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I N  A S S E M B L Y

February 28, 2012

Introduced by M. of A. PAULIN, GALEF, LATIMER, BRINDISI, CAHILL, HIKIND, JAFFEE, KAVANAGH, LAVINE, LIFTON, MAGNARELLI, P. RIVERA, ROBERTS, ROSENTHAL, TITONE, ZEBROWSKI -- Multi-Sponsored by -- M. of A. BOYLAND, COLTON, COOK, GOTTFRIED, LUPARDO, ROBINSON, THIELE, WEISENBERG, WRIGHT -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, in relation to freedom of information requests and attorneys' fees

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 in which such person has substantially prevailed[,] OR when[:

i. 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] THE AGENCY FAILED TO RESPOND TO A REQUEST OR APPEAL WITHIN THE STATUTORY TIME.

S 2. Subdivision 4 of section 89 of the public officers law is amended by adding a new paragraph (d) to read as follows:

(D) THE COURT IN SUCH A PROCEEDING SHALL ASSESS, AGAINST SUCH AGENCY INVOLVED, REASONABLE ATTORNEYS' FEES AND OTHER LITIGATION COSTS REASONABLY INCURRED BY SUCH PERSON IN ANY CASE UNDER THE PROVISIONS OF THIS ARTICLE WHEN SUCH PERSON HAS SUBSTANTIALLY PREVAILED AND THE COURT FINDS THAT THE AGENCY HAD NO REASONABLE BASIS FOR DENYING ACCESS.

S 3. This act shall take effect immediately.

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

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