

STATE OF NEW YORK

7002--A

2021-2022 Regular Sessions

IN ASSEMBLY

April 19, 2021

Introduced by M. of A. LAWLER, DeSTEFANO, SALKA -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public officers law, the civil practice law and rules and the executive law, in relation to extending provisions of the freedom of information law to the state legislature; and to repeal section 88 of the public officers law, section 70-0113 of the environmental conservation law and subdivision 4 of section 308 of the county law relating thereto

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

1 Section 1. Subdivisions 2 and 3 of section 86 of the public officers
2 law, as added by chapter 933 of the laws of 1977, are amended and a new
3 subdivision 10 is added to read as follows:

4 2. "State legislature" means the [~~legislature of the state of New~~
5 ~~York, including~~] New York state senate, New York state assembly, any
6 committee, subcommittee, joint committee, select committee, or commis-
7 sion thereof, and any members, officers, representatives and employees
8 thereof.

9 3. "Agency" means any state or municipal department, board, bureau,
10 division, commission, committee, public authority, public corporation,
11 council, office, or other governmental entity performing a governmental
12 or proprietary function for the state or any one or more municipalities
13 thereof, except the judiciary [~~or the state legislature~~].

14 10. "Respective house of the state legislature" means the New York
15 state senate, New York state assembly, and any corresponding committee,
16 subcommittee, joint committee, select committee, or commission thereof,
17 and any members, officers, representatives and employees thereof.

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

LBD09875-02-2

§ 2. Section 87 of the public officers law, as added by chapter 933 of the laws of 1977, paragraph (a) and the opening paragraph of paragraph (b) of subdivision 1 as amended by chapter 80 of the laws of 1983, subparagraph iii of paragraph (b) of subdivision 1 as amended and paragraph (c) of subdivision 1 and subdivision 5 as added by chapter 223 of the laws of 2008, the opening paragraph and paragraph (e) of subdivision 2 as amended and subdivision 6 as added by chapter 808 of the laws of 2021, paragraph (d) of subdivision 2 as amended by chapter 289 of the laws of 1990, paragraph (f) of subdivision 2 as amended by chapter 403 of the laws of 2003, paragraph (g) of subdivision 2 as amended by chapter 510 of the laws of 1999, paragraph (i) of subdivision 2 as amended by chapter 154 of the laws of 2010, paragraph (j) of subdivision 2 as added by chapter 746 of the laws of 1988, paragraph (k) of subdivision 2 as separately added by chapters 19, 20 and 23 of the laws of 2009, paragraph (l) of subdivision 2 as added by section 12 of part II of chapter 59 of the laws of 2010, paragraph (m) of subdivision 2 as added by chapter 189 of the laws of 2013, paragraph (n) of subdivision 2 as separately added by chapters 99, 101, and 123 of the laws of 2014, paragraph (o) of subdivision 2 as added by chapter 222 of the laws of 2015, paragraph (p) of subdivision 2 as added by section 7 of subpart A of part ZZZ of chapter 59 of the laws of 2019, paragraph (p) of subdivision 2 as added by chapter 148 of the laws of 2019, paragraph (q) of subdivision 2 as added by chapter 145 of the laws of 2019, paragraph (r) of subdivision 2 as added by chapter 421 of the laws of 2021, paragraph (r) of subdivision 2 as added by chapter 460 of the laws of 2021, paragraph (c) of subdivision 3 as amended by chapter 499 of the laws of 2008, subdivision 4 as added by chapter 890 of the laws of 1981, paragraph (c) of subdivision 4 as added by chapter 102 of the laws of 2007 and subdivisions 4-a and 4-b as added by chapter 96 of the laws of 2020, is amended to read as follows:

§ 87. Access to agency or state legislature records. 1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency and each house of the state legislature shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

- i. the times and places such records are available;
- ii. the persons from whom such records may be obtained[~~7~~]; and
- iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record in accordance with the provisions of paragraph (c) of this subdivision, except when a different fee is otherwise prescribed by statute.

(c) In determining the actual cost of reproducing a record, an agency and the state legislature may include only:

i. an amount equal to the hourly salary attributed to the lowest paid employee of an agency or [employee] respective house of the state legislature who has the necessary skill required to prepare a copy of the requested record;

ii. the actual cost of the storage devices or media provided to the person making the request in complying with such request;

iii. the actual cost to the agency or to the respective house of the state legislature of engaging an outside professional service to prepare a copy of a record, but only when an agency's or respective house of the state legislature's information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy; and

iv. preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of agency or respective house of the state legislature employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of an agency or respective house of the state legislature employee's time is needed, or if an outside professional service would be retained to prepare a copy of the record.

2. Each agency and the respective house of the state legislature shall, in accordance with its published rules, make available for public inspection and copying all records, except those records or portions thereof that may be withheld pursuant to the exceptions of rights of access appearing in this subdivision. A denial of access shall not be based solely on the category or type of such record and shall be valid only when there is a particularized and specific justification for such denial. Each agency and the respective house of the state legislature shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency and the respective house of the state legislature may deny access to records or portions thereof that:

(a) are specifically exempted from disclosure by state or federal statute;

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

(c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations provided, however, that the proposed terms of an agreement between a public employer and an employee organization, as those terms are defined in article fourteen of the civil service law, that require ratification by members of the employee organization or by the public employer, where applicable, or approval of such provisions by the appropriate legislative body as required by section two hundred four-a of the civil service law, shall be made available to the public no later than when such proposed terms are sent to members of the employee organization for ratification, when such terms are presented to the employer for ratification, where applicable, or when the provisions of such agreement requiring approval by the appropriate legislative body pursuant to section two hundred four-a of the civil service law are submitted to such body, whichever date is earliest. Additionally, a copy of the proposed terms of such agreement shall be placed on the website of the applicable public employer, if such websites exist, and within the local public libraries and offices of such public employer, or in the case of collective bargaining agreements negotiated by the state, on the website of the office of employee relations on such date;

(d) are trade secrets or are submitted to an agency or to the respective house of the state legislature by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(e) are prepared or created for law enforcement purposes only to the extent that disclosure would:

i. interfere with law enforcement investigations or judicial proceedings, provided however, that any agency considering denying access pursuant to this subparagraph shall proceed in accordance with subdivision six of this section;

ii. deprive a person of a right to a fair trial or impartial adjudication;

iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or

iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(f) if disclosed could endanger critical infrastructure or the life or safety of any person;

(g) are inter-agency or intra-agency materials which are not:

i. statistical or factual tabulations or data;

ii. instructions to staff that affect the public;

iii. final agency policy or determinations;

iv. external audits, including but not limited to audits performed by the comptroller and the federal government; ~~or~~

(g-1) are materials exchanged within the state legislature which are not:

i. statistical or factual tabulations or data;

ii. instructions to staff that affect the public;

iii. final policy or determinations of the respective house of the state legislature;

iv. external audits, including but not limited to audits performed by the comptroller and the federal government;

(h) are examination questions or answers which are requested prior to the final administration of such questions~~;~~;

(i) if disclosed, would jeopardize the capacity of an agency, the state legislature, or an entity that has shared information with an agency or the state legislature to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; ~~or~~

(j) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-a of the vehicle and traffic law~~;~~;

(k) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-b of the vehicle and traffic law~~;~~;

(l) are photographs, microphotographs, videotape or other recorded images produced by a bus lane photo device prepared under authority of section eleven hundred eleven-c of the vehicle and traffic law~~;~~;

(m) are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-b of the vehicle and traffic law~~;~~;

(n) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-d of the vehicle and traffic law~~;~~;

(o) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-e of the vehicle and traffic law[~~+~~];

(p) are data or images produced by an electronic toll collection system under authority of article forty-four-C of the vehicle and traffic law and in title three of article three of the public authorities law[~~+~~];

(p) are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-d of the vehicle and traffic law[~~+~~];

(q) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred seventy-four-a of the vehicle and traffic law[~~+~~];

(r) are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-e of the vehicle and traffic law[~~+~~

~~(+)~~];

~~(s)~~ are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-f of the vehicle and traffic law[~~+~~

~~(+)~~]; or

~~(t)~~ are photographs, microphotographs, videotape or other recorded images or information and data prepared under authority of section three hundred eighty-five-a of the vehicle and traffic law.

3. Each agency and respective house of the state legislature shall maintain:

(a) a record of the final vote of each member in every agency or state legislature proceeding in which the member votes;

(b) a record of votes of each member in every session and every committee and subcommittee meeting in which the member of the senate or assembly votes;

~~(b)~~ (c) a record setting forth the name, public office address, title and salary of every officer or employee of the agency or the state legislature; and

~~(c)~~ (d) a reasonably detailed current list by subject matter of all records in the possession of the agency or state legislature, whether or not available under this article. Each agency and each respective house of the state legislature shall update its subject matter list annually, and the date of the most recent update shall be conspicuously indicated on the list. ~~Each~~ The state legislature and each state agency as defined in subdivision four of this section that maintains a website shall post its current list on its website and such posting shall be linked to the website of the committee on open government. Any such agency or part of the state legislature that does not maintain a website shall arrange to have its list posted on the website of the committee on open government.

4. (a) Each state agency or respective house of the state legislature which maintains records containing trade secrets, to which access may be denied pursuant to paragraph (d) of subdivision two of this section, shall promulgate regulations in conformity with the provisions of subdivision five of section eighty-nine of this article pertaining to such records, including, but not limited to the following:

(1) the manner of identifying the records or parts;

(2) the manner of identifying persons within the agency or respective house of the state legislature to whose custody the records or parts

1 will be charged and for whose inspection and study the records will be
2 made available;

3 (3) the manner of safeguarding against any unauthorized access to the
4 records.

5 (b) As used in this subdivision the term "agency" or "state agency"
6 means only a state department, board, bureau, division, council [or],
7 office and any public corporation the majority of whose members are
8 appointed by the governor.

9 (c) As used in this subdivision the term "state legislature" means the
10 legislature as defined in subdivision two of section eighty-six of this
11 article.

12 (d) Each state agency and respective house of the state legislature
13 that maintains a website shall post information related to this article
14 and article six-A of this chapter on its website. Such information shall
15 include, at a minimum, contact information for the persons from whom
16 records of the agency or respective house of the state legislature may
17 be obtained, the times and places such records are available for
18 inspection and copying, and information on how to request records in
19 person, by mail, and, if the agency or respective house of the state
20 legislature accepts requests for records electronically, by e-mail. This
21 posting shall be linked to the website of the committee on open govern-
22 ment.

23 4-a. A law enforcement agency responding to a request for law enforce-
24 ment disciplinary records as defined in section eighty-six of this arti-
25 cle shall redact any portion of such record containing the information
26 specified in subdivision two-b of section eighty-nine of this article
27 prior to disclosing such record under this article.

28 4-b. A law enforcement agency responding to a request for law enforce-
29 ment disciplinary records, as defined in section eighty-six of this
30 article, may redact any portion of such record containing the informa-
31 tion specified in subdivision two-c of section eighty-nine of this arti-
32 cle prior to disclosing such record under this article.

33 5. (a) An agency and the respective house of the state legislature
34 shall provide records on the medium requested by a person, if the agency
35 or the respective house of the state legislature can reasonably make
36 such copy or have such copy made by engaging an outside professional
37 service. Records provided in a computer format shall not be encrypted.

38 (b) No agency nor the state legislature shall enter into or renew a
39 contract for the creation or maintenance of records if such contract
40 impairs the right of the public to inspect or copy the agency's or the
41 state legislature's records.

42 6. When a request is made for agency or state legislative records and
43 the agency or house of the state legislature receiving such request is
44 considering denying access pursuant to subparagraph i of paragraph (e)
45 of subdivision two of this section on the grounds that disclosure would
46 interfere with a judicial proceeding, the agency or house of the state
47 legislature receiving such request shall promptly notify, in writing,
48 the judge before whom such judicial proceeding is pending and the person
49 making the request. Such judge shall notify the person requesting the
50 record of its receipt, and offer the person requesting the record a
51 reasonable opportunity to be heard. After due deliberation, such judge
52 shall determine whether access to such records should be denied pursuant
53 to subparagraph i of paragraph (e) of subdivision two of this section
54 and shall submit such determination in writing to the agency or house of
55 the state legislature and the person requesting the record. The agency

1 shall then proceed as required pursuant to this article, in accordance
2 with the court's determination.

3 7. (a) Each agency and house of the state legislature shall publish,
4 on its internet website, to the extent practicable, records or portions
5 of records that are available to the public pursuant to the provisions
6 of this article, or which, in consideration of their nature, content or
7 subject matter, are determined by the agency or house of the state
8 legislature to be of substantial interest to the public. Any such
9 records may be removed from the internet website when the agency or
10 house of the state legislature determines that they are no longer of
11 substantial interest to the public. Any such records may be removed from
12 the internet website when they have reached the end of their legal
13 retention period. Guidance on creating records in accessible formats and
14 ensuring their continuing accessibility shall be available from the
15 office of information technology services and the state archives.

16 (b) The provisions of paragraph (a) of this subdivision shall not
17 apply to records or portions of records the disclosure of which would
18 constitute an unwarranted invasion of personal privacy in accordance
19 with subdivision two of section eighty-nine of this article.

20 (c) The committee on open government shall promulgate guidelines to
21 effectuate this subdivision.

22 (d) Nothing in this subdivision shall be construed as to limit or
23 abridge the power of an agency or house of the state legislature to
24 publish records on its internet website that are subject to the
25 provisions of this article prior to a written request or prior to a
26 frequent request.

27 § 3. Section 88 of the public officers law is REPEALED.

28 § 4. Section 89 of the public officers law, as added by chapter 933 of
29 the laws of 1977, paragraph (a) of subdivision 1 as amended by chapter
30 33 of the laws of 1984, paragraph (b) of subdivision 1 as amended by
31 chapter 182 of the laws of 2006, subdivision 2 as amended by section 11
32 of part U of chapter 61 of the laws of 2011, paragraph (b) of subdivi-
33 sion 2 as amended by section 2 of part GGG of chapter 59 of the laws of
34 2019, subdivision 2-a as added by chapter 652 of the laws of 1983,
35 subdivisions 2-b and 2-c as added by chapter 96 of the laws of 2020,
36 subdivision 3 as amended by chapter 223 of the laws of 2008, paragraph
37 (c) of subdivision 3 as added by chapter 47 of the laws of 2018, subdivi-
38 sion 4 as amended by chapter 22 of the laws of 2005, paragraph (c) of
39 subdivision 4 as amended by chapter 453 of the laws of 2017, paragraph
40 (d) of subdivision 4 as added by chapter 487 of the laws of 2016, subdivi-
41 sion 5 as added by chapter 890 of the laws of 1981, paragraph (a) of
42 subdivision 5 as amended by chapter 403 of the laws of 2003, paragraph
43 (d) of subdivision 5 as amended by chapter 707 of the laws of 2019,
44 subdivision 6 as amended and subdivision 10 as added by chapter 808 of
45 the laws of 2021, subdivision 7 as added by chapter 783 of the laws of
46 1983, subdivision 8 as added by chapter 705 of the laws of 1989, and
47 subdivision 9 as added by chapter 351 of the laws of 2008, is amended to
48 read as follows:

49 § 89. General provisions relating to access to records; certain cases.
50 The provisions of this section apply to access to all records, except as
51 hereinafter specified:

52 1. (a) The committee on open government is continued and shall consist
53 of the lieutenant governor or the delegate of such officer, the secre-
54 tary of state or the delegate of such officer, whose office shall act as
55 secretariat for the committee, the commissioner of the office of general
56 services or the delegate of such officer, the director of the budget or

1 the delegate of such officer, and seven other persons, none of whom
2 shall hold any other state or local public office except the represen-
3 tative of local governments as set forth herein, to be appointed as
4 follows: five by the governor, at least two of whom are or have been
5 representatives of the news media, one of whom shall be a representative
6 of local government who, at the time of appointment, is serving as a
7 duly elected officer of a local government, one by the temporary presi-
8 dent of the senate, and one by the speaker of the assembly. The persons
9 appointed by the temporary president of the senate and the speaker of
10 the assembly shall be appointed to serve, respectively, until the expi-
11 ration of the terms of office of the temporary president and the speaker
12 to which the temporary president and speaker were elected. The four
13 persons presently serving by appointment of the governor for fixed terms
14 shall continue to serve until the expiration of their respective terms.
15 Thereafter, their respective successors shall be appointed for terms of
16 four years. The member representing local government shall be appointed
17 for a term of four years, so long as such member shall remain a duly
18 elected officer of a local government. The committee shall hold no less
19 than two meetings annually, but may meet at any time. The members of the
20 committee shall be entitled to reimbursement for actual expenses
21 incurred in the discharge of their duties.

22 (b) The committee shall:

23 i. furnish to any agency and to each house of the state legislature
24 advisory guidelines, opinions or other appropriate information regarding
25 this article;

26 ii. furnish to any person advisory opinions or other appropriate
27 information regarding this article;

28 iii. promulgate rules and regulations with respect to the implementa-
29 tion of subdivision one and paragraph (c) of subdivision three of
30 section eighty-seven of this article;

31 iv. request from any agency and from either house of the state legis-
32 lature such assistance, services and information as will enable the
33 committee to effectively carry out its powers and duties;

34 v. develop a form, which shall be made available on the internet, that
35 may be used by the public to request a record; and

36 vi. report on its activities and findings regarding this article and
37 article seven of this chapter, including recommendations for changes in
38 the law, to the governor and the legislature annually, on or before
39 December fifteenth.

40 2. (a) The committee on [~~public access to records~~] open government may
41 promulgate guidelines regarding deletion of identifying details or with-
42 holding of records otherwise available under this article to prevent
43 unwarranted invasions of personal privacy. In the absence of such guide-
44 lines, an agency and the respective house of the state legislature may
45 delete identifying details when it makes records available.

46 (b) An unwarranted invasion of personal privacy includes, but shall
47 not be limited to:

48 i. disclosure of employment, medical or credit histories or personal
49 references of applicants for employment;

50 ii. disclosure of items involving the medical or personal records of a
51 client or patient in a medical facility;

52 iii. sale or release of lists of names and addresses if such lists
53 would be used for solicitation or fund-raising purposes;

54 iv. disclosure of information of a personal nature when disclosure
55 would result in economic or personal hardship to the subject party and

1 such information is not relevant to the work of the agency or respective
2 house of the state legislature requesting or maintaining it;

3 v. disclosure of information of a personal nature reported in confi-
4 dence to an agency or to the state legislature and not relevant to the
5 ordinary work of such agency or the state legislature;

6 vi. information of a personal nature contained in a workers' compen-
7 sation record, except as provided by section one hundred ten-a of the
8 workers' compensation law;

9 vii. disclosure of electronic contact information, such as an e-mail
10 address or a social network username, that has been collected from a
11 taxpayer under section one hundred four of the real property tax law;
12 ~~[or]~~

13 viii. disclosure of law enforcement arrest or booking photographs of
14 an individual, unless public release of such photographs will serve a
15 specific law enforcement purpose and disclosure is not precluded by any
16 state or federal laws~~[-]~~; or

17 ix. disclosure of communications of a personal nature between legisla-
18 tors and their constituents.

19 (c) Unless otherwise provided by this article, disclosure shall not be
20 construed to constitute an unwarranted invasion of personal privacy
21 pursuant to paragraphs (a) and (b) of this subdivision:

22 i. when identifying details are deleted;

23 ii. when the person to whom a record pertains consents in writing to
24 disclosure;

25 iii. when upon presenting reasonable proof of identity, a person seeks
26 access to records pertaining to him or her; or

27 iv. when a record or group of records relates to the right, title or
28 interest in real property, or relates to the inventory, status or char-
29 acteristics of real property, in which case disclosure and providing
30 copies of such record or group of records shall not be deemed an unwar-
31 ranted invasion of personal privacy, provided that nothing herein shall
32 be construed to authorize the disclosure of electronic contact informa-
33 tion, such as an e-mail address or a social network username, that has
34 been collected from a taxpayer under section one hundred four of the
35 real property tax law.

36 2-a. Nothing in this article shall permit disclosure which constitutes
37 an unwarranted invasion of personal privacy as defined in subdivision
38 two of this section if such disclosure is prohibited under section nine-
39 ty-six of this chapter.

40 2-b. For records that constitute law enforcement disciplinary records
41 as defined in subdivision six of section eighty-six of this article, a
42 law enforcement agency shall redact the following information from such
43 records prior to disclosing such records under this article:

44 (a) items involving the medical history of a person employed by a law
45 enforcement agency as defined in section eighty-six of this article as a
46 police officer, peace officer, or firefighter or firefighter/paramedic,
47 not including records obtained during the course of an agency's investi-
48 gation of such person's misconduct that are relevant to the disposition
49 of such investigation;

50 (b) the home addresses, personal telephone numbers, personal cell
51 phone numbers, personal e-mail addresses of a person employed by a law
52 enforcement agency as defined in section eighty-six of this article as a
53 police officer, peace officer, or firefighter or firefighter/paramedic,
54 or a family member of such a person, a complainant or any other person
55 named in a law enforcement disciplinary record, except where required
56 pursuant to article fourteen of the civil service law, or in accordance

1 with subdivision four of section two hundred eight of the civil service
2 law, or as otherwise required by law. This paragraph shall not prohibit
3 other provisions of law regarding work-related, publicly available
4 information such as title, salary, and dates of employment;

5 (c) any social security numbers; or

6 (d) disclosure of the use of an employee assistance program, mental
7 health service, or substance abuse assistance service by a person
8 employed by a law enforcement agency as defined in section eighty-six of
9 this article as a police officer, peace officer, or firefighter or
10 firefighter/paramedic, unless such use is mandated by a law enforcement
11 disciplinary proceeding that may otherwise be disclosed pursuant to this
12 article.

13 2-c. For records that constitute "law enforcement disciplinary
14 records" as defined in subdivision six of section eighty-six of this
15 article, a law enforcement agency may redact records pertaining to tech-
16 nical infractions as defined in subdivision nine of section eighty-six
17 of this article prior to disclosing such records under this article.

18 3. (a) Each entity subject to the provisions of this article, within
19 five business days of the receipt of a written request for a record
20 reasonably described, shall make such record available to the person
21 requesting it, deny such request in writing or furnish a written
22 acknowledgement of the receipt of such request and a statement of the
23 approximate date, which shall be reasonable under the circumstances of
24 the request, when such request will be granted or denied, including,
25 where appropriate, a statement that access to the record will be deter-
26 mined in accordance with subdivision five of this section. ~~[An]~~ Neither
27 an agency nor the state legislature shall ~~[not]~~ deny a request on the
28 basis that the request is voluminous or that locating or reviewing the
29 requested records or providing the requested copies is burdensome
30 because the agency or respective house of the state legislature lacks
31 sufficient staffing or on any other basis if the agency or respective
32 house of the state legislature may engage an outside professional
33 service to provide copying, programming or other services required to
34 provide the copy, the costs of which the agency may recover pursuant to
35 paragraph (c) of subdivision one of section eighty-seven of this arti-
36 cle. An agency or respective house of the state legislature may require
37 a person requesting lists of names and addresses to provide a written
38 certification that such person will not use such lists of names and
39 addresses for solicitation or fund-raising purposes and will not sell,
40 give or otherwise make available such lists of names and addresses to
41 any other person for the purpose of allowing that person to use such
42 lists of names and addresses for solicitation or fund-raising purposes.
43 If an agency or respective house of the state legislature determines to
44 grant a request in whole or in part, and if circumstances prevent
45 disclosure to the person requesting the record or records within twenty
46 business days from the date of the acknowledgement of the receipt of the
47 request, the agency or respective house of the state legislature shall
48 state, in writing, both the reason for the inability to grant the
49 request within twenty business days and a date certain within a reason-
50 able period, depending on the circumstances, when the request will be
51 granted in whole or in part. Upon payment of, or offer to pay, the fee
52 prescribed therefor, the entity shall provide a copy of such record and
53 certify to the correctness of such copy if so requested, or as the case
54 may be, shall certify that it does not have possession of such record or
55 that such record cannot be found after diligent search. Nothing in this
56 article shall be construed to require any entity to prepare any record

1 not possessed or maintained by such entity except the records specified
2 in subdivision three of section eighty-seven [~~and subdivision three of~~
3 ~~section eighty-eight~~] of this article. When an agency or the respective
4 house of the state legislature has the ability to retrieve or extract a
5 record or data maintained in a computer storage system with reasonable
6 effort, it shall be required to do so. When doing so requires less
7 employee time than engaging in manual retrieval or redactions from non-
8 electronic records, the agency and respective house of the state legis-
9 lature shall be required to retrieve or extract such record or data
10 electronically. Any programming necessary to retrieve a record main-
11 tained in a computer storage system and to transfer that record to the
12 medium requested by a person or to allow the transferred record to be
13 read or printed shall not be deemed to be the preparation or creation of
14 a new record.

15 (b) All entities shall, provided such entity has reasonable means
16 available, accept requests for records submitted in the form of elec-
17 tronic mail and shall respond to such requests by electronic mail, using
18 forms, to the extent practicable, consistent with the form or forms
19 developed by the committee on open government pursuant to subdivision
20 one of this section and provided that the written requests do not seek a
21 response in some other form.

22 (c) Each state agency, as defined in subdivision five of this section,
23 that maintains a website shall ensure its website provides for the
24 online submission of a request for records pursuant to this article.

25 4. (a) Except as provided in subdivision five of this section, any
26 person denied access to a record may within thirty days appeal in writ-
27 ing such denial to the head, chief executive or governing body of the
28 entity, or the person therefor designated by such head, chief executive,
29 or governing body, who shall within ten business days of the receipt of
30 such appeal fully explain in writing to the person requesting the record
31 the reasons for further denial, or provide access to the record sought.
32 In addition, each agency or the respective house of the state legisla-
33 ture shall immediately forward to the committee on open government a
34 copy of such appeal when received by the agency or such house and the
35 ensuing determination thereon. Failure by an agency or respective house
36 of the state legislature to conform to the provisions of subdivision
37 three of this section shall constitute a denial.

38 (b) Except as provided in subdivision five of this section, a person
39 denied access to a record in an appeal determination under the
40 provisions of paragraph (a) of this subdivision may bring a proceeding
41 for review of such denial pursuant to article seventy-eight of the civil
42 practice law and rules. In the event that access to any record is denied
43 pursuant to the provisions of subdivision two of section eighty-seven of
44 this article, the agency or respective house of the state legislature
45 involved shall have the burden of proving that such record falls within
46 the provisions of such subdivision two. Failure by an agency or respec-
47 tive house of the state legislature to conform to the provisions of
48 paragraph (a) of this subdivision shall constitute a denial.

49 (c) The court in such a proceeding: (i) may assess, against such agen-
50 cy involved, reasonable attorney's fees and other litigation costs
51 reasonably incurred by such person in any case under the provisions of
52 this section in which such person has substantially prevailed, and when
53 the agency failed to respond to a request or appeal within the statutory
54 time; and (ii) shall assess, against such agency involved, reasonable
55 attorney's fees and other litigation costs reasonably incurred by such
56 person in any case under the provisions of this section in which such

1 person has substantially prevailed and the court finds that the agency
2 had no reasonable basis for denying access.

3 (d) (i) Appeal to the appellate division of the supreme court must be
4 made in accordance with subdivision (a) of section fifty-five hundred
5 thirteen of the civil practice law and rules.

6 (ii) An appeal from an agency or respective house of the state legis-
7 lature taken from an order of the court requiring disclosure of any of
8 all records sought:

9 (A) shall be given preference;

10 (B) shall be brought on for argument on such terms and conditions as
11 the presiding justice may direct, upon application of any party to the
12 proceedings; and

13 (C) shall be deemed abandoned if the agency or respective house of the
14 state legislature fails to serve and file a record and brief within
15 sixty days after the date of service upon the petitioner of the notice
16 of appeal, unless consent to further extension is given by all parties,
17 or unless further extension is granted by the court upon such terms as
18 may be just and upon good cause shown.

19 5. (a) (1) A person acting pursuant to law or regulation who, subse-
20 quent to the effective date of this subdivision, submits any information
21 to any state agency or to the respective house of the state legislature
22 may, at the time of submission, request that the agency or such house
23 provisionally except such information from disclosure under paragraph
24 (d) of subdivision two of section eighty-seven of this article. Where
25 the request itself contains information which if disclosed would defeat
26 the purpose for which the exception is sought, such information shall
27 also be provisionally excepted from disclosure.

28 (1-a) A person or entity who submits or otherwise makes available any
29 records to any agency or house of the state legislature, may, at any
30 time, identify those records or portions thereof that may contain crit-
31 ical infrastructure information, and request that the agency or house of
32 the state legislature that maintains such records except such informa-
33 tion from disclosure under subdivision two of section eighty-seven of
34 this article. Where the request itself contains information which if
35 disclosed would defeat the purpose for which the exception is sought,
36 such information shall also be provisionally excepted from disclosure.

37 (2) The request for an exception shall be in writing, shall specif-
38 ically identify which portions of the record are the subject of the
39 request for exception and shall state the reasons why the information
40 should be provisionally excepted from disclosure. Any such request for
41 an exception shall be effective for a five-year period from the agency's
42 or respective house of the state legislature's receipt thereof.
43 Provided, however, that not less than sixty days prior to the expiration
44 of the then current term of the exception request, the submitter may
45 apply to the agency or respective house of the state legislature for a
46 two-year extension of its exception request. Upon timely receipt of a
47 request for an extension of an exception request, an agency or respec-
48 tive house of the state legislature may either (A) perform a cursory
49 review of the application and grant the extension should it find any
50 justification for such determination, or (B) commence the procedure set
51 forth in paragraph (b) of this subdivision to make a final determination
52 granting or terminating such exception.

53 (3) Information submitted as provided in subparagraphs one and one-a
54 of this paragraph shall be provisionally excepted from disclosure and be
55 maintained apart by the agency and the respective house of the state
56 legislature from all other records until the expiration of the submit-

1 ter's exception request or fifteen days after the entitlement to such
2 exception has been finally determined or such further time as ordered by
3 a court of competent jurisdiction.

4 (b) ~~[On the]~~ During the effective period of an exception request under
5 this subdivision, on the initiative of the agency or either house of the
6 state legislature at any time, or upon the request of any person for a
7 record excepted from disclosure pursuant to this subdivision, the agency
8 or respective house of the state legislature shall:

9 (1) inform the person who requested the exception of the agency's or
10 such house's intention to determine whether such exception should be
11 granted or continued;

12 (2) permit the person who requested the exception, within ten business
13 days of receipt of notification from the agency or respective house of
14 the state legislature, to submit a written statement of the necessity
15 for the granting or continuation of such exception;

16 (3) within seven business days of receipt of such written statement,
17 or within seven business days of the expiration of the period prescribed
18 for submission of such statement, issue a written determination grant-
19 ing, continuing or terminating such exception and stating the reasons
20 therefor; copies of such determination shall be served upon the person,
21 if any, requesting the record, the person who requested the exception,
22 and the committee on ~~[public access to records]~~ open government.

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

27 (1) Within seven business days of receipt of written notice denying
28 the request, the person may file a written appeal from the determination
29 of the agency or the respective house of the state legislature with the
30 head of the agency or respective house of the state legislature, the
31 chief executive officer or governing body or their designated represen-
32 tatives.

33 (2) The appeal shall be determined within ten business days of the
34 receipt of the appeal. Written notice of the determination shall be
35 served upon the person, if any, requesting the record, the person who
36 requested the exception and the committee on ~~[public access to records]~~
37 open government. The notice shall contain a statement of the reasons for
38 the determination.

39 (d) (i) A proceeding to review an adverse determination pursuant to
40 paragraph (c) of this subdivision may be commenced pursuant to article
41 seventy-eight of the civil practice law and rules. Such proceeding, when
42 brought by a person seeking an exception from disclosure pursuant to
43 this subdivision, must be commenced within fifteen days of the service
44 of the written notice containing the adverse determination provided for
45 in subparagraph two of paragraph (c) of this subdivision. The proceeding
46 shall be given preference and shall be brought on for argument on such
47 terms and conditions as the presiding justice may direct, not to exceed
48 forty-five days.

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

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

53 (A) shall be given preference; and

54 (B) shall be brought on for argument on such terms and conditions as
55 the presiding justice may direct, not to exceed sixty days, upon appli-
56 cation by any party to the proceeding; and

(C) shall be deemed abandoned when the party requesting an exclusion from disclosure fails to serve and file a record and brief within ~~[sixty]~~ thirty days after the date of the notice of appeal, unless consent of further extension is given by all parties, or unless further extension is granted by the court upon such terms as may be just and upon good cause shown.

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

(f) Where the agency or the respective house of the state legislature denies access to a record pursuant to paragraph ~~[(d) of]~~ (b) of this subdivision in conjunction with subdivision two of section eighty-seven of this article, the agency or respective house of the state legislature shall have the burden of proving that the record falls within the provisions of such exception.

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

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

(i) As used in this subdivision the term "state legislature" means the legislature as defined in subdivision two of section eighty-six of this article.

6. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records. A denial of access to records or to portions thereof pursuant to this article shall not limit or abridge any party's right of access to such records pursuant to the civil practice law and rules, the criminal procedure law, or any other law.

7. Nothing in this article shall require the disclosure of the home address of an officer or employee, former officer or employee, or of a retiree of a public employees' retirement system; nor shall anything in this article require the disclosure of the name or home address of a beneficiary of a public employees' retirement system or of an applicant for appointment to public employment; provided however, that nothing in this subdivision shall limit or abridge the right of an employee organization, certified or recognized for any collective negotiating unit of an employer pursuant to article fourteen of the civil service law, to obtain the name or home address of any officer, employee or retiree of such employer, if such name or home address is otherwise available under this article.

8. Any person who, with intent to prevent the public inspection of a record pursuant to this article, willfully conceals or destroys any such record shall be guilty of a violation.

9. When records maintained electronically include items of information that would be available under this article, as well as items of information that may be withheld, an agency or respective house of the state legislature in designing its information retrieval methods, whenever practicable and reasonable, shall do so in a manner that permits the segregation and retrieval of available items in order to provide maximum public access.

10. Nothing in this article shall be construed to limit a person or entity that is a party to any civil or criminal action or proceeding

1 from gaining access to records pursuant to this article relating to such
2 action or proceeding, provided, however, that nothing in this subdivi-
3 sion shall prevent the denial of access to such records or portions
4 thereof after providing particularized and specific justification that
5 such records may be withheld pursuant to this article.

6 § 5. Subdivisions (t) and (u) of section 105 of the civil practice law
7 and rules, subdivision (u) as relettered by chapter 100 of the laws of
8 1994, are relettered subdivisions (u) and (v) and a new subdivision (t)
9 is added to read as follows:

10 (t) "State legislature" means the New York state senate, New York
11 state assembly, any committee, subcommittee, joint committee, select
12 committee, or commission thereof, and any members, officers, represen-
13 tatives and employees thereof.

14 § 6. Subdivision (a) of section 7802 of the civil practice law and
15 rules is amended to read as follows:

16 (a) Definition of "body or officer". The expression "body or officer"
17 includes every court, tribunal, board, corporation, officer, state
18 legislature, or other person, or aggregation of persons, whose action
19 may be affected by a proceeding under this article.

20 § 7. Subdivision 3 of section 713 of the executive law, as amended by
21 section 16 of part B of chapter 56 of the laws of 2010, is amended to
22 read as follows:

23 3. Any reports prepared pursuant to this article shall not be subject
24 to disclosure pursuant to [~~section eighty-eight~~] article six of the
25 public officers law.

26 § 8. Section 70-0113 of the environmental conservation law is
27 REPEALED.

28 § 9. Subdivision 4 of section 308 of the county law is REPEALED.

29 § 10. This act shall take effect immediately; provided however that
30 the amendments to paragraphs (j), (k), (l), (m), (n), (o), (p), (q),
31 (r), (s) and (t) of subdivision 2 of section 87 of the public officers
32 law made by section two of this act shall not affect the repeal of such
33 paragraphs and shall be deemed repealed therewith.