



**STATE OF NEW JERSEY**

**N J L R C**

**New Jersey Law Revision Commission**

**FINAL REPORT**

Relating to

**OPEN PUBLIC RECORDS ACT**

September 2006

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## OPEN PUBLIC RECORDS

This project was begun in response to a decision of the Superior Court, Appellate Division in *Paff v. Byrnes*, 385 *N.J. Super.* 574 (App. Div. 2006). The court considered the exceptions to the Open Public Records Act, *N.J.S.* 47:1A-10, and found that it was unclear whether a personnel record fell within an exception even though an ordinance required the disclosure of the record. The statute provides that a record was not within the exception and must be disclosed if “another law” required its disclosure. The court considered it unclear whether municipal ordinances were encompassed by the phrase, “another law.” The court suggested that the statute be clarified and referred the issue for consideration by the Commission.

The Commission determined that if information is required to be disclosed, there is no reason to shield it from disclosure as an exception to the open public records act. If the information must be made public by other law, that information is no longer confidential. It should not matter what kind of law requires the disclosure; if disclosure is required, there is no basis for an exception to public access to the information under the open public records act.

The Commission recommends the following amendment to *N.J.S.* 47:1A-10. Deletions are indicated by strikeouts; additions, by underlining.

### **47:1A-10 Personnel, pension records not considered public information; exceptions.**

Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that:

an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;

personnel or pension records of any individual shall be accessible when required to be disclosed by ~~another~~ a statute, ordinance, regulation or other law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

data contained in information which discloses conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.