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

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I N A S S E M B L Y

March 2, 2012

Introduced by M. of A. ENGLEBRIGHT, SILVER, GLICK, GALEF, MARKEY, REILLY, BENEDETTO, LATIMER, LAVINE, PEOPLES-STOKES, SCHIMEL -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, in relation to requiring a particularized and specific justification for denial of access to records under the freedom of information law and exemption from disclosure under the freedom of information law of certain law enforcement related records; and to amend the civil rights law, in relation to records identifying victims

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

Section 1. Section 87 of the public officers law is amended by adding a new subdivision 6 to read as follows:

6. WHEN A REQUEST IS MADE FOR AGENCY RECORDS AND THE AGENCY RECEIVING SUCH REQUEST IS CONSIDERING DENYING ACCESS PURSUANT TO SUBPARAGRAPH I OF PARAGRAPH (E) OF SUBDIVISION TWO OF THIS SECTION ON THE GROUNDS THAT DISCLOSURE WOULD INTERFERE WITH A JUDICIAL PROCEEDING, THE AGENCY RECEIVING SUCH REQUEST SHALL PROMPTLY NOTIFY, IN WRITING, THE JUDGE BEFORE WHOM SUCH JUDICIAL PROCEEDING IS PENDING AND THE PERSON MAKING THE REQUEST. SUCH JUDGE SHALL NOTIFY THE PERSON REQUESTING THE RECORD OF ITS RECEIPT, AND OFFER THE PERSON REQUESTING THE RECORD A REASONABLE OPPORTUNITY TO BE HEARD. AFTER DUE DELIBERATION, SUCH JUDGE SHALL DETERMINE WHETHER ACCESS TO SUCH RECORDS SHOULD BE DENIED PURSUANT TO SUBPARAGRAPH I OF PARAGRAPH (E) OF SUBDIVISION TWO OF THIS SECTION AND SHALL SUBMIT SUCH DETERMINATION IN WRITING TO THE AGENCY AND THE PERSON REQUESTING THE RECORD. THE AGENCY SHALL THEN PROCEED AS REQUIRED PURSUANT TO THIS ARTICLE, IN ACCORDANCE WITH THE COURT'S DETERMINATION.

S 2. Subdivision 6 of section 89 of the public officers law, as added by chapter 933 of the laws of 1977 and as renumbered by chapter 890 of the laws of 1981, is amended to read as follows:

6. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records. A DENIAL OF ACCESS TO RECORDS OR TO PORTIONS THEREOF PURSUANT TO THIS ARTICLE SHALL NOT LIMIT OR ABRIDGE ANY PARTY'S RIGHT OF ACCESS

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

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TO SUCH RECORDS PURSUANT TO THE CIVIL PRACTICE LAW AND RULES, THE CRIMINAL PROCEDURE LAW, OR ANY OTHER LAW.

S 3. Section 89 of the public officers law is amended by adding a new subdivision 10 to read as follows:

10. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT A PERSON OR ENTITY THAT IS A PARTY TO ANY CIVIL OR CRIMINAL ACTION OR PROCEEDING FROM GAINING ACCESS TO RECORDS PURSUANT TO THIS ARTICLE RELATING TO SUCH ACTION OR PROCEEDING, PROVIDED, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL PREVENT THE DENIAL OF ACCESS TO SUCH RECORDS OR PORTIONS THEREOF AFTER PROVIDING PARTICULARIZED AND SPECIFIC JUSTIFICATION THAT SUCH RECORDS MAY BE WITHHELD PURSUANT TO THIS ARTICLE.

S 4. The opening paragraph of subdivision 2 of section 87 of the public officers law, as added by chapter 933 of the laws of 1977, is amended to read as follows:

EACH AGENCY SHALL, IN ACCORDANCE WITH ITS PUBLISHED RULES, MAKE AVAILABLE FOR PUBLIC INSPECTION AND COPYING ALL RECORDS, EXCEPT THOSE RECORDS OR PORTIONS THEREOF THAT MAY BE WITHHELD PURSUANT TO THE EXCEPTIONS OF RIGHTS OF ACCESS APPEARING IN THIS SUBDIVISION. A DENIAL OF ACCESS SHALL NOT BE BASED SOLELY ON THE CATEGORY OR TYPE OF SUCH RECORD AND SHALL BE VALID ONLY WHEN THERE IS A PARTICULARIZED AND SPECIFIC JUSTIFICATION FOR SUCH DENIAL. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

S 5. Paragraph (e) of subdivision 2 of section 87 of the public officers law, as added by chapter 933 of the laws of 1977, is amended to read as follows:

(e) are [compiled] PREPARED OR CREATED for law enforcement purposes [and which, if disclosed, would] ONLY TO THE EXTENT THAT DISCLOSURE WOULD:

i. interfere with law enforcement investigations or judicial proceedings, PROVIDED HOWEVER, THAT ANY AGENCY CONSIDERING DENYING ACCESS PURSUANT TO THIS SUBPARAGRAPH SHALL PROCEED IN ACCORDANCE WITH SUBDIVISION SIX OF THIS SECTION;

ii. deprive a person of a right to a fair trial or impartial adjudication;

iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or

iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

S 6. Subdivision 1 of section 50-b of the civil rights law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

1. The identity of any victim of a sex offense, as defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law, or of an offense involving the alleged transmission of the human immunodeficiency virus, shall be confidential. No PORTION OF ANY report, paper, picture, photograph, court file or other documents, in the custody or possession of any public officer or employee, which identifies such a victim shall be made available for public inspection. No such public officer or employee shall disclose any portion of any police report, court file, or other document, which tends to identify such a victim except as provided in subdivision two of this section.

S 7. This act shall take effect immediately.