STATE OF NEW YORK

8062

2021-2022 Regular Sessions

IN ASSEMBLY

June 11, 2021

Introduced by M. of A. CRUZ -- read once and referred to the Committee on Cities

AN ACT to amend the New York city charter, in relation to allowing access to sealed records and certain confidential records by the New York city civilian complaint review board in furtherance of the board's duties and functions

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

Section 1. The New York city charter is amended by adding a new section 442 to read as follows:

§ 442. Access to sealed records. a. Notwithstanding any provision of any general, special or local law to the contrary, the board shall be granted access to and may receive from any public agency of the state of New York or any political subdivision thereof any record that is otherwise sealed in accordance with applicable law in furtherance of the board's duties and functions pursuant to this chapter, or a copy of such record, which shall be deemed to be a "sealed record" for purposes of this section, subject to the requirements set forth in this section.

b. Access to records received by the board pursuant to this section shall be restricted to members and employees of the board who have direct involvement in a matter requiring use of such records, provided that the board may disclose any record obtained pursuant to this section to a public agency for the purpose of a referral for prosecution or investigation, or in furtherance of a disciplinary proceeding, in accordance with applicable law. In addition, such record may be shared with the employee of the police department who is the subject of a disciplinary proceeding or such employee's representative, subject to the requirements of this section, any applicable provisions of the protocols described in paragraph two of subdivision e of this section, and any other appropriate conditions that may be imposed by an adminis-

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

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trative law judge, hearing officer, court or other adjudicative body to ensure the continued confidentiality of such record.

c. Upon receiving a sealed record from a public agency, sharing or transferring a sealed record to a public agency, employee of the police department who is the subject of a disciplinary proceeding or such employee's representative, or destroying or returning all copies of such record pursuant to this section, the board shall as soon as practicable notify, by first-class mail the person who is the subject of the action or proceeding for which the record was sealed, and the representative that represented such person at the time of the termination of such action or proceeding, at the addresses provided by such person and such person's representative during such action or proceeding, or at any other current addresses that can reasonably be ascertained by the board.

d. When the board has no further need in furtherance of its duties and functions pursuant to this chapter to maintain a sealed record obtained from a public agency pursuant to this section, all copies of such record shall be destroyed or, at such public agency's direction, be returned to such agency in a manner preserving the confidentiality of the record.

e. 1. Records obtained by the board pursuant to this section shall not be disclosed by the board except as authorized by this section. Sealed records maintained by the board shall at all times be clearly marked as sealed and confidential.

2. Before obtaining records pursuant to this section, the board shall establish protocols, in addition to those set forth in this section and in consultation with the chief privacy officer designated pursuant to subdivision h of section eight of this charter, to govern the proper acquisition, use, storage, and other handling and disposition of, and access to, records obtained pursuant to this section. Such protocols may include procedures for the appropriate handling of records transferred to or shared by the board with other public agencies, or with an employee of the police department who is the subject of a disciplinary proceeding or such employee's representative.

f. 1. Access to records received from the board by any public agency pursuant to this section shall be restricted to members of the board of the receiving agency, or employees of such agency, who have direct involvement in the matter requiring use of such records. Access to records received from the board by an employee of the police department who is the subject of a disciplinary proceeding, or by such employee's representative, shall be restricted to such employee and such employee's representative, or as otherwise specified by the applicable administrative law judge, hearing officer, court or other adjudicative body in furtherance of the purposes of this section.

2. When a public agency, employee of the police department who is the subject of a disciplinary proceeding or such employee's representative that receives a sealed record from the board pursuant to this section has no further need to maintain such record, all copies of such record shall be destroyed, or returned to the board or at the board's direction, to the public agency from which the board received such record in a manner preserving the confidentiality of the record.

3. Sealed records obtained from the board by a public agency or by any other person or entity pursuant to this section shall not be disclosed by such public agency, person or entity except as authorized by this section or as otherwise specifically authorized by law or order of a court of competent jurisdiction. Such records shall at all times be clearly marked by such public agency, person or entity that has received such records as sealed and confidential.

4. The board shall inform each agency, employee of the police department who is the subject of a disciplinary proceeding or such employee's representative to which it transfers or shares a sealed record about the requirements of this section applicable to such agency, employee or employee's representative.

g. For purposes of this section, a record that is confidential or not available for public inspection pursuant to section fifty-b of the civil rights law shall be deemed to be a sealed record that the board may obtain pursuant to this section. In addition, the victim to which such record pertains, or other person legally responsible for the care of such victim, shall be the person who is required to be notified when the board receives, destroys or returns such record pursuant to subdivision c of this section.

§ 2. This act shall take effect immediately.