



**NEW AMENDMENTS TO THE NEW JERSEY
OPEN PUBLIC RECORDS ACT (“OPRA”)**

On June 5, 2024, Governor Murphy signed a new bill (S2930/A4045) into law as P.L.2024, c.16, resulting in significant amendments to the New Jersey Open Public Records Act (“OPRA”) for the first time in over 20 years. Because school districts are among the various types of public agencies that are obligated to comply with OPRA, districts should ensure that they are aware of and understand these new amendments, which will result in substantial changes in the handling of OPRA requests by records custodians, as well as the rules that apply to OPRA-related litigation. School districts should also anticipate that it will likely be difficult to fully predict how some of the provisions of the new law will be interpreted, such as the charges that may be permissible to impose upon commercial entities that submit OPRA requests, or what type of civil penalties may be available if a commercial entity intentionally fails to properly represent its commercial status when making an OPRA request.

The new amendments to the OPRA statute include, but are not limited to the following:

1. **Increased online access to records and the ability to direct an OPRA requestor to the agency’s website.** A records custodian may require an OPRA requestor to obtain a requested public record from the public agency’s website, if the record is readily available on the website in a complete and unabridged form. The agency’s website must contain a search bar feature on its home page. In addition, the custodian may refer the OPRA requestor to information available on the website of another public agency. If the record is not available online, the agency may charge the requestor for a paper copy. The new law also includes appropriations for public agencies to fund technological upgrades in order to make more records available online.
2. **Additional protections for individuals’ personal information.** A variety of personal information related to individuals that is included within public records, such as birth dates, personal email addresses, phone numbers, driver’s license numbers, and home addresses, will be exempt from disclosure and may be redacted when responding to an OPRA request. The new law also codifies prior court decisions holding that personal identifying information means information that may be used, alone or in conjunction with any other information, to identify a specific individual.
3. **Amendments to fee-shifting provisions.** The new law provides a more stringent standard regarding the potential for “prevailing party” attorney’s fees in the event of litigation. To show an entitlement to such fees in an OPRA matter, a finding must be made that the agency’s denial of access to records was made in “bad faith” or “unreasonably,” or that the agency “knowingly or willfully” violated the law. Although judges will still have discretion to award attorney’s fees to a requestor who prevails in court, such an award will

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not be required unless the standard described above is satisfied. The new law also provides that a penalty levied against a custodian who is found to have knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances will be imposed upon the agency that employs the custodian, and not the custodian personally. Moreover, if the records sought are produced by the agency within seven days of service of a Superior Court Complaint or an action before the Government Records Council (“GRC”), upon notification to the Court or GRC, 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 OPRA.

4. **Codified access to technology.** The amendments include prohibitions on access to technology and devices which operate on or as a part of a computer network or related technologies within the same, which shall include 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, which, if disclosed, could jeopardize computer security or related technologies.
5. **Codified limits to security information.** The new law specifies that security alarm system activity and access reports, including video footage, for any public building, facility, or grounds do not constitute public records available via an OPRA request, unless the request identifies a specific incident that occurred, specific date and limited time period at a particular public building, facility, or grounds and is deemed not to compromise the integrity of the security system by revealing capabilities and vulnerabilities of the system.
6. **Limitations on OPRA requests seeking correspondence and similar records.** If an OPRA request seeks correspondence, email, text messages, or social media postings and messages, the requestor must limit the search to a “reasonable” time frame. Such OPRA requests also must identify a specific job title or email account to be searched, and a specific subject matter for the correspondence sought.
7. **Amendments to “immediate access” provisions.** Immediate access to budgets, bills, vouchers, contracts, and public salary and overtime information is no longer required, if the requested record or information is more than two years old.
8. **Extensions of the deadline for responding to OPRA requests in some instances.** The ordinary seven business day deadline for providing records requested under OPRA has been extended to 14 business days for records requiring redactions, and 21 business days for records that are in storage. The custodian must notify the requestor of the additional response time within seven days. Additionally, if a request is submitted to an individual who is not the custodian, the request is not considered submitted and the statutory deadline for a response will not begin to run until the request is received by the custodian of records.

9. **Extension of the response deadline for commercial OPRA requests.** For OPRA requests seeking records or information for a commercial purpose, the response deadline has been extended to 14 business days, but commercial requesters will also be able to pay a fee to have their requests expedited and receive a response within seven business days. A requestor who is found to have intentionally failed to certify that a request is for a commercial purpose shall be subject to a civil penalty, imposed by the courts.
10. **A rebuttable presumption that special service charges assessed by the custodian was reasonable.** The custodian must provide the requestor with an explanation for and an itemized list of the fees or charges. If the requestor objects, the burden of proof will be on the requestor to demonstrate that the fees or charges are unreasonable.
11. **The potential for public agencies to obtain protective orders.** A public agency may file an action in court seeking a protective order against an OPRA requestor, if the requestor has shown an “intent to substantially impair” the performance of the agency’s operations.
12. **Non-disclosure of photos or video footage of a person’s intimate parts absent consent.** Under the new law, “any indecent or graphic images” of a person’s “intimate parts” are exempt from the definition of a “government record” and cannot be disclosed in response to an OPRA request without the person’s consent.
13. **Restrictions on the required disclosure of metadata.** A records custodian is no longer required to grant access to metadata in response to an OPRA request, except for the portion “that identifies authorship, identity of editor, and time of change.”
14. **Use of GRC form for OPRA requests.** The public agency shall adopt the form established by the GRC for submission of an OPRA request. The form must include a space for the requestor to certify whether the record will be used by that person or another person for a commercial purpose. The form also must include a certification that a party to a legal proceeding may not request a record if the record sought is the subject of a court order or a pending discovery request. This information is required in order for the request to be fulfilled. However, any written request which includes all of the information required by the form shall suffice. If the request does not include all of the information required on the form, the request may be denied. Similarly, if a request is submitted that requires more than reasonable effort to clarify, the request may be denied.
15. **Expansion of and additional funding for the GRC.** The number of public members on the GRC will increase from three to eight members, who will be nominated by the Governor at the recommendation of legislative leaders, will earn a salary, and will no longer be prohibited from holding public employment. The new law also allocates \$6 million in funding for the GRC, and requires that the GRC must adjudicate denial of access complaints within 90 days of filing, with extensions permitted for 45 days for good cause, exclusive of any time during which the parties are in mediation.

16. **Amendments to provisions regarding anonymous OPRA requests.** Under the amendments to the OPRA statute, anonymous requestors may not institute a proceeding to challenge denial of access to record pursuant to N.J.S.A. 47:1A-6, either with the GRC or in Superior Court. In addition, any complaints or appeals regarding OPRA disputes currently pending before the GRC or the Superior Court, which were filed prior to the effective date of the new law 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 the new law.
17. **Retroactive application.** The new law will apply retroactively to all complaints and appeals pending before the GRC, the Superior Court, or the Supreme Court of New Jersey, which were filed prior to the effective date of the new law. However, there will be no retroactive reduction with respect to the statute of limitations governing any complaint or appeal pending before the GRC, the Superior Court or the Supreme Court of New Jersey.

All of the amendments to the OPRA summarized above will generally take effect 90 days from the date of enactment, on September 3, 2024. However, there are exceptions to that effective date, one of which provides that the requirement for appropriation of \$4 million to the Department of Community Affairs will not take effect until eight months after the law's effective date, of June 5, 2024. Furthermore, the requirement that the new law will apply retroactively to all complaints and appeals pending before the GRC, the Superior Court, or the Supreme Court of New Jersey, which were filed prior to the effective date, also will not become effective until eight months after June 5, 2024, meaning on or about January 5, 2024.

In view of the numerous changes to the law summarized above, which will significantly impact OPRA requests and disputes regarding access to public records for years to come, it is anticipated that school districts will need to address and resolve various issues that are likely to arise when applying the new law. It is highly recommended that districts consult with legal counsel as necessary to ensure compliance with the new amendments to the OPRA statute after they take effect on September 3, 2024.

Should you have any questions or concerns, including how to interpret and apply the new law when handling OPRA requests received by your school district, the attorneys at The Busch Law Group are available to counsel you on these issues.

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