



STATEMENT OPPOSING A3626 **(MCKNIGHT)**

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 A3626.

Specifically, A3626 provides that, under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., (“OPRA”), a “government record” shall not include:

personal identifying information of a victim of or witness to a violent crime. For the purposes of this paragraph, personal identifying information shall include, but not be limited to, identity, name, home and work addresses, home and work telephone numbers, home and work fax numbers, social security number, driver's license number, email address, or social media address of a violent crime victim or witness[.]

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 victim of or witness to a violent crime.** 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 “personal identifying information” such as the name and 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 victim or witness to a violent crime.” Of course, the custodian of records would have no way of knowing or checking whether the person named in the record fell within either of these categories.

The bill does not even limit the crime to one that occurred in New Jersey and/or put a time limitation on how far back the crime may have been committed. As such, the custodian would be tasked with determining whether a person named in a government record had ever in their lifetime been the victim of or a witness to a violent crime anywhere in the world. Also, even if it were somehow possible to make this determination, which it obviously is not, the term “violent crime” further complicates the matter. “Violent crime” is defined in the bill as “a crime involving force or the threat of force.” If a custodian were to somehow unearth information that an individual named in a record had been the victim of or witness to a crime, such as an assault, the custodian would still not know whether the actual assault involved force or the threat of force, factors that may or may not be present in an assault charge. Moreover, the definition of an assault may vary from State to State and some States may consider an assault a “crime” and others may not (such as New Jersey, which categorizes a simple assault as a disorderly persons offense), and some may differentiate between simple assault and aggravated assault, further

nuances that the custodian would, in reality, be charged with knowing prior to redacting information from a government record were this bill to become law.

With regard to the issue of social security numbers and drivers' license numbers, both of which are exempt from access under the bill, OPRA already provides for redaction of social security and drivers license numbers before release of government records:

Prior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person;

N.J.S.A. 47:1A-5(a). Additionally, OPRA provides that "victims' records" shall not be considered government records subject to access. N.J.S.A. 47:1A-1.1. Thus, to the extent that government records fall within the statute's definition of victims records, the information is already exempt from access.

OPRA also 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 any of the "personal identifying information" is deemed to fall within this exemption, the limitation on access is already provided under existing law. There is, however, no basis for the blanket exemption from access.

Additionally, to the extent that this "personal identifying information of a victim of or witness to a violent crime" is included within "criminal investigatory records," as defined in OPRA, the information is also already exempt from access as OPRA expressly provides that "government records" shall not include "criminal investigatory records," which are deemed confidential under the statute.

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 A3626 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 A3626.

Thank you for your consideration.

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