

# STATE OF NEW YORK

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6826

2017-2018 Regular Sessions

## IN SENATE

June 21, 2017

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Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil rights law, in relation to personnel records of certain law enforcement officers and other public employees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 50-a of the civil rights law, as amended by chapter  
2 778 of the laws of 1981, the section heading as amended by chapter 757  
3 of the laws of 1986 and subdivision 1 as amended by chapter 516 of the  
4 laws of 2014, is amended to read as follows:

5 § 50-a. Personnel records of police officers, firefighters and  
6 correction officers. 1. ~~All~~ Except as provided for in subdivisions  
7 five and six of this section, all personnel records used to evaluate  
8 performance toward continued employment or promotion, under the control  
9 of any police agency or department of the state or any political subdivi-  
10 sion thereof including authorities or agencies maintaining police  
11 forces of individuals defined as police officers in section 1.20 of the  
12 criminal procedure law and such personnel records under the control of a  
13 sheriff's department or a department of correction of individuals  
14 employed as correction officers and such personnel records under the  
15 control of a paid fire department or force of individuals employed as  
16 firefighters or firefighter/paramedics and such personnel records under  
17 the control of the department of corrections and community supervision  
18 for individuals defined as peace officers pursuant to subdivisions twen-  
19 ty-three and twenty-three-a of section 2.10 of the criminal procedure  
20 law and such personnel records under the control of a probation depart-  
21 ment for individuals defined as peace officers pursuant to subdivision  
22 twenty-four of section 2.10 of the criminal procedure law shall be  
23 considered confidential and not subject to inspection or review without  
24 the express written consent of such police officer, firefighter,  
25 firefighter/paramedic, correction officer or peace officer within the

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

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1 department of corrections and community supervision or probation depart-  
2 ment except as may be mandated by lawful court order as provided in  
3 subdivisions two and three of this section.

4 2. Prior to issuing such court order the judge must review all such  
5 requests and give interested parties the opportunity to be heard. No  
6 such order shall issue without a clear showing of facts sufficient to  
7 warrant the judge to request records for review.

8 3. If, after such hearing, the judge concludes there is a sufficient  
9 basis he shall sign an order requiring that the personnel records in  
10 question be sealed and sent directly to him. He shall then review the  
11 file and make a determination as to whether the records are relevant and  
12 material in the action before him. Upon such a finding the court shall  
13 make those parts of the record found to be relevant and material avail-  
14 able to the persons so requesting.

15 4. As used in this section, the following terms shall have the  
16 following meanings:

17 a. "covered employee" means any individual whose personnel records are  
18 subject to subdivision one of this section.

19 b. "employing agency" means an agency that employs a covered employee.

20 c. "recommending agency" means any government agency or body that is  
21 not authorized to impose discipline on a covered employee, but is  
22 authorized to make recommendations related to imposing discipline on a  
23 covered employee.

24 d. "public disciplinary records" means any of the following personnel  
25 records of a covered employee, when used in or created as a result of  
26 any administrative disciplinary process, whether initiated by civilian  
27 complaint or otherwise:

28 (1) the complaints, allegations, and charges;

29 (2) the name of the covered employee complained of or charged;

30 (3) the final disposition of any complaints, allegations, and charges  
31 against a covered employee, and the final discipline imposed or the fact  
32 that no discipline was imposed;

33 (4) the transcript of any disciplinary trial or hearing, including any  
34 exhibits introduced at such trial or hearing;

35 (5) the final written opinion or memorandum supporting the final  
36 disposition and final discipline imposed and containing an employing  
37 agency's complete factual findings and its analysis of the conduct and  
38 appropriate discipline of the covered employee; and

39 (6) the final written memorandum containing the complete factual find-  
40 ings, analysis, and recommendations regarding disposition, discipline,  
41 or any other aspect of the administrative disciplinary process, made by  
42 a recommending agency.

43 e. "administrative disciplinary process" means a process that includes  
44 any of the following:

45 (1) the formal service of charges and specifications against a covered  
46 employee; or

47 (2) a recommendation of charges and specifications by a recommending  
48 agency; or

49 (3) regardless of whether charges and specifications are served or  
50 recommended, either a recommendation by a recommending agency or accept-  
51 ance by a covered employee of any punishment, not including retraining  
52 or education, provided that the administrative disciplinary process  
53 results from a use of force, entry or search of premises, or strip  
54 search.

55 The administrative disciplinary process shall be deemed to encompass  
56 all parts of such process, including any that may precede the steps

1 specified in subparagraphs one, two and three of this paragraph, includ-  
2 ing but not limited to, the filing of a civilian complaint. The adminis-  
3 trative disciplinary process shall be deemed concluded when a final  
4 disposition has been issued by the agency, body, or official authorized  
5 to impose discipline on the covered employee, or when the covered  
6 employee retires, resigns, or is otherwise separated from the employment  
7 of the agency, whichever is sooner.

8 5. Public disciplinary records shall be subject to subdivisions one,  
9 two and three of this section only until the conclusion of the adminis-  
10 trative disciplinary process. After the conclusion of the administrative  
11 disciplinary process, such public disciplinary records shall not be  
12 subject to subdivisions one, two and three of this section, and instead  
13 shall be subject to subdivision seven of this section. After the conclu-  
14 sion of the administrative disciplinary process, an agency may publicly  
15 disclose such public disciplinary records unless such disclosure is  
16 prohibited by law, and may not deny a request for such public discipli-  
17 nary records made under article six of the public officers law on the  
18 basis of this section or on the basis of paragraph (g) of subdivision  
19 two of section eighty-seven of the public officers law.

20 6. Notwithstanding subdivision one of this section, any recommending  
21 agency may disclose the following information to the complainant or  
22 alleged victim of any act by a covered employee giving rise to a  
23 complaint: a. the covered employee's name; b. the recommendations  
24 regarding disposition and discipline made by any recommending agency;  
25 and c. the final disposition and disciplinary action taken, if any, by  
26 the employing agency. To the extent information disclosed pursuant to  
27 this subdivision is not a public disciplinary record, such information  
28 shall be considered confidential in accordance with subdivision one of  
29 this section.

30 7. After the conclusion of an administrative disciplinary process,  
31 public disciplinary records may not be used in litigation except as may  
32 be mandated by court order. Prior to issuing any such order, the court  
33 shall conduct an in camera review of such records and give all inter-  
34 ested parties, including the subject of such public disciplinary  
35 records, notice and an opportunity to be heard. If, after such hearing  
36 and review, the court determines that any of such records are relevant  
37 and material to the action before it and that their probative value  
38 outweighs their prejudicial effect in such action, then it shall permit  
39 the use in such action of only those records as to which such a finding  
40 was made. The use of such records in litigation shall remain subject to  
41 any other applicable provision of law governing such use.

42 8. The provisions of this section shall not apply to any district  
43 attorney or his assistants, the attorney general or his deputies or  
44 assistants, a county attorney or his deputies or assistants, a corpo-  
45 ration counsel or his deputies or assistants, a town attorney or his  
46 deputies or assistants, a village attorney or his deputies or assist-  
47 ants, a grand jury, or any agency of government which requires the  
48 records described in subdivision one of this section, in the furtherance  
49 of their official functions.

50 § 2. This act shall take effect on the ninetieth day after it shall  
51 have become a law.