

PUBLIC HEARING
before

ASSEMBLY STATE GOVERNMENT, FEDERAL AND INTERSTATE RELATIONS COMMITTEE

on

ASSEMBLY, NOS. 1188, 1466, 3133

(Public disclosure of information, records,
and documents by government instrumentalities
and agencies.)

Held:
June 19, 1975
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Robert C. Shelton, Jr. (Chairman)

Assemblywoman Jane Burgio

* * * *

ASSEMBLY, No. 1466

STATE OF NEW JERSEY

INTRODUCED APRIL 1, 1974

By Assemblymen HAMILTON, BURSTEIN, KLEIN, BARBOUR,
Assemblywoman WILSON, Assemblymen MARTIN, SALKIND,
BAER, HOLLENBECK, VISOTCKY, CONTILLO, DOYLE,
PATERO, BORNHEIMER, KARCHER and OTLOWSKI

Referred to Committee on State Government, Federal and
Interstate Relations

AN ACT concerning the disclosure of information to the citizens of
the State of New Jersey and providing procedures for acknowl-
edging and responding to requests for information.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature finds and declares it to be the public policy
2 of this State to provide the citizens of this State with the maximum
3 information available from the offices and agencies of the State
4 except where overriding considerations exist. The Legislature
5 further finds and declares it to be the public policy of this State to
6 enhance the confidence of the citizens of this State in the processes
7 of government by requiring that State agencies respond to inquiries
8 and requests of citizens in a timely and responsive manner by
9 answering the inquiry or by providing the information requested
10 and when this is not possible by explaining why such information
11 is not available and the time when such information will be avail-
12 able.

1 2. As used in this act the word "agency" or "State agency"
2 shall include each of the principal departments in the executive
3 branch of the State Government, and all boards, divisions, com-
4 missions, agencies, departments, councils, authorities, offices or
5 officers within any such departments now existing or hereafter
6 established.

1 3. a. Any written inquiry or request for information from a
2 citizen of the State of New Jersey to any State agency or to an
3 officer or employee thereof shall be responded to as soon as possible

4 and in any event within 30 days after the date of receipt of such
5 inquiry or request by the agency which has cognizance of, respon-
6 sibility for, or jurisdiction over, the subject matter of the inquiry
7 or request.

8 b. The response shall be an affirmative reply to the inquiry or
9 request. When the agency is unable to furnish an affirmative reply
10 within 30 days of the inquiry or request, the agency shall acknowl-
11 edge receipt of the inquiry or request, shall advise of the inability
12 to comply and shall advise an estimated date when an affirmative
13 reply can be furnished. Any statement of inability to comply with
14 the inquiry or request shall include a brief statement advising the
15 inquirer or requestor why an affirmative reply is not possible within
16 the time required by this act. The estimate as to when an affirma-
17 tive reply can be furnished shall be no later than 15 days beyond
18 the 30 days allowed for the initial reply to the inquiry or request.

19 c. If the agency is unable to furnish an affirmative reply within
20 the original 30-day period or the initial 15-day extension, the in-
21 quirer or requestor shall be so advised prior to the expiration of
22 the initial extension and any extension thereof and given a further
23 estimate as to when an affirmative reply can be furnished which
24 estimate shall in each instance be no later than 15 days from the
25 expiration of the last estimate.

26 d. In the event any inquiry or request for information shall not
27 be within the cognizance, responsibility or jurisdiction of the
28 agency to which addressed or directed, the inquiry or request shall
29 be forwarded to the appropriate State agency, if known, for reply.
30 The inquirer or requestor shall be immediately informed of such
31 referral and the State agency receiving such referral shall comply
32 with the provisions of subsection a. hereof.

33 e. All replies shall be signed by a State officer or employee re-
34 sponsible for answering correspondence addressed to the respec-
35 tive State office and shall also contain a designation of his title or
36 position. Any reply which is unsigned shall be deemed to have
37 been written by the chief officer or head of the respective State
38 department.

1 4. Each agency shall make available to the public and subject to
2 the discretion of the Director of the Division of Administrative
3 Procedure of the Department of State, shall cause to be published
4 in the "New Jersey Register" information as follows:

5 a. Descriptions of its function, services and organization and
6 the established places, persons, and offices from which, and the
7 methods whereby, the public may obtain information, make sub-
8 mittals or requests, or obtain decisions;

9 b. Statements of the general course and method by which the
10 agencies' functions are channeled and determined, including the
11 nature and requirements of all formal and informal procedures
12 available;

13 c. Descriptions of forms available or the places at which forms
14 may be obtained and the rules of procedure for submission of
15 requests for information or services.

1 5. Each agency shall make available for public information and
2 copying:

3 a. Final opinions, including concurring and dissenting opinions,
4 as well as orders, made in the adjudication of cases;

5 b. Statements of policy and interpretations which have been
6 adopted by the agency;

7 c. Administrative staff manuals and instructions that affect a
8 member of the public.

1 6. The Superior Court of the State of New Jersey, or the County
2 Court in which the complainant resides, or has his principal place
3 of business, or in which the agency or the agency records are
4 situated, shall have jurisdiction to enjoin the agency from with-
5 holding agency records or information and to order the produc-
6 tion of any agency records improperly withheld or information not
7 supplied. In such a case the court shall determine the matter de
8 novo and the burden shall be on the agency to sustain its action.
9 In the event of noncompliance with the order of the court, the
10 responsible employee may be punished for contempt.

1 7. This act shall not apply to matters that are:

2 a. Related solely to the internal personnel rules and practices of
3 an agency;

4 b. Specifically exempted from disclosure by statute;

5 c. Trade secrets and commercial or financial information ob-
6 tained from a person and privileged or confidential;

7 d. Interagency or intraagency memorandums or letters which
8 would not be available by law to a party other than a party in
9 litigation with the agency;

10 e. Personnel and medical files and similar files, the disclosure of
11 which would constitute a clearly unwarranted invasion of per-
12 sonal privacy;

13 f. Investigatory files compiled for law enforcement purposes
14 except to the extent available by law to a party other than an
15 agency.

1 8. If any provision of this act or the application of such pro-
2 vision to any person or circumstance is declared invalid, such
3 invalidity shall not affect other provisions or applications of this

4 act which can be given effect; and, to this end, the provisions of
5 this act are declared to be severable.

1 9. This act being necessary for the welfare of the State and its
2 inhabitants shall be liberally construed to effectuate the purposes
3 thereof.

1 10. This act may be known and cited as "The Public Informa-
2 tion Act."

1 11. This act shall take effect immediately.

STATEMENT

This New Jersey Public Information Act is modeled after the Federal Freedom of Information Act and provides that requests by citizens to "State agencies" for information shall be responded to no later than 30 days after receipt, with provisions for 15 day extensions (with notice to the citizen of the need for the extension).

Each principal department in the executive branch of the state government must make available to the public:

(1) A description of its function and methods whereby the public may obtain information, (2) description of its formal and informal procedures, and (3) description of forms available and rules of procedure for submission of requests for information or services. Subject to the discretion of the Director of the Division of Administrative Procedure of the Department of State, this information shall be published in the monthly New Jersey Register.

The act further provides that each department shall make available to the public (for copying): (1) final opinions and orders made in the adjudication of cases, (2) statements of policy and interpretations adopted by the department; and (3) administrative staff manuals and instructions that affect a member of the public.

An agency receiving an inquiry or request not within its cognizance, responsibility or jurisdiction shall transfer the request to the proper agency and inform the requestor of the referral. All replies and correspondence must be signed by the responsible State officer or employee and those not signed shall be deemed to have been written by the chief officer or head of the agency.

Exemptions are provided, including information exempted from disclosure by statute, certain interagency or intraagency memorandums, certain personnel and medical files and other information which release of would constitute a clearly unwarranted invasion of personal privacy.

The Superior Court of New Jersey or the County Court in which a complainant resides is given injunctive and contempt powers to

enforce the act, considering the matter de novo with the burden on the department to sustain its action.

The intent of this act is to enhance the confidence of the citizens of this State in governmental processes and to provide citizens with the maximum information available from the offices and agencies of the State.

ASSEMBLY, No. 1188

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1974

By Assemblymen HURLEY, CHINNICI, KEAN, Assemblywoman BURGIO, Assemblymen LITTELL, EWING, WEIDEL, SNEDEKER, FORAN and ORECHIO

Referred to Committee on Judiciary

AN ACT to require public disclosure of information, records and documents by government instrumentalities and agencies and repealing "An act concerning public records and their examination by citizens of this State, providing certain exceptions to the right to examine public records, and conferring jurisdiction upon the Superior Court in respect to such examination," approved May 31, 1963 (P. L. 1963, c. 73, C. 47:1A-1 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Short title. This act shall be known as the "Public Information
2 Act of 1974."

1 2. Declaration of intent. The Legislature recognizes that nothing
2 so diminishes democracy as the pursuit of secrecy and that if public
3 confidence in government is to be restored then it is necessary to
4 achieve the maximum possible disclosure of governmental affairs.
5 The Legislature also recognizes that the disclosure of any and all
6 information possessed by government would not only inhibit the
7 functions of government but would unnecessarily invade the rights of
8 privacy possessed by all citizens; for the public interest is served
9 not only by protecting the right to know but also by guaranteeing
10 that the individual's privacy and integrity in his personal affairs
11 shall remain inviolate. Consequently it is hereby declared to be the
12 public policy of this State to secure the public's right to know to the
13 maximum extent permitted within the limitations expressed in this
14 act. It is therefore the Legislature's intention that this act should
15 be construed in accordance with the principle of providing
16 maximum access to government-held information without impair-
17 ing the functions of government or the privacy of individuals.

1 3. Definitions. As used in this act:

2 a. "Advisory committee" means any committee, board, commis-
3 sion, council, conference, panel, task force or other similar group,
4 or any subcommittee or other subgroup thereof, which is:

5 (1) established by statute or reorganization plan; or

6 (2) established or utilized by one or more government instru-
7 mentalities;

8 in the interest of obtaining advice or recommendations for a govern-
9 ment instrumentality, except that such term excludes any committee
10 which is composed wholly of full-time officers or employees of a
11 government instrumentality.

12 b. "Consultant" means any person or persons who contract with
13 any government instrumentality to investigate or report on a
14 designated topic, except that such term excludes full-time officers or
15 employees of a government instrumentality.

16 c. "Custodian" means any authorized person having custody or
17 immediate control of the information in question including but not
18 limited to the central information officer provided for in section 8.

19 d. "Decision" means any duly authorized action taken by a
20 government instrumentality or its employees which affects the
21 rights, duties, obligations, privileges or benefits of the public or any
22 member thereof. It shall include but not be limited to policy
23 decisions, resolution of contested cases and the promulgation of
24 rules and regulations.

25 e. "Government instrumentality" means the State and any
26 county, municipality, district, public authority, public agency and
27 any other political subdivision or public body in the State and any
28 program receiving more than half of its funds from public revenue.

29 f. "Information" means all books, papers, maps, photographs,
30 cards, tapes, recordings, or other documentary materials, regard-
31 less of physical form or characteristics.

32 g. "Law" means a constitutional provision, statute, resolution of
33 either or both Houses of the Legislature, Gubernatorial executive
34 order, rule of court, regulation of a department in the Executive
35 Branch of State Government promulgated under the authority of a
36 Gubernatorial executive order, Federal rule, regulation or order,
37 and the decisional law applicable within this State as determined
38 and declared from time to time by the courts of this State and of the
39 United States.

40 h. "Memorandum" means all internal communications, notes,
41 drafts, worksheets, letters and similar materials prepared in the
42 ordinary course of government business.

43 i. "Person" means any natural person, corporation, partnership,
44 firm or association.

45 j. "Person in interest" means the person who is the subject of
46 information or any representative designated by said person, except
47 that if the subject of the information is under legal disability, the
48 term "person in interest" means and includes his parent or duly
49 appointed legal representative.

50 k. "State" means the State, including the Legislature, Judiciary
51 and Governor's Office, and any office, department, division, bureau,
52 board, commission or agency of the State.

1 4. Right to inspect, examine and copy information. Except as
2 otherwise provided by law, all persons shall have the right to in-
3 spect, examine, copy and obtain a copy of any information that is
4 made, maintained or kept by or for any government instrumentality
5 for use in the exercise of functions relating to the conduct of the
6 public's business.

1 5. Common law interest. This act is not intended to abolish the
2 right of a citizen to obtain government information at common law
3 provided that the release of information on the basis of common law
4 right to know should be consistent with the policies enunciated in
5 this act.

1 6. Court rules and subpoena power. This act is not intended to
2 affect any of the rules of procedure of the New Jersey or Federal
3 courts, nor is it intended to affect the acquisition of information
4 through the lawful exercise of the subpoena power.

1 7. Privileges. Nothing in this act shall be construed to impair
2 any privileges recognized by law provided that any such privileges
3 possessed by a government instrumentality shall be construed in
4 accordance with the provisions of this act.

1 8. Duty of public employees; central information officer.

2 a. It shall be the duty of all employees of a government instru-
3 mentality to assure that all requests for information are processed
4 as promptly as possible pursuant to the provisions of this act.

5 b. Each department in the Executive Branch of State Govern-
6 ment shall appoint a central information officer to whom requests
7 for information can be presented and who shall be primarily
8 responsible for the department's compliance with the provisions of
9 this act.

1 9. Processing requests for information.

2 a. Whenever a custodian receives a request to inspect, examine,
3 copy or obtain a copy of information, he shall promptly comply with
4 such request. If the requested information cannot be provided pur-
5 suant to sections 14, 15 or 17 of this act, then the custodian shall
6 promptly notify the requester, in writing if requested, of the

7 grounds for the denial, including a citation of the statute, rule or
8 regulation under which access is being denied and the requester's
9 right to appeal and to whom such appeal may be made. If the re-
10 quested information cannot be provided because it is temporarily
11 unavailable due to its being currently in use or in storage, then the
12 custodian shall promptly notify the requester, in writing if re-
13 quested, of this fact and of the time and place at which the informa-
14 tion will be made available. If, in the opinion of the custodian, the
15 request to inspect, examine, copy or obtain a copy of information is
16 unreasonable because it is overly burdensome in that it would
17 clearly and substantially disrupt agency operations, then the
18 custodian shall promptly notify the requester, in writing if re-
19 quested, of this fact, provided that the custodian shall only deny
20 access to such information after attempting to reach a reasonable
21 solution with the requester accommodating the interests of both
22 parties.

23 b. Whenever any government employee, other than the custodian,
24 receives a request for information, he shall make every reasonable
25 effort to direct the requester to the proper custodian of such in-
26 formation.

27 c. The denial of any request for information shall be given to the
28 requester within a maximum of 20 working days from the receipt
29 of the request.

30 d. Whenever a request made to a custodian is not properly com-
31 plied with or the notification requested by this section is not
32 promptly given, then the person making such request shall have the
33 right to appeal as provided by section 20 of this act.

1 10. Manner and time of inspection and copying. The inspection,
2 examination and copying of information under this act shall be
3 accomplished during the regular business hours of the government
4 instrumentality having immediate control of such information.
5 Every person shall have the right to copy information by hand
6 under appropriate supervision and, consistent with a need to pre-
7 serve the original information, every person shall have the right to
8 purchase copies from the custodian or use his own duplicating
9 process to obtain copies. A person shall be allowed to use his own
10 duplicating process only when the custodian finds that there is no
11 risk of damage to, or mutilation of, or alteration of, such informa-
12 tion and that it will not be incompatible with the economic and
13 efficient operation of the office and the transaction of public business
14 therein.

1 11. Fees. There is hereby created in the Department of State an
2 intergovernmental committee composed of the members of the State
3 Records Committee established by P. L. 1953, c. 410, s. 6 (C. 47:3-20)
4 and the Executive Director of the Office of Fiscal Affairs, the
5 Administrative Director of the Courts and the Director of the
6 Division of Administrative Procedure or their respective designees.
7 It shall be the duty of this committee to establish uniform fee
8 schedules for use by each government instrumentality when pro-
9 viding public information. These schedules when adopted shall have
10 the force and effect of law and shall be enforced pursuant to the pro-
11 visions of section 20 of this act.

1 12. Annual reports. Every central information officer and every
2 local government instrumentality shall prepare and submit to the
3 public information commission, by January 31 of each year, an
4 annual report describing each request for information that has been
5 denied with the reasons for such denial and any problems that have
6 been encountered under this act in the preceding calendar year.

1 13. Creation of records. This act shall not impose any obligation
2 to compile or create information not already in existence at the time
3 of the request. Information is not required to be created by com-
4 piling selected items from the files. Such data as lists, ratios, pro-
5 portions, percentages, per capita, frequency distributions, trends,
6 correlations and comparisons shall be made available only if such
7 data has already been compiled. This section shall not, however,
8 prevent a member of the public from compiling such information
9 provided that the request to inspect, examine, copy or obtain a copy
10 of information conforms to the other provisions of this act.

1 14. Information that may be withheld from disclosure.

2 a. Unless disclosure is specifically mandated by any law, other
3 than section 4 of this act, a government instrumentality may with-
4 hold from disclosure:

5 (1) information contained in a memorandum prepared by an em-
6 ployee of government provided that whenever a memorandum con-
7 tains factual or statistical information, this information shall be
8 disclosed if it can be readily extracted from the memorandum with-
9 out jeopardizing the meaning and confidentiality of the remaining
10 sections. Nothing herein shall be construed to require the disclosure
11 of information contained in a memorandum during the course of
12 preparation;

13 (2) any memorandum described in (1) shall not be withheld from
14 disclosure if:

15 (a) the memorandum represents the sole basis for a decision
16 of government; or

17 (b) the contents have been incorporated by reference in a
18 decision of government; or

19 (c) it is a report or record of a safety or health investigation
20 or inspection.

21 b. Reports prepared for any government instrumentality by in-
22 dependent consultants or advisory committees until such instru-
23 mentality can either approve, reject, modify or implement the con-
24 tents of the final report provided that these reports only be with-
25 held at the direction of the head of the government instrumentality
26 after a finding by him that the disclosure of the report would ma-
27 terially prejudice the accomplishment of its objective and provided
28 further that no report be withheld for more than 1 year from the
29 date on which the final report was submitted to the instrumentality.

30 c. Information that has been received from, or transmitted to, a
31 member of the public unless it is information the sender is required
32 by law to transmit. For the purposes of this subsection, "law"
33 means a constitutional provision, statute, executive order, ordi-
34 nance, resolution, rule or regulation.

35 d. Information that is part of an investigatory record compiled
36 for law enforcement purposes except that this section shall not
37 apply to scientific tests, reports or data or reports or records of
38 safety or health investigations or inspections.

39 e. Information pertaining to pending litigation to which a
40 government instrumentality is a party or to claims made pursuant
41 to (P. L. 1972, c. 45, C. 59:1-1 et seq.) until such litigation or claim
42 has been finally adjudicated or otherwise settled according to law.

43 f. Internal rules and internal practices not required to be made
44 public by (P. L. 1968, c. 410, s. 3, C. 52:14B-3) if disclosure would
45 unduly impede the functioning of the government instrumentality.

46 g. Information received from other states or from the Federal
47 Government pursuant to an agreement that the information be kept
48 confidential.

49 h. The contents of real estate appraisals or other information
50 relating to the possible acquisition of property by a government
51 instrumentality if the disclosure would be likely to benefit a party
52 whose interests are adverse to those of the general community and
53 only until such time as title to the property or property interest has
54 passed to such instrumentality except that where required by law
55 the contents of any appraisals shall be made available to the owner
56 of the property.

57 i. Test questions, scoring keys, grades of individuals and other
58 examination data pertaining to the administration of a licensing,
59 employment or academic examination except that after conducting
60 and grading such examination, a person in interest shall have the
61 right to inspect, but not copy, his examination, his answers, tran-
62 scriptions of his oral examination and his scores. Nothing in this
63 subsection, however, shall prohibit the disclosure of the overall
64 results of any examination.

65 j. Student records except that such records shall not be withheld
66 from a person in interest or a person duly authorized by this State
67 or the United States to inspect such records in connection with his
68 official duties.

69 k. Individual records of applicants or of recipients of govern-
70 ment scholarships, grants, loans, public assistance or other financial
71 or rehabilitative assistance programs except that such records shall
72 not be withheld from a person in interest or a person duly autho-
73 rized by this State or the United States to inspect such records in
74 connection with his official duties.

75 l. Information relating to the resolution of labor problems of a
76 government instrumentality, through negotiation, mediation or
77 otherwise, if the disclosure of such information would materially
78 prejudice governmental action, provided that no such information
79 shall be withheld after resolution of the problem.

80 m. Information relating to the resolution of labor problems in the
81 private sector through negotiation, mediation or otherwise.

1 15. Information that shall be withheld from disclosure.

2 a. Except as otherwise provided by law or when essential to the
3 performance of official duties or when authorized by a person in
4 interest, a government instrumentality shall not disclose to anyone
5 other than a person duly authorized by this State or the United
6 States to inspect such information in connection with his official
7 duties:

8 (1) information relating to the mental or physical condition,
9 character, personality or family history of a person as well as any
10 similar information that would constitute a clearly unwarranted in-
11 vasion of privacy;

12 (2) personnel or pension records of an individual provided how-
13 ever that the following shall be public notwithstanding any other
14 provision of this act:

15 (a) an individual's name, title, position, salary, payroll
16 record, length of service in the government instrumentality and
17 in the government, date of separation from government service

18 and the reason therefore; and the amount and type of pension
19 he is receiving;

20 (b) data contained in information which disclose conformity
21 with specific experiential, educational or medical qualifications
22 required for government employment or for receipt of a public
23 pension, but in no event shall detailed medical or psychological
24 information be released.

25 (3) Commercial or financial information customarily considered
26 confidential and the disclosure of which would constitute a clearly
27 unwarranted invasion of privacy or result in placing the person sub-
28 mitting it at a substantial and unfair competitive disadvantage.

1 16. Deletion of exempt information. It shall be the respon-
2 sibility of a government instrumentality to delete where practical
3 identifying details or other exempt information in order to pro-
4 vide maximum public disclosure.

1 17. Commercial use of information.

2 a. Except as otherwise provided by law and subject to subsec-
3 tion b. no information shall be provided to or allowed to be compiled
4 from government files by or on behalf of any person who:

5 (1) seeks such information for the purpose of selling it, or
6 furnishing it for consideration, to others, or

7 (2) seeks to use such information for the purpose of commercial
8 solicitation for profit.

9 b. The information described in subsection a. may be provided
10 to the persons therein described only by the head of a government
11 instrumentality on the terms and conditions prescribed by him. He
12 may release this information only when he finds that such dis-
13 closure

14 (1) is consistent with the other provisions of this act;

15 (2) would assist in the performance of the assigned duties of
16 the government instrumentality; and

17 (3) would provide a benefit to the public or members thereof
18 which will substantially outweigh the resulting interference with
19 individual privacy.

1 18. Public information commission established.

2 a. There is established in the Department of Law and Public
3 Safety a Public Information Commission which shall supervise
4 and coordinate the implementation of this act.

5 b. Membership of the Public Information Commission shall con-
6 sist of the Director of the Division of Administrative Procedure,
7 the State Archivist, a representative of the Governor's Office,
8 the Commissioner of Institutions and Agencies, a representative of

9 the press to be appointed by the Governor from a list of candidates
10 prepared by the New Jersey Press Association, a member of the
11 League of Women Voters to be appointed by the Governor from a
12 list of candidates prepared by the League of Women Voters, the
13 Superintendent of State Police, the Chief Executive Officer of the
14 New Jersey State League of Municipalities and of the New Jersey
15 Association of Chosen Freeholders, and two public members to be
16 appointed by the Governor. Each member, other than the two
17 public members, may appoint a designee to act in his place.

18 c. Members of the Public Information Commission who are not
19 ex officio, shall serve at the pleasure of the Governor during the
20 term of office of the Governor appointing him and until his suc-
21 cessor is appointed and qualified. Each member of the commission
22 shall serve without compensation but shall be entitled to be re-
23 imbursed for all actual and necessary expenses incurred in the
24 performance of his duties.

25 d. The Director of the Division of Administrative Procedure
26 shall be the Chairman of the Public Information Commission. The
27 chairman shall preside over the meetings and business of the com-
28 mission. A vice-chairman shall be elected annually by the com-
29 mission from its membership. In the absence of the chairman, the
30 vice-chairman shall have all the powers and duties of the chairman.
31 A quorum shall be sufficient to conduct the business of the com-
32 mission and emergent matters may be resolved by the chairman
33 with the consent of a majority of the remaining members of the
34 commission.

35 e. The Attorney General shall act as legal advisor and counsel
36 to the Public Information Commission.

37 f. The Public Information Commission may, within the limits of
38 funds appropriated or otherwise made available to it for the pur-
39 pose, employ such other professional, technical, clerical, or other
40 assistants, excepting legal counsel, and incur such expenses as may
41 be necessary for the performance of its duties.

42 g. The Public Information Commission, in the performance of
43 its assigned duties under this act, shall be exempt from sections 9
44 and 10 of P. L. 1968, c. 410, the "Administrative Procedure Act"
45 (C. 52:14B-9 to 10).

1 19. Powers and duties of the commission.

2 a. The Public Information Commission shall have the following
3 duties pursuant to the provisions of this act:

4 (1) to prepare and supplement guidelines pertaining to the
5 disclosure of information under this act and make such guidelines

6 available in pamphlet form or otherwise to the public and to the
7 government instrumentalities throughout this State;

8 (2) to consider and determine all appeals taken by persons
9 denied information by officials in the Executive Branch of State
10 Government, other than those within the office of the Governor,
11 and, on its own initiative, review any action taken by said officials
12 in which access to information is denied;

13 (3) to report to the Governor and the Legislature no later than
14 June 30 of each year concerning the operation of this act and any
15 recommendations for legislative changes;

16 (4) to review and comment upon any law presently in force or
17 hereinafter enacted which affects the disclosure of government-
18 held information;

19 (5) to coordinate its functions with those of the Destruction of
20 Public Records Committee established (P. L. 1952, c. 217,
21 C. 47:3-8.1 et seq.).

22 b. The Public Information Commission, in order to perform its
23 duties pursuant to the provisions of this act, shall have the power:

24 (1) to initiate and conduct investigations;

25 (2) to hold hearings where appropriate;

26 (3) to compel the attendance of witnesses and the production
27 before it of such information as it may deem relevant and proper;

28 (4) to administer oaths and examine witnesses under oath;

29 (5) in connection with appeals, to determine the matter de novo
30 and to order the disclosure under appropriate terms and condi-
31 tions of requested information when it finds that the withholding
32 of such information is contrary to the provisions of this act;

33 (6) to seek and obtain in a summary action in the Superior
34 Court an order mandating compliance with any decision of the
35 commission made pursuant to the provisions of this act;

36 (7) to adopt such rules and regulations as will guarantee the
37 expeditious and effective implementation of the provisions of this
38 act in the Executive Branch of State Government; and

39 (8) to do all acts necessary and convenient to carry out the
40 powers and duties herein expressly provided to the commission
41 under this act.

1 20. Enforcement proceedings; costs and attorney fees.

2 a. Any person who has been denied for any reason the right to
3 inspect, copy or obtain a copy of any information as provided in
4 this act by any official of the Executive Branch of State Govern-
5 ment, other than those within the office of the Governor, shall have
6 a right to appeal that determination to the Public Information

7 Commission established in section 18 of this act. The burden shall
8 be upon the government instrumentality to sustain the withholding
9 of information. Such appeal shall not be considered a prerequisite
10 to pursuing, or to be in lieu of, any other remedy provided in this
11 section.

12 b. Any person who has been denied for any reason the right to
13 inspect, copy or obtain a copy of any information as provided in
14 this act may apply to the Superior Court of New Jersey by a pro-
15 ceeding in lieu of prerogative writ for an order requiring the
16 custodian of the information to afford inspection, the right to copy
17 or obtain a copy therefor.

18 c. Whenever a proceeding is brought under subsection b., the
19 court shall determine the matter de novo and may proceed in
20 summary manner. The burden shall be upon the government in-
21 strumentality to sustain the withholding of information. If the
22 court finds that the information has been improperly withheld
23 from the plaintiff, it may order the information to be made ac-
24 cessible to the plaintiff at the time and in the manner that the court
25 deems appropriate. Except as to causes the court considers of
26 greater importance, proceedings authorized by this section shall
27 take precedence on the docket over all other causes and shall be
28 assigned for hearing at the earliest practicable date and expedited
29 in every way.

30 d. Notwithstanding that information is required to be public
31 under this act, a custodian may, if he concludes that the disclosure
32 of this information would do substantial injury to the public
33 interest, apply to the Superior Court of New Jersey for an order
34 permitting him to withhold such information. Hearing on such
35 application shall be held at the earliest practical time. After hear-
36 ing, the court may issue such an order upon a finding that dis-
37 closure would cause substantial injury to the public interest. In
38 such action, the burden of proof shall be upon the custodian. The
39 person seeking permission to examine the information shall have
40 notice of said hearing served upon him in the manner provided for
41 service of process by the New Jersey Rules of Court and shall
42 have the right to appear and be heard.

43 e. Where the government instrumentality does not prevail in
44 any court proceeding brought under this act, the court may assess
45 against such instrumentality attorneys' fees and other litigation
46 costs reasonably incurred by the opposing party.

1 21. Penalty. Any government official or employee who shall
2 willfully engage in a continuous and repetitive pattern of violating
3 this act shall be subject to removal from his office or employment
4 after hearing in court and upon application by an aggrieved
5 citizen.

1 22. Appropriation. There is hereby appropriated from the Gen-
2 eral State Fund to the Public Information Commission the sum of
3 \$30,000.00 for use during the fiscal year ending June 30, 1974.

1 23. Severability. If any clause, sentence, subdivision, para-
2 graph, section or part of this act be adjudged to be unconstitu-
3 tional or invalid, such judgment shall not affect, impair or
4 invalidate the remainder thereof, but shall be confined in its opera-
5 tion to the clause, sentence, subdivision, paragraph, section or part
6 thereof directly involved in the case in which said judgment shall
7 have been rendered.

1 24. Repealer. (P. L. 1963, c. 73, C. 47:1A-1 et seq.) is hereby
2 repealed.

1 25. Effective date provision. This act shall take effect 90 days
2 from the date of its enactment into law.

FISCAL NOTE TO
ASSEMBLY, No. 3133

STATE OF NEW JERSEY

DATED: JUNE 12, 1975

Assembly Bill No. 3133 is designated the "Public Information Act of 1975." It requires public disclosure of information, records and documents by instrumentalities of governments and agencies.

The Division of Budget and Accounting estimates that enactment of this legislation would require a State expenditure of \$92,510.00 in fiscal 1975-76 and \$95,011.00 in fiscal 1976-77.

The Judiciary supplements this estimate by stating that as far as it is concerned, some additional staffing may be required to maintain a departmental information office. However, there is no way to determine what requests, if any, would be made for information affecting action of the Judiciary. Therefore, no meaningful estimate of possible additional costs can be made.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

ASSEMBLY, No. 3133

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 20, 1975

By Assemblymen HAMILTON, BURSTEIN, MARTIN, Assemblywoman WILSON and Assemblyman McCARTHY

Referred to Committee on State Government, Federal and Interstate Relations

AN ACT to require public disclosure of information, records and documents by instrumentalities of government and agencies, to repeal the existing "Right to Know Law" (P. L. 1963, c. 73), and making an appropriation.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Short title. This act shall be known as the "Public Informa-
2 tion Act of 1975."

1 2. Declaration of intent. The Legislature recognizes that nothing
2 so diminishes democracy as the pursuit of secrecy and that if
3 public confidence in government is to be restored it is necessary
4 to achieve the maximum possible disclosure of governmental affairs.
5 However, the public interest is served not only by protecting the
6 right to know, but also by guaranteeing that the individual's privacy
7 and integrity in his personal affairs remain inviolate. Consequently
8 it is hereby declared to be the public policy of this State to secure
9 the public's right to know to the maximum extent permitted
10 within the limitations expressed in this act. It is the Legislature's
11 intention that this act be construed in accordance with the principle
12 of providing maximum access to government-held information
13 without impairing the functions of government or the privacy of
14 individuals.

1 3. Definitions. a. "Instrumentality of government" means any
2 unit of the State, including the Legislature, the Judiciary, a de-
3 partment, division, office, board or agency, or of any county,
4 municipality, district, public authority, public agency and any other
5 political subdivision or public body in the State, and their agents
6 and any program receiving more than half of its funds from public
7 revenue including Federal funds.

8 b. "Advisory committee" means any committee, board, commis-
9 sion, council, conference, panel, task force or other similar group,
10 or any subcommittee or other subgroup thereof, which is:

11 (1) Established by law;

12 (2) Established by reorganization plan or executive order; or

13 (3) Established or utilized by one or more instrumentalities of
14 government in the interest of obtaining advice or recommendations
15 for an instrumentality of government, except that such term ex-
16 cludes any committee, board, commission, council, conference,
17 panel, task force or other similar group, which is composed wholly
18 of full-time officers or employees of an instrumentality of
19 government.

20 c. "Consultant" means any person or persons who are com-
21 pensated by any instrumentality of government to investigate or
22 report on a designated topic, except that such term excludes full-
23 time officers or employees of an instrumentality of government.

24 d. "Custodian" means any authorized person having custody
25 or immediate control of any information requested, including, but
26 not limited to, the Central Information Officer provided for in
27 section 5 of this act.

28 e. "Decision" means any duly authorized action taken by an
29 instrumentality of government or its employees which affects the
30 rights, duties, obligations, privileges or benefits of the public or
31 any member thereof. It shall include but not be limited to policy
32 decisions, resolution of contested cases and the promulgation of
33 rules and regulations.

34 f. "Information" means all books, papers, maps, photographs,
35 cards, tapes, recordings, or other documentary materials, regard-
36 less of physical form or characteristics.

37 g. "Law" means a constitutional provision, statute, legislative
38 resolution, rule of court, Federal rule, regulation or order, guber-
39 natorial executive order and the decisional law applicable within
40 this State as determined and declared from time to time by the
41 courts of this State and of the United States.

42 h. "Memorandum" means all written internal communications,
43 notes, drafts, worksheets, letters and similar materials prepared
44 in the ordinary course of government business.

45 i. "Person" means any natural person, corporation, partnership,
46 firm or association.

47 j. "Person in interest" means the person who is the subject of
48 information or any representative designated by said person, except
49 that if the subject of the information is under legal disability, the

50 term "person in interest" shall mean and include his parent or
51 duly appointed legal representative.

1 4. Right to inspect, examine and copy information. a. Except
2 as otherwise provided by this or other law, all persons shall have
3 the right to examine, copy and obtain a copy of any information
4 made or maintained by or for any instrumentality of government
5 in the conduct of the public's business.

6 b. The examination and copying of information under this act
7 shall be accomplished during the regular business hours of the
8 instrumentality of government having immediate control of such
9 information. Every person shall have the right to copy information
10 by hand under appropriate supervision and shall have the right to
11 purchase copies from the custodian.

1 5. Central information officer; duty of public employees. a. Each
2 department in the Executive Branch of State Government shall
3 appoint a central information officer to whom written requests for
4 information may be presented and who shall be responsible for the
5 department's and any custodian's compliance with the provisions
6 of this act.

7 b. It shall be the duty of all employees of any instrumentality of
8 government, including those of the Executive Branch of State
9 Government, to assure that all written requests for information
10 are processed as promptly as possible pursuant to the provisions
11 of this act.

12 c. Whenever any government employee other than a custodian
13 receives a written request for information, he shall make every
14 reasonable effort to direct the requester to the proper custodian of
15 such information.

16 d. Whenever an employee of any instrumentality of government
17 receives a request for copies of any laws, the employee may refer
18 the requester to any public library in which such information may
19 be found.

1 6. Processing requests for information. a. Whenever a cus-
2 todian receives a written request to examine, copy or obtain a
3 copy of information reasonably described, he shall promptly comply
4 with such request. If the requested information, pursuant to
5 sections 8, 9 or 11 of this act is not to be provided, the custodian
6 shall promptly notify the requester in writing of the grounds for
7 the denial, including a citation of the statute, rule or regulation
8 under which the information is being denied, and of the requester's
9 right to appeal, and to whom such appeal may be taken. If the
10 requested information cannot be provided because it is temporarily

11 unavailable, the custodian shall promptly notify the requester in
12 writing of this fact and of the time and place at which the informa-
13 tion will be made available. If, in the opinion of the custodian, the
14 request to examine, copy or obtain a copy of information, would
15 substantially disrupt the operations of an instrumentality of gov-
16 ernment, the custodian shall promptly notify the requester in
17 writing of this fact, and of the procedures to be implemented to
18 accommodate the interests of all the parties.

19 b. Any denial of a written request for information shall be given
20 to the requester within 10 working days from receipt of the request,
21 unless the information or a denial thereof can be given within a
22 shorter period.

23 c. A person making any such written request shall have the right
24 of appeal, as provided by section 13 of this act, whenever a written
25 request made to a custodian is not complied with to the satisfaction
26 of the requester and whenever the notification required by this
27 section is not promptly given.

1 7. Creation of records. This act shall not impose any obligation
2 to compile or create information not already in existence at the time
3 of the request. Such data as lists, ratios, proportions, percentages,
4 per capita, frequency distributions, trends, correlations, compari-
5 sons and compilations of selected items shall be made available only
6 if such data has already been compiled.

1 8. Information that may be withheld from disclosure. Unless
2 disclosure of information is mandated by a law other than section 1
3 of this act, an instrumentality of government may withhold the
4 following from disclosure:

5 a. (1) Information contained in a memorandum prepared by an
6 employee or advisory committee of an instrumentality of govern-
7 ment, if its disclosure would injure the consultative functions of an
7A instrumentality of government. Whenever such a memorandum
8 contains factual or statistical information, this information shall
9 be disclosed but shall be extracted from the memorandum if neces-
10 sary to protect the confidentiality of the remaining sections.
11 Nothing in this subsection shall be construed to require disclosure
12 of information contained in a memorandum in the course of
12A preparation.

13 (2) Information withheld from disclosure pursuant to subsec-
14 tion a. (1) shall not be withheld from disclosure if:

15 (a) The memorandum represents the sole basis for a decision of
16 government; or

17 (b) The contents of the memorandum have been incorporated by
18 reference in a decision of government; or

19 (c) The memorandum is a report or record of a safety or health
20 investigation or inspection of other than a person; or

21 (d) It is the report of an advisory committee and has been before
22 the instrumentality of government for at least 3 months.

23 b. Information relating to appointments of persons to official
24 positions.

25 c. Information that has been received from, or transmitted to, a
26 member of the public, unless it is information the sender is required
27 by law to transmit.

28 d. Information that is part of an investigatory record compiled
29 for law enforcement purposes, if its disclosure would injure the
30 public interest. No reports or records of safety or health investi-
31 gations shall be withheld pursuant to this subsection.

32 e. Information which is an attorney's work product for pending
33 litigation to which the government instrumentality is a party, or
34 for claims made pursuant to P. L. 1972, c. 45 until such litigation
35 or claim has been finally adjudicated or otherwise settled according
36 to law, except that documents filed in open court shall not be with-
37 held pursuant to this section.

38 f. Internal rules and internal practices not required to be made
39 public by section 3 of the Administrative Procedure Act, P. L. 1968,
40 c. 410 (C. 52:14B-3) if disclosure would substantially disrupt the
41 operation of an instrumentality of government.

42 g. Information from other states or from the Federal Govern-
43 ment which is received pursuant to an agreement that the informa-
44 tion be kept confidential, or which is required by regulation
45 issued by the foreign jurisdiction to be kept confidential.

46 h. The contents of real estate appraisals or other information
47 relating to the possible acquisition of property by an instrumen-
48 tality of government, until such time as title to the property or
49 property interest has passed to such instrumentality.

50 i. Test questions, scoring keys, grades of individuals and other
51 examination data pertaining to the administration of a licensing,
52 employment or academic examination, except that after conducting
53 and grading such examination, a person in interest shall have the
54 right to inspect, but not copy, his examination, his answers, tran-
55 scripts of his oral examination and his scores. Examination results
56 not identified by individual shall not be withheld pursuant to this
57 subsection.

58 j. Information on individual students, except that such records
59 shall not be withheld from a person in interest or from a person
60 duly authorized by an instrumentality of government or the United

61 States to inspect such records in connection with his official duties.
62 Information within subsection b. of this section may be withheld
63 from a person in interest.

64 k. Individual records of applicants or recipients of government
65 scholarships, grants, loans, public assistance or of other financial
66 or rehabilitative assistance programs, except that such records
67 shall not be withheld from a person in interest or from a person
68 duly authorized by an instrumentality of government or the United
69 States to inspect such records in connection with his official duties.

70 l. (1) Information relating to the resolution of labor problems
71 of an instrumentality of government through negotiation, media-
72 tion or otherwise, except that no such information shall be withheld
73 after resolution of the problem.

74 (2) Information relating to the resolution of labor problems in
75 the private sector through negotiation, mediation or otherwise.

1 9. Information that shall be withheld from disclosure. Except
2 as provided by another law or when essential to the performance
3 of official duties or when authorized by a person in interest, an
4 instrumentality of government shall not disclose to anyone other
5 than a person duly authorized by an instrumentality of government
6 or the United States to inspect such information in connection with
7 his official duties:

8 a. Information relating to the mental or physical condition,
9 character, personality or family history of a person as well as any
10 similar information that would constitute a clearly unwarranted
11 invasion of privacy or of the doctor-patient privilege.

12 b. Personnel or pension records of an individual, except that the
13 following shall be public:

14 (1) An individual's name, title, position, salary, payroll record,
15 length of service in the instrumentality of government and in the
16 government, date of separation from government service and the
17 reason therefor, and the amount and type of pension he is receiving;

18 (2) Data contained in information which disclose conformity
19 with specific experiential, education or medical qualifications
20 required for government employment or for receipt of a public
21 pension, but in no event shall detailed medical or psychological
22 information be released.

23 c. Commercial or financial information customarily considered
24 confidential and the disclosure of which would constitute a clearly
25 unwarranted invasion of privacy or would result in placing the
26 person or firm submitting it at a substantial and unfair competitive
27 disadvantage.

1 10. Deletion of exempt information. An instrumentality of gov-
2 ernment shall delete identifying details or other exempt informa-
3 tion where practical in order to provide the maximum public
4 disclosure.

1 11. Commercial use of information. a. Except as provided by
2 another law or by subsection b. of this section, no information
3 shall be provided to, or be compiled from government files by or
4 on behalf of, any person who:

5 (1) Seeks such information for the purpose of selling it, or
6 furnishing it for consideration, to others; or

7 (2) Seeks to use such information for the purpose of commercial
8 solicitation for profit.

9 b. Information described in subsection a. shall be provided to
10 the persons therein described only by the head of an instrumen-
11 tality of government on terms and conditions prescribed by him,
12 when he finds that such disclosure

13 (1) Would not be inconsistent with the other provisions of this
14 act; and

15 (2) Would provide a benefit to the public or members thereof
16 substantially outweighing any resulting invasion of privacy.

17 c. The names and business addresses of persons applying for or
18 possessing licenses to engage in professional occupations, shall be
19 available for the purpose of informing such persons of available
20 educational materials and courses related to their professional
21 occupation, pursuant to rules promulgated by the Executive Com-
22 mission on Ethical Standards.

1 12. The Executive Commission on Ethical Standards shall con-
2 sider and determine all appeals taken by persons denied informa-
3 tion by instrumentalities of government, other than the Judicial
4 Branch, the Legislative Branch and the Office of the Governor, and
5 may on its own initiative review any action in which access to in-
6 formation has been denied. Notwithstanding the provisions of
7 sections 9 and 10 of the New Jersey Administrative Procedure
8 Act, P. L. 1968, c. 410 (C. 52:14B-9, 10), the commission is hereby
9 empowered to rely solely upon its own procedures when determining
10 any appeals or issuing any orders pursuant to this act.

1 13. Enforcement proceedings; costs and attorneys fees. a. Any
2 person denied the right to examine, copy or obtain a copy of any
3 information as provided in this act, other than by an official of the
4 Judicial Branch, the Legislative Branch or the Office of the Gov-
5 ernor, shall have a right to appeal that determination to the Exec-
6 tive Commission on Ethical Standards. The burden shall be upon

7 the instrumentality of government to sustain the withholding of
8 information. Such appeal shall not be considered a prerequisite
9 to pursuing, or to be in lieu of, any other remedy provided in this
10 section.

11 b. Any person who has been denied the right to examine, copy
12 or obtain a copy of any information as provided in this act, may
13 apply to the Superior Court of New Jersey by a proceeding in lieu
14 of prerogative writ for an order requiring the custodian of the
15 information to afford the right to examine, copy and obtain a copy
16 thereof.

17 c. Whenever a proceeding is brought under subsection 13 b, the
18 court shall determine the matter de novo and may proceed in sum-
19 mary manner. The burden shall be upon the instrumentality of
20 government to sustain the withholding of information. If the
21 court finds that the information has been improperly withheld from
22 the plaintiff, it may order the information made accessible to the
23 plaintiff at the time and in the manner the court deems appropriate.
24 Except as to causes the court considers of greater importance,
25 proceedings authorized by this subsection shall take precedence
26 on the docket and shall be expedited.

27 d. Notwithstanding that information is required to be public
28 under this act, a custodian may, if he concludes that the disclosure
29 of this information would substantially disrupt the operations of
30 the instrumentality of government or do substantial injury to the
31 public interest, apply to the Superior Court of New Jersey for an
32 order permitting him to withhold such information. Proceedings
33 on such application shall be held at the earliest practical time, and
34 after a hearing, the court may issue the requested order upon a
35 finding that disclosure would substantially disrupt the operations
36 of the instrumentality of government or do substantial injury to
37 the public interest. In such action, the burden of proof shall be
38 upon the custodian. The person seeking permission to examine the
39 information shall have notice of said hearing served upon him in
40 the manner provided for service of process by the New Jersey
41 Rules of Court and shall have the right to appear and be heard.

42 e. When the instrumentality of government does not prevail in
43 any court proceeding brought pursuant to this act, the court may
44 assess against such instrumentality attorneys fees and other liti-
45 gation costs reasonably incurred by the opposing party.

1 14. Fees. The Executive Commission on Ethical Standards shall,
2 pursuant to the Administrative Procedure Act, P. L. 1968, c. 410
3 (C. 42:14B-1 et seq.) promulgate uniform fee schedules for use by

4 each instrumentality of government when providing public in-
5 formation.

1 15. Annual reports. Every central information officer and every
2 unit of county and local government shall prepare and submit to
3 the Executive Commission on Ethical Standards between January
4 1 and January 31 of each year, an annual report describing each
5 request for information that has been denied with the reasons for
6 such denial, and describing any problems encountered under this
7 act.

1 16. Common law interest. This act is not intended to abolish
2 the right of a citizen to obtain information from an instrumentality
3 of government at common law.

1 17. Court rules and subpoena power. This act is not intended to
2 affect any of the rules of evidence or procedure of the New Jersey
3 or Federal courts, nor is it intended to affect the acquisition of
4 information through the lawful exercise of the subpoena power.

1 18. Privileges. This act is not intended to impair any privileges
2 otherwise provided by law, provided that any such privileges pos-
3 sessed by an instrumentality of government shall be construed in
4 accordance with the provisions of this act.

1 19. Severability. If any clause, sentence, subdivision, paragraph,
2 section or part of this act be adjudged to be unconstitutional or
3 invalid, such judgment shall not affect, impair or invalidate the
4 remainder thereof, but shall be confined in its operation to the
5 clause, sentence, subdivision, paragraph, section or part thereof
6 directly involved in the case in which said judgment shall have
7 been rendered.

1 20. P. L. 1963, c. 73 (C. 47:1A-1 et seq.) is repealed.

1 21. There is hereby appropriated to the Executive Commission
2 on Ethical Standards the additional sum of \$100,000.00 for the fiscal
3 year ending June 30, 1975, so that it may implement the provisions
4 of this act.

1 22. This act shall take effect 90 days following its enactment.

STATEMENT

This bill implements the Attorney General's report entitled "New Jersey's Right to Know: A Report on Open Government," issued in January, 1974. The philosophy of the bill is to provide maximum disclosure of governmental information while protecting the citizen's right to privacy and the government's ability to function.

It should therefore enhance confidence in the decision making process. The existing Right to Know law, N. J. S. A. 47:1A-1 et seq., has proven ineffective and inadequate in light of New Jersey court decisions and experience in other states, and is repealed by this bill.

The bill establishes three classes of information: that which must be revealed upon request; that which may be revealed in the discretion of the agency; that which shall not be revealed even upon request. No duty is imposed to create records or compile information not already in existence or already completed.

Jurisdiction over the bill and any controversies resulting is vested both in the existing Executive Commission on Ethical Standards and in the Superior Court, with the instrumentality of government resisting disclosure bearing the burden of proof in either case. The commission is given an additional \$100,000.00 to administer this bill, and will provide speedy administrative relief in most cases.

I N D E X

	<u>Page</u>
James R. Hurley Assemblyman, 1st District	1
Mary Ann Burgess Deputy Attorney General State of New Jersey	7
William J. Hamilton, Jr. Assemblyman, 17th District	13
John A. Spizziri Assemblyman, 40th District	21
Julie Hirsch Common Cause	22
Dorothy Schoenwald New Jersey Civil Liberties Union	26
John Russell New Jersey Press Association	36
 <u>ALSO:</u>	
Statement submitted by Fred G. Burke, Commissioner, Department of Education, State of New Jersey	lx
Statement submitted by Selma Rosen, League of Women Voters of New Jersey	10x
Statement submitted by Joseph Katz, Public Affairs Counsel, Representing the Becker C. P. A. Review	12x

* * * *

ASSEMBLYMAN ROBERT C. SHELTON, JR. (Chairman): This is a public hearing on Bills A-1188, A-1466, and A-3133. I apologize to all those who were present at nine-thirty when this meeting was scheduled to commence.

Mr. Hurley, you are the prime sponsor, I believe, of Bill A-1188. Would you like to present your testimony for the record at this time.

J A M E S R. H U R L E Y: I thank you, Mr. Chairman. I am James R. Hurley, Assemblyman for the 1st District. The subject of my testimony is A-1188, an act to require public disclosure of information, records and documents by government instrumentalities and agencies and repealing the present Right to Know Law.

I will just go through very briefly some of the basic principles of the bill, and then make a comment at the close. The basic principle of A-1188 is that all government held information is public, unless there is a specific provision exempting it from disclosure. Under this principle, the burden is on the government to demonstrate that there is a specific provision allowing it to withhold the requested information. This is a departure from the existing Right to Know Act under which the burden is on the person requesting it. That person must prove either "a special interest, good cause, a proper purpose or a direct concern in order to obtain the information."

Now, what is going to be covered by this Act? Under the existing Right To Know Law, only those records which are required by law to be made, maintained, or kept on file are deemed to be public records. Section I-4 of A-1188 eliminates the "required by law" provision of the existing act, thereby broadening the scope of the proposed act to include virtually all information held by government. Such things as accident and inspection reports, consultants' reports, audits and other studies conducted by government would all be governed by the provisions of this Act.

The Bill provides that the government may withhold the following information from disclosure when it deems it necessary:

1. Personal information, such as family history and similar information that would constitute an unwarranted invasion of privacy. Also exempt are certain personnel or pension records, commercial and financial information which is either an invasion of privacy or which would place the person at an unfair competitive disadvantage.
2. Certain government information may also be withheld. This information includes memoranda, reports prepared for government that may be withheld for as long as one year from the date on which the final report is submitted.
3. Information which is sent to a member of the public.
4. Investigatory records.
5. Information pertaining to pending litigation.
6. Internal rules and practices.
7. Confidential information from other states or from the Federal government.
8. Real estate appraisals relating to possible acquisition of property by the government, if such a disclosure would benefit a party whose interests are adverse to those of the general community.

9. Test scores, questions and grades.
10. Student records need only be disclosed to authorized persons in connection with official duty.
11. Records of applicants or recipients of government scholarships, grants, loans and so forth.
12. Information relating to labor disputes in the public sector prior to their resolution.
13. Information relating to labor disputes in the private sector.

The mechanics of this act include a significant aspect; that is, it is self-executing. In other words, when a custodian receives a request, he must reply promptly, because under the provisions of this act, if a request is denied, a written reply stating the reasons for refusal must be given to the requestor within twenty days.

Each department within the Executive Branch of the government will be required under this Act to appoint a central information officer to whom requests for information can be presented, and who is primarily responsible for the Department's compliance with the provisions of this Act.

In addition to the department custodian, or central information officer, the act establishes a public information commission to supervise and coordinate the act's implementation. The commission is given the following duties:

Prepare and supplement guidelines pertaining to the disclosure of information; to consider and determine all appeals. In my opinion that is one of the most important functions of the

public information commission. To report to the Governor and the Legislature regarding the operation of this act; to review and comment on any law which affects disclosure of government held information; and to coordinate its functions with those of the destruction of records committee.

Now, in order to perform these duties, the commission is allowed to conduct investigations, hold hearings, hear witnesses and force them to produce information which it deems relevant. With regard to appeals, the commission orders the disclosure of information and sets the terms and conditions for such disclosure. Furthermore, the commission can get a Superior Court order mandating the compliance with any of its decisions.

Now, if a person appeals his case in accordance with this act, and the case is decided in his favor, the Court may assess the cost of litigation as well as attorney's fees to the State. This will help prevent the government from withholding information with the hope that the requestor will not want to incur the expense of a court appeal.

I would like to close with some comments on the Act. In all three of these bills under consideration by the Committee today, the issue involves maximizing the public's right to know, while simultaneously protecting the citizen's right of privacy, and the government's right to function. Now, in my opinion, A-1188 meets the problem well by providing the citizen with easy access to information while giving the government their right to withhold information for which it can provide reasons why the information should not be disclosed.

Additionally, because the Act is self-executing, it does insure a prompt response on the part of government. Further, by providing for an information officer in each department, the bill pinpoints responsibility quickly.

Summing it all up, the basic thrust of the bill is to make information - which in a large part is available under

the present law - more easily accessible to interested persons, while still affording government the opportunity to prevent disclosure where it feels necessary.

One final comment by me: This bill was introduced early in this session of the Legislature, which means early in 1974. Since that time, two other bills have been introduced; one, a shortened version by Mr. Hamilton, which purports to be patterned after the Federal Freedom of Information Act. And another one, I understand, has been introduced by the Administration, which is an amalgamation of these other two acts. My only comment is that I think an act of this type should have been passed a long time ago. I would urge your committee to take speedy action, regardless of the bill that you finally release from your committee. I urge you to take action immediately to provide this right to know information to the public.

Thank you, Mr. Chairman.

ASSEMBLYMAN SHELTON: Thank you, Assemblyman Hurley. I assure you that consistent with the rules of this House, after the transcript is prepared, and made available to the Committee, the Committee will act with all due speed with regard to the deliberation on these bills.

I did see a fiscal note on one of these bills. Do you happen to have a fiscal note for A-1188?

ASSEMBLYMAN HURLEY: I don't have the fiscal note, but there is an appropriation called for in the Act, which I believe is \$30,000. Yes, it is on page 12, the last page, section 22. It is appropriated to the Public Information Commission.

ASSEMBLYMAN SHELTON: Do you have a basis to explain to the Committee, for the record, as to why you believe that appropriation would be sufficient and adequate to handle the matter?

ASSEMBLYMAN HURLEY: The only thing necessary for the commission would be, in short, the availability of clerical staff. For example, if you look at the make-up of the Public Information

Commission, you will see that it is established in the Department of Law and Public Safety, and the membership of it is prescribed. But I believe it would - if it is going to handle appeals and other information - require some staffing. It would require secretarial help, unless the Department of Law and Public Safety is willing to provide it without an additional appropriation, which I think it possibly could. I think it might require some additional office space in that Department. I see no other reason for appropriations.

ASSEMBLYMAN SHELTON: Do you have any information on the cost of implementation of the act with regard to those agencies affected?

ASSEMBLYMAN HURLEY: No, sir, I don't. In my opinion, the cost would not be substantially increased by the implementation of this act, since most of this information is available now. The responsibility for providing it takes a different turn in this act. The responsibility becomes that of government.

For example, there is a public information officer or a central information officer in each department now. I have no idea if administratively he can handle that responsibility in addition to what he presently does. I suspect that somebody can without a great deal of money or fuss and bother.

ASSEMBLYMAN SHELTON: Fine. Assemblywoman Burgio.

ASSEMBLYWOMAN BURGIO: I just would like to comment that your bill was filed on February 11th, and referred to the Committee on Judiciary. The other two bills were referred to this Committee. Your bill made no move until the other bills were assigned to this Committee. I would like to congratulate the Chairman of our Committee for having a hearing and bringing it out.

ASSEMBLYMAN HURLEY: I don't want to leave the impression with you that I am chastizing your Committee; however, the necessary requests were made of the Judiciary Committee, and there was no action until abruptly many months after its introduction

it was moved by the Speaker of the House.

ASSEMBLYMAN BURGIO: May I ask you another question. Your bill is quite similar to the other two bills that were assigned to our Committee, and yet this one was assigned to the Judiciary, which I think is a problem we do have in the Assembly. There are similar bills going to different Committees.

ASSEMBLYMAN SHELTON: Thank you very much, Assemblyman. Miss Burgess.

M A R Y A N N B U R G E S S: Good morning.

I AM MARY ANN BURGESS AND I AM A DEPUTY ATTORNEY GENERAL OF THIS STATE. ATTORNEY GENERAL HYLAND WISHED TO PERSONALLY APPEAR BEFORE YOU TODAY TO COMMENT ON A-3133 BUT DUE TO ANOTHER COMMITMENT IS UNABLE TO ATTEND. HE HAS THEREFORE ASKED ME TO APPEAR AND CONVEY TO YOU HIS COMMENTS ON THE BILLS CURRENTLY PENDING BEFORE THIS COMMITTEE.

IN ASSUMING OFFICE IN JANUARY OF 1974, THE CURRENT ADMINISTRATION COMMITTED ITSELF TO A POLICY OF OPEN GOVERNMENT. THIS COMMITMENT WAS MADE BECAUSE OF A STRONG CONVICTION THAT SOCIETY CANNOT BE FREE NOR A PEOPLE INDEPENDENT UNLESS THEY HAVE THE ABILITY TO OVERSEE AND CONTROL THE ACTIONS OF GOVERNMENT. TO ATTAIN THIS GOAL, IT IS INCUMBENT UPON EACH PUBLIC OFFICIAL TO ENGENDER A GOVERNMENT WHOSE DOORS ARE OPEN TO THE PUBLIC AS OPPOSED TO GOVERNMENT WHICH SEEKS TO CLOAK ITS ACTIVITIES IN SECRECY. INDEED, THE SUCCESSFUL CONTINUANCE OF OUR FREE AND DEMOCRATIC FORM OF GOVERNMENT REQUIRES A CITIZENRY ABLE TO EVALUATE INDEPENDENTLY THE ACTIONS AND DECISIONS OF ITS GOVERNMENT. SUCH INDEPENDENT EVALUATION REQUIRES THE GUARANTEE OF AN EFFECTIVE RIGHT TO OBTAIN GOVERNMENT-HELD INFORMATION. ACCESS TO INFORMATION WILL ENCOURAGE NOT ONLY FREE DEBATE ON IMPORTANT CONTEMPORARY ISSUES BUT ALSO GREATER PUBLIC PARTICIPATION IN THE GOVERNMENT DECISION-

MAKING PROCESS. AND SUCH ACTIVITIES SERVE THE BENEFICENT GOAL OF FOSTERING A GOVERNMENT CONTROLLED BY, AND RESPONSIVE TO, THE PEOPLE.

IN ADOPTING A POLICY OF OPEN GOVERNMENT, IT IS RECOGNIZED THAT THERE EXISTS A POTENTIAL FOR MISINTERPRETATION AND MISUSE OF GOVERNMENT INFORMATION. HOWEVER, THESE DISADVANTAGES DO NOT JUSTIFY A POLICY OF SECRECY AMONG A FREE PEOPLE. MISUSE AND MISINTERPRETATION MAY BE RECTIFIED BY EXPLANATION. NO REALLY EFFECTIVE REMEDY EXISTS TO DEAL WITH ERRONEOUS CONCLUSIONS OF GOVERNMENT HIDDEN BEHIND AND PERPETUATED BY A POLICY OF SECRECY. FOR EXAMPLE, GOVERNOR BYRNE HAS ALREADY ACTED TO FURTHER THE PUBLIC'S RIGHT TO KNOW BY ISSUING EXECUTIVE ORDER No. 11. THAT ORDER ALLOWS THE PUBLIC TO SEE THE SALARIES AND PENSION BENEFITS PAID TO PUBLIC OFFICIALS. IT ALSO ALLOWS THE PUBLIC TO DETERMINE WHETHER AN INDIVIDUAL MEETS THE ELIGIBILITY REQUIREMENTS FOR A SPECIFIC JOB IN GOVERNMENT OR A PUBLIC PENSION BY MAKING SUCH INFORMATION PUBLIC.

IN SHORT, THE DISADVANTAGES OF A GENERAL POLICY OF PUBLIC DISCLOSURE ARE FAR OUTWEIGHED BY THE PUBLIC'S INTEREST IN BEING ABLE TO EVALUATE THE QUALIFICATIONS AND PERFORMANCE OF THOSE IN GOVERNMENT AND TO ANALYZE THE DECISIONS AND ACTIONS THAT DIRECTLY AFFECT THEM. OF COURSE, THERE ARE CERTAIN TIMES WHEN CONFIDENTIALITY IS NEEDED. THESE OCCASIONS CAN BE COVERED BY SPECIFIC EXCEPTIONS TO PUBLIC DISCLOSURE WITHOUT THE NEED FOR ADHERENCE TO A GENERAL POLICY OF SECRECY. IN REALITY, THE ONLY RULE THAT CAN VALIDLY EXIST IN A FREE AND DEMOCRATIC SOCIETY CONCERNING GOVERNMENT-HELD INFORMATION IS THAT IT IS OPEN TO PUBLIC INSPECTION AND COPYING UNLESS GOVERNMENT CAN CLEARLY PROVE THAT THE DISCLOSURE OF CERTAIN

INFORMATION WOULD EITHER CONSTITUTE AN UNWARRANTED INVASION OF PERSONAL PRIVACY OR PRECLUDE GOVERNMENT FROM CARRYING OUT ITS ASSIGNED DUTIES OR UNJUSTIFIABLY PREJUDICE PRIVATE PROPERTY RIGHTS OR RESULT IN CREATING AN UNFAIR COMPETITIVE ADVANTAGE IN DEROGATION OF OUR FREE ENTERPRISE SYSTEM.

THE NEED TO ASSURE THE PEOPLE A RIGHT TO OBTAIN GOVERNMENT-HELD INFORMATION WAS RECOGNIZED BY THE LEGISLATURE OF THIS STATE WHEN IT ENACTED THE EXISTING RIGHT TO KNOW LAW FOUND IN TITLE 47 OF THE NEW JERSEY STATUTES. AT THE TIME OF ITS ENACTMENT, THE LAW WAS A FORWARD LOOKING AND MUCH NEEDED STEP IN GUARANTEEING THE PUBLIC'S RIGHT TO KNOW. SINCE THAT TIME, HOWEVER, IT HAS BECOME OUTMODED AND IN NEED OF REFURBISHING. AS WITH MOST OTHER THINGS, EXPERIENCE HAS PROVIDED US WITH VITAL AND NECESSARY KNOWLEDGE. IT HAS PROVIDED US WITH OVERWHELMING EVIDENCE DEMONSTRATING THAT THE PUBLIC'S RIGHT TO KNOW IS A VIABLE CONCEPT THAT CAN AND MUST BE FURTHER IMPLEMENTED. IT HAS ALSO SHOWN US THE LAW'S FAILINGS IN NOT ADEQUATELY GUARANTEEING THAT RIGHT. IT IS BECAUSE OF THIS KNOWLEDGE ACQUIRED WHILE OPERATING UNDER THE EXISTING LAW THAT I NOW SPEAK IN SUPPORT OF A-3133 PRESENTLY PENDING BEFORE THIS COMMITTEE.

UNDER THE EXISTING RIGHT TO KNOW LAW, ONLY THOSE RECORDS "REQUIRED BY LAW TO BE MADE, MAINTAINED OR KEPT ON FILE" ARE SUBJECT TO THE LAW'S PROVISIONS. ALTHOUGH THE COURTS HAVE BEEN GIVING THIS PHRASE AN INCREASINGLY LIBERAL CONSTRUCTION, THIS CRITERIA CAUSES BOTH AMBIQUITY IN IMPLEMENTING THE LAW AND SERVES TO EXCLUDE FROM THE LAW'S MANDATE RECORDS THAT SHOULD BE PUBLIC. IT MUST BE REALIZED THAT MOST OF THE RECORDS COMPILED BY GOVERNMENT

ARE NOT "REQUIRED BY LAW TO BE MADE, MAINTAINED OR KEPT ON FILE", BUT ARE SIMPLY PREPARED AS AN AIDE IN PERFORMING A GOVERNMENT FUNCTION. FOR EXAMPLE, MANY OF THE STUDIES, REPORTS, SURVEYS AND STATISTICAL COMPILATIONS HAVE NO STATUTE, RULE OR REGULATION REQUIRING THEIR COMPILATION AND THEREFORE WOULD NOT BE COVERED BY THE EXISTING LAW. YET, THE PUBLIC SHOULD HAVE THE RIGHT TO INSPECT THESE DOCUMENTS. A-3133 WOULD ELIMINATE THIS ARTIFICIAL DISTINCTION BETWEEN RECORDS REQUIRED BY LAW TO BE COMPILED AND RECORDS THAT ARE SIMPLY COMPILED BY GOVERNMENT WITHOUT ANY LEGAL MANDATE. IT WOULD PLACE ALL RECORDS UNDER THE LAW'S SCOPE THEREBY SUBSTANTIALLY INCREASING THE PUBLIC'S RIGHT TO OBTAIN INFORMATION.

ALTHOUGH THE EXISTING RIGHT TO KNOW LAW MAKES PUBLIC ALL RECORDS REQUIRED BY LAW TO BE MADE, MAINTAINED OR KEPT ON FILE, IT CONTAINS NO DEFINITION OF THE TERM "RECORD". WITH GOVERNMENT'S INCREASED RELIANCE ON COMPUTER SYSTEMS, MICROFILM AND OTHER MECHANICAL DEVICES FOR THE STORAGE OF INFORMATION, THE LAW'S MANDATE BECOMES UNCLEAR. IT IS QUESTIONABLE WHETHER THE PRESENT LAW COVERS INFORMATION WHEN IT IS NOT FOUND IN THE TRADITIONAL WRITTEN, TYPEWRITTEN OR PRINTED FORM. THIS DEFICIENCY IS REMEDIED BY A-3133 WHICH BROADLY DEFINES THE TERM "INFORMATION" TO INCLUDE ALL DOCUMENTARY MATERIALS REGARDLESS OF THE PHYSICAL FORM IN WHICH THEY ARE STORED.

ANOTHER VERY IMPORTANT FEATURE OF THE PRESENT BILL IS THAT IT PLACES THE BURDEN ON GOVERNMENT TO PROVE WHY A SPECIFIC PIECE OF INFORMATION SHOULD BE WITHHELD FROM PUBLIC INSPECTION UNDER THE ACT. WHEN A REQUEST CANNOT BE COMPLIED WITH, IT PLACES THE DUTY ON THE CUSTODIAN OF THE INFORMATION TO NOTIFY THE REQUESTOR OF THE GROUND FOR THE DENIAL OF HIS REQUEST INCLUDING THE STATUTE, RULE OR REGULATION UNDER WHICH THE INFORMATION IS BEING DENIED.

THIS WILL TEND TO FURTHER THE DISCLOSURE OF INFORMATION BY PRECLUDING THE OFFICIAL FROM DENYING A REQUEST WITHOUT ANY REASONS FOR HIS ACTION.

BUT THE MOST IMPORTANT DIFFICULTY WITH THE EXISTING LAW AND THAT WHICH A-3133 SEEKS TO REMEDY IS ITS IMPLEMENTATION. THE ATTORNEY GENERAL'S OFFICE CONTINUALLY RECEIVES REQUESTS FOR ADVICE FROM PUBLIC OFFICIALS ON ALL LEVELS OF NEW JERSEY GOVERNMENT CONCERNING THE LAW AND FROM PRIVATE CITIZENS THROUGHOUT THE STATE. SOME OF THE MORE FREQUENT REQUESTS ARE THOSE CONCERNING LICENSES, GOVERNMENT VOUCHERS, PENSION RECORDS, GOVERNMENT BUDGETS, CRIMINAL STATISTICS, POLICE BLOTTERS, GOVERNMENTAL REPORTS AND GOVERNMENT CONTRACTS. OF THE MORE EXTREME CITIZEN COMPLAINTS ARE THOSE CONCERNING A GOVERNMENT AGENCY REFUSING TO ALLOW INSPECTION OF MINUTES OF A PUBLIC MEETING OR A TRANSCRIPT OF A PUBLIC HEARING. THERE WAS ALSO ONE WHERE A CITIZEN COMPLAINED THAT A MUNICIPALITY WOULD NOT PROVIDE HER WITH A COPY OF A MUNICIPAL ORDINANCE AND ONE WHERE A GOVERNMENT AGENCY WOULD NOT PROVIDE COPIES OF ITS PROPOSED BUDGET PRIOR TO THE PUBLIC HEARING ON THAT BUDGET.

BECAUSE IT IS THE MUNICIPAL OR COUNTY ATTORNEY'S RESPONSIBILITY TO PROVIDE LEGAL ADVICE TO LOCAL OFFICIALS, WE GAVE THE OFFICIAL AS MUCH GENERAL ASSISTANCE AS POSSIBLE BUT USUALLY COULD NOT PROVIDE HIM WITH A SPECIFIC ANSWER. IN MOST OF THESE CASES, IT WAS APPARENT THAT THE LOCAL OFFICIAL WAS EITHER UNAWARE OF THE SPECIFIC PROVISIONS OF THE RIGHT TO KNOW LAW OR FELT BEWILDERED IN ATTEMPTING TO APPLY THE LAW TO A

SPECIFIC FACT SITUATION. BECAUSE OF THIS, HE WAS SEEKING THE ADVICE OR ASSISTANCE OF SOME OFFICIAL OR AGENCY THAT COULD PROVIDE HIM WITH A DEFINITIVE ANSWER, BUT NONE EXISTED.

LIKewise, MEMBERS OF THE PUBLIC WHO TELEPHONED WITH THEIR COMPLAINTS ASKING FOR REDRESS HAD TO BE TOLD THEIR ONLY REMEDY^x WAS TO INSTITUTE SUIT IN THE SUPERIOR COURT. UPON HEARING THIS, THEIR FRUSTRATION AND DESPAIR WAS OBVIOUS. EACH ASKED THE DIFFICULT QUESTION WHY HE OR SHE HAD TO INCUR THE COURT COSTS, THE DELAY AND THE ATTORNEY'S FEES WHEN THE REQUESTED RECORD WAS CLEARLY REQUIRED BY LAW TO BE PUBLIC. THIS QUESTION WAS ESPECIALLY DIFFICULT WHEN THE PRIVATE CITIZEN WAS CLEARLY CORRECT AND THE RECORD WAS PUBLIC UNDER THE EXISTING LAW.

THESE EXPERIENCES DEMONSTRATE THAT TO GUARANTEE THE PUBLIC'S RIGHT TO KNOW, THERE MUST EXIST SOME MECHANISM TO ASSURE UNIFORMITY IN THE APPLICATION OF THE LAW AND TO PROVIDE AN EXPEDITIOUS AND INEXPENSIVE REMEDY TO ENFORCE THE LAW'S PROVISIONS. A-3133 WILL ACCOMPLISH THIS BY GIVING JURISDICTION TO THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS TO ADMINISTER THE LAW AND TO QUICKLY AND EXPEDITIOUSLY DECIDE COMPLAINTS ARISING UNDER IT. TO AVOID BUREAUCRATIC DELAY WHICH CAN COMPLETELY FRUSTRATE THE PUBLIC'S RIGHT TO OBTAIN INFORMATION, THE BILL ALSO PROVIDES A MAXIMUM TIME PERIOD OF TEN DAYS IN WHICH REQUESTS FOR INFORMATION MUST BE ANSWERED AND PLACES THE DUTY ON THE PUBLIC OFFICIAL TO ANSWER THEM SOONER WHERE POSSIBLE. IT ALSO ENCOURAGES A MEMBER OF THE PUBLIC TO SEEK VINDICATION

OF HIS RIGHTS UNDER THE LAW BY ALLOWING HIM TO SEEK ATTORNEY'S FEES IF HE IS SUCCESSFUL IN LITIGATION.

ON BEHALF OF THE ATTORNEY GENERAL, I HAVE ATTEMPTED TO SHOW THROUGH MY STATEMENTS HERE TODAY THE MAJOR CHANGES THAT A-3133 WOULD MAKE ON THE EXISTING LAW AND WHY THESE CHANGES ARE NEEDED. IN CONCLUSION, I WISH TO EXPRESS SUPPORT FOR A-3133. THIS BILL PROVIDES A REASONABLE AND BALANCED APPROACH TO THE PUBLIC'S RIGHT TO KNOW. IT IS THE BELIEF OF THE ATTORNEY GENERAL THAT ITS ENACTMENT WILL INSURE A MEANINGFUL AND EFFECTIVE RIGHT IN THE PUBLIC TO OBTAIN ACCESS TO GOVERNMENT-HELD INFORMATION, WHILE, AT THE SAME TIME, PROVIDING SUFFICIENT PROTECTION FOR INDIVIDUAL PRIVACY, GOVERNMENT OPERATIONS, AND COMMERCIAL INTEGRITY.

ASSEMBLYMAN SHELTON: Any questions from the Committee. Thank you very much, Miss Burgess, for your statement. Please convey our thanks to the Attorney General for his statement and for sending you on his behalf.

Assemblyman Hamilton, good morning.

W I L L I A M J. H A M I L T O N, JR.: Good morning. Mr. Chairman, Assemblywoman Burgio, and those members of your Committee who may later read the transcript that we make here this morning, my comments, I hope, will be brief. I hope they will be cogent. I have to admit to you that the pressure of the last few days has prevented my making a prepared statement of the kind I would have liked to prepare on legislation that to me is as significant as the bill that you have before you today.

I don't think I have to state at great length, to those of you who are here, the need for legislation of this kind, which is a part of a continuing and broad sweeping process designed to make government more responsive and more responsible and more

open, but at the same time this legislation should not unduly burden the day-to-day functioning of government.

A-3133 is built on the report initiated by former Attorney General Kugler, and it is built in part on legislation introduced in the last session, and in this session by Assemblyman Hurley, the Assistant Minority Leader, and myself. And it is in a form that - with some very few amendments, I think - merits very serious consideration and approval of your Committee.

There are -and I will not go into them at length, because while they are substantive they are not major - a series of amendments that I will leave with Mr. Scovronick, your staff aide, and I will ask that your Committee consider these amendments when the full Committee is present and prepared to consider amendments to the bill.

In the main, they are the product of the work of Common Cause and the Office of the Counsel of the Governor, and they are in substantial measure agreed amendments at least from their point of view, and I think they join together in asking that your Committee adopt those amendments. I will give them to Mr. Scovronick as one series of amendments.

Among other things, they provide in Section 6 for some time standard relative to requests for information that are granted. There is, as the Attorney General's representative indicated, a specific time standard for a denial of information. It seems to me that rather than merely stating "promptly" there ought to be some specific standards for the granting of information, or if it cannot be immediately furnished, there should be a statement of when it would be forthcoming. These proposed amendments do purport to do that.

Also, take care of the problem of a late denial, if you will. That is, where a request is received and the agency deems it is going to comply with that request, but in the information gathering process finds perhaps that the information is within one of the areas that ought not be revealed, as

provided for in the law, I think that has to be spelled out.

Beyond that series of amendments, there is a separate amendment that I would like to refer to and then discuss a little bit later, the amendment that has been proposed by Common Cause. It is in Assemblyman Hurley's bill, and that would place enforcements in a public information commission, rather than the ethical standards commission. I would like to address that under what I consider to be the policy considerations that your Committee has to make.

The first of those probably is that particular provision. The bill, as it is written, calls for enforcement by the existing Commission on Ethical Standards. In support of that, it can be said that this is a functioning and ongoing agency that has done its work well. In support of that, it can be said that it can probably perform the function more cheaply and more expeditiously than a public information commission. On the other hand, there is at least the suggestion of a problem of separation of powers, if members of the Legislative Branch and the Judicial Branch who are covered to some extent by the provisions of this act are subject to having their actions reviewed by the Commission on Ethical Standards, which is in the Executive Branch of government.

I am concerned, and I think it is a consideration that you are going to have to take into account, about the cost of the bill. Were these ordinary times, I would not hesitate to urge the bill and skip right over that question, because the fiscal note that has been submitted estimates, with enforcement under the Commission on Ethical Standards, about \$100,000 independently of consideration of the number of requests that might be received. That fiscal note probably is not before you. I have approved it within the last day or so. The worksheet concludes - and I don't have it in front of me - by saying there is no meaningful way in which an estimate can be made of the costs that might be engendered because of the requests that are made.

That concerns me. It concerns me very much that we would add even a penny to the cost of government at a time when New Jersey has serious doubt as to whether or not it can pay its existing bills for the forthcoming year. So I think that is something that ought to be considered with respect to an effective date on this bill. It is also probably the determinative factor with respect to whether or not enforcement on the bill would be the Commission on Ethical Standards or the Public Information Commission. I suspect that on balance, for reasons of economy, that enforcement ought to be placed in the existing office, the Commission on Ethical Standards, for a trial period of, say, two years, at which time there ought to be a specific review and a specific re-evaluation of whether there should be a separate and independent agency known as the Public Information Commission.

I think, too, that there ought to be reports by the Commission, not only to the Executive Branch, but also to the Judicial Branch and to the Legislature, or at least the presiding officers of the Legislature, and I believe we incorporated that in one of the proposed amendments.

Another policy consideration that I think is a serious one is set forth in Section 13 of the bill. Section 13 of the bill by design provides for an alternative remedy. This is only at variance -- when I refer to Section 13, I am talking about Section 13 in the bill as it is printed, and not as the bill would read if it were to be amended with the sets of amendments that are in Mr. Scovronick's hands. There appears to be, by design, an alternate remedy that says you can either go to the Commission on Ethical Standards or you can go immediately to Superior Court. Under the usual administrative practice there is a requirement of the law that you exhaust administrative remedies. I certainly would not sit here before you today and say that you ought to make an undue burden on the citizen who feels he has been wrongfully denied information at the hands of one of the branches of government. On

the other hand, we ought to recognize, if we are going to go in that direction, that in truth and in fact it is a basic and serious departure from just about any other part of the practice of administrative law. I would suggest that what you might want to do is consider providing the alternate remedy only with respect to denials by the Judicial Branch of government or by the Legislature.

The statutory scheme would then be this: That a citizen who was denied information by the Executive Branch would have to exhaust his remedies, going through the Commission on Ethical Standards, or the Public Information Commission. The citizen who was denied information -- and let me say that if he was not satisfied at that point he would still have the remedy in Superior Court. On the other hand, if the citizen was denied information by either of the other independent branches of government, the Judiciary or the Legislature, the sole remedy would be, with respect to a court action, a summary court action. It would seem to me that this might help solve the problem of separation of powers that I alluded to earlier, and still not provide a basic departure, or too great a basic departure, from the existing scheme of the administrative law.

I am concerned with the fiscal note. I have to say this to you in all honesty. While I'm the sponsor of the bill, I believe in the bill and I believe it is something we ought to do, but I am concerned about it, given the present time. The worksheet, I believe, calls for one new secretary and one investigator. There is no one at all who knows how many requests are going to be received, and I can foresee that this in two years is going to be three investigators and three secretaries, extra lawyers. It seems to me that, given the natural probabilities of government to proliferate itself, we are going to have substantial costs involved, and that's a matter of very serious concern to me today. It is a matter that I don't have an answer

for, but I suggest that you take this into consideration with respect to any effective date that you might put on this legislation.

I would say one other thing to you; I have attempted to circulate in my legislative district to the League of Municipalities and to the State Association of Freeholders - and in all honesty I can't say they have gotten the communication yet - some comments from those branches of government, those offices of government, because I feared that in the past all too often we have been accused of legislating without regard for other levels of government and the fiscal impact upon them. Make no mistake, the enactment of this law is going to provide a record keeping requirement, and it is going to provide certain other requirements on government. I'm prepared to do that where it is in the absolute public interest to do so, and I think this kind of legislation is in that direction. But I am concerned that at the same time we undertake this burden we are placing the burden on the backs of the local property tax payers, and it may be that there ought to be a phase-in with respect to the application of this law to the lower levels of government, although I also have to say to you that in all probability that is where the denials of information have been most serious and most traumatic, in the lower levels of government.

I think the State ought to be prepared to set its own house in order first, and I think it ought to be prepared to fiscally be responsible, not only with respect to its state taxpayers, but also with respect to state and county levels of government.

I think this is meritorious legislation. I think there are serious matters of policy that ought to be considered by you. I don't take even a half step back in my support of this concept, but I do have to say that given the present economic dilemma of the State, I am somewhat in a quandary as to how fast we ought to move to implement it. I think the bill ought to be finalized. I think it ought to be passed. I have to say that serious

consideration ought to be given to the date of implementation, and the matters of economy that I have spoken about, not only for the State government but also for the other levels of government.

I want to thank you for bearing with me on what has been an unprepared statement on a hot day here. I would offer my help, such as it may be, and that of everyone in my office to work with your committee and with Mr. Scovronick in your continuing consideration of this legislation or any similar legislation. Unless there are any questions, I thank you very much, Mr. Chairman.

ASSEMBLYMAN SHELTON: Thank you, Mr. Hamilton. I have given some thought to the problem that might arise, particularly with regard to discovery rules in legal actions, as to whether the confidentiality of a particular document might not be divulged in the course of trying to come to the determination as to whether or not it should be released. Have you given any thought to how this bill might affect that problem? It is a problem obviously we get into very often in the civil and criminal justice system.

ASSEMBLYMAN HAMILTON: I have to say that until you asked the question, I had not given specific consideration to that, but I am reminded immediately of the various procedures for examination of documents in-camera that have arisen in some of the former eavesdropping and internal security cases where the courts have had procedures, and perhaps there is an additional reason why there ought to be the avenue of redress to the court rather than to the executive commission. It may well be that where there is a certification before the executive commission and there is that kind of material, the matter could be transferred to Superior Court. I think it is a problem, but I don't think it is an insurmountable problem.

Your comment reminds me of one other thing that I should have mentioned in the amendments. I believe the ones that were submitted to you include more specific protection, in Section 11, for bona fide new media. There is a prohibition in there against dissemination for profit. Certainly we do not want to preclude the publication in a newspaper that is offered for sale of information that has been disclosed where it has been disclosed in accordance with the statutes. I think that is an amendment that you will want to address yourself to.

I would also state that in the proposed amendments that were suggested to me by Common Cause, there was one to include bi-state agencies, and I discussed that with the administration, and while there is general agreement that bi-state agencies ought to be covered by a law of this kind, there were serious reservations as to whether or not it could be accomplished within the ambit of this statute. The suggestion being that there be a separate bill identical, say, for the Port Authority of New York and New Jersey wherein there would be an identical statute for New York and an identical statute for New Jersey, and probably that ought to be addressed in separate legislation, which your Committee might want to author or which I will if I have the time, certainly, as we proceed through the rest of the summer.

ASSEMBLYMAN SHELTON: Thank you.

ASSEMBLYWOMAN BURGIO: To your knowledge, are there any Federal laws being prepared on this subject?

ASSEMBLYMAN HAMILTON: To my knowledge, the Federal Freedom of Information Act - I believe that is the name of it - has been on the books for some years. It was amended some two or three years ago. I am not specifically aware of any other pending amendment. Mrs. Burgio, to the best of my knowledge, there were amendments within the past two to three years. I am not aware of anything that is near passage now in the Congress.

ASSEMBLYMAN SHELTON: Thank you very much, Mr. Hamilton. Mr. Spizziri.

J O H N A. S P I Z Z I R I: Mr. Chairman, I am Assemblyman John Spizziri. I must confess that I walked in on this public hearing unexpectedly. I would like to speak briefly on this bill and the similar bill of Assemblyman Hurley, which was handed to me by the committee aide.

After listening briefly to the remarks of Assemblyman Hamilton and briefly looking at the bill, I want to bring to the Committee's attention one fact. I am the Vice-Chairman of the Joint Ethical Legislative Standards Commission. According to our rules, any decisions rendered by this Committee are not to be disclosed except upon the request of the inquirer or upon a vote of the Committee.

We have recently gone through litigation brought by a member of this House demanding that our decisions be made public. The courts at the various levels, both trial and appellate levels, have upheld our right - the right of the Committee - not to divulge this information or any advisory opinions rendered by us. So my concern is that when the Committee discusses bill A-3133 it keep in mind the rules of our Committee, and I would like to see a specific section in this bill keeping the confidentiality of our opinions and our decisions in tact, so there will be no question in the future.

I have briefly read the bill. There seems to be some language which would cover the functions of our Committee, but because of the nature of it, and because of our rules, and because of the court decisions, it would be my opinion - and I am speaking for myself as a member of that Committee. I am not speaking for the Committee as a whole at this time because the Committee has not discussed A-3133 - that your Committee should give some import to that rule of ours and put in the specific exemption in the bill should you decide to release that.

I thank you for the opportunity to draw this to your attention.

ASSEMBLYMAN SHELTON: Thank you very much for calling that to our attention, Assemblyman. Mrs. Burgio, do you have any questions?

ASSEMBLYWOMAN BURGIO: No.

ASSEMBLYMAN SHELTON: Thank you. Julie Hirsch,
Common Cause.

J U L I E H I R S C H: Good morning, Mr. Chairman and members
of the Committee.

My name is Julie Hirsch, and I am a member of the state Issues
Committee of New Jersey Common Cause. On behalf of the 12,000
members of New Jersey Common Cause, I am speaking today in support
of Assembly bill 3133, the Public Information Act of 1975.

The events of the last few years have been greatly educational
for the voting public. More than ever before, we are aware of what
we don't and can't know about our government. We are also increas-
ingly aware of what government can know about us. In keeping with
Common Cause's concern for opening up the governmental system, we
have directed our efforts towards open meetings, public financing
of elections, and ending conflict of interest.

Freedom of information is another important link in the chain
of clean and open government. Public antipathy and suspicion of
all things and persons governmental can only be dissipated by vigorous
house-cleaning by government: unnecessary secrecy must be one of the
first protective cobwebs to be swept away.

I say unnecessary secrecy because we realize, of course, that
while, as the bill states, "it is necessary to achieve the maximum
possible disclosure of governmental affairs...the public interest is

served not only be protecting the right to know but also by guaranteeing that the individual's privacy and integrity in his personal affairs remain inviolate." Therefore, the bill has spelled out clearly under section 8 the areas of information that may be withheld from disclosure and under section 9 the areas that shall be withheld from disclosure. We believe these safeguards to be fair and comprehensive.

In its national study of state freedom of information laws, Common Cause applied seven key questions to the various state statutes examined:

(1) Does any person have the right to inspect government documents and what restrictions are put on access?

In A3133, as in the best of the other state laws, access has been limited essentially only to the scope of legal prohibition, reasonable time and handling rules, and means of proper self-identification.

(2) Does the state law apply to the state and localities or just to the state?

Almost all state laws apply to both the states and their local political subdivisions, as does A3133.

(3) Does the law apply to the executive or to the executive and legislative branches?

As written, A3133 does not apply to the executive branch. In the appended list of amendments that Common Cause feels would appreciably strengthen this bill, you will find that on page one, section 3, line 2 of the bill we have inserted the phrase "the Executive Branch of State Government" after the word "including."

(4) What exemptions are written into the law?

Experience with the federal Freedom of Information Act has shown that if exemptions are not clearly defined, they can be used as effective loopholes. By these means, legitimate kinds of information have been withheld as "inter-agency memoranda". We feel that the exemptions written into A3133 are specific and well-defined and provide proper protection without circumventing the basic purpose of the bill.

(5) Can a person go to court with an appeal if access to a record has been denied?

The problems in the past with many so-called open government laws have lain in their lack of enforceability. A mockery of the legislative system results if a law is passed that is largely unenforceable, and this situation contributes mightily to public cynicism. As written, A3133 provides in more than one manner for enforceability. Page 7, section 12 of the bill gives the task of considering and determining appeals by persons denied information to the Executive Commission on Ethical Standards. In our list of proposed amendments, you will see that we suggest the establishment of a Public Information Commission within the Department of Law and Public Safety. The makeup of this Commission, the compensation of its members and its powers and duties have been carefully spelled out. We feel it would be a most efficient, balanced and effective means of handling this first step of appeal.

However, the bill does provide for court enforcement proceedings, court costs, and attorneys' fees should the government instrumentality

against which a proceeding is being brought not prevail in court.

(6) What are the powers given to the court? Does the court have full de novo review powers or discretionary review powers? Does the court have injunctive review power to force disclosure?

It is obvious that for effective enforcement, the courts must be able to review the materials in question and force disclosure if that is what the court deems appropriate. This bill provides for both.

(7) Are there penalties for officials who violate the law?

Federal officials who are candid have admitted that the spelled out time frames and other tightened up areas written into the current federal Freedom of Information Act can be directly related to the lack of compliance on their part with the 1966 law. It became obvious that if there were no time limits, requests would simply be ignored. Information is requested for a particular purpose and that purpose can often be rendered moot if the information is not forthcoming.

Without effective oversight and penalties for non-compliance, the law is worth only the paper on which it is written. A3133 provides for annual reports and time limits. We have submitted an amendment concerning time limits to be inserted on page 3, section 6, line 4 which we feel is more comprehensive than page 4, section b, line 19 originally provided.

Although no penalties are spelled out in this bill, we would strongly suggest the inclusion of penalties such as those written into Assembly bill 3193, the amendment to the New Jersey Conflict

of Interest Law, page 16, section 12d, line 45. Oversight, however, is provided for on page 9, section 15, which mandates the annual reports.

In the main, we believe that this is a fair, comprehensive and highly necessary piece of legislation. When secrecy is diminished in the activities of government, meaningful, maximum participation by an informed citizenry is possible. The onus then is on the citizens to take part in the workings of their democracy as the blame for obstruction can then no longer fall on their government.

We thank you for permitting us to present our views to you today.

ASSEMBLYWOMAN BURGIO: Thank you. I would just like to ask you a question. Common Cause has presented a case for A-3133. Have you an opinion on the other two bills we are discussing today, A-1188 and A-1466.

MS. HIRSCH: Yes. I have read them all, and we felt, the group, that this was the most comprehensive and the most clearly spelled out of all of them.

ASSEMBLYWOMAN BURGIO: In other words, you believe this bill combines all the features.

MS. HIRSCH: Yes.

ASSEMBLYWOMAN BURGIO: Thank you very much. Mrs. Schoenwald.

DOROTHY SCHOENWALD: I would first like to apologize to the Committee. I don't have a written copy of my statement but would like to submit one, perhaps in greater detail than the comments I will make at this time, in the next couple of days.

I am Dorothy Schoenwald, Director of Legislation of the American Civil Liberties Union of New Jersey. We represent

about 15,000 members throughout the State. The last few years in this country have greatly affected and stirred many people's ideas of government functioning in the democratic society. Political abuse, surveillance, and the general atmosphere of secrecy on the part of government agencies have seemingly flooded many citizens with the sense of suspicion and distrust of government.

The response, I think, on the part of government not only in New Jersey and of citizen groups like Common Cause has been laudable. I am talking about the move to open up meetings, records and general government information to public access. We approve and support this effort. We are here to support today A-3133. While it is a bill not without flaws, we think it is a great improvement over the existing New Jersey Right To Know Law.

The existing distinctions between information which is required by law to be maintained and all other information maintained by government are eliminated. The clear placement of the burden of proof on government officials for denial of information is appropriate, and we feel it will encourage citizens to actively pursue their right to information under this new law.

I am going rather briefly over the analysis of A-3133 compared to existing law, because I think that other people who have spoken today have gone over this quite sufficiently. We do hardly approve of the inclusion of the time standard. Again, as others have pointed out, we think that these requirements will work to speed up the sometimes cumbersome bureaucratic process. While A-3133 does provide time limitation on denials, it does not provide the same time limit on either information which is to be given to the requesting party or information which is temporarily unavailable. I am not suggesting a time at this point. A-1466 does say that. I think it says thirty days after a request is received. That is probably too long, but somewhere between nothing and thirty days, I would urge the Committee to consider

for all types of responses.

I would like to talk about some suggested amendments that we feel would work to better open up and safeguard the public's right of access to information. One definition in the bill which has given us quite a bit of concern is the vagueness of the language describing conditions under which information can be denied. It is a difficult area to define, but I think that something stronger than the language which is currently being used, i. e., "when in the judgement of the custodian provision of the information would substantially disrupt government functioning," is too broad.

I'm envisioning a local citizen walking down to the town hall and his attitude isn't appreciated by the -- the clerk doesn't like his attitude, or he doesn't feel that he or she wants to provide the information, and can simply say, you are going to disrupt the office, I can't give it to you.

A-1188 does put a stronger requirement on denial for reasons of interference with government functioning. That is, denial can be given only after the custodian of the information has made an effort to reach some kind of compromise with the requesting party to work out a different procedure for gaining the information. We feel that it's a sort of strengthening of some vagueness or a strengthening of the requirements for denial.

Another way that we think -- and perhaps a negative way to define the interruption of government functions is again found in A-1188, Section 6. It talks about material which is temporarily unavailable. A-3133 does not define "unavailable." A-1188 does define it in terms of material which is temporarily unavailable due to being in use currently or being in storage. That again by negative definition limits what can be denied on the interruption of government function. I would urge the Committee to look at that language again and try to come up with a stronger, clearer definition.

Going on to the Executive Commission on Ethical Standards, the ACLU approves of placing responsibility for administering this act with the already existing Commission, rather than setting up a new procedure and a new commission. We are also a little nervous about the inclusion of public members on the Commission as suggested in A-1188, particularly when that Committee would be dealing with appeals from private citizens who are challenging the release of information which they feel should be private. The inclusion of too many public members on such a body would, in fact, defeat the purposes of this bill which work toward confidentiality and protection of the individual's right to privacy. We therefore feel that the executive commission is an appropriate one.

The Commission should be bound by confidentiality, particularly in the situation I have just described where a private citizen is challenging the release of information based on a constitutional guarantee to privacy.

Again, I think an omission from A-3133, which was touched on in A-1188, is a requirement on the Commission to publish rules and regulations, or perhaps a fair description is a better word, of the rights conferred to citizens under this new Right To Know Law, not only in access to information but to rights in regard to appeal procedures as well. I think the act is somewhat weakened if the public of New Jersey does not know that it exists; does not know that they have a right to information, and does not know that they have a right to appeal when that information is denied.

The Executive Commission on Ethical Standards is currently composed of seven members, all of whom are State employees, and none serving full time on the Commission. I understand that they meet approximately once a month.

The ACLU recommends that there be hired a full time assistant to the Chairman of the Commission, who would have full-time responsibility for the enforcement of A-3133, if that is the bill

that is passed, more generally known as the Right To Know Law. We can't imagine that a Commission meeting once a month, with seven members, all of whom have many other responsibilities, could adequately deal with the potentially large number of appeals which will be made to that Commission. We feel that an additional staff member could be quite easily accommodated within the current appropriation of \$100,000 which is made in the bill and would not require any new money.

Another question in the area of opening up government is the exclusion of the Office of the Governor from the definitions of instrumentality of government in Assembly Bill 3133. That is page 1, Section III. The Office of the Governor is mentioned later in the bill, so I don't know if that was an error in draftsmanship or not, but we certainly feel that the Governor's Office should be included in that definition of instrumentality of government.

And, again, later in the bill when you are discussing appeal rights to the Executive Commission on Ethical Standards, all denials except those made by the Judiciary, the Legislature, and the Office of the Governor are appealable to the Commission, and I would seriously question the exclusion of these three branches of government from the appeal procedure with the Ethical Executive Commission. That is another way of saying that we strongly approve of the dual appeal procedure; one, the right to appeal to the Executive Commission and the alternative of appealing directly to the Superior Court.

The above comments all dealt with the question of opening government records up. I think there is another concern which is very much in keeping with the ACLU's traditional positions on the right to privacy. In the last few years with increasing government surveillance, not only Watergate style, but most recently the discussion of a hook up of a mass system of computers that can read into each other, we think that the individual rights to privacy cannot be forgotten in the pursuit to open government up.

We have some very specific suggested amendments that we feel would provide a better balance between the right to know and an individual protection of privacy.

I will just briefly go through some sections of the bill. Primarily our objections fall in Section VIII, information which may be withheld from disclosure. In Section VIII on page 5, paragraph D, it talks about information which may be withheld. "Information that is part of an investigatory record compiled for law enforcement purposes, if its disclosure would injure the public interest."

We strongly feel that that language should be amended to read: Information that is currently being collected for a specific ongoing criminal investigation. We do not feel that fingerprints, arrest records, dossiers on potential troublemakers, or dossiers on potential troublemakers - people who have done nothing wrong, but on whom records are maintained by law enforcement agencies - should be denied but generally withheld, particularly from the person in interest. The language "injure the public interest" could be interpreted under this section to mean nothing more than the local law enforcement agency could be brought into disrepute if it were known that they were collecting information which they should not be, i. e., dossiers of what I described earlier.

I missed one correction. In Section VIII, paragraph B, on page 5, "Information relating to appointments of persons to official positions may be withheld." We certainly feel that this information should be available to the person in interest, the subject of the appointment. The danger of erroneous information being included in government files, whether it comes from malicious gossip of neighbors or is information which is ordinarily collected through a background check, we feel strongly that an individual has a right to know what information the government is maintaining on him, and whether in fact it is correct information, and he should be allowed an opportunity to correct that information

if he feels it is incorrect. That is in keeping with most of the new Federal laws on disclosure and public right to know. We think the unavailability of information in Section B to the person in interest would seriously defeat the stated purpose of this act.

Going further in Section 8, on page 5, paragraph F, "Internal rules and internal practices not required to be made public by Section 3 of the Administrative Procedure Act, P. L., 1968, may be withheld." We have found this language to be a legal challenge because institutions and agencies often fail to publish their rules and regulations under which they operate. This kind of language has been their excuse. I am speaking now particularly of the prisons and county jails. We feel strongly that inmates or residents of state facilities in particular should have a right to know what the rules and procedures of that facility are. We therefore feel that Section F should not be placed under the "may be withheld category" but rather in the "shall be disclosed category."

Section 8, paragraph G, is the section dealing with information coming from the Federal government or another state. Such information may be required to be kept confidential, by virtue of another state's law. New Jersey apparently feels that the right to know is an important function of its government. We should not, therefore, compound the shortcomings of other jurisdictions by enforcing their confidentiality requirements. There may be some rare instances where information which is essential to New Jersey government must be guaranteed confidentiality, but a general guarantee of confidentiality, as contained in Section G, we don't think is appropriate. If New Jersey feels that its Right to Know Law is good enough for its citizens, it should not be frustrated by also maintaining lower standards of another state.

Paragraph I, on the same page, deals with test questions, scores, and examinations which may be withheld. In keeping with the Federal and state moves to protect the confidentiality of student records, we strongly feel that this language should be placed in Section 9, "Records which must be withheld," with the exception that they be available to the person in interest.

This section goes on and says that not only the person in interest shall have access, but any individual authorized by government in connection with his pursuit of his duty. Again, the Buckley amendment and the newly adopted New Jersey regulations on student records and confidentiality do not allow that broad access by government officials. All information must be gained either through the consent of the subject of the reports or through a court order. We feel that this bill, in its effort to open up government, should not work against the safeguards of confidentiality of student records and would recommend an appropriate amendment.

The same criticism applies to Section J, again dealing with student records. To reiterate, they too should be placed under the must be withheld category with the exception of access to the subject of the report.

Again, Paragraph K, dealing with the individual records of applicants or recipients of government monies, whether it be a scholarship or public assistance money, we see no reason that it should ever be disclosed to anyone other than the subject, and would therefore again recommend its placement under Section 9, category which must be withheld, rather than Section 8, the discretionary, may be withheld category.

Under Section 9, the category of information which shall be withheld from disclosure, Sub-section B(1) "An individual's name, title, position, salary, payroll record, length of service in the instrumentality of government service and reason therefor,

and the amount and type of pension he is receiving." That information must be withheld. We feel that in the public interest there is a reasonable right of the public to know who is employed by government. We would therefore suggest that an individual's name and title and position should be available to the public but not the confidential personal information of salary, length of service, reason for leaving, and other legitimately withheld information.

That concludes my comments. I again apologize for not having a written copy, but hope to get one to the Committee with these amendments spelled out in detail. Thank you.

ASSEMBLYMAN SHELTON: We will be glad to include your written testimony as part of the transcript. Tell me, would you consider it a violation of one's civil liberties to require of an applicant for a particular position that he produce documents, which, under this proposed act as you would amend it, would be required not to be disclosed by the agency?

MS. SCHOENWALD: To disclose documents which would be held ---

ASSEMBLYMAN SHELTON: All right, let me explain my question a little bit more. Assume that there is a particular piece of personal information involving an applicant for a public position, and that piece of information is one of those pieces, which, according to the law as you would change it to protect the confidentiality of that person, is one which should not be disclosed; it obviously could be disclosed to the person affected, so the public employer says, We are not permitted to ask for this information, but as a condition of considering you for employment, one of our conditions is that you obtain - because you are entitled to it - and produce for us this information.

MS. SHOENWALD: I think it would depend on the specific type of information requested. Under our amendments we would not allow grades or records of behavior problems in schools to be open to the public.

ASSEMBLYMAN SHELTON: All right, let's take that as an example. Let's assume that someone wishes to be a police officer, and as a condition of accepting the application to become a police officer it is required that the applicant obtain - because he can obtain it - and submit with his application these grades and the record of his behavior problems, if any, in school.

Now, would it in your opinion be a deprivation of that person's civil rights to require this as a condition of accepting his application for that type of employment?

MS. SCHOENWALD: I think when a legitimate relationship between the job to be performed and the information requested can be shown, and if there would be a very good case for requiring it ---

ASSEMBLYMAN SHELTON: If that is so, should we not then engraft an exception which says they must not be disclosed except under those circumstances, and should we not have to define these in the legislation?

MS. SCHOENWALD: I think there is a difference between public disclosure of an individual's school records and consenting disclosure by the subject to a potential employer.

ASSEMBLYMAN SHELTON: My point being, where you require his consent as a condition, does that not deprive him of a civil right of having this protection against disclosure, because it is exactly the same thing.

MS. SCHOENWALD: No, because no individual is required to take a job that would make this requirement of him. I think our concern in this area is to make certain the individual has a choice, and the protection is there, and it is the individual's right to decide whether or not he wants his employer to know his school record; but the employer can't go out and collect information about every individual who walks in with an application. There is a legitimate difference there -- again, it is a difficult question to strike these balances on, and I think my response is that we feel it is an appropriate balance as long as

the individual has the right to make the decision and is not compelled by any government regulations to disclose confidential information. His or her civil rights are then adequately protected.

ASSEMBLYMAN SHELTON: Thank you. Assemblywoman Burgio.

ASSEMBLYWOMAN BURGIO: There is a great deal of substance in your amendments, and I am very happy that you have submitted those to the Committee. Thank you very much.

MS. SCHOENWALD: Thank you very much for the opportunity.

ASSEMBLYMAN SHELTON: Mr. Russell

J O H N R U S S E L L: Mr. Chairman, my name is John Russell. I am an Assistant General Manager of the New Jersey Press Association. Unfortunately our General Manager, Mr. Lloyd P. Burns, would have liked to have been here today, but he had to be elsewhere, so I will read his statement. TODAY, I WISH TO PRESENT THE

VIEWPOINT OF THE NJPA ON AN ALL IMPORTANT MATTER, BOTH TO THE PUBLIC AND THE PRESS OF NEW JERSEY--THE PUBLIC'S RIGHT TO KNOW AND IT'S ACCESS TO GOVERNMENT INFORMATION.

THIS SUBJECT IS COVERED IN THE BILLS BEFORE THE COMMITTEE TODAY, A1188,A1466 and A3133, WHICH WOULD INCREASE THE PUBLIC'S ACCESSABILITY TO PUBLIC DOCUMENTS.

BEFORE I BEGIN SPEAKING ON THE QUESTION AT HAND, LET ME SAY A FEW WORDS ABOUT THE NEW JERSEY PRESS ASSOCIATION. THE ASSOCIATION WAS FOUNDED IN 1857 AND IS THE OLDEST CONTINUOUS NEWSPAPER ASSOCIATION IN THE UNITED STATES. TODAY, ITS MEMBERSHIP IS COMPOSED OF ALL 28 DAILY NEWSPAPERS IN THE STATE AND 140, or 90 PERCENT, OF NEW JERSEY'S WEEKLY NEWSPAPERS. ALL OUR MEMBERS ARE PAID CIRCULATION NEWSPAPERS.

NATURALLY, THE QUESTION OF ACCESS TO PUBLIC RECORDS IS IMPORTANT TO THE PRESS OF NEW JERSEY. IT IS ALSO EXTREMELY IMPORTANT TO THE GENERAL PUBLIC FOR IN THIS WAY THE PUBLIC HAS THE MEANS TO OBTAIN INFORMATION WHICH MAY HAVE LED TO IMPORTANT GOVERNMENTAL DECISIONS.

THE BILLS BEFORE THE COMMITTEE OFFER A MORE ADEQUATE FRAMEWORK WITH WHICH TO SUCCESSFULLY PROVIDE INFORMATION TO THE PUBLIC.

LET ME SAY AT THIS TIME, SINCE THE PROPOSED LEGISLATION CONSIDERS THE RIGHT TO PRIVACY, THAT THE ASSOCIATION FULLY AGREES WITH THE CONCEPT OF PROTECTING AN INDIVIDUALS RIGHT TO PRIVACY IF THAT PERSON IS NOT AN ELECTED OR APPOINTED PUBLIC OFFICIAL OR IF THAT PERSON IS NOT IN THE PUBLIC EMPLOY.

WE HOLD THAT PERSONS WHO ARE IN POSITIONS THAT MAKE THEM ANSWERABLE TO THE PUBLIC, AND THIS WOULD INCLUDE IN OUR MINDS CIVIL SERVICE CANNOT EXPECT TO ENJOY THE SAME AMOUNT OF PRIVACY AS A PERSON WHO DOES NOT HOLD PUBLIC RESPONSIBILITY.

I CANNOT MAKE THIS POINT MORE STRENUOUSLY BECAUSE A PERSON WHO VOLUNTARILY ACCEPTS A PUBLIC POSITION IS ACCOUNTABLE, NO MATTER WHAT THAT POSITION MAY BE.

IN LOOKING AT THE PROPOSED LEGISLATION,^x AND AT THIS POINT I AM ADDRESSING MYSELF ONLY TO A1188 and A 3133, WE THINK THAT A1188 IS A STRONGER AND MORE WORKABLE BILL.

MR CHAIRMAN, IF YOU WILL PERMIT, I WILL FILE AN ADDENDA TO THIS STATEMENT ON A1466, WHICH WE ARE NOT PREPARED TO ADDRESS OURSELVES TO TODAY.

WHILE WE BELIEVE A1188 IS A BETTER PROPOSAL BECAUSE IT HAS MORE SCOPE AND THE PUBLIC INFORMATION COMMISSION IT WOULD FORM WOULD BE AN ASSET TO THE FREE FLOW OF INFORMATION. WE PARTICULARLY ARE IMPRESSED WITH THE CROSS SECTION OF MEMBERS IT WOULD PROVIDE WHICH WOULD PRESERVE THE PUBLIC INTEREST.

HOWEVER, WHILE A 1188 IS MORE WORKABLE, WE ALSO BELIEVE IT SHOULD BE AMENDED TO BE MORE SPECIFIC IN CERTAIN AREAS AND THUS REMOVE ALL QUESTIONS AND DOUBTS ON ITS APPLICATION.

LET ME TRACE OUR SUGGESTED AMENDMENTS TO A1188 AND OUR REASONING BEHIND THESE SUGGESTIONS.

SECTION 9 Para.C. OF A1188 REQUIRES THAT DENIALS FOR INFORMATION SHOULD BE GIVEN WITHIN 20 DAYS. IT IS OUR OPINION THAT 10 WORKING DAYS IS SUFFICIENT TIME FOR CONSIDERATION AND THIS BILL SHOULD BE AMENDED TO REFLECT THAT.

SECTION 14 PARA.A subpara.(2 a). THIS SECTION DEALS WITH THE RELEASE OF MEMORANDUMS. IN THE SUBPARAGRAPH NOTED A MEMORANDUM MAY BE RELEASED IF " THE MEMORANDUM REPRESENTS THE SOLE BASIS FOR A DECISION OF GOVERNMENT..."

NJPA BELIEVES THIS SECTION SHOULD BE AMENDED AND WE WOULD SUGGEST IT SHOULD READ " THE MEMORANDUM REPRESENTS THE BASIS, EITHER IN WHOLE OR IN PART, FOR A DECISION OF GOVERNMENT."

WE BELIEVE THIS AMENDMENT IS NECESSARY BECAUSE IN TODAY'S GOVERNMENTAL OPERATIONS, DATA WILL BE ACCUMULATED FROM VARIOUS SOURCES IN MANY DIFFERENT FORMS. ALL OF THIS DATA PLAYS A PART IN THE DECISION MAKING PROCESS AND THE PUBLIC IS ENTITLED TO KNOW WHAT INFORMATION THE GOVERNMENT INSTRUMENTALITY HAD AT ITS DISPOSAL TO MAKE ITS DECISION. ONLY IN THIS WAY CAN THE PUBLIC POSSIBLY KNOW WHETHER THE GOVERNMENT INSTRUMENTALITY IS FUNCTIONING AT ITS OPTIMUM.

FINALLY, DECISIONS, NO MATTER HOW SEEMINGLY UNIMPORTANT, HAVE A WAY OF AFFECTING THE PUBLIC AT LARGE. BECAUSE OF THIS FACTOR, THE PUBLIC HAS EVERY RIGHT TO KNOW WHAT INFORMATION AND INPUT WENT INTO THE DECISION MAKING PROCESS.

SECTION 14 PARAGRAPH d. THIS PARAGRAPH RELATES DIRECTLY TO LAW ENFORCEMENT INVESTIGATORY RECORDS AND IN ITS PRESENT FORM WE BELIEVE IT IS OVERLY BROAD AND CAN BE OPEN TO ABUSE.

THE PARAGRAPH NOW READS " INFORMATION THAT IS PART OF AN INVESTIGATORY RECORD COMPILED FOR LAW ENFORCEMENT PURPOSES EXCEPT THAT THIS SECTION SHALL NOT APPLY TO SCIENTIFIC TESTS, REPORTS OR DATA OR REPORTS OR RECORDS OF SAFETY OR HEALTH INVESTIGATIONS OR INSPECTIONS."

I MIGHT ADD THIS SECTION DEALS ENTIRELY WITH INFORMATION THAT A GOVERNMENT INSTRUMENTALITY MAY NOT DISCLOSE. THE INSTRUMENTALITY IS GIVEN A CHOICE IN THE MATTER.

WE AGREE THAT ON-GOING CRIMINAL INVESTIGATIONS MIGHT REQUIRE A CERTAIN AMOUNT OF NON-DISCLOSURE IN ORDER TO PRESERVE THE INVESTIGATORY PROCEDURE, AT LEAST UNTIL THE CASE HAS BEEN RESOLVED.

HOWEVER, THE LANGUAGE IN THE PARAGRAPH IS OVERLY BROAD AND WE MAINTAIN IT SHOULD BE AMENDED TO READ " INFORMATION THAT IS PART OF AN ON-GOING CRIMINAL INVESTIGATION COMPILED FOR LAW ENFORCEMENT PURPOSES EXCEPT THAT THIS SECTION SHALL NOT APPLY TO SCIENTIFIC TESTS, REPORTS OR DATA OR REPORTS OR RECORDS OF SAFETY OR HEALTH INVESTIGATIONS OR INSPECTIONS, OR REPORTS OR DATA RELATED TO THE PERFORMANCE OR CONDUCT OF LAW ENFORCEMENT AGENCIES OR INFORMATION RELATED TO TRENDS, PATTERNS OR FREQUENCY OF MATTERS WHICH CONCERN PUBLIC SAFETY AND HEALTH."

SECTION 15 OF A 1188 LISTS INFORMATION THAT CANNOT BE REVEALED BY ANY GOVERNMENT INSTRUMENTALITY. WHILE WE AGREE IN SUBSTANCE WITH THIS SECTION, ESPECIALLY WHEN IT CONCERNS PRIVATE CITIZENS, WE FIND SUB-PARAGRAPH 3 OF THIS SECTION UNSATISFACTORY. THIS SECTION DEALS WITH DISCLOSURE OF COMMERCIAL AND FINANCIAL INFORMATION. WE BELIEVE THAT THE FOLLOWING SUGGESTED AMENDMENT IS IN ORDER: " THIS SECTION SHALL NOT APPLY TO ELECTED OR APPOINTED PUBLIC OFFICIALS OR PUBLIC EMPLOYEES OF ANY GOVERNMENT INSTRUMENTALITY."

BECAUSE OF THEIR RESPONSIBILITY TO THE PUBLIC, AS WE HAVE OUTLINED, WE BELIEVE THAT PUBLIC OFFICIALS AND EMPLOYEES HAVE THE OBLIGATION TO HAVE THEIR VARIOUS COMMERCIAL OR FINANCIAL HOLDINGS OPEN TO PUBLIC SCRUTINY. THIS IS NOT AN UNWARRANTED INVASION OF PRIVACY SINCE PEOPLE HOLDING PUBLIC TRUST

HAVE AN OBLIGATION NOT TO MAKE ANY PERSONAL GAIN, NOR HAVE THE APPEARANCE OF ACQUIRING PERSONAL GAIN.

AS I HAVE STATED, WE BELIEVE THE CONCEPT OF A PUBLIC INFORMATION COMMISSION IS SOUND. OUR ONLY SUGGESTION FOR THIS COMMISSION IS THAT IT BE EXPANDED TO INCLUDE IN ITS JURISDICTION ALL GOVERNMENT INSTRUMENTALITIES. IN THE BILL BEFORE US IT IS RESTRICTED TO THOSE INSTRUMENTALITIES OF THE EXECUTIVE BRANCH.

WE BELIEVE THAT ALL COUNTY AND MUNICIPAL FORMS OF GOVERNMENT SHOULD BE INCLUDED AS WELL AS THE JUDICIARY AND SECTION 19 a(2) SHOULD BE AMENDED TO REFLECT THIS.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THE NEW JERSEY PRESS ASSOCIATION STRONGLY BELIEVES THAT A STRONG GOVERNMENT IS ONE THAT PROVIDES ALL THE INFORMATION AT HAND TO THE PUBLIC. WE BELIEVE THAT SINCE IT IS GOVERNMENTS, NO MATTER WHAT LEVEL OR BRANCH, OBLIGATION TO SERVE THE PUBLIC, THIS INFORMATION IS THE PUBLIC'S PROPERTY AND THE GOVERNMENT INSTRUMENTALITY IS ONLY THE TRUSTEE FOR THAT PROPERTY. NATURALLY, THERE MAY BE CASES WHERE INFORMATION WOULD HAVE TO BE WITHHELD FOR THE PUBLIC GOOD, BUT BY AND LARGE, INFORMATION THAT IS HELD BY THE GOVERNMENT, UNLESS IT IS A MATTER OF PRIVATE RECORDS OF PRIVATE INDIVIDUALS, SHOULD BE OPEN TO PUBLIC SCRUTINY WITHOUT DIFFICULTY.

And one further comment, Mr. Chairman, Section 17 of this bill provides that information cannot be obtained for commercial gain. Here again, we would suggest that it be amended to include all members of the new media.

If you have any questions, I will be happy to answer them.

ASSEMBLYMAN SHELTON: Thank you very much, Mr. Russell.
Are there any other witnesses who wish to be heard at this public hearing?

There will be included in the transcript a statement of the Department of Education, the League of Women Voters of New Jersey, and any other statement which may be submitted within the next week. Thank you. This hearing is closed.

-- --
HEARING CONCLUDED

-- --



STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
225 WEST STATE STREET
TRENTON, N. J.

OFFICE OF THE COMMISSIONER

June 19, 1975

M E M O R A N D U M

TO: The Honorable Members of the State Government and
Federal and Interstate Relations Committee of the
General Assembly

The enclosed materials concerning pupil records are forwarded to you because I believe them relevant to your considerations today. If it be your desire, I should be pleased to have this Subchapter of Title 6 of the New Jersey Administrative Code appended to the record of your hearing today.

I would like also to speak my support of Assembly Bill No. 3133, one of the bills under your consideration. I believe this bill will provide maximum disclosure of governmental information while protecting both the right to privacy of individuals and the ability of government to function. I find no inconsistency between the Administrative Code materials cited above and the provisions of this bill, in particular Sections 8 i, 8 j and 8 k. On the contrary, I find the Administrative Code provisions already adopted by the State Board of Education and effectuated by the State Department of Education to be both harmonious with and a natural flow from the proposed act.

The clear delineation of three classes of information, that which must be revealed upon request, that which may be revealed in the discretion of the agency and that which shall not be revealed even upon request must be applauded. I also agree strongly with the clear language of the bill that says no duty shall be imposed to create records or compile information not already in existence or already completed.

Assembly Bill No. 3133 is a carefully constructed bill which is well suited to accomplishing its purpose. I urge your positive consideration of it.



Fred G. Burke
Commissioner

NEW JERSEY ADMINISTRATIVE CODE

TITLE 6

EDUCATION

Subtitle A. State Board of Education

Chapter 3 School Districts

Subchapter 2. Pupil Records

6:3-2.1 Definitions

- (a) "Pupil" means a person who is enrolled in a public school.
- (b) "Adult pupil" means a person who is or was enrolled in a public school and who is at least 18 years of age or an emancipated minor.
- (c) "Parent" means the natural parent(s) or legal guardian(s) of a pupil. Where parents are separated or divorced, "parent" means the person or agency who has legal custody of the child.
- (d) "Pupil record" means information related to an individual pupil gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record. Therefore, information recorded by any certified school personnel solely as a memory aid, not for the use of a second party is excluded from this definition.
- (e) Access means the right to view, to make notes, and/or to have a reproduction of the pupil record made.

6:3-2.2 General Considerations

- (a) Each local school district shall have the responsibility to compile and maintain pupil records and to regulate access to and security of such records in accordance with these rules and regulations.
- (b) Pupil records shall contain only such information as is relevant to the education of the pupil, and is objectively based on the personal observations or knowledge of the originator of the record.

- (c) The local school district shall notify parents individually at least annually of their rights in regard to pupil records and shall make copies of the applicable state and federal laws and local policies available upon request. Such notification shall be in the language of the parent.
- (d) A non-adult pupil may assert rights of access only through his parents. However, nothing in these rules shall be construed to prohibit certified school personnel, in their discretion, from disclosing pupil records to non-adult pupils; or to appropriate persons in connection with an emergency, if such knowledge is necessary to protect the health or safety of the pupil or other persons.
- (e) The parent(s) shall either have access to or be specifically informed about that portion of another pupil's record that contains information about his/her own child.
- (f) Each local school district shall establish written policies and procedures for pupil records which:
 - 1. guarantee access to persons authorized under 6:3-2.6 of these rules and regulations in a reasonable amount of time, within ten days and not to exceed twenty-five days.
 - 2. assure security of the records; and
 - 3. enumerate and describe the pupil records collected and maintained by the local school district.
- (g) All anecdotal information and assessment reports collected on a pupil shall be dated and signed by the individual who originated the data.
- (h) The chief school administrator shall require all pupil records of currently enrolled students to be reviewed annually by certified school personnel to determine the educational relevance of the material contained therein. The reviewer shall cause to be deleted from the records data no longer descriptive of the pupil or educational situation. Such information shall be destroyed and shall not be recorded elsewhere nor shall a record of such deletion be made.
- (i) No liability shall attach to any member, officer or employee of any local board of education permitting access or furnishing pupil records in accordance with these rules and regulations.
- (j) When the parents' dominant language is not English the local school district shall make every effort to:

1. provide interpretation of the pupil record in the dominant language of the parent, or;
2. assist parents in securing an interpreter.

6:3-2.3 Pupil Records

(a) The local school district may not compile any other pupil records except mandated and permitted records as herein defined:

1. Mandated pupil records are those pupil records which the schools have been directed to compile by New Jersey statute, regulation, or authorized administrative directive. Mandated pupil records shall include the following:
 - i. Personal data which identifies each pupil enrolled in the school district. This data shall include the pupil's name, address, date of birth, name of parents and/or guardians, citizenship and sex of the pupil. The local school district is prohibited from recording the religious or political affiliation of the pupil and/or parents unless requested to do so by the parent or adult student. The district is also prohibited from labeling the pupil illegitimate.
 - ii. Record of daily attendance.
 - iii. Descriptions of pupil progress, according to the system of pupil evaluation used in the district. Grade level or other program assignments shall also be recorded.
 - iv. History and status of physical health compiled in accordance with state regulations, including results of any physical examinations given by qualified district employees.
 - v. All other records required to be kept by the State Board of Education including N.J.A.C. 6:28 regarding the education of handicapped pupils.
2. Permitted pupil records are those which a local board of education has authorized the district to collect by resolution adopted at a regular public meeting to promote the educational welfare of the student. The local board of education shall report annually at a public board meeting a description of the types of pupil records it has authorized certified school personnel to collect and maintain. The pupil records so authorized must also comply with these rules and regulations as to relevance and objectivity.

6:3-2.4 Maintenance and Security of Pupil Records

- (a) The chief school administrator or designee shall be responsible for the security of pupil records maintained in the local school district and shall devise procedures for assuring that access to such records is limited to authorized persons.
- (b) Records for each individual pupil shall be maintained in a central file at the school attended by the pupil, or when records are maintained in different locations a notation in the central file as to where such other records may be found is required.

6:3-2.5 Access to Pupil Records

- (a) Only authorized organizations, agencies or persons as defined herein shall have access to pupil records.
- (b) The local board of education may charge a reasonable fee for reproduction not to exceed the actual cost to the board of education of reproducing such copies.
- (c) Copying of material such as test protocols which are subject to copyright laws is prohibited.
- (d) Authorized organizations, agencies, and persons shall include only:
 - 1. The parent(s) or legal guardian(s) of a pupil under the age of 18, and the pupil who has the written permission of such parent(s) or guardian(s).
 - 2. Pupils at least 16 years of age who are terminating their education in the district because they will graduate secondary school at the end of the term or no longer plan to continue their education.
 - 3. The adult pupil and the pupil's parent(s) or guardian(s) who have the written permission of such pupil except that the parents or guardians shall have access without consent of the pupil as long as the pupil is financially dependent on the parents or guardians and enrolled in the public school system.
 - 4. Certified school personnel who have assigned educational responsibility for the pupil.
 - 5. Accrediting organizations in order to carry out their accrediting functions.
 - 6. The Commissioner of Education, and members of the New Jersey Department of Education staff who have assigned responsibility which necessitates the review of such records.

7. Officials of other public school districts in which the student is registered or intends to enroll except that the parent or adult pupil shall be notified of the transfer of mandated pupil records. Written consent of the parent or adult pupil is required prior to the transfer of permitted record to another school district except where a formal sending-receiving relationship exists between the school districts. Copies of records shall be forwarded to the administrative official of the school to which the child has been transferred within 30 days after the transfer has been verified by the requesting school district.
8. Organizations, agencies, and persons from outside the school if they have the written consent of the parents or adult pupils except that these organizations, agencies, and persons shall not transfer pupil record information to a third party without the written consent of the parent or adult pupil.
9. Organizations, agencies and individuals outside the school upon the presentation of a court order.
10. Bona fide researchers who explain in writing the nature of the research project and the relevance of the records sought, and who satisfy the chief school administrator that the records will be used under strict conditions of anonymity and confidentiality. Such assurance must be received in writing by the chief school administrator prior to the release of information to the researcher.

6:3-2.6 Conditions for Access to Pupil Records

(a) All authorized organizations, agencies and persons as defined in 6:3-2.5 shall have access to the records of a pupil, subject to the following conditions:

1. No pupil record shall be altered or destroyed during the time period between a request to review the record and the actual review of the record.
2. Authorized organizations, agencies and persons from outside the school whose access requires the consent of parent or adult pupil must submit their request to view the records, together with any required authorization, to the chief school administrator, or his/her designee.
3. The chief school administrator or his/her designee shall be present during the period of inspection to provide interpretation of the records where necessary and to prevent their alteration, damage or loss. In every instance of inspection of student records by persons who do not have assigned educational responsibility,

an entry shall be made in the pupil record of the names of persons granted access, the reason access was granted, the time and circumstances of inspection, and the records studied.

4. Unless otherwise judicially instructed, the school district shall, prior to the disclosure of any pupil records to organizations, agencies or persons outside the school pursuant to a court order, give the parent or adult pupil at least three days notice of the name of the requesting agency and the specific records requested. Such notification shall be provided in writing if practicable. Only those records related to the specific purpose of the court order shall be disclosed.
5. A record may be withheld from a parent or guardian of a pupil under 18, or from an adult pupil only when the chief school administrator in consultation with the professional staff, is convinced that the disclosure would create a substantial risk of harm to the pupil or to a person with whom the record is concerned. When the chief school administrator is convinced that the risk is of such high degree, he shall notify the parent, guardian, or adult pupil within five days that access to the record has been denied, and that he has the right to appeal this decision to the Commissioner of Education. If an appeal should be made, the Commissioner shall designate a professional of the same discipline as the originator of the record to review the record and to recommend whether access should be granted. The Commissioner shall make a determination within 30 days of the receipt of the request. Any decision made by the Commissioner may be appealed to the State Board of Education.

6:3-2.7 Rights of Appeal for Parents and Adult Students

- (a) Pupil records are subject to challenge by parents and adult pupils on grounds of inaccuracy, irrelevancy, impermissive disclosure, inclusion of improper information or denial of access to organizations, agencies and persons. The parent or adult pupil may seek to:
 1. Expunge inaccurate, irrelevant or otherwise improper information from the pupil record.
 2. Insert additional data as well as reasonable comments as to the meaning and/or accuracy of the records.
 3. Request an immediate stay of disclosure pending final determination of the challenge procedure as described in (b).

- (b) To appeal, a parent or adult pupil must notify the chief school administrator in writing, of the specific issues relating to the pupil record. Within ten days of notification, the chief school administrator or designee shall meet with parent or adult student to review the issues set forth in the appeal. If the matter is not satisfactorily resolved, the parent or adult student may appeal this decision to the local board of education or Commissioner of Education within ten days. If appeal is made to the local school board, a decision shall be rendered within 20 days. The decision of the local school board may be appealed to the Commissioner pursuant to N.J.S.A. 18A:6-9 and rules adopted in accordance with such statute. At all stages of the appeal process, the parent shall be afforded a full and fair opportunity to present evidence relevant to the issue. A record of the appeal proceedings and outcome shall be made a part of the student record with copies made available to the parent or adult student.

6:3-2.8 Retention and Destruction of Pupil Records

- (a) Upon the graduation or permanent departure of a pupil from the school system, the parent or adult pupil shall be notified that a copy of the entire pupil record will be provided to them upon request.
- (b) No additions shall be made to the record after graduation or permanent departure without the prior consent of the parent or adult pupil.
- (c) Mandated pupil records shall be preserved in perpetuity by the New Jersey public school last attended.
- (d) Permitted pupil records may be preserved for a period of time to be determined by the local board of education by resolution adopted at a public meeting except that pupils upon high school graduation or permanent departure from the school district shall have the right to remove any material from the permitted record.



LEAGUE OF WOMEN VOTERS OF NEW JERSEY

460 BLOOMFIELD AVENUE, MONTCLAIR, NEW JERSEY 07042 TELEPHONE 746-1465 AREA CODE 201

TESTIMONY ON ASSEMBLY BILLS 1188, 1466, and 3133

by Selma Rosen
League of Women Voters of New Jersey
June 19, 1975

The League of Women Voters of New Jersey vigorously supports the concept embodied in the proposed Right to Know legislation. Indeed, our support is spelled out in our national Principles as follows, "The League of Women Voters believes that democratic government depends upon the informed and active participation of its citizens and requires that governmental bodies protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible."

In keeping with this Principle, the New Jersey League supports A.1188 and A.3133 as worthy efforts to implement this idea. Our present Right to Know law (P.L. 1963, c.73) needs replacing. While it does attempt to make more information available to the public, it does not go far enough. The new proposals are superior insofar as they do the following:

- * broadly define what information is to be made available to the public
- * put the burden on the government to justify refusal of information
- * apply to all branches of government
- * apply to all levels of government
- * provide for information officers in state government departments
- * establish specific timetables for supplying information
- * make provisions to enforce the law.

The primary difference between these two bills is their manner of enforcement. A.1188 proposes that a Public Information Commission be created and A.3133 depends on the already existing Executive Commission on Ethical Standards. The proposed Public Information Commission would provide strong enforcement of this new law. It would be an independent commission, it would include public members and it would have the necessary power to enforce the law as it applies to all levels of government. The Executive Commission on Ethical Standards with less independence and no public members would be weaker but would have the advantage of utilizing an already existing

Testimony on A.1188, A.1466, A.3133, 6/19/75 - cont'd.

and staffed government commission.

The League is very much concerned with the problem of effective enforcement of laws of this nature. Presently we are comparing how the Lobbying Activities Act is enforced in contrast to the Campaign Contributions and Expenditures Act which does have a specially created enforcement commission. The League sees the need for strong enforcement of Right to Know laws but, at the same time, we are concerned with the costly expenditure that would result if all the recently proposed special enforcement commissions were created. It would seem to make good sense to combine the enforcement provisions of the laws dealing with Right to Know, open meetings, conflicts of interest, financial disclosure and lobbying under one commission. It could be a large, well staffed agency and there could be consideration given to the idea of appointing full time commissioners. Perhaps the already existing Election Law Enforcement Commission could be expanded.

We support both A.1188 and A.3133 but believe both would be improved if they were amended to include the creation of such a joint commission. A.1466 does not have the support of the League of Women Voters of New Jersey as it is not specific or strong enough to adequately guarantee all citizens the Right to Know.

ASSEMBLY COMMITTEE Amendments

to

Assembly Bill No. 1188

Amend:

Page	Sec.	Line
8	17	19

Add new subsection: "c. Nothing in this act shall prohibit the providing of the names and addresses of persons applying for or possessing licenses to engage in professional occupations, which shall be available for the purpose of informing such persons of available educational materials and courses related to their professional occupations."

KATZ

Assembly Committee Amendments

to

Assembly Bill No. 1466

Amend:

Page	Sec.	Line	
4	9	1	(Add new section) Nothing in this act shall prohibit the providing of informational materials relating to available professional educational materials or courses, wherein only the names and addresses of persons applying for or possessing licenses to engage in professional occupations shall be released to persons or organizations providing such professional educational materials or courses.
4	9	1	Re-number as section 10.
4	10	1	Re-number section 11.
4	11	1	Re-number as section 12.

AUG 14 1985



