

STATE OF NEW YORK

4213

2019-2020 Regular Sessions

IN SENATE

March 4, 2019

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

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.