

McGreevey Signs Executive Order 26 Regarding Open Public Records Act

EXECUTIVE ORDER NO. 26

WHEREAS, the Open Public Records Act, Chapter 404, P.L. 2001, became effective on July 8, 2002; and

WHEREAS, that Act authorizes the Governor to exempt certain government records from public access by Executive Order; and

WHEREAS, pursuant to that authority, Executive Order No. 21 was issued on July 5, 2002; and

WHEREAS, Executive Order No. 21 exempted certain records of the Office of the Governor from public disclosure; and

WHEREAS, Executive Order No. 21 further exempted from disclosure home addresses and telephone numbers of individual citizens, as well as their social security numbers; and

WHEREAS, since the issuance of Executive Order No. 21, this Administration has continued to engage in a constructive dialogue with representatives of the media and other advocates of open government concerning the proper implementation of the Open Public Records Act and Executive Order No. 21; and

WHEREAS, discussions following the issuance of Executive Order No. 21 have demonstrated the need to clarify certain provisions of that Executive Order; and

WHEREAS, this Administration remains committed to open, accessible government, and to ensuring the successful implementation of the Open Public Records Act;

NOW, THEREFORE, I, JAMES E. MCGREEVEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Paragraphs 2 and 3 of Executive Order No. 21 are hereby rescinded and replaced with the following paragraphs.
2. In addition to those records of the Office of the Governor that are exempted by the provisions of the Open Public Records Act, the following records maintained by the Office of the Governor, or part thereof, shall not be deemed to be government records under the provisions of Chapter 404, P.L. 2001, and Chapter 73, P.L. 1963, and thus shall not be subject to public inspection, copying or examination:
 - (a) Any record made, maintained, kept on file or received by the Office of the Governor in the course of its official business which is subject to an executive privilege or grant of confidentiality established or recognized by the Constitution of this State, statute, court rules or judicial case law.
 - (b) All portions of records, including electronic communications, that contain advisory, consultative or deliberative information or other records protected by a recognized privilege.
 - (c) All portions of records containing information provided by an identifiable natural person outside the Office of the Governor which contains information that the sender is not required by law to transmit and which would constitute a clearly unwarranted invasion of personal privacy if disclosed.
 - (d) If any of the foregoing records shall contain information not exempted by the provision of the Open Public Records Act or the preceding subparagraphs (a), (b) or (c) hereof then, in such event, that portion of the record so exempt shall be deleted or excised and access to the remainder of the record shall be promptly permitted.

3. No public agency shall disclose the resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing. The resumes of successful candidates shall be disclosed once the successful candidate is hired. The resumes of unsuccessful candidates may be disclosed after the search has been concluded and the position has been filled, but only where the unsuccessful candidate has consented to such disclosure.

4. The following records shall not be considered to be government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:

(a) Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments in accordance with the State Policy Prohibiting Discrimination, Harassment and Hostile Environments in the Workplace adopted by Executive Order No. 106 (Whitman 1999), whether open, closed or inactive.

(b) Information concerning individuals as follows:

(1) Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation;

(2) Information in a personal income or other tax return;

(3) Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed.

(c) Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing.

(d) Records of a department or agency in the possession of another department or agency when those records are made confidential by a regulation of that department or agency adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.

(e) Records of a department or agency held by the Office of Information Technology (OIT) or the State Records Storage Center of the Division of Archives and Records Management (DARM) in the Department of State, or an offsite storage facility outside of the regular business office of the agency. Such records shall remain the legal property of the department or agency and be accessible for inspection or copying only through a request to the proper custodian of the department or agency. In the event that records of a department or agency have been or shall be transferred to and accessioned by the State Archives in the Division of Archives and Records Management, all such records shall become the legal property of the State Archives, and requests for access to them shall be submitted directly to the State Archives.

5. The Privacy Study Commission created by Chapter 404, P.L. 2001, is hereby directed to promptly study the issue of whether and to what extent the home address and home telephone number of citizens should be made publicly available by public agencies and to report back to the Governor and the Legislature within six months.

6. The remaining provisions of Executive Order No. 21 are hereby continued to the extent that they are not inconsistent with this Executive Order.

7. This Executive Order shall take effect immediately.

GIVEN, under my hand and seal this 13th day of August

in the Year of Our Lord, Two Thousand and Two, and of the Independence of the United States, the Two Hundred and Twenty-Seventh.

/s/ James E. McGreevey
Governor