

14 March 2024

Senator Nicholas P. Scutari  
New Jersey Legislature  
125 West State Street  
Trenton, New Jersey 08608  
Via Electronic Mail: [SenScutari@njleg.org](mailto:SenScutari@njleg.org)

Dear Senator Scutari,

New Jersey's Open Public Records Act (OPRA) is in the midst of a potential upheaval following the introduction of [Senate Bill No. 2930](#) by Democratic Senator Paul Sarlo on March 4, 2024. The Association of Professional Genealogists (APG) firmly believes that these amendments are terrible policy, will harm our members' abilities to conduct their businesses in New Jersey, and will ultimately winnow away transparency in the state. We urge the legislature to reject these changes as OPRA is currently one of the strongest public records laws in the nation, and these amendments turn the clock back on transparency and access.

The Association of Professional Genealogists (APG) is a not-for-profit 501(c)(6) professional organization dedicated to the growth and enhancement of the genealogical profession. Founded in 1979, APG is the world's largest association for professional genealogists, representing more than 2,000 members in forty countries around the world, all of whom are committed to the preservation and dissemination of historical records. Many of our members are residents of New Jersey.

This proposed overhaul, designed to reduce the alleged challenges posed by commercial and voluminous records requests, is garnering significant attention and criticism, being dubbed by the *Jersey City Times* as a "[New Bill in Trenton \[that\] Threatens to Gut the Open Public Records Act](#)." The amendments present numerous issues to APG's members and the public at large, namely that genealogists are poised to lose access to genealogical records about their research subjects, and that our use of records obtained via OPRA may be technically rendered illegal.

The overly broad definition of "personal identifying information," will make it more difficult, if not impossible, to gain access to currently-public records which facilitate our clients in understanding their origins, acquiring citizenship, and distributing assets to heirs. The failure of this bill to place time limits on these protections would likely inhibit access to unredacted historical records, and would place additional burdens on government staff to perform tedious, time-intensive reviews of records before providing access. We request that the definition of

"personal identifying information" be curtailed to only include information which is *actually* sensitive, such as social security numbers. Additionally, the law must include provisions to remove privacy rights at death.

While much of our work focuses on deceased individuals, the undefined term "consumer" within the definition of "data broker" may place unintended groups, like genealogists, within the definition of the latter. Our members, in their professional capacities, may be banned from accessing records, and the commercial databases on which we rely to help us complete our work will become less useful. Further, the restrictions in the amendment of Section 6(f), namely, "Data obtained through a records request shall not be sold," would completely prohibit commercial uses of records that are otherwise contemplated in the bill. We request that the cited portion of the amendment to Section 6(f) be stricken, and that data brokers continue to be able to request records under OPRA. There is public interest in the compilation of these records; the state should not be intervening in the marketplace.

Other proposed exemptions, such as a blanket restriction on "drafts" are overly subjective and are open to potential abuse. Additionally, the amendments add procedural hurdles which will complicate the process of submitting requests, and will delay the fulfillment of requests. For example, the timeclock only begins when the custodian officially "receives" the request, potentially causing delays if the custodian is unavailable or if the request is redirected. Agencies are likely to take advantage of any new lever they are provided to reduce public access to records, and costly litigation will be required to set the bounds of each of these new provisions.

The bill also eliminates the requirement for records to be provided in the format requested by the applicant, granting custodians discretion over how records are disclosed. This can allow agencies to produce records in poor quality or archaic formats, which will further chill public access. Furthermore, the bill introduces exemptions for metadata, hindering efforts to create searchable records. This change poses particular challenges for genealogists and research groups seeking access to historical information, as record sets such as indexes to vital records may now be exempt. APG members have previously used OPRA to obtain "death indexes" from the Department of Health, which can be used to prove that individuals are deceased. Public access to these indexes eases the Department of Health's burden, because when genealogists submit requests for copies of vital records, they can provide a proper citation to the record, obviating the need of the agency employee to perform lengthy searches, in which they have to manually check many years and name variants themselves.

This sharp reduction in access would extend to nonprofit groups which benefit from mandatory reimbursement for legal costs. Under the proposed legislation, legal expense reimbursement becomes a discretionary choice by the judge, presenting challenges for groups seeking legal

representation in cases of wrongfully denied access to public records. In states where fee-shifting is discretionary, courts usually set an unreasonably high bar to warrant awarding attorneys' fees, meaning that unless someone has tens of thousands of dollars to spare, agencies can deny almost any request.

The proposed gutting of OPRA will significantly alter the landscape surrounding public records in New Jersey, making it easier for custodians to be less proactive, or at the very least, less inclined to improve access to records regularly utilized by the genealogical community. These proposed changes raise serious concerns about transparency, accountability, and public access to information. The potential for abuse, coupled with shifts in liability and exemptions, could reshape the record accessibility landscape in the state, impacting citizens, researchers, and organizations alike.

APG calls on the legislature to leave the law in place as it is, as these amendments are an answer in search of a problem.

Sincerely,



John Boeren  
President  
Association of Professional Genealogists

CC:

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