



MEMO IN SUPPORT

Clarifies Provisions of the Freedom of Information Law and Civil Rights Law Related to Disclosure of Law Enforcement Records During Judicial Proceedings

[A.3939\(Englebright\)/S.5496\(Skoufis\)](#)

May 20, 2019

TITLE OF BILL

An act to amend the public officers law, in relation to requiring a particularized and specific justification for denial of access to records under the Freedom of Information Law and exemption from disclosure under the freedom of information law of certain law enforcement related records; and to amend the civil rights law, in relation to records identifying victims.

SUMMARY OF PROVISIONS

Section 1 of the bill requires that when an agency is considering denying a records request under FOIL because disclosure would interfere with a judicial proceeding, it promptly notify the court in writing of the records request. The judge handling the proceeding will notify the requester of receipt and provide an opportunity to be heard. The judge will determine whether the record can be disclosed, or whether the record is exempt from disclosure because it would interfere with the judicial proceeding, and inform the agency and requester.

Section 2 of the bill clarifies that none of the exemptions to disclosure in FOIL limit the ability to obtain records through the civil practice law and rules, the criminal procedure law or any other law. It also clarifies that a party to a civil or criminal action or proceeding may obtain records pursuant to FOIL, and can only be denied access to records under FOIL if a specific and particularized justification is provided related to the exemptions under the law.

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Section 3 of the bill clarifies that each agency shall maintain records subject to FOIL available for inspection in whole or part, and records shall not be excepted from disclosure based on categories or types of records but only when a particularized and specific justification has been provided for exemption from disclosure. It also clarifies that when an agency is considering exempting a record from disclosure because it will interfere with a legal proceeding, it should follow the procedures laid out in section 1 of this bill.

Section 4 amends subdivision 1 of section 50-b of the civil rights law, clarifying that the portion of any record that reveals whether a victim of certain sexual offenses or transmission of HIV shall not be made available for inspection.

Section 5 requires the act go into effect immediately.

STATEMENT OF SUPPORT

Reinvent Albany supports transparency in government and FOIL administration which recognizes the law's presumption that the public has access to government records.

This bill will result in more precise and appropriate consideration of records that may interfere with a judicial proceeding. Agencies will have to notify the judge overseeing a legal proceeding if the agency is considering denying a law enforcement record because its release may interfere with the proceeding. The judge will decide whether the release of the record will interfere with the proceeding after hearing from the requester, and notify the requester and the agency. This procedure is better than having the agency make a judgment on the release of the record because the judge knows best if the record will interfere with the proceeding the judge administers.

Other portions of this bill also importantly clarify the presumption of access to records. The bill clarifies that agencies must provide a particularized and specific justification when exempting a record from disclosure. It clarifies that a denial to a record under FOIL does not prevent a requester from obtaining the record through other laws; that a party to a civil or criminal action or proceeding may use FOIL to obtain records related to that proceeding; and that agencies may not exempt categories or types of records from disclosure.

Reinvent Albany supports this legislation and urges its passage by the Senate. It has already passed the Assembly.