

Bill S2930

The OPRA Legislation was signed by the Governor and took effect on September 3, 2024.

IMPORTANT PROVISIONS

Personal identifying information is now more broadly defined and includes:

- Name
- social security number
- credit card number, debit card number, bank account information
- month and day of birth
- any personal email address required for applications, services, or programs
- personal telephone number
- the street address portion of any person's primary or secondary home address, or
- driver license number.

The term "government record" now **excludes**:

- Administrative or technical information regarding tablets, telephones, electronic computing devices, software applications, or devices which operate on or as a part of a computer network or related technologies within the same,;
- 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, or a specific date and limited time period at a particular public facility and is deemed not to compromise the integrity of the security system;
- Personal identifying information provided to a public agency for the sole purpose of receiving official notifications or animal licenses or registration
- Metadata which shall include the SMTP header properties of emails, except that portion that identifies authorship, identity of editor, and time of change;
- Data classified under the HIPAA
- Indecent or graphic images of a person's intimate parts

REQUESTS FOR CORRESPONDENCE

- Requests for mail, email, text messages, correspondence, or social media postings and messages, must identify a (1) specific job title or accounts to be searched, (2) a specific subject matter, and (3) a reasonable time period
- May be denied if the custodian determines that the request would require research, the collection of information from the contents of government records and the creation of new government records setting forth that research and information.

HANDLING OF REQUESTS

- Response times for certain requests is extended to 14 business days
 - o Requests requiring review under Daniel's Law
 - o Requests for commercial purposes
 - "Commercial purpose" is the use of any part of a government record for sale, resale, solicitation, rent, or lease of a service, or any use by for a profit, except by:
 - The news media

- A news, educational, scientific, scholarly or governmental organization
 - 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
 - Labor organizations
 - A contractor seeking information to the enforcement of the law regarding wage and hour protections, workplace safety, or public procurement process
 - Nonprofit entities that do not sell government records
 - If a commercial requestor would like to receive the record within seven business days, the custodian may charge a special service fee not exceeding two times the cost of the production of the record.
- Nonresponse to a request is deemed a denial UNLESS
 - the requestor has elected not to accurately identify themselves or to provide an accurate address, email address, or telephone number
 - Records in storage may receive extensions which shall be no more than 21 business days from the date the requestor is so advised or shall be deemed denied.
 - 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.

REFERRAL TO WEBSITE:

- Government records shall be made available to the public on a publicly available website to the extent feasible.
- If available on a website, the following process must be followed:
 - The custodian may require the requestor to obtain the record from the website;
 - If the requestor does not respond to the custodian within seven business days of the custodian providing the website information, the request is deemed fulfilled
 - If the requestor is unable to find the record upon making a good faith effort, the requestor shall notify the custodian within seven business days. Upon receiving a request for assistance, the custodian shall make a reasonable attempt to assist the requestor with finding the record on the website within seven business days of the requestor notifying the custodian.
 - If the requestor is still unable to 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** within seven business days of the request for a physical copy

REQUEST FORM:

- GRC is required to create a uniform request form, which Custodians must adopt
- The custodian may deny a request that is incomplete, except that an anonymous request shall not be grounds for denial.

- The form is not required to be used if the requestor includes all of the information required on the adopted form.
- **COMMERCIAL PURPOSE:** The form also shall include space for a requestor to certify whether the government record will be used for a commercial purpose, and the requestor shall be required to provide this information for the request to be fulfilled.
- Requestors are only permitted to submit each request to one public agency

Reasons for denial:

- If the request includes substantially more information than required on the 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 request
- **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 in the agency, shall permit the custodian to deny the request.**

RECORDS IN THE POSSESSION OF OTHER AGENCIES

- A public agency shall not be considered to be in possession of a public record that is created maintained, or received 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, unless that agency is the judiciary
- A records custodian of a public agency that receives such a request is not obligated to provide the record to the requestor
- The custodian shall direct the requestor within seven business days to the public agency that created, maintains, or received the requested record.

COMPLAINTS AGAINST REQUESTORS

- An agency may file a complaint to the Superior Court alleging that a requestor sought records with the intent to substantially interrupt the performance of government function,
- The court may issue a protective order limiting the number and scope of requests or order such other relief as appropriate, including referral of the matter to mediation or a waiver of the required response time
- The court may issue the protective order if it finds by clear and convincing evidence that the requestor has sought records under OPRA with the intent to substantially interrupt the performance of government function.
- The complaint shall include a declaration of facts by the public agency demonstrating that it has complied with OPRA and has made a good faith effort to reach an informal resolution of the issues relating to the records requests.
- The public agency bears the burden of proof by clear and convincing evidence.

MEDIUM OR FORMAT OF DOCUMENT

- Document must be provided in the requested medium or format if it is available and does not require substantial manipulation or programming, or services of a third party vendor
- If the public agency converts the record to the medium or format requested, the agency may charge a reasonable special service fee that 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, and the medium or format is not available to the public agency without a substantial amount of manipulation or information technology, the custodian shall be under no obligation to convert the record **but shall, at a minimum, provide a copy in the electronic format maintained by the public agency.**

OPRA AND DISCOVERY

- A party to a legal proceeding may not request a government record if the record sought is the subject of a court order including a pending discovery request and a custodian shall not be required to complete such a request.

DENIALS OF ACCESS

- Only requestors who are accurately identified by name may file denial of access complaints.
- Prevailing requestors are not guaranteed attorneys fees.
- The Court or GRC MAY award attorneys fees to a prevailing party;
- If the public agency has been determined to have unreasonably denied access, acted in bad faith, or knowingly and willfully then the requestor is entitled to attorney's fees.
- If an agency produces records within seven business days of service of an action in Superior Court or a complaint before the Government Records Council, the matter is 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

KNOWING AND WILLFUL VIOLATIONS

- Upon a finding of a knowing and willful violation, the penalty may be assessed to the public agency, officer, employee or official
- A requestor who is found to have intentionally failed to certify that a records request is for a commercial purpose 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.

PENDING ANONYMOUS COMPLAINTS

- All complaints and appeals pending before the Government Records Council or the Superior Court filed prior to the effective date of 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 the bill