

# STATE OF NEW YORK

2004

2021-2022 Regular Sessions

## IN SENATE

January 16, 2021

Introduced by Sens. JACKSON, BIAGGI -- 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 Assem-  
bly, do enact as follows:

1 Section 1. Paragraph (c) of subdivision 4 of section 89 of the public  
2 officers law, as amended by chapter 453 of the laws of 2017, is amended  
3 to read as follows:

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

8 (i) such person has substantially prevailed[~~7~~] and [~~when~~] the court  
9 finds that such agency had no such reasonable basis for denying access;  
10 or

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

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

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

23 § 2. This act shall take effect on the first of September next  
24 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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