STATE OF NEW YORK

3257

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

Introduced by Sen. HOYLMAN-SIGAL -- 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 requiring entities that submit records to state agencies that are excepted from disclosure under the freedom of information law to periodically re-apply for the exception

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

Section 1. Subdivision 5 of section 89 of the public officers law, as added by chapter 890 of the laws of 1981, paragraph (a) as amended by chapter 403 of the laws of 2003 and paragraph (d) as amended by chapter 707 of the laws of 2019, is amended to read as follows:

5. (a) (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.

(1-a) A person or entity who submits or otherwise makes available any records to any agency, may, at any time, identify those records or portions thereof that may contain critical infrastructure information, and request that the agency that maintains such records except such information from disclosure under 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.

(2) **(i)** The request for an exception shall be in writing**, shall specifically identify which portions of the record are the subject of**

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

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the request for exception and state the reasons why the information should be excepted, for a defined period of time, from disclosure. The submitter may also provide a date by which such exception shall expire, provided that such date shall not exceed three years from the time of the agency's receipt of the request for an exception.

(ii) Not less than sixty days prior to the expiration of the then current term of the exception request, the submitter may apply to the agency for a three-year extension of its exception request. Upon timely receipt of a request for an extension of an exception request, an agency shall review the application and either grant or deny the extension request. A denial of an extension request may be appealed by the submitter pursuant to paragraph (c) of this subdivision. If the submitter fails to apply for an extension, the exception shall be considered to have expired.

(3) Information submitted subsequent to the effective date of the chapter of the laws of two thousand twenty-three that amended this subdivision and as provided in subparagraphs one and one-a of this paragraph shall be excepted from disclosure for a defined period of time and be maintained apart by the agency from all other records until the expiration of the submitter's exception request or fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction.

(b) [~~On~~] During the effective period of an exception request under this subdivision, on the initiative of the agency at any time, or upon the request of any person for a record excepted from disclosure pursuant to this subdivision, the agency shall:

(1) inform the person who requested the exception of the agency's intention to determine whether such exception should be granted or continued;

(2) permit the person who requested the exception, within ten business days of receipt of notification from the agency, to submit a written statement of the necessity for the granting or continuation of such exception;

(3) within seven business days of receipt of such written statement, or within seven business days of the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such exception and stating the reasons therefor; copies of such determination shall be served upon the person, if any, requesting the record, the person who requested the exception, and the committee on [~~public access to records~~] open government.

(c) A denial of an exception from disclosure under paragraph (b) of this subdivision may be appealed by the person submitting the information and a denial of access to the record may be appealed by the person requesting the record in accordance with this subdivision:

(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.

(2) The appeal shall be determined within ten business days of the receipt of the appeal. Written notice of the determination shall be served upon the person, if any, requesting the record, the person who requested the exception and the committee on [~~public access to records~~] open government. The notice shall contain a statement of the reasons for the determination.

(d) (i) A proceeding to review an adverse determination pursuant to paragraph (c) of this subdivision may be commenced pursuant to article

seventy-eight of the civil practice law and rules. Such proceeding, when brought by a person seeking an exception from disclosure pursuant to this subdivision, must be commenced within fifteen days of the service of the written notice containing the adverse determination provided for in subparagraph two of paragraph (c) of this subdivision. The proceeding shall be given preference and shall be brought on for argument on such terms and conditions as the presiding justice may direct, not to exceed forty-five days.

(ii) 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.

(iii) An appeal taken from an order of the court requiring disclosure:

(A) shall be given preference; and

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

(C) shall be deemed abandoned when the party requesting an exclusion from disclosure fails to serve and file a record and brief within sixty days after the date of the notice of appeal, unless consent of 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.

(e) The person requesting an exception from disclosure pursuant to this subdivision shall in all proceedings have the burden of proving entitlement to the exception.

(f) Where the agency denies access to a record pursuant to paragraph [~~(d) of~~] **(b) of this subdivision in conjunction with** subdivision two of section eighty-seven of this article, the agency shall have the burden of proving that the record falls within the provisions of such exception.

(g) Nothing in this subdivision shall be construed to deny any person access, pursuant to the remaining provisions of this article, to any record or part excepted from disclosure upon the express written consent of the person who had requested the exception.

(h) As used in this subdivision the term "agency" or "state agency" means only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor.

§ 2. This act shall take effect immediately.