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

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:

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

5. (a) (1) A person acting pursuant to law or regulation who, subsequent to the effective date of this subdivision, submits [any information] RECORDS to any state agency may, at the time of submission, request that the agency except such information from disclosure under paragraph (d) of subdivision two of section eighty-seven of this article. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

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

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

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

LBD09787-01-9

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

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

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

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

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

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

(1) Within seven business days of receipt of written notice denying the request, the person may file 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.] AN AGENCY SHALL ACKNOWLEDGE RECEIPT OF A REQUEST FOR AN EXCEPTION FROM DISCLOSURE BY INFORMING THE PERSON WHO SUBMITTED SUCH REQUEST THAT THE EXCEPTION FROM DISCLOSURE, IF APPROVED, SHALL REMAIN IN EFFECT FOR A PERIOD OF UP TO ONE YEAR FROM THE DATE OF SUCH ACKNOWLEDGEMENT.

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

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

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

(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 person, if any, requesting the record,] the person who

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

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

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

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

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

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

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

S 2. This act shall take effect immediately.