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:

Section 1. Section 50-a of the civil rights law, as amended by chapter 778 of the laws of 1981, the section heading as amended by chapter 757 of the laws of 1986 and subdivision 1 as amended by chapter 516 of the laws of 2014, is amended to read as follows:

§ 50-a. Personnel records of police officers, firefighters and correction officers. 1. [~~All~~] **Except as provided for in subdivisions five and six of this section, all** personnel records used to evaluate performance toward continued employment or promotion, under the control of any police agency or department of the state or any political subdivision thereof including authorities or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law and such personnel records under the control of a sheriff's department or a department of correction of individuals employed as correction officers and such personnel records under the control of a paid fire department or force of individuals employed as firefighters or firefighter/paramedics and such personnel records under the control of the department of corrections and community supervision for individuals defined as peace officers pursuant to subdivisions twenty-three and twenty-three-a of section 2.10 of the criminal procedure law and such personnel records under the control of a probation department for individuals defined as peace officers pursuant to subdivision twenty-four of section 2.10 of the criminal procedure law shall be considered confidential and not subject to inspection or review without the express written consent of such police officer, firefighter, 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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department of corrections and community supervision or probation department except as may be mandated by lawful court order **as provided in subdivisions two and three of this section**.

2. Prior to issuing such court order the judge must review all such requests and give interested parties the opportunity to be heard. No such order shall issue without a clear showing of facts sufficient to warrant the judge to request records for review.

3. If, after such hearing, the judge concludes there is a sufficient basis he shall sign an order requiring that the personnel records in question be sealed and sent directly to him. He shall then review the file and make a determination as to whether the records are relevant and material in the action before him. Upon such a finding the court shall make those parts of the record found to be relevant and material available to the persons so requesting.

4. **As used in this section, the following terms shall have the following meanings:**

a. "covered employee" means any individual whose personnel records are subject to subdivision one of this section.

b. "employing agency" means an agency that employs a covered employee.

c. "recommending agency" means any government agency or body that is not authorized to impose discipline on a covered employee, but is authorized to make recommendations related to imposing discipline on a covered employee.

d. "public disciplinary records" means any of the following personnel records of a covered employee, when used in or created as a result of any administrative disciplinary process, whether initiated by civilian complaint or otherwise:

(1) the complaints, allegations, and charges;

(2) the name of the covered employee complained of or charged;

(3) the final disposition of any complaints, allegations, and charges against a covered employee, and the final discipline imposed or the fact that no discipline was imposed;

(4) the transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing;

(5) the final written opinion or memorandum supporting the final disposition and final discipline imposed and containing an employing agency's complete factual findings and its analysis of the conduct and appropriate discipline of the covered employee; and

(6) the final written memorandum containing the complete factual findings, analysis, and recommendations regarding disposition, discipline, or any other aspect of the administrative disciplinary process, made by a recommending agency.

e. "administrative disciplinary process" means a process that includes any of the following:

(1) the formal service of charges and specifications against a covered employee; or

(2) a recommendation of charges and specifications by a recommending agency; or

(3) regardless of whether charges and specifications are served or recommended, either a recommendation by a recommending agency or acceptance by a covered employee of any punishment, not including retraining or education, provided that the administrative disciplinary process results from a use of force, entry or search of premises, or strip search.

The administrative disciplinary process shall be deemed to encompass all parts of such process, including any that may precede the steps

specified in subparagraphs one, two and three of this paragraph, including but not limited to, the filing of a civilian complaint. The administrative disciplinary process shall be deemed concluded when a final disposition has been issued by the agency, body, or official authorized to impose discipline on the covered employee, or when the covered employee retires, resigns, or is otherwise separated from the employment of the agency, whichever is sooner.

5. Public disciplinary records shall be subject to subdivisions one, two and three of this section only until the conclusion of the administrative disciplinary process. After the conclusion of the administrative disciplinary process, such public disciplinary records shall not be subject to subdivisions one, two and three of this section, and instead shall be subject to subdivision seven of this section. After the conclusion of the administrative disciplinary process, an agency may publicly disclose such public disciplinary records unless such disclosure is prohibited by law, and may not deny a request for such public disciplinary records made under article six of the public officers law on the basis of this section or on the basis of paragraph (g) of subdivision two of section eighty-seven of the public officers law.

6. Notwithstanding subdivision one of this section, any recommending agency may disclose the following information to the complainant or alleged victim of any act by a covered employee giving rise to a complaint: a. the covered employee's name; b. the recommendations regarding disposition and discipline made by any recommending agency; and c. the final disposition and disciplinary action taken, if any, by the employing agency. To the extent information disclosed pursuant to this subdivision is not a public disciplinary record, such information shall be considered confidential in accordance with subdivision one of this section.

7. After the conclusion of an administrative disciplinary process, public disciplinary records may not be used in litigation except as may be mandated by court order. Prior to issuing any such order, the court shall conduct an in camera review of such records and give all interested parties, including the subject of such public disciplinary records, notice and an opportunity to be heard. If, after such hearing and review, the court determines that any of such records are relevant and material to the action before it and that their probative value outweighs their prejudicial effect in such action, then it shall permit the use in such action of only those records as to which such a finding was made. The use of such records in litigation shall remain subject to any other applicable provision of law governing such use.

8. The provisions of this section shall not apply to any district attorney or his assistants, the attorney general or his deputies or assistants, a county attorney or his deputies or assistants, a corporation counsel or his deputies or assistants, a town attorney or his deputies or assistants, a village attorney or his deputies or assistants, a grand jury, or any agency of government which requires the records described in subdivision one of this section, in the furtherance of their official functions.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.