



## Daniel's Law and Recent Clean-Up Legislation

In November of 2020, Governor Murphy signed Daniel's Law, amending the Open Public Records Act (OPRA) and other statutes intending to protect certain persons in public service. Specifically, Daniel's Law prohibited the disclosure of home addresses or unpublished telephone numbers of certain active and retired law enforcement officers, judicial officers, prosecutors, and their immediate family members. The prohibition against disclosure of these individual's home address extends to most entities, including private businesses and local governments

Despite its laudable goals Daniel's Law, as initially adopted, created a variety of uncertainties and unintended consequences making implementation extremely challenging for local governments and their records custodians. With these concerns in mind the legislature moved to adopt clean-up legislation to make implementation more reasonable, and on January 12, 2022, Governor Murphy signed into effect legislation amending Daniel's Law. P.L.2021, c.371 took effective immediately and applied retroactive to December 10, 2021.

The information below seeks to address some of the more common questions associated with Daniel's Law and the recent clean-up legislation.

### **Who is covered under Daniel's Law?**

An active, formerly active, or retired judicial officer or law enforcement officer, or prosecutor and any immediate family member living in the same household that has submitted a request to and has been approved by the Director of the Office of Information Privacy, is known as a "covered person," subject to the privacy protections of the law.

### **What is the Office of Information Privacy?**

The Office of Information Privacy (OIP) is the newly created office within the Department of Community Affairs. The OIP is tasked with creating a secure portal which a person may submit or revoke a request for redaction or nondisclosure of a covered person's home address. The Director of the OIP has authority to evaluate and approve or deny a request from any person regarding their eligibility as a "covered person."

### **What information is prohibited from being published, and what must be redacted?**

The state and any local government agency is prohibited from knowingly posting, reposting, publishing, or republishing on the internet the home address of any covered person approved by the Office of Information Privacy, 31 days or more following such approval, unless the agency obtains written permission of that person. (N.J.S.A. 47:1-17)

Additionally, as applied to requests made under the Open Public Records Act, the records custodian must redact any portion of any document which discloses the home address, whether primary or secondary residence, of any active, formerly active, or retired judicial officer, prosecutor, or law enforcement officer, or immediate family member living in the same household.

### **How is a records custodian supposed to know who is a "covered person"?**

Daniel's Law nor the recent amendments specifically outlines a means by which records custodians will be notified of the potential need to redact or remove from a publishing a covered persons home address. The inability of records custodians to readily or accurately identify covered individuals was a critical concern regarding the implementation of

Daniel's Law when it was first adopted. However, based on the recent amendments, it is likely that OIP will provide some kind of notice to the municipality or possibly create a database of covered individuals, available to records custodians. It is also possible that the OIP will require covered individuals to provide some kind of self-reporting regarding their status to municipal agencies. Unfortunately, as of the time of this writing, a mechanism for identifying cover persons has not been created.

**How will those individuals that choose to have their information redacted and unpublished get certain notices such as those required under the Municipal Land Use Law?**

A covered individual upon the submission of their request to have their information redacted or unpublished must affirm their understanding that this action will affect certain rights, duties, and obligations, including:

- 1) The receipt of certain notices from non-governmental entities as would otherwise be required under the MLUL.
- 2) The signing of petitions related to the nomination or election of a candidate to public office or related to any public question.
- 3) The eligibility requirements related to seeking or accepting the nomination for election or election to public office or the appointment to any public position.
- 4) The sale or purchase of a home or other property, recordation of a judgment, lien or other encumbrance on real or other property, and any relief granted based thereon.
- 5) The ability to be notified of any class action suit or settlement.
- 6) Any other legal, promotional, or official notice which would otherwise be provided to the person but for the redaction or nondisclosure of such person's home address.

With this, a covered individual seeking to have their information redacted or unpublished understands that they may not receive the notices they would otherwise be entitled to or obligated to receive.

**Are there any exception to the requirement to redact and the prohibition against disclosure of a covered person's home address?**

Yes, there are a number of exceptions provided for in the law, depending on the type of record and the record's use. This includes:

- 1) Voter registration files maintained in the Statewide voter registration system and maintained by the commissioner of registration in each county, when provided;
  - a. To the chairperson of the county or municipal committee of a political party, for distribution to any person authorized to serve as a challenger at a polling place or during early voting,
  - b. To any vendor, contractor, or organization carrying out a function of a county or of the state concerning the administration or conduct of elections, or
  - c. Under order of a judge of the Superior Court after a finding that the unredacted copy is necessary to determine the merits of a petition contesting an election for public office.
- 2) Documents affecting the title to real property, recorded and indexed by a county recording officer, or as otherwise held or maintained by the Division of Taxation, a county board of taxation, a county tax administrator, or a county or municipal tax accessor that contain and address subject to redaction and nondisclosure. In such cases these documents shall be provided, unredacted to:
  - a. A title insurance company, a title insurance agent, or an approved attorney,
  - b. A mortgage guarantee insurance company,
  - c. A mortgage loan originator,

- d. A registered title search company,
  - e. A real estate; broker, salesperson, or broker-salesperson, licensed with a real estate referral company, and
  - f. A person or business that has made or received an offer to purchase the real estate or real property of a covered person.
- 3) Home addresses may be provided to the union representative of the municipal employee.
- 4) In addition to those above, the following records are also specifically exempt from redaction or nondisclosure:
- a. Records and documents, including Uniform Commercial Code filings and finance agreements, maintained by the Division of Revenue Enterprise Services in the Department of Treasury.
  - b. Petitions naming candidates for political office.
  - c. Records evidencing any lien, judgement, or other encumbrance on real or other property.
  - d. Assessment lists subject to inspection, when inspected in person.
  - e. The index of all recorded documents maintained by a county recording officer, when inspected in person.
  - f. Real property that is presumed abandoned under the Uniform Unclaimed Property Act.
- 5) A public agency may share unredacted information with any vendor, contractor, or organization to carry out the purpose for which the agency entered into an agreement with them, however these other entities can only use the unredacted information to carry out the purpose of the agreement.
- 6) Any document that by its nature can only be viewed in person and cannot be redacted is not required to be redacted. However, reasonable efforts must be made to hide such addresses from any individual without authority to view the address.
- 7) Redaction or nondisclosure is not required for any record shared with or provided to any other government entity.
- 8) Redaction or nondisclosure is not required if so provided by a court order.

**When does the amended Daniel's Law become effective?**

The new law became effective immediately on January 12, 2022 and is retroactive to December 10, 2021. However, compliance with provisions of Daniel's Law and the recent amendments is not required until next year, January 13, 2023. Local governments are authorized to honor requests for redaction or nondisclosure, or revocation thereof, submitted by an authorized person prior to the required compliance date.

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