

# STATE OF NEW YORK

5707

2023-2024 Regular Sessions

## IN ASSEMBLY

March 22, 2023

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

AN ACT to amend the public officers law, in relation to the hearing of FOIL appeals by the committee on open government

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

1 Section 1. Subdivision 4 of section 89 of the public officers law, as  
2 amended by chapter 22 of the laws of 2005, paragraph (c) as amended by  
3 chapter 453 of the laws of 2017 and paragraph (d) as added by chapter  
4 487 of the laws of 2016, is amended to read as follows:

5 4. (a) Except as provided in subdivision five of this section, any  
6 person denied access to a record may within thirty days appeal in writ-  
7 ing such denial to the [~~head, chief executive or governing body of the~~  
8 ~~entity, or the person therefor designated by such head, chief executive,~~  
9 ~~or governing body,~~] committee on open government who shall within ten  
10 business days of the receipt of such appeal fully explain in writing to  
11 the person requesting the record the reasons for further denial, or  
12 provide access to the record sought. [~~In addition, each agency shall~~  
13 ~~immediately forward to the committee on open government a copy of such~~  
14 ~~appeal when received by the agency and the ensuing determination there-~~  
15 ~~on. Failure by an agency to conform to the provisions of subdivision~~  
16 ~~three of this section shall constitute a denial.~~]

17 (b) Except as provided in subdivision five of this section, a person  
18 denied access to a record in an appeal determination under the  
19 provisions of paragraph (a) of this subdivision may bring a proceeding  
20 for review of such denial pursuant to article seventy-eight of the civil  
21 practice law and rules. In the event that access to any record is denied  
22 pursuant to the provisions of subdivision two of section eighty-seven of  
23 this article, the [~~agency involved~~] committee on open government shall  
24 have the burden of proving that such record falls within the provisions  
25 of such subdivision two. Failure by [~~an agency~~] the committee on open

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

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1 government to conform to the provisions of paragraph (a) of this subdivi-  
2 vision shall constitute a denial.

3 (c) The court in such a proceeding: (i) may assess, against such agen-  
4 cy involved, reasonable attorney's fees and other litigation costs  
5 reasonably incurred by such person in any case under the provisions of  
6 this section in which such person has substantially prevailed, and when  
7 the agency failed to respond to a request or the committee on open

8 government failed to respond to an appeal within the statutory time; and  
9 (ii) shall assess, against such agency involved, reasonable attorney's  
10 fees and other litigation costs reasonably incurred by such person in  
11 any case under the provisions of this section in which such person has  
12 substantially prevailed and the court finds that the agency had no  
13 reasonable basis for denying access.

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

17 (ii) An appeal from [~~an agency~~] the committee on open government taken  
18 from an order of the court requiring disclosure of any or all records  
19 sought:

20 (A) shall be given preference;

21 (B) shall be brought on for argument on such terms and conditions as  
22 the presiding justice may direct, upon application of any party to the  
23 proceeding; and

24 (C) shall be deemed abandoned if the [~~agency~~] committee on open  
25 government fails to serve and file a record and brief within sixty days  
26 after the date of service upon the petitioner of the notice of appeal,  
27 unless consent to further extension is given by all parties, or unless  
28 further extension is granted by the court upon such terms as may be just  
29 and upon good cause shown.

30 § 2. Subparagraph 1 of paragraph (a) of subdivision 5 of section 89 of  
31 the public officers law, as amended by chapter 403 of the laws of 2003,  
32 is amended to read as follows:

33 (1) A person acting pursuant to law or regulation who, subsequent to  
34 the effective date of this subdivision, submits any information to any  
35 state agency may, at the time of submission, request that the agency  
36 except such information from disclosure under paragraph (d) of subdivi-  
37 sion two of section eighty-seven of this article. Where the request  
38 itself contains information which if disclosed would defeat the purpose  
39 for which the exception is sought, such information shall also be  
40 excepted from disclosure under paragraph (d) of subdivision two of  
41 section eighty-seven of this article. Where the request itself contains  
42 information which if disclosed would defeat the purpose for which the  
43 exception is sought, such information shall also be excepted from  
44 disclosure.

45 § 3. Subparagraph 1 of paragraph (c) of subdivision 5 of section 89 of  
46 the public officers law, as added by chapter 890 of the laws of 1981, is  
47 amended to read as follows:

48 (1) Within seven business days of receipt of written notice denying  
49 the request, the person may file a written appeal from the determination  
50 of the [~~agency with the head of the agency, the chief executive officer~~  
51 ~~or governing body or their designated representatives~~] committee on open  
52 government.

53 § 4. This act shall take effect immediately.