

4359

2009-2010 Regular Sessions

I N S E N A T E

April 22, 2009

Introduced by Sen. KRUGER -- 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 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:

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

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

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

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

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

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

19 S 2. This act shall take effect on the first of September next  
20 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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