STATE OF NEW YORK

7835

IN SENATE

February 25, 2020

Introduced by Sen. JACKSON -- 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, in relation to permitting assessment of certain fees and costs upon wrongful denial of access to 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. Paragraph (c) of subdivision 4 of section 89 of the public officers law, as amended by chapter 453 of the laws of 2017, is amended to read as follows:

(c) The court in such a proceeding[~~: (i)~~] may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this [~~section in which~~] **article in which:**

(i) such person has substantially prevailed[~~,~~] and [~~when~~] **the court finds that such agency had no such reasonable basis for denying access; or**

(ii) the agency failed to respond to a request or appeal within the statutory time; [~~and (ii) shall assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed~~] **or**

(iii) the record is substantially disclosed following the initiation of such proceeding but prior to a judicial determination and the court finds that the agency [~~had no~~] **lacked a** reasonable basis **in law** for [~~denying access~~] **withholding the record**.

Nothing contained herein shall be construed to abridge or deny any right or remedy available under article eighty-six of the civil practice law and rules.

§ 2. This act shall take effect on the first of September next succeeding the date on which it shall have become a law.

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

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