

STATE OF NEW YORK

938

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. CARROLL -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the New York city charter, in relation to the confidentiality of information obtained by a city employee in the course of official duties

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. In August 1989, Mayor Edward Koch
2 issued Executive Order No. 124, which prohibits any city officer or
3 employee from transmitting information regarding the immigration status
4 of any individual to federal immigration authorities except under
5 certain circumstances. Mayors David Dinkins and Rudolph Giuliani re-
6 sued this executive order. In a decision stemming from the city's chal-
7 lenge to the constitutionality of two federal statutes that preempted
8 the Executive Order, the Second Circuit Court of Appeals, although
9 affirming the lower court's dismissal of the city's lawsuit, also left
10 open the possibility that a generalized confidentiality policy necessary
11 to the performance of legitimate municipal functions might survive a
12 constitutional challenge. City of New York v. United States of America,
13 179 F 3rd 29 (1999), cert denied 528 US 1115 (2000). In fact, the Second
14 Circuit Court of Appeals, recognizing that the city's concerns regarding
15 the obtaining of confidential information are not insubstantial, stated
16 that the "obtaining of pertinent information, which is essential to the
17 performance of a wide variety of state and local governmental functions,
18 may in some cases be difficult or impossible if some expectation of
19 confidentiality is not preserved. Preserving confidentiality may in turn
20 require that state and local governments regulate the use of such infor-
21 mation by their employees."

22 Recognizing the importance of keeping certain information confidential
23 that city employees may obtain in the course of fulfilling their duties,

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 as well as adhering to the concerns of the second circuit, the city
2 council finds that a general policy limiting the disclosure of many
3 types of confidential information is warranted. Confidentiality is vital
4 when the city obtains such information as an individual's health or
5 disability status, sexual orientation, immigration status, status as a
6 crime victim or witness, or other information. Without the assurance
7 that such information will be kept confidential, it will be difficult
8 and oftentimes impossible for the city to perform certain essential
9 functions. By creating a presumption of confidentiality with regard to
10 certain information, and establishing a mechanism that regulates the
11 disclosure of such information, the city will go a long way to insuring
12 that vital services are provided to all people who reside in, work in,
13 or visit this city.

14 § 2. The New York city charter is amended by adding a new section 1114
15 to read as follows:

16 § 1114. Disclosure of confidential information by city employees. a.
17 Definitions. (1) "Confidential information" means any information main-
18 tained or obtained by a city agency or employee concerning an individ-
19 ual's health or disability status, income tax records, sexual orien-
20 tation, status as a victim of domestic violence, status as a crime
21 victim or witness, public assistance status, immigration status, or any
22 information that is otherwise protected from disclosure by any provision
23 of federal, state or local law.

24 (2) "Line worker" means any person employed by any city agency whose
25 duties involve contact with the public.

26 b. Procedure for the disclosure of confidential information. (1)
27 Except as provided in paragraph two of this subdivision, no city officer
28 or employee shall disclose confidential information to any one except
29 another city officer or employee acting in the scope of his or her offi-
30 cial duties.

31 (2) Confidential information may be disclosed other than as provided
32 in paragraph one of this subdivision only if:

33 (a) The officer's or employee's agency is required by law to disclose
34 such confidential information, provided that the disclosure shall be
35 limited to that required by law; or

36 (b) The officer's or employee's agency has been authorized, in writing
37 signed by the individual or, if the individual is a minor or is not
38 competent, the individual's parent or legal guardian, to disclose such
39 confidential information, provided that the disclosure shall be limited
40 to that authorized in writing by the individual; or

41 (c) There is reasonable suspicion or probable cause to believe that a
42 person is engaging in criminal activity and the disclosure of confiden-
43 tial information is necessary to cooperate with a law enforcement agency
44 investigating that criminal activity; or

45 (d) Such confidential information is to be used solely for the purpose
46 of compiling statistical information by a federal, state, or local
47 government agency, provided that the disclosure shall be limited to that
48 necessary to compile such statistical information, and provided that the
49 recipient of the information ensures in writing in advance of any
50 disclosure that the confidential information will not be further
51 disclosed to any agency or individual.

52 c. Procedure for collection and recording of confidential information.
53 No city officer or employee shall make inquiries to any individual
54 applying for or receiving any service or benefit, on behalf of one's
55 self or another, regarding confidential information unless such confi-

1 denial information is specifically required by federal or state law as
2 a condition of receipt of such service or benefit.

3 (1) Where confidential information is a condition of receipt of the
4 service or benefit, the city officer or employee shall make only those
5 inquiries necessary to determine whether an applicant or recipient is
6 qualified for such service or benefit.

7 (2) This section shall apply to any information, questionnaire, inter-
8 view sheet or other form used in relation to benefits or services
9 provided by the city.

10 (3) No city officer or employee shall record information regarding the
11 immigration status of an applicant for or recipient of any service or
12 benefit unless required by federal or state law. Where federal or state
13 law requires the recording of confidential information, only that infor-
14 mation specifically required shall be recorded.

15 d. Designation of officer responsible for authorizing the release of
16 confidential information. The head or governing body of each agency
17 shall designate one or more persons with supervisory authority who have
18 authority to approve the release of confidential information. The desig-
19 nation shall include the name, specific job title, telephone number and
20 business address of such access officer. In approving the release of
21 confidential information the designated officer shall specify the
22 specific information to be disclosed and the persons or entities to
23 which such disclosure shall be made. The designated officer shall ensure
24 that the disclosure is authorized by law and is limited in scope as
25 provided by law.

26 e. Disclosure by line workers of confidential information. No line
27 worker employed by a city agency shall disclose confidential information
28 without obtaining prior written approval of the designated officer
29 responsible for authorizing the release of confidential information for
30 that agency.

31 f. Other laws respecting confidentiality. Nothing in this section
32 reduces or abridges any other protection in federal, state, or local law
33 respecting the confidentiality of information.

34 § 3. Severability. If any section, subdivision, sentence, clause,
35 phrase or other portion of this act is, for any reason, declared uncon-
36 stitutional or invalid, in whole or in part, by any court of competent
37 jurisdiction, such portion shall be deemed severable, and such unconsti-
38 tutionality or invalidity shall not affect the validity of the remaining
39 portions of this act, which remaining portions shall continue in full
40 force and effect.

41 § 4. This act shall take effect immediately.