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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 19, 2009

Introduced by M. of A. BRENNAN -- Multi-Sponsored by -- M. of A. PHEFFER, ROBINSON -- 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:

Section 1. Legislative intent. In August 1989, Mayor Edward Koch issued Executive Order No. 124, which prohibits any city officer or employee from transmitting information regarding the immigration status of any individual to federal immigration authorities except under certain circumstances. Mayors David Dinkins and Rudolph Giuliani reissued this executive order. In a decision stemming from the city's challenge to the constitutionality of two federal statutes that preempted the Executive Order, the Second Circuit Court of Appeals, although affirming the lower court's dismissal of the city's lawsuit, also left open the possibility that a generalized confidentiality policy necessary to the performance of legitimate municipal functions might survive a constitutional challenge. CITY OF NEW YORK V. UNITED STATES OF AMERICA, 179 F 3rd 29 (1999), CERT DENIED 528 US 1115 (2000). In fact, the Second Circuit Court of Appeals, recognizing that the city's concerns regarding the obtaining of confidential information are not insubstantial, stated that the "obtaining of pertinent information, which is essential to the performance of a wide variety of state and local governmental functions, may in some cases be difficult or impossible if some expectation of confidentiality is not preserved. Preserving confidentiality may in turn require that state and local governments regulate the use of such information by their employees."

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

S 2. The New York city charter is amended by adding a new section 1113 to read as follows:

S 1113. DISCLOSURE OF CONFIDENTIAL INFORMATION BY CITY EMPLOYEES. A. DEFINITIONS. (1) "CONFIDENTIAL INFORMATION" MEANS ANY INFORMATION MAINTAINED OR OBTAINED BY A CITY AGENCY OR EMPLOYEE CONCERNING AN INDIVIDUAL'S HEALTH OR DISABILITY STATUS, INCOME TAX RECORDS, SEXUAL ORIENTATION, STATUS AS A VICTIM OF DOMESTIC VIOLENCE, STATUS AS A CRIME VICTIM OR WITNESS, PUBLIC ASSISTANCE STATUS, IMMIGRATION STATUS, OR ANY INFORMATION THAT IS OTHERWISE PROTECTED FROM DISCLOSURE BY ANY PROVISION OF FEDERAL, STATE OR LOCAL LAW.

(2) "LINE WORKER" MEANS ANY PERSON EMPLOYED BY ANY CITY AGENCY WHOSE DUTIES INVOLVE CONTACT WITH THE PUBLIC.

B. PROCEDURE FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION. (1) EXCEPT AS PROVIDED IN PARAGRAPH TWO OF THIS SUBDIVISION, NO CITY OFFICER OR EMPLOYEE SHALL DISCLOSE CONFIDENTIAL INFORMATION TO ANY ONE EXCEPT ANOTHER CITY OFFICER OR EMPLOYEE ACTING IN THE SCOPE OF HIS OR HER OFFICIAL DUTIES.

(2) CONFIDENTIAL INFORMATION MAY BE DISCLOSED OTHER THAN AS PROVIDED IN PARAGRAPH ONE OF THIS SUBDIVISION ONLY IF:

(A) THE OFFICER'S OR EMPLOYEE'S AGENCY IS REQUIRED BY LAW TO DISCLOSE SUCH CONFIDENTIAL INFORMATION, PROVIDED THAT THE DISCLOSURE SHALL BE LIMITED TO THAT REQUIRED BY LAW; OR

(B) THE OFFICER'S OR EMPLOYEE'S AGENCY HAS BEEN AUTHORIZED, IN WRITING SIGNED BY THE INDIVIDUAL OR, IF THE INDIVIDUAL IS A MINOR OR IS NOT COMPETENT, THE INDIVIDUAL'S PARENT OR LEGAL GUARDIAN, TO DISCLOSE SUCH CONFIDENTIAL INFORMATION, PROVIDED THAT THE DISCLOSURE SHALL BE LIMITED TO THAT AUTHORIZED IN WRITING BY THE INDIVIDUAL; OR

(C) THERE IS REASONABLE SUSPICION OR PROBABLE CAUSE TO BELIEVE THAT A PERSON IS ENGAGING IN CRIMINAL ACTIVITY AND THE DISCLOSURE OF CONFIDENTIAL INFORMATION IS NECESSARY TO COOPERATE WITH A LAW ENFORCEMENT AGENCY INVESTIGATING THAT CRIMINAL ACTIVITY; OR

(D) SUCH CONFIDENTIAL INFORMATION IS TO BE USED SOLELY FOR THE PURPOSE OF COMPILING STATISTICAL INFORMATION BY A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY, PROVIDED THAT THE DISCLOSURE SHALL BE LIMITED TO THAT NECESSARY TO COMPILE SUCH STATISTICAL INFORMATION, AND PROVIDED THAT THE RECIPIENT OF THE INFORMATION ENSURES IN WRITING IN ADVANCE OF ANY DISCLOSURE THAT THE CONFIDENTIAL INFORMATION WILL NOT BE FURTHER DISCLOSED TO ANY AGENCY OR INDIVIDUAL.

C. PROCEDURE FOR COLLECTION AND RECORDING OF CONFIDENTIAL INFORMATION. NO CITY OFFICER OR EMPLOYEE SHALL MAKE INQUIRIES TO ANY INDIVIDUAL APPLYING FOR OR RECEIVING ANY SERVICE OR BENEFIT, ON BEHALF OF ONE'S SELF OR ANOTHER, REGARDING CONFIDENTIAL INFORMATION UNLESS SUCH CONFI-

DENTIAL INFORMATION IS SPECIFICALLY REQUIRED BY FEDERAL OR STATE LAW AS A CONDITION OF RECEIPT OF SUCH SERVICE OR BENEFIT.

(1) WHERE CONFIDENTIAL INFORMATION IS A CONDITION OF RECEIPT OF THE SERVICE OR BENEFIT, THE CITY OFFICER OR EMPLOYEE SHALL MAKE ONLY THOSE INQUIRIES NECESSARY TO DETERMINE WHETHER AN APPLICANT OR RECIPIENT IS QUALIFIED FOR SUCH SERVICE OR BENEFIT.

(2) THIS SECTION SHALL APPLY TO ANY INFORMATION, QUESTIONNAIRE, INTERVIEW SHEET OR OTHER FORM USED IN RELATION TO BENEFITS OR SERVICES PROVIDED BY THE CITY.

(3) NO CITY OFFICER OR EMPLOYEE SHALL RECORD INFORMATION REGARDING THE IMMIGRATION STATUS OF AN APPLICANT FOR OR RECIPIENT OF ANY SERVICE OR BENEFIT UNLESS REQUIRED BY FEDERAL OR STATE LAW. WHERE FEDERAL OR STATE LAW REQUIRES THE RECORDING OF CONFIDENTIAL INFORMATION, ONLY THAT INFORMATION SPECIFICALLY REQUIRED SHALL BE RECORDED.

D. DESIGNATION OF OFFICER RESPONSIBLE FOR AUTHORIZING THE RELEASE OF CONFIDENTIAL INFORMATION. THE HEAD OR GOVERNING BODY OF EACH AGENCY SHALL DESIGNATE ONE OR MORE PERSONS WITH SUPERVISORY AUTHORITY WHO HAVE AUTHORITY TO APPROVE THE RELEASE OF CONFIDENTIAL INFORMATION. THE DESIGNATION SHALL INCLUDE THE NAME, SPECIFIC JOB TITLE, TELEPHONE NUMBER AND BUSINESS ADDRESS OF SUCH ACCESS OFFICER. IN APPROVING THE RELEASE OF CONFIDENTIAL INFORMATION THE DESIGNATED OFFICER SHALL SPECIFY THE SPECIFIC INFORMATION TO BE DISCLOSED AND THE PERSONS OR ENTITIES TO WHICH SUCH DISCLOSURE SHALL BE MADE. THE DESIGNATED OFFICER SHALL ENSURE THAT THE DISCLOSURE IS AUTHORIZED BY LAW AND IS LIMITED IN SCOPE AS PROVIDED BY LAW.

E. DISCLOSURE BY LINE WORKERS OF CONFIDENTIAL INFORMATION. NO LINE WORKER EMPLOYED BY A CITY AGENCY SHALL DISCLOSE CONFIDENTIAL INFORMATION WITHOUT OBTAINING PRIOR WRITTEN APPROVAL OF THE DESIGNATED OFFICER RESPONSIBLE FOR AUTHORIZING THE RELEASE OF CONFIDENTIAL INFORMATION FOR THAT AGENCY.

F. OTHER LAWS RESPECTING CONFIDENTIALITY. NOTHING IN THIS SECTION REDUCES OR ABRIDGES ANY OTHER PROTECTION IN FEDERAL, STATE, OR LOCAL LAW RESPECTING THE CONFIDENTIALITY OF INFORMATION.

S 3. Severability. If any section, subdivision, sentence, clause, phrase or other portion of this act is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this act, which remaining portions shall continue in full force and effect.

S 4. This act shall take effect immediately.