

STATE OF NEW YORK

2643--A

Cal. No. 322

2019-2020 Regular Sessions

IN SENATE

January 28, 2019

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public officers law, in relation to accessing records 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. Subparagraph iii of paragraph (b) of subdivision 2 and
2 subdivision 3 of section 89 of the public officers law, subparagraph iii
3 of paragraph (b) of subdivision 2 as amended by section 11 of part U of
4 chapter 61 of the laws of 2011, subdivision 3 as amended by chapter 223
5 of the laws of 2008 and paragraph (c) of subdivision 3 as added by chap-
6 ter 47 of the laws of 2018, are amended to read as follows:

7 iii. sale or release of lists of names of natural persons and residen-
8 tial addresses if such lists would be used for solicitation or fund-
9 raising purposes;

10 3. (a) Each entity subject to the provisions of this article, within
11 five business days of the receipt of a written request for a record
12 reasonably described, shall make such record available to the person
13 requesting it, deny such request in writing or furnish a written
14 acknowledgement of the receipt of such request and a statement of the
15 approximate date, which shall be reasonable under the circumstances of
16 the request, when [~~such request will be granted or denied~~] a response
17 will be given, including, where appropriate, a statement that access to
18 the record will be determined in accordance with subdivision five of
19 this section.

20 (b) An agency shall not deny a request on the basis that the request
21 is voluminous or that locating, generating or reviewing the requested
22 record or records or providing the requested copies is burdensome

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

LBD01195-03-9

1 because the agency lacks sufficient staffing or on any other basis if
2 the agency may engage an outside professional service to provide copy-
3 ing, programming or other services required to provide the copy, the
4 costs of which the agency may recover pursuant to paragraph (c) of
5 subdivision one of section eighty-seven of this article.

6 (c) An agency may require a person requesting lists of names and
7 addresses to provide a written certification that such person will not
8 use such lists of names of natural persons and residential addresses for
9 solicitation or fund-raising purposes and will not sell, give or other-
10 wise make available such lists of names and addresses to any other
11 person for the purpose of allowing that person to use such lists of
12 names and addresses for solicitation or fund-raising purposes.

13 ~~(d) If [an agency determines to grant a request in whole or in part,~~
14 ~~and if]~~ circumstances prevent an agency from notifying the person
15 requesting the record or records of the agency's determination regarding
16 the rights of access and disclosure to the person requesting the record
17 or records within twenty business days from the date of the acknowledge-
18 ment of the receipt of the request, the agency shall state, in writing,
19 both the reason for the inability to ~~[grant the request]~~ do so within
20 twenty business days and a date certain within a reasonable period,
21 depending on the circumstances, when ~~[the request will be granted in~~
22 ~~whole or in part]~~ a determination regarding disclosure will be rendered.

23 (e) Upon payment of, or offer to pay, the fee prescribed therefor, the
24 entity shall provide a copy of such record and certify to the correct-
25 ness of such copy if so requested, or as the case may be, shall certify
26 that it does not have possession of such record or that such record
27 cannot be found after diligent search.

28 (f) Nothing in this article shall be construed to require any entity
29 to ~~[prepare]~~ create any record not possessed or maintained by such enti-
30 ty except the records specified in subdivision three of section eighty-
31 seven and subdivision three of section eighty-eight of this article.
32 When an agency has the ability to retrieve or extract a record or data
33 maintained in a computer storage system with reasonable effort, it shall
34 be required to do so. When doing so requires less employee time than
35 engaging in manual retrieval or redactions from non-electronic records,
36 the agency shall be required to retrieve or extract such record or data
37 electronically. ~~[Any programming necessary to retrieve]~~ The retrieval of
38 a record or data maintained in a computer storage system and ~~[to]~~ the
39 transfer of that record to the medium requested by a person or to a
40 medium that would allow the transferred record to be read or printed
41 shall not be deemed to be the ~~[preparation or]~~ creation of a new record.

42 ~~[(b)]~~ (g) All entities shall, provided such entity has reasonable
43 means available, accept requests for records submitted in the form of
44 electronic mail and shall respond to such requests by electronic mail,
45 using forms, to the extent practicable, consistent with the form or
46 forms developed by the committee on open government pursuant to subdivi-
47 sion one of this section and provided that the written requests do not
48 seek a response in some other form.

49 ~~[(e)]~~ (h) Each state agency, as defined in subdivision five of this
50 section, that maintains a website shall ensure its website provides for
51 the online submission of a request for records pursuant to this article.

52 § 2. This act shall take effect immediately.