

# STATE OF NEW YORK

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119--B

Cal. No. 4

2019-2020 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 9, 2019

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Introduced by M. of A. BUCHWALD, GALEF, PAULIN, GOTTFRIED -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading, amended and ordered reprinted, retaining its place on 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 2 of part GGG of chapter 59 of the laws of 2019, 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 fundraising 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

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

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

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

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

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

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

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

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

53 § 2. This act shall take effect immediately.