



MEMO OF SUPPORT

S5174 (Jackson) / A5118 (Thiele)

Strengthens FOIL Attorneys' Fees

March 29, 2023

TITLE OF BILL

An act to amend the public officers law, in relation to permitting assessment of certain fees and costs upon wrongful denial of access to records under the freedom of information law.

SUMMARY OF PROVISIONS

Section 1 amends Public Officers Law §89(4)(c) to make it so that courts may order the attorneys' fees of Freedom of Information Law (FOIL) requestors to be reimbursed either when the requestor has substantially prevailed in court *or* when the agency failed to respond to a request by the legal deadline. The bill also clarifies that attorneys' fees can be reimbursed for any case under FOIL, and that the law does not cancel out recovery of counsel fees under the "New York State Equal Access to Justice Act."

Section 2 provides that the bill shall take effect on September 1st after it becomes law.

STATEMENT OF SUPPORT

The 2018 law requiring FOIL requesters who prevailed in court to have their attorneys' fees reimbursed was championed by dozens of NYS and national transparency groups and lauded as an important step forward for freedom of information in New York.

Unfortunately, the public has learned through bitter experience that the existing law contains conditions that make it extremely difficult to recover attorneys' fees. Agencies have learned to game the law by providing records after a requester has gone through the effort of filing an Article 78 or between a court hearing and a judge's decision.

This bill allows the court to order requestors' legal fees to be reimbursed when a requester substantially prevails *or* when agencies do not respond to requests in time, rather than only when *both* conditions are met. We believe this will encourage agencies to respond to requests in a more timely manner.

We urge the Legislature to pass the bill.