

**GOVERNOR'S STATEMENT UPON SIGNING
SENATE BILL NO. 2930
(SECOND REPRINT)**

Today I am signing Senate Bill No. 2930 (Second Reprint), which makes various changes to the Open Public Records Act and appropriates \$10 million.

Before I discuss the merits of the bill, I want to acknowledge that I know that this decision will disappoint many members of the advocacy community, including a number of social justice, labor, and environmental organizations, among others. I have heard the many objections to the bill directly, and I know that they are made in good faith and with good intentions. I also commend everyone who has engaged in this debate for making their voice heard, which is the foundation of our democratic system of government.

Perhaps the most troubling concern that I have heard is that signing this bill will both enable corruption and erode trust in our democracy. I understand we are living in a moment where our democracy feels more fragile than ever, with a former President who has been indicted for inciting an insurrection during his final days in office inexplicably within striking distance of the White House once again. And I know that closer to home, New Jerseyans across the political spectrum feel deeply betrayed and outraged by the serious allegations that our senior United States Senator accepted bribes from a foreign government.

If I believed that this bill would enable corruption in any way, I would unhesitatingly veto it. In my first week in office, I ordered a comprehensive audit of the Economic Development Authority's tax incentive programs, as I had reason to believe that under the prior administration, they were designed to favor special interests and the well-connected. I successfully fought to reform those programs and introduce important safeguards, even when there was little appetite to amend them. In 2021, when legislation was sent to my desk that would have eliminated mandatory prison sentences for public corruption offenses, I vetoed it on multiple occasions. And more recently, when Senator Menendez was indicted, I called for his immediate resignation that same day. Throughout my tenure in office, I have sought not only to lead an administration free from corruption, but also to speak out against it in all of its forms.

As for the health of our democracy here in New Jersey, I know that it is far more robust than when my Administration took office. Since I took office, in partnership with the Legislature, we have established automatic voter registration and online voter registration. We enacted in-person early

voting and made it far easier to vote by mail. We restored voting rights for over 80,000 New Jerseyans on probation or parole. We enacted legislation that will allow 17-year-olds to vote in primaries if they turn 18 by the general election. And we are by no means done. I continue to call for legislation allowing same-day voter registration and enabling 16- and 17-year-olds to vote in school board elections, and I am hopeful that these bills will move through the Legislature soon.

With this history in mind, when it comes to the legislation on my desk, I take the concerns regarding corruption and trust in our democracy extremely seriously. However, my responsibility as Governor is to evaluate the bill on the merits, regardless of how it may be perceived. And in making this evaluation, I am mindful that this bill was the product of a great deal of discussion and compromise.

The Open Public Records Act ("OPRA") was enacted in 2002. In the last 22 years, the statute has not been the subject of any type of comprehensive update until now. Today's world is very different than 2002, a time when the Internet was far less ubiquitous and there was vastly less access to individuals' personal information. While case law on OPRA has evolved, it is also appropriate for our democratic branches of government to take a look at the statute, informed by how various provisions have played out in practice.

The bill encourages public records to be placed on agency websites to the extent feasible, so they will be readily accessible even without an OPRA request, and appropriate funds to support those efforts. Furthermore, if the requestor is referred to the public agency's website, the bill requires that the agency assist requestors in locating those records. The bill also provides additional flexibility for submitting requests by allowing their submission via form, letter, or email. With regard to personal information, the bill takes a number of positive steps. It defines personal identifying information and specifically adds new protections for month and day of birth, personal email addresses, the street address portion of a person's primary or secondary home address, information about minors, and information protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The bill also modernizes the Government Records Council ("GRC") to enhance public access in a number of ways. It requires the GRC to update its website periodically to better assist the public, and to create a database of OPRA cases in Superior Court so that the public has easy access to how those matters were handled and resolved. The bill also requires the GRC to use videoconferencing and conduct virtual meetings and hearings, so that all members of the public have access to their proceedings. The bill preserves the ability for requestors to file in the GRC without paying a filing fee, and requires the

GRC to promptly adjudicate matters to ensure that it remains a viable forum for challenging a denial of access.

In addition to these provisions that update the law to better reflect today's world, the bill also codifies a number of judicial decisions. For example, the bill requires a date range, a subject matter, and the identification of an employee, account, or job title of the individual whose records are to be searched. This is the standard laid out by the Appellate Division in *Burke v. Brandes*, 429 N.J. Super. 169 (App. Div. 2012). The bill codifies the Supreme Court's decision in *Gilleran v. Twp. of Bloomfield*, 227 N.J. 159 (2016) governing access to security camera recordings and expands that access to be available under OPRA, not just the common law right of access. And in addition to creating new statutory protections for individuals' privacy, as described above, the bill also codifies judicial decisions protecting the personal information that citizens provide to the government, such as contact information provided to receive updates from the government, *Rise Against Hate v. Cherry Hill Twp.*, A-1440-21 (App. Div. Mar. 29, 2023).

The provision of the bill that has undoubtedly received the most attention is the change to fee shifting. Under current law, when the requestor is a prevailing party, the award of attorney's fees is mandatory. It is clear that many advocacy groups firmly believe that mandatory fee shifting is necessary to incentivize compliance with OPRA. At the same time, many local officials argue that this provision unnecessarily incentivizes litigation when municipal and county clerks are trying their best to abide by the statute and denials of access are inadvertent or unintentional. These local officials note that this litigation, and the attorney's fees that result, impose significant costs on taxpayers.

I am aware that many discussions were held in an effort to find a compromise on this issue. Ultimately, the Legislature included language that continues mandatory fee shifting, uncapped, in instances where there is 1) bad faith by the public entity; 2) a knowing and willful violation of OPRA; or 3) an unreasonable denial of access. In all other circumstances, attorney's fees may be awarded - the same standard that is currently in place under the Law Against Discrimination, the Civil Rights Act, and the federal Freedom of Information Act. Just as state and federal courts have been able to responsibly decide the issue of attorney's fees under these other statutes, I am confident that both our courts and the GRC will utilize their new discretion regarding attorney's fees wisely. My Administration will monitor the implementation of this provision closely to ensure there are no adverse impacts.

Another provision that has garnered a significant amount of controversy concerns the ability of public entities to sue requestors. In order to prevent abuse, the bill establishes an extraordinarily high standard for such lawsuits, as the public

entity must prove harassment or substantial interruption of government functions by clear and convincing evidence. Some advocacy groups claim that the mere threat of a lawsuit will deter citizens from making requests under OPRA. However, I signed an important law last September that protects individuals from meritless lawsuits intended to intimidate them for exercising their free speech rights. I am confident that this "anti-SLAPP" law will allow individuals to obtain expedited dismissals of any improper lawsuits brought under this new provision of OPRA.

After a thorough examination of the provisions of the bill, I am persuaded that the changes, viewed comprehensively, are relatively modest. The categories of documents currently subject to OPRA does not change at all. Under the bill, the manner by which requests are made and the specificity required for such requests is consistent with current practice. Important protections, such as the ability to file requests anonymously and have access to records related to collective bargaining, are preserved or strengthened.

With respect to the GRC, as mentioned earlier, the bill requires it to make better use of technology and remain accessible to the public, and also provides an additional appropriation of \$6 million to help the GRC carry out its work. Given the GRC's important role, especially in applying the attorney's fees provision, I will ensure that my four appointments to the GRC are well-respected figures with unimpeachable credentials on issues of public access and the public interest.

As mentioned earlier, this legislation was proposed after extensive deliberation and compromise, and passed with bipartisan support in both chambers. In addition to support from the Senate President and the Speaker, the Senate Minority Leader was a prime sponsor of the bill and the Assembly Minority Leader voted for it as well. Over a hundred mayors from both parties have asked for it to be enacted into law. I understand that some may view this support cynically, but I do not believe it is fair to dismiss an overwhelming bipartisan consensus from local elected officials. Serving in local elected office is a deeply thankless and glamour-free job, and I have consistently found mayors from both parties to be dedicated and hard-working public servants. Mayors subject themselves to constant scrutiny by their neighbors and their very own communities, especially in the age of social media, and I simply reject the idea that those calling for the bill's passage are part of a nefarious plot to evade transparency and accountability.

The enactment of OPRA in 2002 was a landmark achievement that should be celebrated. But like any document meant to apply to a changing society, it must be periodically updated, particularly as technology is rapidly evolving. The Legislature's task of balancing all of the interests involved

in this challenging issue was not an easy one and should not be subject to derision. While I do not believe the concerns raised about some provisions of the bill are irrational, I am persuaded that the safeguards in the bill and the protections provided by the GRC and the courts are sufficient to mitigate them.

As a result, I am making the decision to sign this bill into law.

Date: June 5, 2024

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor