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 Assembly, do enact as follows:

Section 1. Paragraph (c) of subdivision 4 of section 89 of the public officers law, as amended by chapter 453 of the laws of 2017, is amended to read as follows:

(c) The court in such a proceeding: (i) may assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this [~~section~~] **article** in which such person has substantially prevailed, [~~and when~~] **or in which** the agency failed to respond to a request or appeal within the statutory time; and (ii) shall assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this [~~section~~] **article** in which such person has substantially prevailed and the court finds that the agency had no reasonable basis for denying access. **Nothing contained herein shall be construed to abridge or deny any right or remedy available under article eighty-six of the civil practice law and rules.**

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

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