

# STATE OF NEW YORK

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370

2023-2024 Regular Sessions

## IN ASSEMBLY

January 6, 2023

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Introduced by M. of A. CRUZ -- read once and referred to the Committee on Cities

AN ACT to amend the New York city charter, in relation to allowing access to sealed records and certain confidential records by the New York city civilian complaint review board in furtherance of the board's duties and functions

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

1 Section 1. The New York city charter is amended by adding a new  
2 section 442 to read as follows:

3 § 442. Access to sealed records. a. Notwithstanding any provision of  
4 any general, special or local law to the contrary, the board shall be  
5 granted access to and may receive from any public agency of the state of  
6 New York or any political subdivision thereof any record that is other-  
7 wise sealed in accordance with applicable law in furtherance of the  
8 board's duties and functions pursuant to this chapter, or a copy of such  
9 record, which shall be deemed to be a "sealed record" for purposes of  
10 this section, subject to the requirements set forth in this section.

11 b. Access to records received by the board pursuant to this section  
12 shall be restricted to members and employees of the board who have  
13 direct involvement in a matter requiring use of such records, provided  
14 that the board may disclose any record obtained pursuant to this section  
15 to a public agency for the purpose of a referral for prosecution or  
16 investigation, or in furtherance of a disciplinary proceeding, in  
17 accordance with applicable law. In addition, such record may be shared  
18 with the employee of the police department who is the subject of a  
19 disciplinary proceeding or such employee's representative, subject to  
20 the requirements of this section, any applicable provisions of the  
21 protocols described in paragraph two of subdivision e of this section,  
22 and any other appropriate conditions that may be imposed by an adminis-

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

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1 trative law judge, hearing officer, court or other adjudicative body to  
2 ensure the continued confidentiality of such record.

3 c. Upon receiving a sealed record from a public agency, sharing or  
4 transferring a sealed record to a public agency, employee of the police  
5 department who is the subject of a disciplinary proceeding or such  
6 employee's representative, or destroying or returning all copies of such  
7 record pursuant to this section, the board shall as soon as practicable  
8 notify, by first-class mail the person who is the subject of the action  
9 or proceeding for which the record was sealed, and the representative  
10 that represented such person at the time of the termination of such  
11 action or proceeding, at the addresses provided by such person and such  
12 person's representative during such action or proceeding, or at any  
13 other current addresses that can reasonably be ascertained by the board.

14 d. When the board has no further need in furtherance of its duties and  
15 functions pursuant to this chapter to maintain a sealed record obtained  
16 from a public agency pursuant to this section, all copies of such record  
17 shall be destroyed or, at such public agency's direction, be returned to  
18 such agency in a manner preserving the confidentiality of the record.

19 e. 1. Records obtained by the board pursuant to this section shall not  
20 be disclosed by the board except as authorized by this section. Sealed  
21 records maintained by the board shall at all times be clearly marked as  
22 sealed and confidential.

23 2. Before obtaining records pursuant to this section, the board shall  
24 establish protocols, in addition to those set forth in this section and  
25 in consultation with the chief privacy officer designated pursuant to  
26 subdivision h of section eight of this charter, to govern the proper  
27 acquisition, use, storage, and other handling and disposition of, and  
28 access to, records obtained pursuant to this section. Such protocols may  
29 include procedures for the appropriate handling of records transferred  
30 to or shared by the board with other public agencies, or with an employ-  
31 ee of the police department who is the subject of a disciplinary  
32 proceeding or such employee's representative.

33 f. 1. Access to records received from the board by any public agency  
34 pursuant to this section shall be restricted to members of the board of  
35 the receiving agency, or employees of such agency, who have direct  
36 involvement in the matter requiring use of such records. Access to  
37 records received from the board by an employee of the police department  
38 who is the subject of a disciplinary proceeding, or by such employee's  
39 representative, shall be restricted to such employee and such employee's  
40 representative, or as otherwise specified by the applicable administra-  
41 tive law judge, hearing officer, court or other adjudicative body in  
42 furtherance of the purposes of this section.

43 2. When a public agency, employee of the police department who is the  
44 subject of a disciplinary proceeding or such employee's representative  
45 that receives a sealed record from the board pursuant to this section  
46 has no further need to maintain such record, all copies of such record  
47 shall be destroyed, or returned to the board or at the board's direc-  
48 tion, to the public agency from which the board received such record in  
49 a manner preserving the confidentiality of the record.

50 3. Sealed records obtained from the board by a public agency or by any  
51 other person or entity pursuant to this section shall not be disclosed  
52 by such public agency, person or entity except as authorized by this  
53 section or as otherwise specifically authorized by law or order of a  
54 court of competent jurisdiction. Such records shall at all times be  
55 clearly marked by such public agency, person or entity that has received  
56 such records as sealed and confidential.

1     4. The board shall inform each agency, employee of the police depart-  
2 ment who is the subject of a disciplinary proceeding or such employee's  
3 representative to which it transfers or shares a sealed record about the  
4 requirements of this section applicable to such agency, employee or  
5 employee's representative.

6     g. For purposes of this section, a record that is confidential or not  
7 available for public inspection pursuant to section fifty-b of the civil  
8 rights law shall be deemed to be a sealed record that the board may  
9 obtain pursuant to this section. In addition, the victim to which such  
10 record pertains, or other person legally responsible for the care of  
11 such victim, shall be the person who is required to be notified when the  
12 board receives, destroys or returns such record pursuant to subdivision  
13 c of this section.

14     § 2. This act shall take effect immediately.