# STATE OF NEW YORK

5707

2023-2024 Regular Sessions

# IN ASSEMBLY

March 22, 2023

Introduced by M. of A. STECK -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, in relation to the hearing of FOIL appeals by the committee on open government

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

Section 1. Subdivision 4 of section 89 of the public officers law, as amended by chapter 22 of the laws of 2005, paragraph (c) as amended by chapter 453 of the laws of 2017 and paragraph (d) as added by chapter 487 of the laws of 2016, is amended to read as follows:

4. (a) Except as provided in subdivision five of this section, any person denied access to a record may within thirty days appeal in writing such denial to the [~~head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body,~~] committee on open government who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. [~~In addition, each agency shall immediately forward to the committee on open government a copy of such appeal when received by the agency and the ensuing determination thereon. Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial.~~]

(b) Except as provided in subdivision five of this section, a person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the [~~agency involved~~] committee on open government shall have the burden of proving that such record falls within the provisions of such subdivision two. Failure by [~~an agency~~] the committee on open

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

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government to conform to the provisions of paragraph (a) of this subdivision shall constitute a denial.

(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 in which such person has substantially prevailed, and when the agency failed to respond to a request or the committee on open government failed to respond to an 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 in which such person has substantially prevailed and the court finds that the agency had no reasonable basis for denying access.

(d) (i) Appeal to the appellate division of the supreme court must be made in accordance with subdivision (a) of section fifty-five hundred thirteen of the civil practice law and rules.

(ii) An appeal from [~~an agency~~] the committee on open government taken from an order of the court requiring disclosure of any or all records sought:

(A) shall be given preference;

(B) shall be brought on for argument on such terms and conditions as the presiding justice may direct, upon application of any party to the proceeding; and

(C) shall be deemed abandoned if the [~~agency~~] committee on open government fails to serve and file a record and brief within sixty days after the date of service upon the petitioner of the notice of appeal, unless consent to further extension is given by all parties, or unless further extension is granted by the court upon such terms as may be just and upon good cause shown.

§ 2. Subparagraph 1 of paragraph (a) of subdivision 5 of section 89 of the public officers law, as amended by chapter 403 of the laws of 2003, is amended to read as follows:

(1) A person acting pursuant to law or regulation who, subsequent to the effective date of this subdivision, submits any information to any state agency may, at the time of submission, request that the agency except such information from disclosure under paragraph (d) of subdivision two of section eighty-seven of this article. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure under paragraph (d) of subdivision two of section eighty-seven of this article. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

§ 3. Subparagraph 1 of paragraph (c) of subdivision 5 of section 89 of the public officers law, as added by chapter 890 of the laws of 1981, is amended to read as follows:

(1) Within seven business days of receipt of written notice denying the request, the person may file a written appeal from the determination of the [~~agency with the head of the agency, the chief executive officer or governing body or their designated representatives~~] committee on open government.

§ 4. This act shall take effect immediately.