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The Honorable Kathy Hochul

Governor of New York State

Executive Chamber

State Capitol

Albany, New York 12224

*Re: Support for S.2520-B (Skoufis)/A.3425-A (Raga)*

Dear Governor Hochul,

The New York State Bar Association supports this bill which would require agencies to acknowledge Freedom of Information Law (“FOIL”) requests and provide within a reasonable time frame an approximate date by which a request will be approved or denied. Our [Task Force on Free Expression in the Digital Age](#) prepared the attached report, outlining, among other things, deficiencies with FOIL and the difficulties experienced by all New Yorkers and especially members of the press, who are regularly unable to obtain timely responses to proper FOIL requests.

The purpose of FOIL is to promote the public’s right to be informed about the processes of executive branch decision-making by affording access to government records. Governmental information “should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.”<sup>1</sup> When he signed FOIL into law in 1974, Governor Wilson stressed the importance of open government to a free society and the need for FOIL to further public understanding and encourage participation.

FOIL’s current provisions regarding the timing of agency disclosures allow for delays that can diminish, if not entirely negate, 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 or deny the request in writing, or provide a statement of the approximate date

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<sup>1</sup> Legislative Declaration, Public Officers Law § 84

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, it must inform the requester in writing of the reason the deadline cannot be met and provide a date “within a reasonable period” when access will be granted. Despite these rules, agencies responding to FOIL requests often issue only standard form letters acknowledging receipt of the request, setting rolling deadlines for a response that too often never comes. Whether those delays are caused by a lack of resources at an agency or a willful attempt to keep information from the public, the effect is the same: delays in disclosure effectively amount 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.”<sup>2</sup>

The proposed legislation amends the Public Officers Law to require that agencies respond to a request within five days, either granting it, denying it, or providing a written acknowledgment of the request which includes an approximate date by which the request will be granted or denied, not to exceed thirty days from receipt of the original request. A request not acknowledged within five business days or replied to within the thirty days of an original acknowledgement will be considered denied and is therefore appealable. This would ensure that New Yorkers have access to a transparent and responsive government.

The New York State Bar Association **SUPPORTS** S.2520/A.3425 and urges that it be signed into law. We welcome the opportunity to meet with the Chamber to discuss the bill and address any questions your office may have. Please do not hesitate to contact me, or NYSBA’s General Counsel, David Miranda, who can be reached at [dmiranda@nysba.org](mailto:dmiranda@nysba.org), 518-487-5524.

Respectfully,



Kathleen M. Sweet  
President

Cc: Brian M. Mahanna, Esq., Counsel to the Governor  
Denise Gagnon, Director of Legislative Services/ Legislative Secretary

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<sup>2</sup> [Task-Force-on-Free-Expression-in-the-Digital-Age-FINAL-with-edits-from-HOD-meeting-and-cover.pdf \(nysba.org\)](#)