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

5715

2009-2010 Regular Sessions

I N A S S E M B L Y

February 19, 2009

Introduced by M. of A. BRENNAN, TITONE, SCHROEDER, FIELDS, MILLMAN, REILLY, ROSENTHAL, CLARK -- Multi-Sponsored by -- M. of A. BOYLAND, COLTON, COOK, DelMONTE, GOTTFRIED, JOHN, LANCMAN, PHEFFER -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, in relation to permitting assessment of certain fees and costs upon wrongful denial of access to records under the freedom of information law

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

Section 1. Paragraph (c) of subdivision 4 of section 89 of the public officers law, as amended by chapter 492 of the laws of 2006, is amended to read as follows:

(c) The court in such a proceeding may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this [section] ARTICLE in which [such person has substantially prevailed, when]:

i. SUCH PERSON HAS SUBSTANTIALLY PREVAILED AND the agency had no reasonable basis for denying access; or

ii. the agency failed to respond to a request or appeal within the statutory time; OR

III. THE RECORD IS SUBSTANTIALLY DISCLOSED FOLLOWING THE INITIATION OF SUCH PROCEEDING BUT PRIOR TO A JUDICIAL DETERMINATION AND THE AGENCY LACKED A REASONABLE BASIS IN LAW FOR WITHHOLDING THE RECORD.

NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO ABRIDGE OR DENY ANY RIGHT OR REMEDY AVAILABLE UNDER ARTICLE EIGHTY-SIX OF THE CIVIL PRACTICE LAW AND RULES.

S 2. This act shall take effect on the first of September next succeeding the date on which it shall have become a law.

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

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