

STATE OF NEW YORK

8128

IN SENATE

January 8, 2024

Introduced by Sen. SKOUFIS -- 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 time frames for responding to requests for records under the freedom of information act

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

1 Section 1. Subdivision 3 of section 89 of the public officers law, as
2 amended by chapter 223 of the laws of 2008 and paragraph (c) as added by
3 chapter 47 of the laws of 2018, is amended to read as follows:

4 3. (a) Each entity subject to the provisions of this article, within
5 five business days of the receipt of a written request for a record
6 reasonably described, shall make such record available to the person
7 requesting it, deny such request in writing or furnish a written
8 acknowledgement of the receipt of such request [~~and a statement of the~~
9 ~~approximate date, which shall be reasonable under the circumstances of~~
10 ~~the request, when such request will be granted or denied~~], including,
11 where appropriate, a statement that access to the record will be deter-
12 mined in accordance with subdivision five of this section. If such
13 acknowledgement is not furnished within five business days, such request
14 shall be deemed denied and is appealable.

15 (i) (A) An acknowledgement shall include a statement of the approxi-
16 mate date, which shall be reasonable under the circumstances of the
17 request and which shall not exceed thirty days from receipt of the
18 original request, when such request will be granted or denied, and a
19 statement explaining why such delay is necessary under the circumstance
20 of the request. If a response is not issued by the date stated in the
21 acknowledgment, the request shall be deemed denied and is appealable,
22 except as provided for in clause (B) of this subparagraph.

23 (B) An agency may only extend the response date beyond thirty days if
24 such agency determines to grant a request in whole or in part and if the
25 agency is unable to complete its response within thirty days. In such
26 case, such agency shall state in writing both the reason that the

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

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1 response could not be completed within thirty days and provide a date no
2 later than sixty days from receipt of the original request when such
3 request shall be granted in whole or in part. In no case shall an agency
4 take longer than sixty days to respond to a request. If a full response
5 is not issued within sixty days, the request shall be deemed denied and
6 is appealable.

7 (ii) An agency shall not deny a request on the basis that the request
8 is voluminous or that locating or reviewing the requested records or
9 providing the requested copies is burdensome because the agency lacks
10 sufficient staffing or on any other basis if the agency may engage an
11 outside professional service to provide copying, programming or other
12 services required to provide the copy, the costs of which the agency may
13 recover pursuant to paragraph (c) of subdivision one of section eighty-
14 seven of this article.

15 (iii) An agency may require a person requesting lists of names and
16 addresses to provide a written certification that such person will not
17 use such lists of names and addresses for solicitation or fund-raising
18 purposes and will not sell, give or otherwise make available such lists
19 of names and addresses to any other person for the purpose of allowing
20 that person to use such lists of names and addresses for solicitation or
21 fund-raising purposes. If an agency determines to grant a request in
22 whole or in part, and if circumstances prevent disclosure to the person
23 requesting the record or records within twenty business days from the
24 date of the acknowledgement of the receipt of the request, the agency
25 shall state, in writing, both the reason for the inability to grant the
26 request within twenty business days and a date certain within a reason-
27 able period, depending on the circumstances, when the request will be
28 granted in whole or in part.

29 (iv) Upon payment of, or offer to pay, the fee prescribed therefor,
30 the entity shall provide a copy of such record and certify to the
31 correctness of such copy if so requested, or as the case may be, shall
32 certify that it does not have possession of such record or that such
33 record cannot be found after diligent search.

34 (v) Nothing in this article shall be construed to require any entity
35 to prepare any record not possessed or maintained by such entity except
36 the records specified in subdivision three of section eighty-seven and
37 subdivision three of section eighty-eight of this article. When an agen-
38 cy has the ability to retrieve or extract a record or data maintained in
39 a computer storage system with reasonable effort, it shall be required
40 to do so. When doing so requires less employee time than engaging in
41 manual retrieval or redactions from non-electronic records, the agency
42 shall be required to retrieve or extract such record or data electron-
43 ically. Any programming necessary to retrieve a record maintained in a
44 computer storage system and to transfer that record to the medium
45 requested by a person or to allow the transferred record to be read or
46 printed shall not be deemed to be the preparation or creation of a new
47 record.

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

1 (c) Each state agency, as defined in subdivision five of this section,
2 that maintains a website shall ensure its website provides for the
3 online submission of a request for records pursuant to this article.
4 § 2. This act shall take effect January 1, 2025.