargaining agreement for Prevailing Wage documentation, workplace safety or procurement & public bidding after submission of bid solicitation.
    - 501(c)3 or 501(c)4 entity when they do not sell, resell, solicit, rent, or lease a government record to an unaffiliated 3rd party.
- Must certify on OPRA request form if for commercial purposes.
  - Failure to certify subject to civil penalty of \$1,000 1st offense, \$2,500 2nd offense, & \$5,000 each subsequent offense.

# Exemptions From Disclosure - Privacy

- Portion of any document that discloses:
  - Debit card number.
  - Bank account information.
  - Month & day of birth.
  - Any personal email address required as part of government application, service, or programs.
  - Any telephone number.
  - Provides exemption for records & documents maintained by Dept. of Treasury in connection with State's business registry programs.
- 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 or those on special assistance list.
- Any portion of document that would disclose information for those under the age 18.
  - Exemption provided for driver information for MVC, Insurance or claims investigation activities, or voter information.
- Personal identifying information disclosed on domestic animal permits, licenses, & registration.
- [Sections of Bill](#): Section 1 (amends N.J.S.A. 47:1A-1.1), pg 7, lines 28-48, pg 8, line 1, 9-15, 19 -48

# Exemptions From Disclosure - Privacy

- Any indecent or graphic image of person's intimate parts that are captured in a photo or video recording without prior written consent of the subject of the photo or video.
- A person who obtains a video or photograph & is not subject of the photograph or video cannot disclose any indecent or graphic images of the subject's intimate parts without prior written consent of the subject or their next of kin.
- Violation of this provision is a disorderly persons offense.
- "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 for pecuniary gain or not.
- "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.

# Expands Exemptions

- Trade secret exemption includes applications & code obtained by a public body under a licensing agreement, which prohibits its disclosure.
- Tablets, telephone, electronic computing devices, software applications networks or devices which operate on or as 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 & generated by the devices or servers covered within this paragraph, which, if disclosed, could jeopardize computer security or related technologies.
- Security alarm system activity & access reports, including video footage, for any public building, facility or grounds.
  - Unless the requestor identifies a specific incident that occurred or a specific date & limited time period & is deemed not to compromise the integrity of the security system by revealing capabilities & vulnerabilities of the system.
- Detailed or itemized cost estimates prior to bid opening.
- Meta data including SMTP header properties of emails.
  - Exception for portion that identifies the author, editor, & time of change.
- NJ State Firemen's Association financial relief application.
- Owner & maintenance manuals.
- Data classified under HIPPA.

# Use of Public Agency's Website

- Can direct a requestor to information on public agency's website to fulfill OPRA request.
  - Cannot charge a fee.
- Records on Public Agency's website.
  - To extent feasible must make records available on website.
  - Can enter into a shared services agreement for this requirement.
  - Website must include a search bar on its homepage.
- If record is unabridged & complete, then the OPRA request can be fulfilled by providing a link to requested document but:
  - Requestor has 7 business days to request respond, otherwise OPRA request is fulfilled.
- Unless the document on the website fails to contain non-protected information.
- Then custodian must provide the original version with appropriate redactions.
- If upon request, the custodian must make a reasonable attempt to assist within 7 business days of assistance request.
- If requestor is still unable to find the document, the custodian must provide a physical copy at a fee 2x the cost within 7 business days.

# Special Service Charge

- Does not have to be established in advance by ordinance,
  - Shall be reasonable.
  - Custodian must provide the requestor with an explanation for or an itemized list of the fees or charges.
  - There is a rebuttable presumption that the fees or charges by the custodian are reasonable.
  - If the requestor objects, they have the burden of proof.
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- [Sections of Bill](#): Section 2 (amends N.J.S.A. 47:1A-5), pg 13, lines 14-27

# Format of Government Records

- Government record in format or medium not maintained.
- Custodian must convert the record to the medium or format requested if the medium or format is available to public agency & does not require a substantial amount of manipulation or programming or the services of 3rd-party vendor.
- If converted, the public agency may charge an additional fee.
- If the public agency does not maintain in the format or medium requested and it requires a substantial amount of manipulation or programming or the service of 3rd-party vendor, the custodian is under no obligation to convert.
- But must provide a copy in the electronic format that the record is maintained.
- [Sections of Bill](#): Section 2 (amends N.J.S.A. 47:1A-5), pg 13, lines 28-48, pg. 14, lines 1-13

# Relief for Abuses

- Avenue to address request filed with intent to substantially impair the performance of government functions.
- Court can:
  - Issue protective order limiting number & scope of request.
  - Refer matter to mediation.
  - Waive the required response time.
  - Limit or eliminate public agency's duty to respond to request.
  - Issue a protective order if it finds by clear and convincing evidence.
- Requestor must have notice & opportunity to answer allegations.
- Public agency must have the burden of proof by clear and convincing evidence.
- Does not apply to labor organizations seeking records for:
  - Prevailing Wage Act compliance.
  - Workplace safety.
  - Public bidding documents.
- [Sections of Bill](#): Section 7 (new section), pg 27, lines 4-48

# Immediate Access

- Immediate access (i.e., budgets, bills, vouchers) is for the documents that are 24 months or less old.
- [Sections of Bill](#): Section 2 (amends N.J.S.A. 47:1A-5), pg 14, lines 14-19

# Use of Official Form

- Requires public agency to adopt GRC adopted request form that includes:
    - Requestor's name.
    - Requestor's address.
    - Requestor's phone number.
    - Requestor's email address.
    - Brief description of records sought.
  - Place for requestor to certify whether government record will be used for commercial purposes.
  - Custodian can deny request if the form is incomplete.
  - Requestor can submit a letter or email instead of GRC adopted form, but it must include all the elements required in the adopted form.
  - If letter or email includes substantially more detail than required by the adopted form & requires more than reasonable effort to clarify the information, the custodian can deny the request.
  - If the letter or email does not include all the information required, the custodian may deny the request.
  - Request can be submitted anonymously, but the requestor can file a denial of record claim
    - An anonymous request is not considered incomplete.
  - For public agencies that have adopted electronic forms, they must include instructions on their website how to submit a request.
  - Requests can be submitted electronically, fax, mail.
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- [Sections of Bill](#): Section 2 (amends N.J.S.A. 47:1A-5), pg 15, lines 7-35

# Multiple/Similar Requests

- Government Records request can 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, the custodian can deny the request.
- Custodian is not required to complete an identical request for access to a government record from the same requestor if the information has not changed.
- A requestor is not prevented from filing periodic requests regarding regularly updated public records, including but not limited to, certified payroll records, permits, and licensing applications.
- [Sections of Bill](#): Section 2 (amends N.J.S.A. 47:1A-5), pg 16, lines 19-31, pg 19, lines 5-10

# Disruption of Operations

- If request would substantially disrupt the agency operations the custodian may deny the request:
  - After notifying the requestor.
  - After attempting to reach a reasonable solution.

- [Sections of Bill](#): Section 2 (amends N.J.S.A. 47:1A-5), pg 16, lines 46-48, pg 17, lines 1-4

# OPRA As Discovery

- Prohibits use of OPRA as discovery if:
  - Record sought is subject of court order, including pending discovery.
- Requestor must certify if the records sought are in connection with legal proceedings & identify the proceeding.
- A party to legal proceeding includes:
  - A party subject to a court order.
  - Any attorney representing that party.
  - Any person acting as an agent for or on behalf of that party.
- Does not apply to labor organizations, when not in connection with legal proceedings, seeking records related to Prevailing Wage Act, workplace safety, or bidding documents

## OPRA as Research

- A custodian does not need to fulfill a request including for, but not limited to, mail, email, text messages, correspondence, or social media postings & messages, if:
  - The request does not identify:
    - Specific job titles or accounts to be searched,
    - A specific subject matter & is not confined a reasonable time period.
  - If the custodian determines that the request would require research & the collection of information from the contents of government records & 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 & position.
- [Sections of Bill](#): Section 2 (amends N.J.S.A. 47:1A-5), pg 17, lines 28-38

## Response Time & Extensions

- Request is not considered submitted until it is received by records custodian
  - Response time still 7 business days unless;
    - 14 business days for commercial purposes
      - Except commercial requestor can pay 2x the fee and receive in 7 business days
    - 14 business days if Daniel's Law review is required
  - Fire Districts with 1 or few full-time employees have 14 business days.
  - Custodian is entitled to a reasonable extension of time to fulfill a request if:
    - Due to unforeseen circumstances or
    - Circumstances that otherwise reasonably necessitate additional time to fulfill
    - Must notify the requestor with 7 business days
  - For documents in storage custodian has up to 21 business day to fulfill the request but must advise requestor within 7 business days.
- [Sections of Bill](#): Section 2 (amends N.J.S.A. 47:1A-5), pg 17, lines 42-43, pg 18 lines 1-38

# Possession of Records

- Public agency not in possession of a public record that is created, maintained, or received by another public agency & is made available to the public agency by remote access to a computer network or courtesy copy.
- Unless the original agency is within the judicial branch of State Government.
- Custodian is not obligated to provide the record.
- If not provided, custodian must direct the requestor to the public agency that to the best of their knowledge created, maintained, or received the record.
  - Must do so within 7 business days.
- Request is deemed fulfilled.
- A requestor has 14 business days to retrieve the government record following notice from the custodian that the request is completed & the records are available.
- [Sections of Bill](#): Section 2 (amends N.J.S.A. 47:1A-5), pg 18, lines 39-48, pg 19, lines 1-13

# Denial of Access

- Denial of Access poster
  - No longer required to prominently post in public.
  - Must include information on public agency's website & public records request form.
    - Must include GRC toll-free number.
- Denial of Record Appeal must be filed within 45 days of the denial.
- If records sought are produced by public agency within 7 business days of service of action in Superior Court or GRC, the matter shall be dismissed without prejudice.
  - Attorney's fees may be granted if custodian knew or should have known denial violated OPRA.
- Prohibits anonymous requestors from filing a denial of access appeal – requestors' name must be accurate.
- Sections of Bill: Section 2 (amends N.J.S.A. 47:1A-5), pg 15, lines 27-31, pg 19, lines 23-37; Section 3 (amends N.J.S.A. 47:1A-6) pg 19, lines 41-43, pg 20- lines 21-28

# GRC Changes

- Expands GRC to 8 members.
  - Removes Commissioner of Education from GRC.
  - Permits public member to hold an appointed office or public employment while serving
- GRC members receive salary equal to Local Finance Board members
- GRC given rulemaking authority to adopt government records request form
- Form must be made available to incarcerated individuals
- GRC can utilize video conferencing
- GRC can conduct virtual meetings & hearings, when practical & at discretion of council
- Must periodically review & update its website to ensure that the information is clearly presented & accessible to the general public
- GRC may assign staff attorneys to conduct investigations, present findings, & make recommendations
- Appeals of GRC decision to Appellate Division must be filed within 45 days from the date GRC renders a decision
- [Sections of Bill](#): Section 4 (amends N.J.S.A. 47:1A-7), pg 20, lines 33-47, pg. 21, lines 1-40, pg 22, lines 16-44, pg 23 lines 20-22, pg 24 lines 8-9

## GRC Changes – continued

- Within 18 months, GRC must adjudicate complaints within 90 days with ability to extend for 45 days for good cause.
- Superior Court must provide GRC a list of all actions on OPRA matters brought before the courts.
- GRC must compile a database of the data provided by the courts.
- AOC to provide GRC report at end of each court year.
  - Grouped by agency & county
  - Include comprehensive list of all cased file with a summary judgement
  - Itemized, including counsel of records, case disposition & fees paid or waived
- Appropriates \$6 million to GRC.
- Sections of Bill: Section 4 (amends N.J.S.A. 47:1A-7), pg 24 lines 14-22, lines 35-48, pg 25 lines 1-6, Section 11 (new section), pg 33 lines 4-17

# Violations of OPRA

- The public agency is subject to the fine, not the custodian.
- Requestor who intentionally failed to certify records request is for commercial purpose subject to civil penalty of:
  - \$1,000 1st offense,
  - \$2,500 2nd offense and
  - \$5,000 for each subsequent offense.
  - Imposed by courts
- [Sections of Bill](#): Section 5 (amends N.J.S.A. 47:1A-11), pg 25, lines 15-16, 23-32

# Daniel's Law & OPRA

- A custodian who makes a reasonable effort to comply with Daniel's Law redactions is presumed to have acted without willful, purposeful, or reckless disregard of the law.
- [Sections of Bill](#): Section 6 (amends N.J.S.A. 47:1B-2), pg 26, lines 16-18

# Elections Records

- Election Agency is the:
  - Division of Elections
  - NJ ELEC
  - County Boards of Elections
  - Superintendent of Elections
  - County Clerks, Municipal Clerks
  - Fire District Boards Clerks
  - School District Business Administrators
  - School District Board Secretaries
- Requires to provide a record in response to a request for election records, unless it has made or received & maintains said requested record pursuant to law or regulation.
- [Sections of Bill](#): Section 8 (new section), pg 29, lines 11-24

# Elections Records – continued

- Following records shall not be redacted except for:
  - Voter signatures.
  - Social Security numbers.
  - Driver License numbers.
  - Non-driver identification numbers.
- Voter registration forms & forms changing the provided information.
- Party affiliation forms & forms changing the provided information.
- Applications for a vote-by-mail ballot, except as otherwise provided in NJSA 19:63-1 et seq.
- Forms or reports submitted to the Election Law Enforcement Commission.
- Nominating petitions for any candidate for any elected office, which shall be provided in a manner that includes voter signatures on such petitions.
- Petitions to recall an elected official, which shall be provided in a manner that includes voter signatures on such petitions.
- Petitions or submissions for any public question or referenda to be considered by voters, which shall be provided in a manner that includes voter signatures on such petitions.
- Any submissions, responses, objections, or challenges pertaining to a record referred to in this subsection.
- Any addendums, amendments, corrections, withdrawals, or accompanying forms or submissions pertaining to a record referred to in this subsection.

Sections of Bill: Section 8 (new section), pg 29, lines 25-47, pg 30 lines 1-8

## Elections Records – continued

- The following records & information must be made available to requestors for immediate access & transmission via email as soon as possible, but not later than 2 business days after receipt of the request, provided the request is not for a commercial purpose, for which a fee shall not be charged nor collected:
  - The inspection and transmission deadline requirements are satisfied if the records & information are posted on the agency's website.
  - Nominating petitions for any candidate for any elected office filed with the election agency within the preceding 90 days of the date the request is received.
  - Petitions to recall an elected official filed with the election agency within the preceding 90 days of the date the request is received.
  - Petitions or submissions for any public question or referenda to be considered by voters filed with the election agency within the preceding 90 days of the date the request is received.
  - Any submissions, responses, objections, or challenges filed with the election agency within the preceding 90 days pertaining to a record referred to in this subsection.
  - Any addendums, amendments, corrections, withdrawals, or accompanying forms or submissions filed with the election agency within the preceding 90 days pertaining to a record referred to in this subsection.

Sections of Bill: Section 8 (new section), pg 30, lines 9-35

## Elections Records – continued

- The following records & information that an election agency must make available to requestors for immediate access & transmission via email as soon as possible, provided the request pertains only to an election to be held within 16 days after the date of the request & is not for a commercial purpose.
- The transmission no later than two business days after receipt of the request when said request is made between one & 15 days before the date of the election pertaining to the request.
- For any request submitted the day before an election by noon, the request shall be completed by noon the day of the election.
- A fee shall not be charged nor collected.
- Lists, in a format capable of being sorted by the requestor, of registered voters, including their name, address, party affiliation, and municipal voting ward and district, who have requested, been mailed, or returned a vote-by-mail ballot, including the dates the ballot was requested by the voter, mailed to the voter, and received by the appropriate election agency;
- Lists, in a format capable of being sorted by the requestor, of registered voters, including their name, address, party affiliation, and municipal voting ward and district, who have cast a vote during the early voting period, including the date and polling location the vote was cast;
- The inspection and transmission deadline requirements of this subsection shall be deemed satisfied if an election agency posts on its website the records and information referred to in this subsection.
- Whenever the requirements of this subsection would cause a voter's privacy to be violated, the information shall be provided in a manner that maintains the privacy of the voter.

Sections of Bill: Section 8 (new section), pg 30, lines 36-48, pg 31 lines 1-18

# Elections Records – continued

- The following records or information shall not be subject to disclosure pursuant to a request for public records:
  - Ballots marked by a voter.
  - Vote tabulations.
  - Election results for any election prior to the time of the closing of the polls on the date of the election, except as otherwise provided for by law, rule, or regulation.
  - Manuals instructions, specifications, technical information, or programming code of computers, software, applications, networks, tablets, voting machines, printers, scanners, & any other equipment, systems, policies or plans used for the conduct of elections, the disclosure of which, could have the potential to jeopardize the security, integrity or accuracy of the conduct of elections, tabulation of votes, or determination of election results, except as otherwise provided for by law, rule, or regulation, or in response to a subpoena or order of a court or tribunal of competent jurisdiction.
- Rulemaking authority to Secretary of State.

Sections of Bill: Section 8 (new section), pg 31, lines 19-41

# Effective Date & Implementation Issues

- Any anonymous requestor or requestor using a fictitious name with complaints and appeals before GRC or Court filed before effective date may be dismissed with prejudice upon a motion of the public agency.
  - Unless the complainant files an amendment to accurately identify their name and mailing address within 90 days of effective date.
- Any complaint or appeal pending before the Government Records Council, the Superior Court, or the Supreme Court filed prior to the effective date is to be permitted to file an amendment to their respective complaints and answers within 90 days of the effective date.
- Takes effect 90 days following enactment.
- [Sections of Bill](#): Section 9 (new section), pg 32 lines 8-23, Section 12 (new law), pg 33, lines 19-20

# P.L. 2024, c. 16 Does Not Address



- Data Mining or Data Brokers
- Police Records

# Questions

You can continue to submit questions on the new law at

[www.njlm.org/FormCenter/Legislative-Survey-17/Questions-on-PL-2024-c-16-OPRA-Moderniza-288](http://www.njlm.org/FormCenter/Legislative-Survey-17/Questions-on-PL-2024-c-16-OPRA-Moderniza-288)





## Contact Us

Please do not hesitate to reach out to us for further information about P.L. 2024, c. 16:

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