

Amendments to New Jersey's Open Public Records Act

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By: David Disler

On June 5, Governor Murphy signed Senate Bill 2930 into law, which significantly amends New Jersey's Open Public Records Act (OPRA). The new law will become effective on September 3, 2024. Among other changes, the bill transforms OPRA's attorney's fee provision, imposes new requirements on public entities to include public records on their websites, and allows public agencies to file lawsuits against individuals who file OPRA requests for the purpose of interrupting a government function.

Attorney Fees

The change drawing the most attention is the provision that will now limit a requestor's ability to recover attorney's fees. Previously, a requestor who prevailed in court was entitled to recover their attorney's fees – regardless of whether the law on the issue was unclear or unsettled. This provision arguably placed custodians in impossible situations, in which if they guess wrong as it relates to an unclear law, their decision could cost the taxpayers thousands in attorney fees. The new law guarantees a requestor attorney's fees only if the public agency “unreasonably denied access, acted in bad faith, or knowingly and willfully violated” OPRA. Additionally, under the new amendments, if the public agency furnishes the records within seven days of being served with the requestor's lawsuit, the requestor may be entitled to attorney's fees only if the agency “knew or should have known that the denial of access violated” OPRA. In all other situations, attorney fees may be awarded at the discretion of the Court.

Protective Order Against Requestors Seeking to Interrupt Government Functions

The bill also enables public agencies to file lawsuits against individuals who make records requests that would limit the individual's ability to submit future requests. Under this provision, a court may issue a protective order if it finds by clear and convincing evidence that the requestor has sought records “with the intent to substantially interrupt the performance of government function.” If issued, the protective order would limit the scope or number of the records requested. Significantly, the court may also eliminate or limit the public agency's duty to respond to the requestor in the future.

Requirement to Place Public Records Online

Under the new legislation, public agencies are now required to keep records on a publicly available website “to the extent feasible.” The law also allows public agencies to fulfill their OPRA obligations if they keep records on a publicly available website “in a complete and unabridged form.” The website must contain a search bar on its homepage, and the custodian of records must assist the requestor in finding the records on the website. Additionally, the public agency's website must also present information concerning the requestor's right to appeal a denial of records.

Other Changes

The new law also contains several other amendments, which limit the scope of OPRA and change the procedure by which OPRA denials are appealed:

Special Service Charges: Public agencies are granted a presumption of reasonableness in disputes regarding special service charges incurred by requestors of records.

Identical Requests: Public agencies are no longer required to respond to identical requests for records from the same requestor if no information has changed.

Anonymous Requests: Anonymous requestors cannot file lawsuits challenging the denial of an OPRA request.

Appeal Timeframe: Requestors must appeal the denial of their request within 45 days.

Records Kept By Others: Public agencies that receive requests for records kept by a separate public agency are not obligated to respond to the request.

Vague Requests: Public agencies are not required to respond to a request if it “does not identify a specific individuals or job title or accounts to be searched, a specific subject matter, and is not confined to a discrete and limited reasonable time period.” However, a request is sufficient if it identifies specific individuals by the individual's job title and position.

Security Footage: Security footage of public buildings is excluded from the definition of a public record under OPRA “unless the request identifies a specific incident that occurred, or a specific date and limited time period at a particular public building.”

Personal Information: Personal identifying information (names, phone numbers, and home addresses) is now excluded from the definition of a public record if the information appears in certain documents—such as animal permits, lists of people in need of emergency assistance, and any document with information concerning a minor.

GRC Request Form: The Government Records Council is empowered to create a uniform record request form, which public agencies are required to use in processing OPRA requests.

Commercial Purposes: Public agencies have 14 days to respond to an OPRA request made for a commercial purpose. The uniform record request form will include a space for requestors to specify whether the request is for a commercial purpose.

Conclusion

The Porzio Education Team is available to assist in all aspects of the implementation of OPRA's new requirements, including policy development, training, and guidance.