

LAWS OF NEW YORK, 2008

CHAPTER 223

AN ACT to amend the public officers law and the civil practice law and rules, in relation to the provision of public agency records

Became a law July 7, 2008, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph iii of paragraph (b) of subdivision 1 of section 87 of the public officers law, as amended by chapter 73 of the laws of 1982, is amended to read as follows:

iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record in accordance with the provisions of paragraph (c) of this subdivision, except when a different fee is otherwise prescribed by statute.

§ 2. Subdivision 1 of section 87 of the public officers law is amended by adding a new paragraph (c) to read as follows:

(c) In determining the actual cost of reproducing a record, an agency may include only:

i. an amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record;

ii. the actual cost of the storage devices or media provided to the person making the request in complying with such request;

iii. the actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency's information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy; and

iv. preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of agency employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of an agency employee's time is needed, or if an outside professional service would be retained to prepare a copy of the record.

§ 3 Section 87 of the public officers law is amended by adding a new subdivision 5 to read as follows:

5.(a) An agency shall provide records on the medium requested by a person, if the agency can reasonably make such copy or have such copy made by engaging an outside professional service. Records provided in a computer format shall not be encrypted.

(b) No agency shall enter into or renew a contract for the creation or maintenance of records if such contract impairs the right of the public to inspect or copy the agency's records.

§ 4 Subparagraph iii of paragraph (b) of subdivision 2 of section 89 of the public officers law, as added by chapter 933 of the laws of 1977, is amended to read as follows:

EXPLANATION--Matter in italics is new; matter in brackets [] is old law to be omitted.

iii. sale or release of lists of names and addresses if such lists would be used for **[commercial] solicitation** or fund-raising purposes;

§ 5. Subparagraph iii of paragraph (c) of subdivision 2 of section 89 of the public officers law, as added by chapter 933 of the laws of 1977, is amended and a new subparagraph iv is added to read as follows:

iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him[.] **or her; or**

iv. when a record or group of records relates to the right, title or interest in real property, or relates to the inventory, status or characteristics of real property, in which case disclosure and providing copies of such record or group of records shall not be deemed an unwarranted invasion of personal privacy.

§ 6. Subdivision 3 of section 89 of the public officers law, as amended by chapter 182 of the laws of 2006, is amended to read as follows:

3. (a) Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with subdivision five of this section. **An agency shall not deny a request on the basis that the request is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome because the agency lacks sufficient staffing or on any other basis if the agency may engage an outside professional service to provide copying, programming or other services required to provide the copy, the costs of which the agency may recover pursuant to paragraph (c) of subdivision one of section eighty-seven of this article. An agency may require a person requesting lists of names and addresses to provide a written certification that such person will not use such lists of names and addresses for solicitation or fund-raising purposes and will not sell, give or otherwise make available such lists of names and addresses to any other person for the purpose of allowing that person to use such lists of names and addresses for solicitation or fund-raising purposes.** If an agency determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight of this article. **When an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so. When doing so requires less employee time than engag-**

ing in manual retrieval or redactions from non-electronic records, the agency shall be required to retrieve or extract such record or data electronically. Any programming necessary to retrieve a record maintained in a computer storage system and to transfer that record to the medium requested by a person or to allow the transferred record to be read or printed shall not be deemed to be the preparation or creation of a new record.

(b) All entities shall, provided such entity has reasonable means available, accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail, using forms, to the extent practicable, consistent with the form or forms developed by the committee on open government pursuant to subdivision one of this section and provided that the written requests do not seek a response in some other form.

§ 7. Paragraphs 3 and 4 of subdivision (f) of section 8019 of the civil practice law and rules, as amended by section 24 of part J of chapter 62 of the laws of 2003, are amended and a new paragraph 5 is added to read as follows:

3. to prepare and certify a copy of any record or paper on file, one dollar twenty-five cents per page with a minimum fee of five dollars;
[and]

4. to prepare and certify a copy of a certificate of honorable discharge, except as provided for in the military law, two dollars fifty cents[.]; and

5. to prepare a copy of any paper or record on file in the office in a medium other than paper, the actual cost of reproducing the record in accordance with paragraph (c) of subdivision one of section eighty-seven of the public officers law.

§ 8. This act shall take effect on the ~~th~~ thirtieth day after it shall have become a law.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO

SHELDON SILVER

Temporary President of the Senate

Speaker of the Assembly

SUMMARY:

S962-C SKELOS Same as [A 809-C](#) Destito
SKELOS

Amd SS87 & 89, Pub Off L; amd S8019, CPLR

Provides that a person may request a copy of a public record in a form other than paper; the cost of reproducing a record may include the hourly salary paid to agency employees to reproduce the record, the cost of the storage device or media provided to the person making the request and the cost of engaging an outside organization to produce a copy of the record; requires public records to be provided in the form and format requested by the person asking for a copy; prohibits disclosure of names and addresses of public employees for solicitation purposes; requires disclosure of all records relating to any right, title or interest in real property; eliminates grounds for denying a request for a copy of public record on the basis that providing such copy is voluminous or burdensome; authorizes the contracting with an outside service for the provision of copies of public records; provides that any programming necessary to retrieve a public record shall not be deemed to be the creation or preparation of a new record.

EFF. DATE 08/06/2008

SPONSORS MEMO:

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S962C

SPONSOR: SKELOS

TITLE OF BILL:

An act to amend the public officers law and the civil practice law and rules, in relation to the provision of public agency records

PURPOSE:

Provides that a person may request a copy of a public record in a form other than paper after paying for the actual cost of reproduction.

SUMMARY OF PROVISIONS:

The legislation makes several amendments to §87 of the public officers law to provide guidelines for determining the actual cost of reproducing a public record when a copy of such a record is provided to the public under the Freedom of Information Law (FOIL) and the traditional per page photocopy fee may not be applicable. A new paragraph (C) of subdivision 1 of §87 is added to provide that the public may and can only be charged an amount equal to the hourly salary attributed to the employee or employees required to produce a copy of the record and the actual cost of the storage device or media provided to the public in complying with the FOIL request, and the actual cost to a public agency of engaging an outside professional service to produce a copy of the record or records, if the agency needs to engage an outside entity in order to comply with the FOIL request.

Subdivision 5 of §87 is also amended to require a public agency to

provide copies of records in the format and on the medium requested by the person filing the FOIL request if the agency can reasonably do so. The subdivision is further amended to prohibit a public agency from entering into a contract for the creation or maintenance of records if such a contract impairs the right of the public to inspect or copy that agency's records.

Subdivision 2 of §89 is amended to clarify the restriction on the sale or release of lists of names and addresses when the use of such lists for solicitation or fund raising purposes is deemed an unwarranted invasion of personal privacy.

Subdivision 2 of §89 is further amended to clarify that public records related to the ownership, title or interest in real property and details related to such property or properties shall not be deemed a "list of names and addresses" under paragraph (b) of such subdivision.

Subdivision 3 of §89 is amended to ensure that FOIL requests for public documents are complied with and that an agency cannot use the excuse that the FOIL request is voluminous, burdensome or it lacks the staff to copy the documents. Because of the new amendment to §87 (1)(C) the agency may recover any costs in complying with the request including having an outside entity to provide copying, programming or other services needed to provide such copies. The amendment to this subdivision also enables a public agency to require that a person requesting lists of names and addresses provide a written certification that the person will not use the lists for solicitation or fund-raising purposes and that such person will not sell, give or make such lists available to others to use for such purposes. The section is further amended to clarify that any programming necessary to retrieve a public record maintained in a computer storage system shall not be deemed the creation or preparation of a new record. This clarification would prohibit an agency from denying a FOIL request on that ground.

Finally, paragraph (f) of §8019 of the CPLR related to fees for copies of records is amended to cover the actual costs for copies in a format other than paper to be consistent with the above described amendment to §87 of the public officers law defining "actual costs."

JUSTIFICATION:

This legislation enacts amendments to the State's Freedom of Information Law (FOIL) to reflect changes that have occurred since the law was first adopted nearly thirty years ago so that it is clear that records can be easily retrieved in electronic or computer or other non-paper formats. The legislation supports the position that has been taken in numerous court decisions that government records in all forms, including non-paper records, are preemptively open for public inspection and copying unless those records fall within a specific statutory exemption. The courts also have repeatedly ruled that these exemptions are to be narrowly construed. Nevertheless, some agencies have denied access to records or refused to provide copies based on volume, format requests and copies on a particular medium.

This legislation makes it clear that public agencies should provide the type of copies the public requests when it can reasonably do so and that public agencies have the right to recover their actual costs in providing such copies, including the cost of using an outside contractor to provide the copies if that is, in fact, necessary. The legislation also

clarifies how requests for important public records related to the ownership, status and title of real property should be handled and that the fact that such records often contain "names and addresses" as well as other information does not constitute an exemption under the statute. To treat this information as an exemption would prevent the public from pursuing normal business transactions related to the financing, insuring, mortgaging, developing and transferring real property.

In general the legislation continues the intent and purpose of the State's Freedom of Information Law by enacting changes which recognize technology advances in the storage and collection of public records, and clarifies problems that have occurred related to certain sections of the law by requiring public access wherever possible while still maintaining protections against the invasion of Privacy.

LEGISLATIVE HISTORY:

2007 - Passed Senate, Non-Controversial

2006 - S.7135-A - Passed Senate 62-0 / Assembly Governmental Operations

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Ninety days after it shall have become law.
