

TAMPERING WITH PUBLIC RECORDS OR INFORMATION
(DESTRUCTION, CONCEALMENT, REMOVAL OR MUTILATION)
(N.J.S.A. 2C:28-7a(3))

The indictment charges the defendant with the crime of tampering with public records or information and reads as follows:

(Read Indictment)

The statute upon which this charge is based reads in pertinent part:

A person commits an offense if he purposely and unlawfully destroys, conceals, removes, mutilates, or otherwise impairs the verity or availability of any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government¹ . . . [with the purpose to defraud or injure anyone.]²

In order to convict the defendant, the State must prove each of the following elements beyond a reasonable doubt:

- (1) that the defendant destroyed, concealed, removed, mutilated, or otherwise impaired the verity of any record, document or thing;
- (2) that said record, document or thing belonged to, or was received or kept by, the government for information or record, or required to be kept by others for information of the government;
- (3) that the defendant acted purposely; and
- (4) that the defendant's act was unlawful.

The first element that the State must prove beyond a reasonable doubt is that the defendant destroyed, concealed, removed, mutilated, or otherwise impaired the verity of any record, document or thing.

The second element that the State must prove beyond a reasonable doubt is that the

¹ N.J.S.A. 2C:28-7a(3).

² N.J.S.A. 2C:28-7b. This is the grading portion of the statute which makes the offense a third degree crime as opposed to a disorderly persons offense. This part of the statute should be charged to the jury only after a finding of guilt as to subsection (a)(2).

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record, document or thing belonged to, or was received or kept by, the government for information or record, or required to be kept by others for information of the government.

“Government” includes any branch, subdivision or agency of the government of the State or any locality within it.³

With regard to the third element, a person acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is (his/her) conscious object to engage in conduct of that nature or to cause such a result. That is, a person acts purposely if (he/she) means to act in a certain way or to cause a certain result. A person acts purposely with respect to attendant circumstances if (he/she) is aware of the existence of such circumstances or (he/she) believes or hopes that they exist. In other words, if (he/she) means to do it.⁴

Purpose is a condition of the mind which cannot be seen and can only be determined by inferences from the defendant’s conduct, words or acts. A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary, members of the jury, that the State produce witnesses to testify that an accused said (he/she) had a certain state of mind when (he/she) engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of (his/her) acts and (his/her) conduct, and from all (he/she) said and did at the particular time and place, and from all of the surrounding circumstances.

With regard to the fourth element, the State must prove beyond a reasonable doubt that the defendant’s conduct was unlawful. Here, the State charges that the defendant _____
_____. **[Here, the court should describe the unlawful conduct]**. You must not consider your own notions of the unlawfulness of some other undescribed purpose of the defendant, but rather you must consider whether the State has proven the specific unlawful purpose charged.

If you find that the State has failed to prove any one of these elements beyond a reasonable doubt, then you must find the defendant not guilty.

³ N.J.S.A. 2C:27-1b.

⁴ N.J.S.A. 2C:2-2b(1).

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If you find, however, that the State has proven these four elements beyond a reasonable doubt, then you must consider a fifth element, namely whether the defendant's purpose was to defraud or injure anyone.⁵

I have already defined "purpose" for you. It remains the same.

As to this element, the State must prove beyond a reasonable doubt that the defendant's purpose was to defraud or injure anyone. Here, the State alleges that the defendant's purpose was _____. **[Here, the court should state to the jury the allegation(s) made by the State and the defense's position(s), if any].**

If you find that the State has proven all five elements beyond a reasonable doubt, you must find the defendant guilty of the crime of tampering with public records or information with purpose to defraud or injure anyone. If you find that the State has failed to prove the fifth element beyond a reasonable doubt, but has proven the first four elements beyond a reasonable doubt, then you must find the defendant guilty of the offense of tampering with public records or information.

⁵ N.J.S.A. 2C:28-7a(3).