S T A T E O F N E W Y O R K

7428

I N S E N A T E

April 9, 2010

Introduced by Sen. NOZZOLIO -- 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 authorizing the denial of access to public records or portions thereof which constitute the recordings or reproductions of emergency 911 calls

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

Section 1. Subparagraphs iii and iv of paragraph (g), and paragraphs (h), (i), (j) and (k) of subdivision 2 of section 87 of the public officers law, subparagraph iii of paragraph (g) as amended and subparagraph iv of paragraph (g) as added by chapter 510 of the laws of 1999, paragraph (h) as added by chapter 933 of the laws of 1977, paragraph (i) as added by chapter 368 of the laws of 2001, paragraph (j) as added by chapter 746 of the laws of 1988 and paragraph (k) as separately added by chapters 19, 20, 21, 22, 23 and 383 of the laws of 2009, are amended and a new paragraph (1) is added to read as follows:

iii. final agency policy or determinations; OR

iv. external audits, including but not limited to audits performed by the comptroller and the federal government; [or]

(h) are examination questions or answers which are requested prior to the final administration of such questions[.];

(i) if disclosed, would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; [or]

(j) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-a of the vehicle and traffic law[.];

(k) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-b of the vehicle and traffic law[.]; OR

(1) IN ACCORDANCE WITH SUBDIVISION FOUR OF SECTION THREE HUNDRED EIGHT OF THE COUNTY LAW, ARE RECORDINGS OR REPRODUCTIONS OF EMERGENCY 911 CALLS, WHICH IF DISCLOSED COULD RESULT IN TRAUMA, SORROW, HUMILIATION OR

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

LBD16603-01-0

EMOTIONAL INJURY TO THE PERSON REPORTING THE EMERGENCY OR REQUIRING EMERGENCY SERVICES, OR TO SUCH PERSON'S IMMEDIATE FAMILY.

S 2. Section 89 of the public officers law is amended by adding a new subdivision 5-a to read as follows:

5-A. (A) EACH AGENCY, UPON RECEIPT OF A WRITTEN REQUEST FOR A RECORD THAT IS A RECORDING OR REPRODUCTION OF AN EMERGENCY 911 CALL, SHALL:

(1) DENY SUCH REQUEST UNTIL THE PROVISIONS OF THIS SUBDIVISION HAVE BEEN FULLY COMPLIED WITH; AND

(2) WITHIN FIVE CALENDAR DAYS OF THE RECEIPT OF SUCH REQUEST, DELIVER BY FIRST CLASS MAIL A NOTICE OF THE RIGHT OF THE PERSON REPORTING THE EMERGENCY OR REQUIRING THE EMERGENCY TO OBJECT TO THE DISCLOSURE OF ALL OR ANY PORTION OF SUCH RECORD ON THE BASIS THAT ITS DISCLOSURE WOULD CAUSE TRAUMA, SORROW, HUMILIATION OR EMOTIONAL INJURY TO SUCH PERSON OR HIS OR HER IMMEDIATE FAMILY. IN THE EVENT SUCH PERSON IS A MINOR, INCOMPETENT OR DECEASED, THE NOTICE SHALL BE PROVIDED TO THE PERSON'S PARENTS, LEGAL GUARDIANS OR EXECUTOR, AS THE CASE MAY BE. SUCH NOTICE SHALL GRANT THE RECIPIENT THE OPTION OF DENYING DISCLOSURE OF THE ENTIRETY OR ANY PORTION OR PORTIONS OF THE RELEVANT RECORD, OR GRANT FULL DISCLOSURE THEREOF. EACH REQUEST FOR DENIAL OF DISCLOSURE SUBMITTED PURSUANT TO THIS SUBDIVISION SHALL BE BASED UPON TRAUMA, SORROW, HUMILIATION OR EMOTIONAL INJURY, AND SHALL STATE THE FACTS SURROUNDING SUCH CLAIM. INCLUDED WITH EACH SUCH NOTICE SHALL BE A PLAIN WRITTEN EXPLANATION OF ALL THE RIGHTS AND REMEDIES OF THE RECIPIENT PURSUANT TO THIS ARTICLE.

(B) EVERY RECIPIENT OF A NOTICE PURSUANT TO THIS SUBDIVISION, SHALL, WITHIN SIXTY DAYS OF THE RECEIPT THEREOF, RETURN THE COMPLETED DISCLOSURE CONSENT OR DENIAL PORTION OF SUCH NOTICE TO THE AGENCY HAVING CUSTODY OF THE 911 EMERGENCY CALL RECORDING OR REPRODUCTION.

(C) THE AGENCY UPON RECEIPT OF A COMPLETED DISCLOSURE CONSENT OR DENIAL OR WITHIN SEVEN DAYS OF THE EXPIRATION OF THE PERIOD PRESCRIBED FOR SUBMISSION OF THE CONSENT OR DENIAL, SHALL ISSUE A WRITTEN DETERMINATION GRANTING, LIMITING OR DENYING DISCLOSURE OF THE RECORD AND STATING THE REASONS THEREFOR. COPIES OF SUCH DETERMINATION SHALL BE SERVED UPON THE PERSON REQUESTING THE RECORD, THE PERSON WHO RECEIVED NOTICE PURSUANT TO SUBPARAGRAPH TWO OF PARAGRAPH (A) OF THIS SUBDIVISION AND THE COMMITTEE ON PUBLIC ACCESS TO RECORDS.

(D) THE DISCLOSURE OF A RECORD CONTRARY TO THE WISHES OF THE RECIPIENT OF NOTICE PURSUANT TO THIS SUBDIVISION, OR THE DENIAL OF DISCLOSURE OF THE RECORD MAY BE APPEALED:

(1) WITHIN SEVEN BUSINESS DAYS OF THE DETERMINATION OF THE AGENCY, BY FILING A WRITTEN APPEAL FROM THE DETERMINATION OF THE AGENCY WITH THE HEAD OF THE AGENCY, THE CHIEF EXECUTIVE OFFICER OR GOVERNING BODY OR THEIR DESIGNATED REPRESENTATIVES; AND

(2) THE APPEAL SHALL BE DETERMINED WITHIN TEN BUSINESS DAYS OF THE RECEIPT OF THE APPEAL. WRITTEN NOTICE OF THE DETERMINATION SHALL BE SERVED UPON THE PERSONS REQUESTING DISCLOSURE, THE PERSONS REQUESTING DENIAL OF DISCLOSURE AND THE COMMITTEE ON PUBLIC ACCESS TO RECORDS. THE NOTICE SHALL CONTAIN A STATEMENT OF THE REASONS FOR THE DETERMINATION.

(E) A PROCEEDING TO REVIEW AN ADVERSE DETERMINATION PURSUANT TO PARAGRAPH (D) OF THIS SUBDIVISION MAY BE COMMENCED PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. SUCH PROCEEDING MUST BE COMMENCED WITHIN FIFTEEN DAYS OF THE SERVICE OF THE WRITTEN NOTICE CONTAINING THE ADVERSE DETERMINATION PROVIDED FOR IN SUBPARAGRAPH TWO OF PARAGRAPH (D) OF THIS SUBDIVISION.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, that:

(a) the amendments to paragraph (j) of subdivision 2 of section 87 of the public officers law, made by section one of this act, shall not affect the expiration and repeal of such paragraph and shall expire and be deemed repealed therewith;

(b) the amendments to paragraph (k) of subdivision 2 of section 87 of the public officers law, made by section one of this act, shall not affect the expiration and repeal of such paragraph and shall expire and be deemed repealed therewith; and

(c) effective immediately, any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.