MEMORANDUM

TO: Whom it May Concern

FROM: Shoshanah Bewlay
Executive Director, Committee on Open Government

RE: Chapter 155 of the Laws of 2022 Repeals and Amends Sections of Chapter 808 of the Laws of 2021

DATE: March 22, 2022

On December 29, 2021, Governor Hochul signed Chapter 808 of the Laws of 2021, making changes to how an agency must support a claim of an exception to rights of access to records pursuant to the Freedom of Information Law (FOIL). Most significant, Chapter 808 required that any agency claiming that a law enforcement record was exempt due to the pendency of a judicial proceeding need obtain from the relevant court a validation of the applicability of the exemption.

In her approval memo, Governor Hochul identified the court validation requirement as potentially problematic and noted that a future amendment further clarifying or changing it would be agreed with the legislature.

On March 18, 2022, Governor Hochul signed Chapter 155 of the Laws of 2022 repealing the requirement under Chapter 808 that an agency claiming that disclosure of a law enforcement record would interfere with an ongoing investigation or judicial proceeding need obtain certification from a court. Rather, Chapter 155 provides that FOIL now requires that an agency (if it is not the agency conducting the relevant investigation) claiming an exemption based on § 87(2)(e) obtain a confirmation from the law enforcement agency that is conducting the investigation that disclosure of the record will interfere with its investigation.

FOIL as amended may be found at this link.