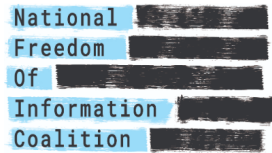




**THE  
LEGAL AID  
SOCIETY**



**CITIZENS  
UNION**  
OF THE CITY OF NEW YORK



Governor Kathy Hochul  
New York State Capitol Building  
Albany, NY 12224

**VIA EMAIL**

December 13, 2021

Dear Governor Hochul,

We appreciate your intention to improve the Freedom of Information Law (FOIL) process. To that end, our groups write to urge you to sign [A5470 \(Englebright\) / S6017 \(Skoufis\)](#). This bill is an important step forward for FOIL but was vetoed by then-Governor Cuomo in 2019.

We are asking you to sign this bill into law as part of a new and sincere commitment to fostering greater transparency in our state.

The bill makes two important changes:

1. It would allow FOIL requesters to have the courts decide if disclosing records would interfere with judicial proceedings.
2. It would make FOIL consistent with New York case law.

***Allow Judges to Weigh Merits of Certain FOIL Requests***

The bill increases transparency by allowing FOIL requesters to have the merits of their requests considered by the courts in certain cases. If an agency is considering denying a request on the basis that disclosure would interfere with a judicial proceeding, the agency will have to notify the presiding judge of the request. The judge will then notify

the requester of receipt, provide an opportunity to be heard, then determine whether or not the records should be released. This procedure works better than letting the agency decide, because the judge presiding over a case would be in the best position to determine, after hearing from both parties, whether disclosure would interfere with judicial proceedings.

Last year, thousands of New Yorkers protested police brutality against people of color. As a direct result of those demonstrations, New York finally repealed 50-a of the Civil Rights Law, the provision that allowed police personnel records to be exempt from Freedom of Information requests.

Despite 50-a's repeal, police agencies continue to deny FOIL requests. In denials, agencies often cite Public Officers Law §87(2)(e)(i), which states that requests may be denied if disclosure "would interfere with law enforcement investigations or judicial proceedings."

Our groups know firsthand that many of these denials are frivolous. The Committee on Open Government has documented in numerous advisory opinions how police and other public agencies have denied FOIL requests by citing §87(2)(e)(i) even when the provision should not apply.<sup>1</sup> Allowing a judge to review agency denials will make FOIL fairer and take away an arbitrary excuse to keep public records secret.

### ***Making FOIL Consistent with Case Law***

The bill also revises parts of FOIL to mirror case law. Agencies have cited ambiguities in the law to justify not disclosing records. For example, Section 2 of the bill clarifies that agencies must provide a "particularized and specific" justification to deny the release of records. This has been established in case law for decades,<sup>2</sup> but some agencies have refused to comply. We believe that clarifying the law will result in greater transparency.

Similar changes are made in Section 4, which clarifies that requesters are not prevented from obtaining records by methods other than FOIL,<sup>3</sup> and Section 4, which clarifies that only portions of records revealing the identity of HIV-positive individuals or victims of certain sex crimes shall not be disclosed, rather than the entire record.<sup>4</sup>

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<sup>1</sup> See Committee on Open Government Advisory Opinions [12223](#), [19047](#), See also [Fusco v. Putnam County Sheriff's office](#), [Planned Parenthood of Westchester, Inc. v. Town Board of Town of Greenburgh](#).

<sup>2</sup> [Fink v. Lefkowitz](#), [Capital Newspapers v. Burns](#).

<sup>3</sup> See [§2019-a of the Uniform Justice Court Act](#).

<sup>4</sup> See Committee on Open Government's [2020 Annual Report](#), pages 19-20.

Police and other agencies have inappropriately used the law enforcement/judicial proceeding exception to deny New Yorkers access to public records for far too long. This legislation can help bring New York the transparency our state needs. We urge you to sign the bill into law.

Sincerely,

John Kaehny  
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Reinvent Albany

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