

# STATE OF NEW YORK

6895

2021-2022 Regular Sessions

## IN ASSEMBLY

April 13, 2021

Introduced by M. of A. ENGLEBRIGHT, BRONSON -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, in relation to requiring entities that submit records to state agencies that are excepted from disclosure under the freedom of information law to periodically re-apply for the exception

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 5 of section 89 of the public officers law, as  
2 added by chapter 890 of the laws of 1981, paragraph (a) as amended by  
3 chapter 403 of the laws of 2003 and paragraph (d) as amended by chapter  
4 707 of the laws of 2019, is amended to read as follows:

5 5. (a) (1) A person acting pursuant to law or regulation who, subse-  
6 quent to the effective date of this subdivision, submits any information  
7 to any state agency may, at the time of submission, request that the  
8 agency except such information from disclosure under paragraph (d) of  
9 subdivision two of section eighty-seven of this article. Where the  
10 request itself contains information which if disclosed would defeat the  
11 purpose for which the exception is sought, such information shall also  
12 be excepted from disclosure.

13 (1-a) A person or entity who submits or otherwise makes available any  
14 records to any agency, may, at any time, identify those records or  
15 portions thereof that may contain critical infrastructure information,  
16 and request that the agency that maintains such records except such  
17 information from disclosure under subdivision two of section eighty-sev-  
18 en of this article. Where the request itself contains information which  
19 if disclosed would defeat the purpose for which the exception is sought,  
20 such information shall also be excepted from disclosure.

21 (2) (i) The request for an exception shall be in writing, shall  
22 specifically identify which portions of the record are the subject of  
23 the request for exception and state the reasons why the information

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

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1 should be excepted, for a defined period of time, from disclosure. The  
2 submitter may also provide a date by which such exception shall expire,  
3 provided that such date shall not exceed three years from the time of  
4 the agency's receipt of the request for an exception.

5 (ii) Not less than sixty days prior to the expiration of the then  
6 current term of the exception request, the submitter may apply to the  
7 agency for a three-year extension of its exception request. Upon timely  
8 receipt of a request for an extension of an exception request, an agency  
9 shall review the application and either grant or deny the extension  
10 request. A denial of an extension request may be appealed by the submit-  
11 ter pursuant to paragraph (c) of this subdivision. If the submitter  
12 fails to apply for an extension, the exception shall be considered to  
13 have expired.

14 (3) Information submitted subsequent to the effective date of the  
15 chapter of the laws of two thousand twenty-one that amended this subdi-  
16 vision and as provided in subparagraphs one and one-a of this paragraph  
17 shall be excepted from disclosure for a defined period of time and be  
18 maintained apart by the agency from all other records until the expira-  
19 tion of the submitter's exception request or fifteen days after the  
20 entitlement to such exception has been finally determined or such  
21 further time as ordered by a court of competent jurisdiction.

22 (b) ~~On~~ During the effective period of an exception request under  
23 this subdivision, on the initiative of the agency at any time, or upon  
24 the request of any person for a record excepted from disclosure pursuant  
25 to this subdivision, the agency shall:

26 (1) inform the person who requested the exception of the agency's  
27 intention to determine whether such exception should be granted or  
28 continued;

29 (2) permit the person who requested the exception, within ten business  
30 days of receipt of notification from the agency, to submit a written  
31 statement of the necessity for the granting or continuation of such  
32 exception;

33 (3) within seven business days of receipt of such written statement,  
34 or within seven business days of the expiration of the period prescribed  
35 for submission of such statement, issue a written determination grant-  
36 ing, continuing or terminating such exception and stating the reasons  
37 therefor; copies of such determination shall be served upon the person,  
38 if any, requesting the record, the person who requested the exception,  
39 and the committee on ~~public access to records~~ open government.

40 (c) A denial of an exception from disclosure under paragraph (b) of  
41 this subdivision may be appealed by the person submitting the informa-  
42 tion and a denial of access to the record may be appealed by the person  
43 requesting the record in accordance with this subdivision:

44 (1) Within seven business days of receipt of written notice denying  
45 the request, the person may file a written appeal from the determination  
46 of the agency with the head of the agency, the chief executive officer  
47 or governing body or their designated representatives.

48 (2) The appeal shall be determined within ten business days of the  
49 receipt of the appeal. Written notice of the determination shall be  
50 served upon the person, if any, requesting the record, the person who  
51 requested the exception and the committee on ~~public access to records~~  
52 open government. The notice shall contain a statement of the reasons  
53 for the determination.

54 (d) (i) A proceeding to review an adverse determination pursuant to  
55 paragraph (c) of this subdivision may be commenced pursuant to article  
56 seventy-eight of the civil practice law and rules. Such proceeding, when

1 brought by a person seeking an exception from disclosure pursuant to  
2 this subdivision, must be commenced within fifteen days of the service  
3 of the written notice containing the adverse determination provided for  
4 in subparagraph two of paragraph (c) of this subdivision. The proceeding  
5 shall be given preference and shall be brought on for argument on such  
6 terms and conditions as the presiding justice may direct, not to exceed  
7 forty-five days.

8 (ii) Appeal to the appellate division of the supreme court must be  
9 made in accordance with subdivision (a) of section fifty-five hundred  
10 thirteen of the civil practice law and rules.

11 (iii) An appeal taken from an order of the court requiring disclosure:

12 (A) shall be given preference; and

13 (B) shall be brought on for argument on such terms and conditions as  
14 the presiding justice may direct, upon application by any party to the  
15 proceeding; and

16 (C) shall be deemed abandoned when the party requesting an exclusion  
17 from disclosure fails to serve and file a record and brief within sixty  
18 days after the date of the notice of appeal, unless consent of further  
19 extension is given by all parties, or unless further extension is grant-  
20 ed by the court upon such terms as may be just and upon good cause  
21 shown.

22 (e) The person requesting an exception from disclosure pursuant to  
23 this subdivision shall in all proceedings have the burden of proving  
24 entitlement to the exception.

25 (f) Where the agency denies access to a record pursuant to paragraph  
26 [~~(d)~~ ~~of~~] (b) of this subdivision in conjunction with subdivision two of  
27 section eighty-seven of this article, the agency shall have the burden  
28 of proving that the record falls within the provisions of such excep-  
29 tion.

30 (g) Nothing in this subdivision shall be construed to deny any person  
31 access, pursuant to the remaining provisions of this article, to any  
32 record or part excepted from disclosure upon the express written consent  
33 of the person who had requested the exception.

34 (h) As used in this subdivision the term "agency" or "state agency"  
35 means only a state department, board, bureau, division, council or  
36 office and any public corporation the majority of whose members are  
37 appointed by the governor.

38 § 2. This act shall take effect immediately.