

APPROVAL MEMORANDUM - No. 157 Chapter 808

MEMORANDUM filed with Assembly Bill Number 5470, entitled:

"AN ACT to amend the public officers law, in relation to requiring a particularized and specific justification for denial of access to records under the freedom of information law and exemption from disclosure under the freedom of information law of certain law enforcement related records; and to amend the civil rights law, in relation to records identifying victims" APPROVED

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This bill amends the public officers law to require an agency that is considering asserting the law enforcement exemption under the Freedom of Information Law ("FOIL") on the grounds that it would interfere with a judicial proceeding, receive permission from the presiding judge in the judicial proceeding to assert this exemption. This bill also amends section 50-b of the civil rights law to specify that only portions of a report that identify a victim of a sexual offense is exempt from disclosure, rather than the entire record. Additionally, this bill specifies that parties to any civil or criminal action or proceeding can use FOIL to obtain records concerning the subject action or proceeding, and that a denial under FOIL does not prohibit an individual from obtaining records through other legal means. Finally, this bill requires that an agency provide particularized and specific justification for withholding records.

Since I took office in August of this year, I have been committed to restoring faith in New York's Government by improving transparency and increasing accountability. Under my administration, State agencies are no longer required to send certain FOIL responses to the Executive Chamber for review, and the Office of Information Technology Services is seeking statewide technology solutions that can accelerate the speed of FOIL responses. I have also launched a website that hosts the new transparency plans of State agencies.

In order to ensure that there are no unnecessary delays or confusion when it comes to the public's access to public records, I have secured an agreement with the Legislature to make amendments to this bill. These amendments include removing the requirement of an agency to interrupt an ongoing judicial proceeding to seek permission from the presiding judge before asserting the law enforcement exemption on the grounds that it will interfere with a judicial proceeding. Such requirement would cause delay not only in the judicial proceeding but also in processing the FOIL request. Additional amendments include ensuring that an investigating agency can assert the law enforcement exemption in regards to sensitive records compiled for law enforcement purposes, and require an agency to confirm with the investigating agency that disclosure of the requested records would interfere with an ongoing investigation before asserting the law enforcement exemption. Finally, these amendments would ensure that reports that identify victims of a sex offense would be withheld in its entirety to protect the anonymity of these victims. On the basis of this agreement, I am pleased to sign this bill.

This bill is approved.

(signed) KATHY HOCHUL

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