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:

Section 1. Subparagraph iii of paragraph (b) of subdivision 2 and subdivision 3 of section 89 of the public officers law, subparagraph iii of paragraph (b) of subdivision 2 as amended by section 11 of part U of chapter 61 of the laws of 2011, subdivision 3 as amended by chapter 223 of the laws of 2008 and paragraph (c) of subdivision 3 as added by chapter 47 of the laws of 2018, are amended to read as follows:

iii. sale or release of lists of names **of natural persons** and **residential** addresses if such lists would be used for solicitation or fund-raising purposes;

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

(b) An agency shall not deny a request on the basis that the request is voluminous or that locating**, generating** or reviewing the requested **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

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately.