

# STATE OF NEW YORK

---

5174

2023-2024 Regular Sessions

## IN SENATE

February 24, 2023

---

Introduced by Sens. JACKSON, MANNION -- 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 agen-  
5 cy 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]~~ article in which such person has substantially prevailed,  
8 ~~[and when]~~ or in which the agency failed to respond to a request or  
9 appeal within the statutory time; and (ii) shall assess, against such  
10 agency involved, reasonable attorney's fees and other litigation costs  
11 reasonably incurred by such person in any case under the provisions of  
12 this ~~[section]~~ article in which such person has substantially prevailed  
13 and the court finds that the agency had no reasonable basis for denying  
14 access. Nothing contained herein shall be construed to abridge or deny  
15 any right or remedy available under article eighty-six of the civil  
16 practice law and rules.

17 § 2. This act shall take effect on the first of September next  
18 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.

LBD09491-01-3