

Memorandum in Support

May 16, 2024

S. 8128
A. 8586

By: Senator Skoufis
By: M. of A. Raga
Senate Committee: Third Reading
Assembly Committee: Governmental Operations
Effective Date: January 1st, 2025

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.

LAW AND SECTIONS REFERRED TO: Subdivision 3 of Section 89 of the Public Officers Law

This bill would require agencies to acknowledge FOIL requests and produce an approximate date, within a reasonable time frame, for the requests to be approved or denied by.

The New York State Bar Association’s Task Force on Free Expression in the Digital Age completed the attached report, outlining a few deficiencies they found in FOIL when speaking with those, primarily the press, who rely on it regularly. One of those deficiencies is the requesters’ inability to get timely responses to FOIL requests.¹

The purpose of FOIL is to promote the public’s right to be informed about the processes of executive branch decision-making by giving access to government records. The statute was enacted by the Legislature because access to governmental information “should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.”² In signing FOIL into law in 1974, then Governor Wilson stressed the importance of open government to a free society and the need for FOIL to create public understanding and participation.

FOIL’s current provisions regarding the timing of agency disclosures allow for delays that can severely diminish, if not extinguish, the value of the requested information. Under Public Officers Law Section 89, an agency must respond within five business days of receipt of a written request. That response must grant the request, deny the request in writing, or provide a statement of the approximate date by which the request will be granted or denied, which must be “reasonable under the circumstances.” If and when the agency decides to grant the request, it must do so within 20 days or, if there are reasonable circumstances preventing the agency from complying with that deadline, inform the requester in writing of the reason the deadline cannot be met and provide a

¹[Task-Force-on-Free-Expression-in-the-Digital-Age-FINAL-with-edits-from-HOD-meeting-and-cover.pdf \(nysba.org\)](#)

²Legislative Declaration, Public Officers Law § 84

date “within a reasonable period” when access will be granted.

One concerning practice that has grown out of these provisions is agencies responding to a FOIL request by periodically issuing standard form letters acknowledging receipt of the FOIL request and setting rolling deadlines for a response. Whether those delays are caused by a lack of resources at an agency or a willful attempt by an agency to keep sensitive information away from the public, the effect is the same: delays in disclosure effectively amounting to denials of public access. This violates FOIL’s premise that “the public is vested with an inherent right to know, and that official secrecy is anathematic to our form of government.”³

This legislation will amend the public officers law to require that agencies respond to a request within five days by granting it, denying it, or providing a written acknowledgment of the request, which will include an approximate date when such request will be granted or denied and which will not exceed thirty days from receipt of the original request. If the request is not acknowledged within five business days or replied to within the thirty days stated with an original acknowledgement, the request is considered denied and is appealable.

This bill will ensure that New Yorkers have access to a transparent and responsive government when it comes to FOIL requests. For the above reasons, and the attached report, the New York State Bar Association **SUPPORTS** S.8128/A.8586.

³[Task-Force-on-Free-Expression-in-the-Digital-Age-FINAL-with-edits-from-HOD-meeting-and-cover.pdf \(nysba.org\)](#)