



May 13, 2024

Gov. Phil Murphy

Sen. Nicholas Scutari, Senate President

Asm. Craig Coughlin, Assembly Speaker

State of New Jersey

via email: constituent.relations@nj.gov; senscutari@njleg.org; asmcoughlin@njleg.org

Dear Sirs:

We're gravely concerned about proposed changes to the Open Public Records Act (OPRA). The [amendments](#) voted forward last week defang the law, which will impact journalists for decades to come. We're asking for you to take steps to [defend OPRA](#).

Here are [our main objections](#) to the legislation:

- Legal fees are no longer automatic and must be bargained for in court even after it's proven that records were unlawfully denied. This means there'll be fewer meritorious public interest lawsuits filed by journalists and members of the public who do not otherwise have the means to pay thousands of dollars in legal fees.
- The bill makes it almost impossible to obtain emails of public officials unless you know what they're saying behind the scenes. Investigative journalism relies on emails that will become unavailable if this bill is signed into law.
- Legislators nixed a ban on email and call logs but created a loophole for records custodians to deny requests for email logs. Journalists use email logs as a news-gathering tool to suss out stories.
- New Jersey taxpayers will bear the burden of these changes. As [state comptroller Kevin Walsh](#) testified at a hearing in March, a less transparent government is a more expensive one. "I fear that if documents are harder to get, we will get less transparency and that will lead to more corruption, fraud, waste, and abuse," he said.

Eliminating mandatory attorney fees for those who prevail in public records lawsuits remains the most [controversial part of the bill](#). But it now contains a new twist. Requestors must show an agency's denial was made in "bad faith" to recoup legal fees. Public records attorneys say that's virtually impossible.

It hardly matters whether records are intentionally hidden or records custodians fail to release them because they don't grasp the law. The result is the same for journalists: We can't tell stories that matter to readers without those records.

Indeed, the New Jersey Supreme Court has noted the important enforcement role of the fee-shifting provision — explaining that without it, “The ordinary citizen would be waging a quixotic battle against a public entity vested with almost inexhaustible resources. By making the custodian of the government record responsible for the payment of counsel fees to a prevailing requestor, the Legislature intended to even the fight.” *New Jerseyans for Death Penalty Moratorium v. New Jersey Dep't of Corr.*, 883 A.2d 329, 338 (N.J. 2005), quoting *Courier News v. Hunterdon Cty. Prosecutor's Office*, 378 N.J. Super. 539, 546 (App. Div. 2005).

Perhaps state lawmakers don't understand the detrimental impact of doing away with fee shifting. They're accustomed to state agencies handing over records without a fight.

Rarely do lawmakers encounter uncooperative agencies or obstinate public officials. When that happens, they have a powerful tool to ensure compliance — [the authority to issue subpoenas](#) to compel records and testimony — unavailable to journalists and everyday citizens. OPRA is the people's subpoena in prying loose records.

Imagine if the legislative panel that [investigated the Bridgegate scandal](#) lacked subpoena power. It would've been a toothless ad-hoc committee, twiddling its thumbs in search of answers as former Gov. Chris Christie's administration circled the wagons and [lined up powerful law firms](#) to defend itself.

Stripping mandatory legal fees from OPRA is equivalent to stripping lawmakers of subpoena power.

Journalists need access to emails to investigate corruption.

Yet, under the world envisioned by this bill, Bridget Anne Kelly's infamous email, "[Time for some traffic problems in Fort Lee](#)," would've remained hidden. The bill says the public must identify a "specific job title or individuals and accounts to be searched regarding a specific subject matter."

Reporters would've had to know that Kelly sent an email in August 2013 about traffic. If this bill is signed into law, records custodians frustrated with reporters on fishing expeditions should understand that they'll have to do more work searching for a sliver of emails amid an endless sea of records. Reporters will be left to harpoon for minnows while blindfolded in the belly of a government whale.

Email logs remain a crucial tool for journalists to narrow records requests. They eliminate the need for keyword searches and constant back-and-forth with records custodians.

Lawmakers removed part of the original bill that made it impossible to obtain call and email logs. But they inserted language that creates a backdoor for records custodians to deny access to email logs.

Records custodians can deny requests that require them to conduct research to collect "information from the contents of government records" and create "new government records setting forth that research and information." That's email logs writ large.

While we share the goal of reducing waste of taxpayer funds, lawmakers unfairly blamed public records attorneys for driving up the cost of government. During the March hearing, Sen. Paul Sarlo's comments fueled the idea that droves of opportunistic and self-serving attorneys are filing frivolous public records lawsuits and quickly cutting checks with towns across the state.

Nothing is further from the truth.

Many of New Jersey's prominent public records attorneys said they only take cases they can win. They must prove in court that their clients were unlawfully denied public records before they see a dime.

Attorneys took noble causes on contingency that led to some of the state's most important [legal decisions](#). Citizens must be allowed to freely test the bounds of law to have a healthy democracy, not just reflexively accept that the government knows best.

Debate sometimes makes democracy fraught, but it also keeps it taut. Journalism seeks to spark these discussions, educate the masses, and uncover injustices. The outlets signed onto this letter point to a few examples of stories they couldn't have told without public records:

- NJ Advance Media has built a reputation as one of the state's fiercest watchdogs with deeply reported investigations into the [state's medical examiner offices](#) and police misconduct. The outlet used OPRA to build the [most comprehensive database](#) for tracking police force, collecting more than 72,000 records covering every department in New Jersey.

- The Trentonian fought Ewing Township for three years in court over a use-of-force report — records that the [New Jersey Supreme Court](#) had ruled were available under OPRA. The township paid more than \$170,000 to a law firm to try [keeping the record hidden](#). It was revealed several officers manhandled a Black teenager during the arrest, but only one of them filled out the required use-of-force report. Bodycam footage of the encounter revealed three police officers — but not the one who filed the report — stomping the teenager's head and kicking snow in his face while he was handcuffed on the ground. After the [footage was published](#), the [FBI indicted](#) the officers.
- New Brunswick Today sued for bodycam footage that showed Edison police officers [mistreating a busload of migrants](#) sent to New Jersey by Texas Gov. Greg Abbott. The footage captured officers escorting the bus out of town at gunpoint and siccing a "drug dog" on the immigrants. They're heard calling the immigrants' arrival an "invasion" and comparing it to the movie "Red Dawn."
- Planet Princeton got a lawyer involved to force Princeton to turn over records that revealed miscommunications between first responders during Hurricane Irene. An EMT died while trying to rescue people from a submerged vehicle [that police were told was empty](#). Planet Princeton also uncovered records that showed an employee at the [New Jersey Department of Environmental Protection](#) flagged illegal dumping at a municipal property, but no one followed up on the report. The dumping cost millions to clean up. Planet Princeton's reporting saved taxpayers from having to spend millions on those efforts.

Providing additional training for municipal clerks and records custodians on how to respond to OPRA requests is the best way to reduce government spending. Fewer wrongful denials means fewer lawsuits — and less money spent by governments with "almost inexhaustible resources."

Saving OPRA is journalists' legacy. We're looking to protect and preserve rights for future reporters. It's also a legacy issue for elected leaders. New Jersey voters [don't want OPRA changed](#). They're begging for more transparency, not less.

Access to government records separates us from autocratic societies that squash dissent. Democracy demands sunshine. Let the light in.

Sincerely,

New Jersey Society of Professional Journalists (NJ-SPJ)
 APP-MCJ Guild/NewsGuild of New York
 Deadline Club
 The Jersey Vindicator
 New Brunswick Today
 NewsGuild of Greater Philadelphia
 New Jersey Broadcasters Association
 New Jersey Foundation for Open Government
 NJ Advance Media
 OPRAmachine
 Press Pass NYC
 Planet Princeton
 Rebovich Institute for New Jersey Politics
 The Record Guild/NewsGuild of New York
 State Broadcast News
 The Trentonian
 William Paterson Society of Professional Journalists

cc: Sen. Paul Sarlo, via email: sensarlo@njleg.org

Assemblyman Joe Daniels, via email: asmdanielsen@njleg.org

Mahen Gunaratna, communications director, Office of Gov. Phil Murphy, via email: mahen.gunaratna@nj.gov