

STATE OF NEW YORK

7933--A

2023-2024 Regular Sessions

IN ASSEMBLY

August 4, 2023

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public officers law, in relation to creating special proceedings for freedom of information law and open meetings law reviews

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

Section 1. The public officers law is amended by adding a new article 9 to read as follows:

ARTICLE 9

SPECIAL PROCEEDINGS FOR FREEDOM OF INFORMATION LAW

AND OPEN MEETINGS LAW REVIEWS

Section 120. Definitions.

121. Procedure to review freedom of information law requests and open meetings law requirements.

122. Appointment of hearing officers.

123. Hearing procedures.

124. Decision of petition for freedom of information law and open meetings law review.

125. Determination not precedent.

126. Waiver of other remedies and right to judicial review.

127. Rules of practice and procedure.

§ 120. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Agency" shall have the same meaning as defined in section eighty-six of this chapter, and shall apply to all entities subject to the provisions of the freedom of information law.

2. "Freedom of information law" shall mean the laws under article six of this chapter.

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

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1 3. "Hearing officer" shall mean a hearing officer appointed pursuant
2 to section one hundred twenty-two of this article, and shall include
3 judicial hearing officers.

4 4. "Open meetings law" shall mean the laws under article seven of this
5 chapter.

6 5. "Public body" shall have the same meaning as defined under section
7 one hundred two of this chapter, and shall apply to all entities subject
8 to the provisions of the open meetings law.

9 § 121. Procedure to review freedom of information law requests and
10 open meetings law requirements. 1. The chief administrator of the courts
11 shall establish a "freedom of information law and open meetings law
12 review program" in the supreme court.

13 2. An individual who has made a request under the freedom of informa-
14 tion law and is claiming to be aggrieved by a failure of an agency to
15 appropriately fulfill such request may file a petition for review pursu-
16 ant to this article provided that such individual shall have first filed
17 an administrative appeal of their freedom of information law request
18 pursuant to paragraph (a) of subdivision four of section eighty-nine of
19 this chapter.

20 3. An individual claiming a violation of the open meetings law may
21 file a petition for review pursuant to this article provided that such
22 individual shall have first filed a request for an opinion regarding
23 their claim with the New York state committee on open government.

24 4. Upon determining a freedom of information law appeal pursuant to
25 paragraph (a) of subdivision four of section eighty-nine of this chap-
26 ter, the appropriate agency shall inform the freedom of information law
27 requestor in writing of their right to court review under this article
28 with their appeal determination and where court review forms may be
29 obtained. Each agency shall also in their appeal determinations notify
30 such requestors of their right to file a proceeding pursuant to article
31 seventy-eight of the civil practice law and rules, within one hundred
32 twenty days of the appeal determination. The petition form for court
33 review shall be provided to such requestors, upon request, at no cost in
34 accordance with the rules promulgated pursuant to section one hundred
35 twenty-seven of this article.

36 5. The petition for review pursuant to this article shall be filed for
37 freedom of information law reviews within thirty days after the agency
38 appeal determination referenced in subdivision four of this section, or
39 if no response was received to the requestor's appeal, within thirty
40 days of the agency appeal request being made. The petition for review
41 pursuant to this article shall be filed for open meetings law reviews
42 within thirty days after the New York committee on open government
43 issues an opinion or the public body's response regarding the
44 petitioner's claim, or if no response was received, within thirty days
45 of the committee on open government/public body request being made.
46 Failure to file the petition within such time shall constitute a
47 complete defense to the petition and the petition shall be dismissed. A
48 fee of fifty dollars shall be paid upon filing of each petition, which
49 shall be the sole fee required for petitions filed pursuant to this
50 article. The county clerk of each county outside the city of New York
51 shall retain ten dollars of each filing fee and shall pay the balance of
52 each fee to the office of court administration as provided in paragraph
53 (e) of subdivision two of section thirty-nine of the judiciary law.

54 6. The petition form for freedom of information law and open meetings
55 law review shall be prescribed by the office of court administration
56 after consultation with the New York committee on open government. Such

1 form shall require the petitioner to set forth their name, mailing
2 address, telephone number, and email address, the name of the agency the
3 freedom of information law request was made to, or the name of the
4 public body alleged to have violated the open meetings law, a concise
5 statement of the ground or grounds upon which review is sought and any
6 such other information as may be required by the office of court admin-
7 istration.

8 7. No petition for freedom of information law or open meetings law
9 review shall relate to more than one request.

10 8. The petition may be made by a person who has knowledge of the facts
11 stated therein and who is authorized in writing by the requestor to file
12 such petition. Such written authorization shall be made a part of such
13 petition.

14 9. Commencement of a proceeding under this article shall not stay the
15 requirements for filing a proceeding under article seventy-eight of the
16 civil practice law and rules.

17 10. The petitioner shall mail a copy of the petition within five days
18 from the date of filing with the clerk of the supreme court to the
19 records access officer of the agency or public body named in the peti-
20 tion, or if there is no such officer, then to the head, chief executive
21 or governing body of such entity. In the event that service is made by
22 personal delivery, the records access officer or other appropriate
23 person shall provide a receipt for such service to the petitioner stat-
24 ing the date and time of service.

25 § 122. Appointment of hearing officers. 1. The chief administrator of
26 the courts shall appoint a panel of hearing officers selected from
27 persons requesting to serve as such hearing officers who shall have
28 submitted resumes of qualifications. Hearing officers to be appointed to
29 the panel shall be qualified by training, interest, experience, temper-
30 ament and knowledge of New York's freedom of information law and open
31 meetings law but need not be attorneys. The chief administrator of the
32 court shall randomly assign a hearing officer or hearing officers, or
33 may assign a judicial hearing officer designated pursuant to article
34 twenty-two of the judiciary law, to conduct an informal hearing on the
35 petition for review with the applicants and a representative of the
36 agency which made the determination sought to be reviewed or the public
37 body for which an open meetings law violation has been alleged. Hearing
38 officers assigned shall not possess any conflict of interest with regard
39 to the petitions to be heard. Hearing officers shall be compensated at
40 least one hundred dollars per hearing for their services in accordance
41 with a fee schedule to be established by the chief administrator of the
42 courts.

43 2. A hearing officer shall disqualify himself or herself from a hear-
44 ing where such officer possesses a conflict of interest. Such hearing
45 officer shall also disqualify himself or herself from a hearing where
46 such hearing officer has a direct or indirect interest in any agency or
47 public body for which a petition has been filed or a direct or indirect
48 interest with a petitioner. For the purposes of this article, a hearing
49 officer shall be deemed to have a direct or indirect interest in any
50 agency or public body for which a petition has been filed or with a
51 petitioner, when the hearing officer, spouse, registered domestic part-
52 ner, any of his or her children, mother, father, brother, or sister:

53 (a) has an interest in any contract with the agency, public body, or
54 petitioner;

55 (b) is employed by the agency, public body, or petitioner; or

1 (c) serves on the board of directors of the agency or is an elected
2 official of the public body.

3 3. Where a hearing officer disqualifies himself or herself, such hear-
4 ing officer shall notify the chief administrator of the court who shall
5 reassign the case to another hearing officer.

6 § 123. Hearing procedures. 1. Hearings under this article shall be
7 held within forty-five days of the filing of a petition. In the event
8 all such hearings cannot be held within forty-five days, hearings may be
9 held at a later date in accordance with the rules promulgated pursuant
10 to section one hundred twenty-seven of this article. Such hearing, where
11 practicable, shall be held virtually/remotely via video conferencing or
12 telephone conferencing. If for any reason it is not possible to conduct
13 a hearing virtually/remotely then the hearing shall occur at a location
14 within the county in which the petitioner resides. A hybrid hearing may
15 be held where some parties including the hearing officer appear in
16 person and others appear remotely/virtually. The petitioner and agency
17 or public body shall be advised by mail and/or email of the time and
18 place of such hearing and how to appear electronically via video or
19 telephone at least ten business days prior to the date of the hearing;
20 provided, however, that failure to receive such notice in such time
21 period shall not bar the holding of a hearing. Hearings under this
22 article shall be open to the public and anyone shall have the right to
23 create an audio-visual recording of such hearing.

24 2. The petitioner shall not be required to present expert witnesses
25 nor be represented by an attorney at such hearing. Such proceedings
26 shall be conducted on an informal basis in such manner as to do substan-
27 tial justice between the parties. The petitioner shall not be bound by
28 statutory provisions or rules of practice, procedure, pleading or
29 evidence. All statements and presentation of evidence made at the hear-
30 ing by either party shall be made or presented to the hearing officer
31 who shall assure that decorum is maintained at the hearing. The hearing
32 officer shall consider the best evidence presented in each particular
33 case. Such evidence may include, but shall not be limited to, the
34 request made and response provided thereto. The agency or public body
35 shall have the burden of proving why the information sought is exempt
36 from disclosure under the freedom of information law or made available
37 as required by the open meetings law, and if fees are being charged the
38 burden of proving why such fees are proper.

39 3. All parties shall be required to appear at the hearing in person or
40 in accordance with subdivision two of this section. Failure to appear
41 shall result in the petition being determined upon inquest by the hear-
42 ing officer based upon the available evidence submitted.

43 4. The hearing officer shall determine all questions of fact and law
44 de novo.

45 § 124. Decision of petition for freedom of information law and open
46 meetings law review. 1. The hearing officer shall make a decision in
47 writing with respect to the petition within thirty days after conclusion
48 of the hearing conducted with respect thereto. The hearing officer's
49 decision may grant the petition in full or in part or may deny the peti-
50 tion. The hearing officer may award the petitioner costs against the
51 respondent agency or public body in an amount not to exceed the fee paid
52 by the petitioner to file the petition for review. In unusual circum-
53 stances, the hearing officer may extend the thirty-day time limit by
54 sending written notice to the petitioning party and a copy to the deny-
55 ing agency or public body, setting forth the reasons for the extension,
56 and the day on which a decision is expected to be issued, which shall

1 not exceed an additional thirty days. As used in this section, the term
2 "unusual circumstances" shall mean, but only to the extent reasonably
3 necessary to the proper resolution of a petition: (a) the need to obtain
4 additional documentation from the agency and a copy of the records
5 involved; or (b) the need to conduct extensive research on issues of
6 first impression.

7 2. If the hearing officer determines from the petition and upon the
8 evidence presented at the hearing that the determination by the agency
9 or public body being reviewed to withhold information is improper or the
10 fees being sought are excessive, he or she shall order a correction of
11 the decision made in whole or in part, in such manner as shall be in
12 accordance with law.

13 3. If the hearing officer determines that the petitioner did not qual-
14 ify for review pursuant to section one hundred twenty-one of this arti-
15 cle, the petition shall be denied without prejudice and the petitioner,
16 notwithstanding any other provision of law, shall be permitted to
17 commence a proceeding pursuant to article seventy-eight of the civil
18 practice law and rules with the understanding that the statute of limi-
19 tations for such a proceeding shall not be tolled by petitions filed
20 under this article.

21 4. The decision of the hearing officer shall state the findings of
22 fact and the evidence upon which it is based. Such decisions shall be
23 attached to and made part of the petition for review and shall be dated
24 and signed. Where the decision of the hearing officer determines that
25 the petitioner did not qualify for review pursuant to section one
26 hundred twenty-one of this article, a notice shall be attached to such
27 decision stating that the petitioner may seek judicial review of their
28 freedom of information law request pursuant to article seventy-eight of
29 the civil practice law and rules, and that the last day to file for
30 judicial review is one hundred twenty days after having been served with
31 a copy of such decision. Where the decision of the hearing officer
32 determines that the petition is granted in full or in part, a notice
33 shall be attached to such decision stating that the determination of the
34 freedom of information law request shall be changed in compliance with
35 such decision and that such change shall be followed by name, telephone
36 number and/or address of the agency.

37 5. The hearing officer shall promptly transmit the decision to the
38 clerk of the court, who shall file and enter it in accordance with the
39 rules promulgated pursuant to section one hundred twenty-seven of this
40 article.

41 6. The hearing officer shall promptly mail a copy of the decision to
42 the petitioner, the agency or public body named in the petition.

43 § 125. Determination not precedent. No transcript of testimony shall
44 be made of a hearing held under this article. The hearing officer's
45 decision of a petition under this article shall not constitute precedent
46 for any purpose or proceeding involving the parties or any other person
47 or persons.

48 § 126. Waiver of other remedies and right to judicial review. A peti-
49 tioner to an action pursuant to this article may seek judicial review
50 pursuant to article seventy-eight of the civil practice law and rules,
51 provided that such review shall be maintained against the same parties
52 named in the freedom of information law or open meetings law petition.

53 § 127. Rules of practice and procedure. The chief administrator of the
54 courts shall adopt such rules of practice and procedure, consistent with
55 this article, as may be necessary to implement the freedom of informa-
56 tion law and open meetings law review procedure established under this

1 article. Such rules shall provide for the scheduling of evening hearings
2 where practicable, the availability of petition forms, and the proce-
3 dures for the filing of decision rendered by hearing officers pursuant
4 to the provisions of this article.

5 § 2. This act shall take effect one year after it shall have become a
6 law. Effective immediately, the addition, amendment and/or repeal of any
7 rule or regulation necessary for the implementation of this act on its
8 effective date are authorized to be made and completed on or before such
9 effective date.