



MEMO OF SUPPORT

S8128 (Skoufis) / A8586 (Raga)

Reduces time public must wait to appeal FOIL delays and denials

May 6, 2024

TITLE OF BILL

An act to amend the public officers law, in relation to time frames for responding to requests for records under the freedom of information act.

SUMMARY OF PROVISIONS

Section 1 amends Public Officers law §89(3)(a) to provide that if an acknowledgement of a FOIL request is not furnished within five business days, the request shall be deemed denied and be appealable.

The bill then inserts a new subparagraph (i) providing that the acknowledgement of the request shall state an approximate date by which the request shall be granted or denied – to be no longer than 30 days from the date of the request – as well as a statement explaining why delay is necessary. Denials must be issued within 30 days, and agencies may only take 60 days if they will ultimately complete the request in full or in part, and only if they state the reason that more than 30 days are needed. If any agency takes longer than 60 days to complete a request – the maximum allowed under the bill – the request shall be deemed denied and be appealable.

Section 2 states that the act takes effect on January 1, 2025.

STATEMENT OF SUPPORT

Our groups support this legislation because we believe it will foster a more transparent state government by reducing the time the public must wait before appealing the delay or denial of Freedom of Information requests.

We believe New York government agencies are severely undermining the Freedom of Information Law by routinely failing to provide records for months or even years. Regardless of agency motives, our experience is that agencies regularly delay the FOIL process far past the statutory requirement.

FOIL is broken in New York State. While the absence of FOIL reporting makes it difficult to see how long agencies take to respond to FOIL requests on average, the available data and anecdotes from the public suggest that many FOIL requests are not completed, and agency delays can make the process drag out interminably.

This bill provides that requests are deemed constructively denied if the agency does not respond in a timely manner, which will incentivize agencies to acknowledge and complete requests more quickly, as well as enable requesters to sue for records more quickly when agencies do not comply with the law. The establishment of a sixty-day deadline also ensures that requests are not subject to endless delays.

We urge the Assembly and Senate to pass the bill, and the Governor to sign it.