



STATEMENT OPPOSING A1329 **(RIBLE)**

The New Jersey Press Association (“NJPA”) is a non-profit organization incorporated in 1857 under the laws of the State of New Jersey. It has a membership of 16 daily newspapers, 3 affiliate newspapers, over 160 weekly newspapers, over 50 digital news websites, as well as over 60 corporate and non-profit associate members. NJPA respectfully submits this position paper opposing A1329.

Specifically, A1329 provides that, pursuant to N.J.S.A. 47:1A-1 et seq. (“OPRA”), a “government record” shall not include “the home address of any law enforcement officer or retired law enforcement officer,” and such information “shall be deemed to be confidential” under OPRA.

The bill defines a “law enforcement officer” as:

any person who is employed as a permanent full-time member of any State, county or municipal law enforcement agency, department, or division of those governments who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State and statutorily required to successfully complete a training course approved by, or certified as being substantially equivalent to such an approved course, by the Police Training Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.).

This bill, as currently drafted, is simply unworkable. The bill is not limited to a particular type of record, such as a police report or other law enforcement related record. Thus, the scope of the bill as written extends to all government records. ***It would be absolutely impossible for a custodian of records who receives an OPRA request to know whether a person named in a government record is, in fact, or ever has been, a law enforcement officer.*** Take, for example, the case of real estate records such as deeds or property tax records, which are filed as public records. If a person made a government record request for a deed or property tax record – which, by their very nature, include the address of the property owner -- the custodian of records would be required under the bill to redact that information if the person named in the record was a current or retired law enforcement officer. Of course, the custodian of records would have no way of knowing whether the person named in the record fell within either of these categories.

The bill is not even limited to New Jersey law enforcement officers and retired law enforcement officers. As such, the custodian would be tasked with determining whether a person named in a government record was currently a law enforcement officer anywhere in the world or was a retired law enforcement officer from anywhere in the world. Also, even if it were somehow possible to make this determination, which it obviously is not, the term “law enforcement officer” further complicates the matter. If a custodian were to somehow unearth information that an individual named in a record was currently, or had at any time been, in law enforcement, the

custodian would still not know whether the individual fell within the bill's definition of a "law enforcement officer."

Under the bill's definition of a "law enforcement officer," the custodian would, in reality, be charged with knowing, prior to redacting information from a government record were this bill to become law, whether the person:

1. is or was employed in a permanent full-time capacity;
2. is or was employed by any State, county or municipal law enforcement agency, department or division of those governments who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention or rehabilitation of persons violating the criminal laws of this State; and
3. is or was statutorily required to successfully complete a training course approved by or certified as being substantially equivalent to such an approved course by the Police Training Commission.

Clearly, the language in the bill is unworkable.

OPRA provides:

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy;

N.J.S.A. 47:1A-1. Thus, to the extent that the information falls within this exemption, the limitation on access is already provided under existing law. There is, however, no basis for the blanket exemption from access.

OPRA expressly provides that certain information is available to the public in connection with investigations in progress. Specifically, N.J.S.A. 47:1A-3 provides:

§ 47:1A-3. Access to records of investigation in progress

a. Notwithstanding the provisions of P.L. 1963, c. 73 (C. 47:1A-1 et seq.) as amended and supplemented, where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in P.L. 1963, c. 73 (C. 47:1A-1 et seq.) as amended and supplemented may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced. Whenever a public agency, during the course of an investigation, obtains from another public agency a government record that was open for public inspection, examination or copying before the investigation commenced, the investigating agency shall provide the other agency with sufficient access to the record to allow the other agency to comply with requests made pursuant to P.L. 1963, c. 73 (C. 47:1A-1 et seq.).

b. Notwithstanding the provisions of P.L. 1963, c. 73 (C. 47:1A-1 et seq.), as amended and supplemented, the following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable, of a request for such information:

where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;

if an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notification of next of kin of any victims of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or Court Rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;

if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or Court Rule;

information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the release of such information is contrary to existing law or court rule;

information as to the identity of the investigating and arresting personnel and agency and the length of the investigation;

information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police; and

information as to circumstances surrounding bail, whether it was posted and the amount thereof.

However, N.J.S.A. 47:1A-3 also provides that:

Notwithstanding any other provision of this subsection, **where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release, such information may be withheld.** This exception shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety. Whenever a law enforcement official determines that it is necessary to withhold information, the official shall issue a brief statement explaining the decision.

N.J.S.A. 47:1A-3 (emphasis added). Therefore, there is under these circumstances already a mechanism in place in OPRA for withholding certain information when it will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release. And, after all, these are the likely circumstances that A1329 is attempting to address – the safety of individuals and the integrity of investigations in progress. OPRA has contemplated and addressed these scenarios. The blanket exemption in the bill, however, raises more problems than it solves and, as described, is completely unworkable.

For these reasons NJPA opposes A1329.

Thank you for your consideration.

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