

STATE OF NEW YORK

2916

2021-2022 Regular Sessions

IN SENATE

January 26, 2021

Introduced by Sens. SERINO, O'MARA -- 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 clarifying the
amount of time an agency has to respond to a request 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 (a) of subdivision 3 of section 89 of the public
2 officers law, as amended by chapter 223 of the laws of 2008, is amended
3 to read as follows:

4 (a) Each entity subject to the provisions of this article, within five
5 business days of the receipt of a written request for a record reason-
6 ably described, shall make such record available to the person request-
7 ing it, deny such request in writing or furnish a written acknowledge-
8 ment of the receipt of such request and a statement of the [approximate]
9 date, which shall be [~~reasonable under the circumstances of the request~~]

10 no longer than twenty days, when such request will be granted or denied,
11 including, where appropriate, a statement that access to the record will
12 be determined in accordance with subdivision five of this section. Any
13 entity subject to the provisions of this article which does not grant or
14 deny a request for a record within twenty-five days of such request
15 shall be deemed to have denied the request for such record. Any entity
16 subject to the provisions of this article which grants any request for a
17 record within twenty-five days of such request, but fails to provide
18 such records within forty days of such request, shall be deemed to have
19 denied the request for such record. An agency shall not deny a request

20 on the basis that the request is voluminous or that locating or review-
21 ing the requested records or providing the requested copies is burden-
22 some because the agency lacks sufficient staffing or on any other basis
23 if the agency may engage an outside professional service to provide

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

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1 copying, programming or other services required to provide the copy, the
2 costs of which the agency may recover pursuant to paragraph (c) of
3 subdivision one of section eighty-seven of this article. An agency may
4 require a person requesting lists of names and addresses to provide a
5 written certification that such person will not use such lists of names
6 and addresses for solicitation or fund-raising purposes and will not
7 sell, give or otherwise make available such lists of names and addresses
8 to any other person for the purpose of allowing that person to use such
9 lists of names and addresses for solicitation or fund-raising purposes.
10 If an agency determines to grant a request in whole or in part, and if
11 circumstances prevent disclosure to the person requesting the record or
12 records within twenty business days from the date of the acknowledgement
13 of the receipt of the request, the agency shall state, in writing, both
14 the reason for the inability to grant the request within twenty business
15 days and a date certain within a reasonable period, depending on the
16 circumstances, when the request will be granted in whole or in part.
17 Upon payment of, or offer to pay, the fee prescribed therefor, the enti-
18 ty shall provide a copy of such record and certify to the correctness of
19 such copy if so requested, or as the case may be, shall certify that it
20 does not have possession of such record or that such record cannot be
21 found after diligent search. Nothing in this article shall be construed
22 to require any entity to prepare any record not possessed or maintained
23 by such entity except the records specified in subdivision three of
24 section eighty-seven and subdivision three of section eighty-eight of
25 this article. When an agency has the ability to retrieve or extract a
26 record or data maintained in a computer storage system [~~with reasonable~~
27 ~~effort~~], it shall be required to do so. When doing so requires less
28 employee time than engaging in manual retrieval or redactions from non-
29 electronic records, the agency shall be required to retrieve or extract
30 such record or data electronically. Any programming necessary to
31 retrieve a record maintained in a computer storage system and to trans-
32 fer that record to the medium requested by a person or to allow the
33 transferred record to be read or printed shall not be deemed to be the
34 preparation or creation of a new record.

35 § 2. Paragraph (a) of subdivision 4 of section 89 of the public offi-
36 cers law, as amended by chapter 22 of the laws of 2005, is amended to
37 read as follows:

38 (a) Except as provided in subdivision five of this section, any person
39 denied access to a record, or deemed to have been denied access to a
40 record pursuant to subdivision three of this section, may within thirty
41 days appeal in writing such denial to the head, chief executive or
42 governing body of the entity, or the person therefor designated by such
43 head, chief executive, or governing body, who shall within ten business
44 days of the receipt of such appeal fully explain in writing to the
45 person requesting the record the reasons for further denial, or provide
46 access to the record sought. In addition, each agency shall immediately
47 forward to the committee on open government a copy of such appeal when
48 received by the agency and the ensuing determination thereon. Failure by
49 an agency to conform to the provisions of subdivision three of this
50 section shall constitute a denial.

51 § 3. This act shall take effect immediately.