STATE OF NEW YORK

4044--A

2023-2024 Regular Sessions

IN SENATE

February 2, 2023

Introduced by Sens. GONZALEZ, BRISPORT, BROUK, FERNANDEZ, HOYLMAN-SIGAL, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public officers law, in relation to disclosing personal information

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

Section 1. Section 92 of the public officers law, as added by chapter 652 of the laws of 1983, subdivision 8 as amended by section 135 of subpart B of part C of chapter 62 of the laws of 2011 and the opening paragraph of subdivision 9 as amended by chapter 313 of the laws of 1991, is amended to read as follows:

§ 92. Definitions. (1) Agency. The term "agency" means any state board, bureau, committee, commission, council, department, public authority, public benefit corporation, division, office or any other governmental entity performing a governmental or proprietary function for the state of New York, except the judiciary or the state legislature or any unit of local government and shall not include offices of district attorneys.

(2) Committee. The term "committee" means the committee on open government as constituted pursuant to subdivision one of section eighty-nine of this chapter.

(3) Data subject. The term "data subject" means any natural person about whom personal information has been collected by an agency.

(4) Disclose. The term "disclose" means to reveal, release, transfer, disseminate or otherwise communicate personal information or records

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

LBD04764-02-3

orally, in writing or by electronic or any other means other than to the data subject.

(5) **911 services dispatcher. The term "911 services dispatcher" means a person who receives reports of emergencies via a 911 system or E911 system as defined in subdivision three of section three hundred one of the county law.**

(6) Emergency medical services personnel. The term "emergency medical services personnel" means individuals designated as such in subdivision five of section twenty-nine hundred ninety-four-aa of the public health law.

(7) Governmental unit. The term "governmental unit" means any governmental entity performing a governmental or proprietary function for the federal government or for any state or any municipality thereof.

[~~(6)~~] **(8)** Law. The term "law" means state or federal statute, rule or regulation.

[~~(7)~~] **(9) Law enforcement agency. The term "law enforcement agency" shall have the same meaning as in subdivision four of section 705.00 of the criminal procedure law.**

(10) Law enforcement officer. The term "law enforcement officer" means a police officer or peace officer as defined in section 1.20 of the criminal procedure law.

(11) Police agency. The term "police agency" has the same meaning as in subdivision eight of section eight hundred thirty-five of the executive law.

(12) Personal information. The term "personal information" means any information concerning a data subject which, because of name, number, symbol, mark or other identifier, **alone or in combination with other information,** can be used to identify that data subject **or be associated with an identified data subject**.

[~~(8)~~] **(13)** Public safety agency record. The term "public safety agency record" means a record of the state commission of correction, the temporary state commission of investigation, the department of corrections and community supervision, the office of children and family services, the office of victim services, the office of probation and correctional alternatives or the division of state police or of any agency or component thereof whose primary function is the enforcement of civil or criminal statutes if such record pertains to investigation, law enforcement, confinement of persons in correctional facilities or supervision of persons pursuant to criminal conviction or court order, and any records maintained by the division of criminal justice services pursuant to sections eight hundred thirty-seven, eight hundred thirty-seven-a, eight hundred thirty-seven-b, eight hundred thirty-seven-c, eight hundred thirty-eight, eight hundred thirty-nine, and eight hundred forty-five of the executive law and by the department of state pursuant to section ninety-nine of the executive law.

[~~(9)~~] **(14)** Record. The term "record" means any item, collection or grouping of personal information about a data subject which is maintained and is retrievable by use of the name or other identifier of the data subject irrespective of the physical form or technology used to maintain such personal information. The term "record" shall not include personal information which is not used to make any determination about the data subject if it is:

(a) a telephone book or directory which is used exclusively for telephone and directory information;

(b) any card catalog, book or other resource material in any library;

(c) any compilation of information containing names and addresses only which is used exclusively for the purpose of mailing agency information;

(d) personal information required by law to be maintained, and required by law to be used, only for statistical research or reporting purposes;

(e) information requested by the agency which is necessary for the agency to answer unsolicited requests by the data subject for information; or

(f) correspondence files.

[~~(10)~~] **(15)** Routine use. The term "routine use" means, with respect to the disclosure of a record or personal information, any use of such record or personal information relevant to the purpose for which it was collected, and which use is necessary to the statutory duties of the agency that collected or obtained the record or personal information, or necessary for that agency to operate a program specifically authorized by law.

[~~(11)~~] **(16)** System of records. The term "system of records" means any group of records under the actual or constructive control of any agency pertaining to one or more data subjects from which personal information is retrievable by use of the name or other identifier of a data subject.

§ 2. Section 96 of the public officers law, as added by chapter 652 of the laws of 1983, paragraph (j) of subdivision 1 as amended by chapter 1015 of the laws of 1984, paragraph (n) of subdivision 1 as amended by chapter 319 of the laws of 2014, paragraphs (o) and (p) of subdivision 1 as amended by section 1 of part S of chapter 58 of the laws of 2022, and paragraph (c) of subdivision 2 as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 96. Disclosure of records. (1) No agency may disclose any record or personal information unless such disclosure is:

(a) pursuant to a written request by or the voluntary written consent of the data subject, provided that such request or consent by its terms limits and specifically describes:

(i) the personal information which is requested to be disclosed;

(ii) the person or entity to whom such personal information is requested to be disclosed; and

(iii) the uses which will be made of such personal information by the person or entity receiving it; or

(b) to those officers and employees of, and to those who contract with, the agency that maintains the record if such disclosure is necessary to the performance of their official duties pursuant to a purpose of the agency required to be accomplished by statute or executive order or necessary to operate a program specifically authorized by law; or

(c) subject to disclosure under article six of this chapter, unless disclosure of such information would constitute an unwarranted invasion of personal privacy as defined in paragraph (a) of subdivision two of section eighty-nine of this chapter; or

(d) to officers or employees of another governmental unit if each category of information sought to be disclosed is necessary for the receiving governmental unit to operate a program specifically authorized by statute and if the use for which the information is requested is not relevant to the purpose for which it was collected; or

(e) for a routine use, as defined in subdivision [~~ten~~] **fifteen** of section ninety-two of this article; or

(f) specifically authorized by statute or federal rule or regulation; or

(g) to the bureau of the census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title XIII of the United States Code; or

(h) to a person who has provided the agency with advance written assurance that the record will be used solely for the purpose of statistical research or reporting, but only if it is to be transferred in a form that does not **and cannot** reveal the identity of any data subject**, alone or in combination with other available information**; or

(i) pursuant to a showing of compelling circumstances affecting the health or safety of a data subject, if upon such disclosure notification is transmitted to the data subject at [~~his or her~~] **their** last known address; or

(j) to the state archives as a record which has sufficient historical or other value to warrant its continued preservation by the state or for evaluation by the state archivist or [~~his or her~~] **their** designee to determine whether the record has such value; or

(k) to any person pursuant to a court ordered subpoena or other compulsory legal process; or

(l) **from one public safety agency record** for inclusion in [~~a~~] **another** public safety agency record or **from one public safety agency record** to any governmental unit or component thereof which performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, provided that, such record is reasonably described and is requested solely for a law enforcement function**, and further provided that data may not be transferred under this paragraph to United States Immigrations and Customs Enforcement, United States Customs and Border Protection, any other entity for the purposes of immigration enforcement, or to any out-of-state law enforcement agency, law enforcement officer, or police agency for the enforcement of any criminal law the elements of which would not constitute a crime in the state of New York**; or

(m) pursuant to a search warrant; or

(n) to officers or employees of another agency if the record sought to be disclosed is necessary for the receiving agency to comply with the mandate of an executive order, but only if such records are to be used only for statistical research, evaluation or reporting and are not used in making any determination about a data subject; or

(o) to officers or employees of a public retirement system of the city of New York if the information sought to be disclosed is necessary for the receiving public retirement system to process benefits under the retirement and social security law, the administrative code of the city of New York, or the education law or any other applicable provision of law. A written request or consent from the data subject pursuant to paragraph (a) of this subdivision shall not be required for the disclosure of records pursuant to this paragraph; or

(p) to officers or employees of the United States department of education for such department to process credit for qualifying employment and loan forgiveness under the public service loan forgiveness program. A written request or consent from the data subject pursuant to paragraph (a) of this subdivision shall not be required for the disclosure of records pursuant to this paragraph**; or**

(q) necessary to prevent an immediate and substantial risk of death, significant bodily harm, significant damage to property, or is otherwise necessary to respond to an immediate emergency; or

(r) disclosed by a 911 service dispatcher in the course of responding to an emergency reported via a 911 system or E911 system to emergency

medical services personnel, law enforcement officers, or others responsible for providing assistance at the scene of an emergency; or

(s) to licensing officers of New York state, as defined in subdivision ten of section 265.00 of the penal law, for such officers to issue firearm licenses pursuant to section 400.00 of the penal law.

(2) Notwithstanding subdivision one of section ninety-two of this article, for the purposes of this section, the term "agency" has the same meaning as in subdivision three of section eighty-six of this chapter.

(3) Notwithstanding subdivision one of this section, no agency may disclose any record or personal information to a law enforcement agency, law enforcement officer, or police agency unless such disclosure is pursuant to paragraph (k), (l), (m), (q), (r), or (s) of subdivision one of this section, and no agency other than a law enforcement agency or police agency may disclose any record or personal information to a law enforcement agency, law enforcement officer, or police agency pursuant to paragraph (l) of subdivision one of this section.

(4) (a) An agency may only disclose records or personal information to a person or entity that is not an agency pursuant to paragraph (b) or (e) of subdivision one of this section if such person or entity agrees in writing not to disclose such records or personal information to a law enforcement agency, law enforcement officer, or police agency except pursuant to this section.

(b) If an agency enters into a partnership or agreement with another entity to provide services, and such other entity directly collects records or personal information pursuant to such a partnership or agreement, the entity may not disclose the records or personal information other than pursuant to paragraph (k), (l), (m), (q), (r), or (s) of subdivision one of this section.

(c) No agency shall enter into an agreement described in paragraph (b) of this subdivision with any police agency or law enforcement agency.

(5) Nothing in this section shall require disclosure of[~~:~~

~~(a) personal information which is otherwise prohibited by law from being disclosed;~~

~~(b) patient records concerning mental disability or medical records where such disclosure is not otherwise required by law;~~

~~(c) personal information pertaining to the incarceration of an incarcerated individual at a state correctional facility which is evaluative in nature or which, if disclosed, could endanger the life or safety of any person, unless such disclosure is otherwise permitted by law;~~

~~(d) attorney's work product or material prepared for litigation before judicial, quasi-judicial or administrative tribunals, as described in subdivisions (c) and (d) of section three thousand one hundred one of the civil practice law and rules, except pursuant to statute, subpoena issued in the course of a criminal action or proceeding, court ordered or grand jury subpoena, search warrant or other court ordered disclosure~~] any record or personal information or expand an agency's or governmental unit's ability to disclose any record or personal information.

§ 3. Section 97 of the public officers law, as added by chapter 652 of the laws of 1983, is amended to read as follows:

§ 97. [~~Civil remedies~~] Remedies. (1) Any data subject aggrieved by any action taken under this article may seek judicial review and relief pursuant to article seventy-eight of the civil practice law and rules.

(2) In any action brought under subdivision one of this section, the plaintiff may seek:

(a) one thousand dollars per violation or actual damages, whichever is greater; and

(b) punitive damages; and

(c) any other relief the court deems proper.

(3) In assessing the amount of punitive damages awarded to a plaintiff in an action brought under subdivision one of this section, the court shall consider:

(a) the defendant's pattern of violations of this article; and

(b) the impact of the violation on the data subject's exercise of constitutional and statutory rights, including, but not limited to, religion, political views, and medical care.

(4) In any proceeding brought under subdivision one of this section, the party defending the action shall bear the burden of proof, and the court [~~may~~] shall, if the data subject [~~substantially~~] prevails against any agency [~~and if the agency lacked a reasonable basis pursuant to this article for the challenged action~~], award to the data subject reasonable attorneys' fees and disbursements reasonably incurred.

[~~(3)~~] (5) Any information disclosed to a law enforcement agency, law enforcement officer, or police agency in violation of this article shall be inadmissible against the data subject in a criminal or civil court, or administrative proceeding.

(6) Nothing in this article shall be construed to limit or abridge the right of any person to obtain judicial review or pecuniary or other relief, in any other form or upon any other basis, otherwise available to a person aggrieved by any agency action under this article.

§ 4. This act shall take effect immediately.