

4580

2009-2010 Regular Sessions

I N S E N A T E

April 24, 2009

Introduced by Sen. C. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the public officers law, in relation to exceptions to the freedom of information law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 5 of section 89 of the public officers law, as
2 added by chapter 890 of the laws of 1981, paragraph (a) as amended by
3 chapter 403 of the laws of 2003, and paragraph (d) as amended by chapter
4 339 of the laws of 2004, is amended to read as follows:

5 5. (a) (1) A person acting pursuant to law or regulation who, subse-
6 quent to the effective date of this subdivision, submits [any informa-
7 tion] RECORDS to any state agency may, at the time of submission,
8 request that the agency except such information from disclosure under
9 paragraph (d) of subdivision two of section eighty-seven of this arti-
10 cle. Where the request itself contains information which if disclosed
11 would defeat the purpose for which the exception is sought, such infor-
12 mation shall also be excepted from disclosure.

13 (1-a) A person or entity who submits or otherwise makes available any
14 records to any agency, may, at any time, identify those records or
15 portions thereof that may contain critical infrastructure information,
16 and request that the agency that maintains such records except such
17 information from disclosure under subdivision two of section eighty-sev-
18 en of this article. Where the request itself contains information which
19 if disclosed would defeat the purpose for which the exception is sought,
20 such information shall also be excepted from disclosure.

21 (2) The request for an exception shall be in writing and state the
22 reasons why [the information] AND IDENTIFY WHICH PORTIONS OF THE RECORDS
23 should be excepted from disclosure.

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

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1 (3) [Information submitted as provided in subparagraphs one and one-a
2 of this paragraph shall be excepted from disclosure and be maintained
3 apart by the agency from all other records until fifteen days after the
4 entitlement to such exception has been finally determined or such
5 further time as ordered by a court of competent jurisdiction.

6 (b) On the initiative of the agency at any time, or upon the request
7 of any person for a record excepted from disclosure pursuant to this
8 subdivision, the agency shall:

9 (1) inform the person who requested the exception of the agency's
10 intention to determine whether such exception should be granted or
11 continued;

12 (2) permit the person who requested the exception, within ten business
13 days of receipt of notification from the agency, to submit a written
14 statement of the necessity for the granting or continuation of such
15 exception;

16 (3) within seven business days of receipt of such written statement,
17 or within seven business days of the expiration of the period prescribed
18 for submission of such statement, issue a written determination grant-
19 ing, continuing or terminating such exception and stating the reasons
20 therefor; copies of such determination shall be served upon the person,
21 if any, requesting the record, the person who requested the exception,
22 and the committee on public access to records.

23 (c) A denial of an exception from disclosure under paragraph (b) of
24 this subdivision may be appealed by the person submitting the informa-
25 tion and a denial of access to the record may be appealed by the person
26 requesting the record in accordance with this subdivision:

27 (1) Within seven business days of receipt of written notice denying
28 the request, the person may file a written appeal from the determination
29 of the agency with the head of the agency, the chief executive officer
30 or governing body or their designated representatives.] AN AGENCY SHALL
31 ACKNOWLEDGE RECEIPT OF A REQUEST FOR AN EXCEPTION FROM DISCLOSURE BY
32 INFORMING THE PERSON WHO SUBMITTED SUCH REQUEST THAT THE EXCEPTION FROM
33 DISCLOSURE, IF APPROVED, SHALL REMAIN IN EFFECT FOR A PERIOD OF UP TO
34 ONE YEAR FROM THE DATE OF SUCH ACKNOWLEDGEMENT.

35 (4) THE PERSON TO WHOM AN EXCEPTION FROM DISCLOSURE IS GRANTED MAY AT
36 ANY TIME WITHIN ONE MONTH PRIOR TO THE DATE OF EXPIRATION OF THE EXCEP-
37 TION REQUEST IN WRITING THAT THE AGENCY EXTEND THE EXCEPTION FOR A PERI-
38 OD OF SIX MONTHS BY EXPLAINING WHY DISCLOSURE WOULD CONTINUE TO CAUSE
39 SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF THE COMMERCIAL ENTER-
40 PRISE OR OTHERWISE DENIABLE UNDER SUBDIVISION TWO OF THIS SECTION. A
41 FAILURE TO REQUEST AN EXCEPTION FROM DISCLOSURE OR TO SEEK AN EXTENSION
42 OF SUCH DISCLOSURE SHALL TERMINATE THE APPLICATION OF THE PROVISIONS OF
43 THIS SUBDIVISION BUT SHALL IN NO WAY LIMIT OR ABRIDGE THE AUTHORITY OF
44 AN AGENCY TO WITHHOLD RECORDS TO THE EXTENT AUTHORIZED BY SUBDIVISION
45 TWO OF SECTION EIGHTY-SEVEN OF THIS ARTICLE.

46 (B) UPON REQUEST OF ANY PERSON FOR A RECORD EXCEPTED FROM DISCLOSURE,
47 THE AGENCY SHALL INFORM THE PERSON MAKING SUCH REQUEST OF THE EXCEPTION
48 FROM DISCLOSURE AND ITS DATE OF EXPIRATION AND OF THE RIGHT TO APPEAL
49 THE DENIAL OF THE REQUEST IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDIVI-
50 SION FOUR OF THIS SECTION.

51 (C) (1) A DENIAL OF A REQUEST FOR AN EXCEPTION FROM DISCLOSURE OR A
52 REQUEST FOR AN EXTENSION OF AN EXCEPTION PREVIOUSLY GRANTED MAY BE
53 APPEALED BY THE PERSON REQUESTING SUCH EXCEPTION OR ITS EXTENSION.

54 (2) The appeal shall be determined within ten business days of the
55 receipt of the appeal. Written notice of the determination shall be
56 served upon [the person, if any, requesting the record,] the person who

1 requested the exception OR EXTENSION and the committee on [public access
2 to records] OPEN GOVERNMENT. The notice shall contain a statement of
3 the reasons for the determination.

4 (d) A proceeding to review an adverse determination pursuant to para-
5 graph (c) of this subdivision may be commenced pursuant to article
6 seventy-eight of the civil practice law and rules. Such proceeding, when
7 brought by a person seeking an exception from disclosure pursuant to
8 this subdivision, must be commenced within fifteen days of the service
9 of the written notice containing the adverse determination provided for
10 in subparagraph two of paragraph (c) of this subdivision.

11 (e) The person requesting an exception from disclosure pursuant to
12 this subdivision shall in all proceedings have the burden of proving
13 entitlement to the exception.

14 (f) Where the agency denies access to a record pursuant to PARAGRAPH
15 (B) OF THIS SUBDIVISION IN CONJUNCTION WITH paragraph (d) of subdivision
16 two of section eighty-seven of this article, the agency shall have the
17 burden of proving that the record falls within the provisions of such
18 exception.

19 (g) AN AGENCY SHALL NOT DISCLOSE A RECORD IN RESPONSE TO A REQUEST
20 MADE PURSUANT TO THIS ARTICLE DURING THE PENDENCY OF A REQUEST FOR AN
21 EXCEPTION FROM DISCLOSURE, ANY APPEAL MADE PURSUANT TO PARAGRAPH (C) OF
22 THIS SUBDIVISION, OR IF SUCH APPEAL IS DENIED, UNTIL AT LEAST FIFTEEN
23 DAYS FOLLOWING THE DENIAL OF THE APPEAL.

24 (H) Nothing in this subdivision shall be construed to deny any person
25 access, pursuant to the remaining provisions of this article, to any
26 record or part excepted from disclosure upon the express written consent
27 of the person who had requested the exception.

28 [(h)] (I) As used in this subdivision the term "agency" or "state
29 agency" means only a state department, board, bureau, division, council
30 or office and any public corporation the majority of whose members are
31 appointed by the governor.

32 S 2. This act shall take effect immediately.