

3423

2013-2014 Regular Sessions

I N S E N A T E

February 1, 2013

Introduced by Sen. KRUEGER -- 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 and the executive law, in relation to providing for the review by the attorney general of requests denied 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. Subdivision 4 of section 89 of the public officers law, as
2 amended by chapter 22 of the laws of 2005, paragraph (c) as amended by
3 chapter 492 of the laws of 2006, is amended to read as follows:
4 4. (a) Except as provided in subdivision five of this section, any
5 person denied access to a record may within thirty days appeal in writ-
6 ing such denial to the head, chief executive or governing body of the
7 entity, or the person therefor designated by such head, chief executive,
8 or governing body, who shall within ten business days of the receipt of
9 such appeal fully explain in writing to the person requesting the record
10 the reasons for further denial, or provide access to the record sought.
11 In addition, each agency shall immediately forward to the committee on
12 open government a copy of such appeal when received by the agency and
13 the ensuing determination thereon. Failure by an agency to conform to
14 the provisions of subdivision three of this section shall constitute a
15 denial.
16 UPON RECEIPT OF A COPY OF AN APPEAL UNDER PARAGRAPH (A-1) OF THIS
17 SUBDIVISION, EACH AGENCY SHALL IMMEDIATELY FORWARD TO THE COMMITTEE ON
18 OPEN GOVERNMENT A COPY OF SUCH APPEAL WHEN RECEIVED BY THE AGENCY AND
19 THE ENSUING DETERMINATION THEREON.
20 (A-1) EXCEPT AS PROVIDED IN SUBDIVISION FIVE OF THIS SECTION, A PERSON
21 DENIED ACCESS TO A RECORD PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION
22 MAY WITHIN THIRTY DAYS APPEAL IN WRITING SUCH DENIAL TO THE ATTORNEY
23 GENERAL, WHO SHALL WITHIN TWENTY BUSINESS DAYS OF THE RECEIPT OF SUCH

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

LBD01555-01-3

1 APPEAL, ADJUDGE SUCH APPEAL MERITORIOUS OR NON-MERITORIOUS. COPIES OF
2 SUCH DETERMINATION SHALL BE PROMPTLY FORWARDED BY CERTIFIED MAIL, RETURN
3 RECEIPT REQUESTED, TO THE PERSON REQUESTING THE RECORD AND THE AGENCY
4 MAKING FURTHER DENIAL THEREOF. SUCH DETERMINATION SHALL STATE THE
5 OUTCOME OF THE APPEAL AND SHALL BRIEFLY EXPLAIN THE REASONS THEREFOR.

6 (1) IF AN APPEAL IS DETERMINED TO BE NON-MERITORIOUS, THE PERSON
7 REQUESTING THE RECORD MAY PROCEED PURSUANT TO PARAGRAPH (B) OF THIS
8 SUBDIVISION. PROCEEDING PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH
9 SHALL NOT BE DEEMED A NECESSARY CONDITION PRECEDENT FOR PROCEEDING
10 PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.

11 (2) IF AN APPEAL IS DETERMINED TO BE MERITORIOUS, THE ATTORNEY GENERAL
12 SHALL ORDER THE AGENCY TO PROVIDE ACCESS TO THE RECORD SOUGHT. AN AGENCY
13 AGGRIEVED BY SUCH AN ORDER MAY BRING A PROCEEDING FOR REVIEW OF SUCH
14 DENIAL PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND
15 RULES; PROVIDED THAT NO SUCH PROCEEDING PURSUANT TO ARTICLE
16 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES MAY BE BROUGHT UNLESS
17 SUCH AGENCY SHALL HAVE NOTIFIED THE ATTORNEY GENERAL AND THE PERSON
18 REQUESTING THE RECORD OF ITS INTENT TO INSTITUTE SUCH A PROCEEDING, IN
19 THE MANNER PRESCRIBED FOR THE SERVICE OF A SUMMONS, WITHIN TWENTY BUSI-
20 NESS DAYS OF THE MAILING OF THE DETERMINATION BY THE ATTORNEY GENERAL.
21 THE COURT MAY EXTEND THIS PERIOD FOR AN ADDITIONAL TWENTY BUSINESS DAYS
22 FOR GOOD CAUSE SHOWN.

23 (b) Except as provided in subdivision five of this section, a person
24 denied access to a record in an appeal determination under the
25 provisions of paragraph (a) of this subdivision may bring a proceeding
26 for review of such denial pursuant to article seventy-eight of the civil
27 practice law and rules. In the event that access to any record is denied
28 pursuant to the provisions of subdivision two of section eighty-seven of
29 this article, the agency involved shall have the burden of proving that
30 such record falls within the provisions of such subdivision two. Failure
31 by an agency to conform to the provisions of paragraph (a) of this
32 subdivision shall constitute a denial.

33 (c) The court in such a proceeding may assess, against such agency
34 involved, reasonable attorney's fees and other litigation costs reason-
35 ably incurred by such person in any case under the provisions of this
36 section in which such person has substantially prevailed, when:

37 i. the agency had no reasonable basis for denying access; or
38 ii. the agency failed to respond to a request or appeal within the
39 statutory time.

40 S 2. The executive law is amended by adding a new section 63-e to read
41 as follows:

42 S 63-E. ADJUDICATION BY ATTORNEY GENERAL OF APPEALS FOR THE DENIAL OF
43 ACCESS TO A RECORD UNDER THE FREEDOM OF INFORMATION LAW. THE ATTORNEY
44 GENERAL SHALL REVIEW APPEALS FOR THE DENIAL OF ACCESS TO A RECORD UNDER
45 THE FREEDOM OF INFORMATION LAW PURSUANT TO PARAGRAPH (A-1) OF SUBDIVI-
46 SION FOUR OF SECTION EIGHTY-NINE OF THE PUBLIC OFFICERS LAW. THE ATTOR-
47 NEY GENERAL SHALL PRESCRIBE SUCH RULES OF PROCEDURE AND FORMS AS MAY BE
48 DEEMED NECESSARY OR CONVENIENT TO THE EXECUTION OF THE PROVISIONS OF
49 THIS SECTION.

50 S 3. This act shall take effect on the one hundred twentieth day after
51 it shall have become a law. Effective immediately the department of law
52 is authorized to promulgate any and all rules and regulations and take
53 any other measures necessary to implement this act on its effective date
54 on or before such date.