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The New York Freedom of Information Law

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THE NEW YORK FREEDOM OF INFORMATION LAW

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I. INTRODUCTION

ON September 1, 1974, New York became one of the first states to effect a "Freedom of Information Law."[1] Patterned after the Federal Freedom of Information Act,[2] the Law marked the beginning of complete disclosure of governmental information on all levels of government in New York State.

The Law, which culminated many years work by the Assembly Committee on Governmental Operations and the Subcommittee on the Right of Privacy of the Senate Committee on the Judiciary,[3] enjoyed widespread support in the legislature, passing the Assembly without a dissenting vote in 1973, and passing both the Senate and the Assembly without opposition in 1974.[4] It has also been supported by the media.[5]

This Article reviews the New York Freedom of Information Law, compares it with the Federal Act and existing state law, and discusses its prospective impact.

II. LEGISLATIVE PURPOSE

The Freedom of Information Law is designed to make available to the public all documents generated by, and in the possession of government unless a compelling reason requires their confidentiality. The Law's statement of legislative intent declares "that government is the public's busi-

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* Senator Marino was the Senate Sponsor of the Freedom of Information Law. He received his B.A. from Syracuse University, and his LL.B. from Fordham Law School.

1. N.Y. Pub. Officers Law §§ 85-89, N.Y. Sess. Laws ch. 578, §§ 85-89 (McKinney 1974) as amended, N.Y. Sess. Laws chs. 579-80 (McKinney 1974) [hereinafter cited by § as N.Y. Pub. Officers Law]. Similar legislation has been adopted in Maine, Me. Rev. Stat. Ann. ch. 13, §§ 401-06 (Supp. II, 1973), as amended, Me. Sess. Laws ch. 704, §§ 1-2 (1974), and Iowa, Iowa Code Ann. ch. 68A (1973).

2. 5 U.S.C. § 552 (1970).

3. Assemblyman Donald Taylor is Chairman of the Assembly Committee on Governmental Operations. Senator Marino was chairman of the Senate Subcommittee on the Right of Privacy which was phased out when the Senate reorganized following the 1972 general elections.

4. The bill known as A-3247 & S-5205 was signed into law by Governor Malcolm Wilson on May 29, 1974, as Chapter 578 of the Laws of 1974.

5. See, e.g., Times Union (Albany), May 9, 1974, at 15, cols. 1 & 2 (editorial); Newsday, Apr. 18, 1974, at 13, cols. 1-3; Letter from Arthur G. Milton, Chrmn. Freedom of Information Committee of Sigma Delta Chi (the national journalism society), to Hon. Ralph J. Marino, Apr. 8, 1974.

ness and that the public, individually and collectively and represented by a free news media, should have unimpaired access to the records of government."[6] Similarly, the Sponsor's Memorandum[7] expresses the intent of the measure as guaranteeing "the access of the public to government records."[8] In signing the legislation, Governor Wilson stated:

> As government has grown and become more sophisticated and complex, so too has it become more remote from the people and more difficult to comprehend in all of its workings. These bills will provide, for the first time in New York State, a structure through which citizens may gain access to the records of government and thereby gain insight into its workings.[9]

Prior to the adoption of the Freedom of Information Law, statutory[10] and case law in New York assured the public's right to review governmental records, but failed clearly to define the records available or to establish procedures for making them available. Courts indicated that legislative policy was to make all records, papers and documents kept in public offices available for inspection in the absence of specific prohibitions or rules to the contrary.[11] Furthermore the right of the public to know of governmental operations and inspect public records was held to be fundamental to the workings of a democratic society.[12] In many situations, however, the public's right to access was denied because of determinations that the situation did not come within the general "common law" right to

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6. N.Y. Pub. Officers Law § 85.

7. The revised rules of the Senate and Assembly require the sponsor to submit a memorandum in support of every bill. See Rule 11, The Clerk's Manual of the Legislature of the State of New York 71 (1960).

8. Sponsor's Memorandum, A-3247, S-5205 (1974 Session, New York State Legislature).

9. Memorandum of Governor Malcolm Wilson, approving Laws of 1974, chs. 578-80, May 29, 1974, in N.Y. Sess. Laws at A-319, A-320 (McKinney 1974) [hereinafter cited as Approval Memorandum].

10. Section 66 of the Public Officers Law which was repealed by chapter 578 of the Laws of 1974 provided:

"A person, having the custody of the records or other papers in a public office, within the state, must, upon request, and upon payment of, or offer to pay, the fees allowed by law, or, if no fees are expressly allowed by law, fees at the rate allowed to a county clerk for a similar service, diligently search the files, papers, records, and dockets in his office; and either make one or more transcripts therefrom, and certify to the correctness thereof, and to the search, or certify that a document or paper, of which the custody legally belongs to him, can not be found." N.Y. Pub. Officers Law § 66 (McKinney 1971), repealed, N.Y. Sess. Laws ch. 578, § 1 (McKinney 1974).

11. Werfel v. Fitzgerald, 23 App. Div. 2d 306, 260 N.Y.S.2d 791 (2d Dep't 1965); New York Post Corp. v. Moses, 12 App. Div. 2d 243, 210 N.Y.S.2d 88 (1st Dep't), rev'd on other grounds, 10 N.Y.2d 199, 176 N.E.2d 709, 219 N.Y.S.2d 7 (1961).

12. Winston v. Mangan, 72 Misc. 2d 280, 281, 338 N.Y.S.2d 654, 657 (Sup. Ct. 1972).

inspect documents.[13] Thus, whether a record in custody of a public officer was available for public inspection had been held to depend upon the nature of the document[14] or the interest of the individual seeking the information.[15]

The adoption of the Freedom of Information Law should indicate to governmental administrators and to the courts that restrictions other than those specifically enumerated are not to be placed on the public's access to information.

III. The Scope of the Public's Right To Know

A. *Agencies Subject to the Law*

The draftsmen intended to require every public agency over which the state has jurisdiction to comply with the Law.[16] Clearly reflecting this intention, the definition of "agency" includes, "any state or municipal board, bureau, commission, council, department, public authority, public corporation, division, office or other governmental entity performing a governmental or proprietary function for the state of New York or one or more municipalities therein."[17] The term "municipality" or "municipal" is designed to include "any city, county, town, village, school district, fire district, water district, sewage district, drainage district or special district established by law for any public purpose."[18] It is anticipated that these definitions will remedy those situations where access to information was denied on the grounds that the public authority involved was not subject to public inspection.[19]

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13. New York Post Corp. v. Moses, 10 N.Y.2d 199, 176 N.E.2d 709, 219 N.Y.S.2d 7 (1961); Dabrowski v. Rosenberg, 44 Misc. 2d 877, 255 N.Y.S.2d 305 (Sup. Ct. 1964).

14. New York Post Corp. v. Moses, 23 Misc. 2d 826, 204 N.Y.S.2d 44 (Sup. Ct. 1960), rev'd, 12 App. Div. 2d 243, 210 N.Y.S.2d 88 (1st Dep't), rev'd on other grounds, 10 N.Y.2d 199, 176 N.E.2d 709, 219 N.Y.S.2d 7 (1961).

15. Dabrowski v. Rosenberg, 44 Misc. 2d 877, 255 N.Y.S.2d 305 (Sup. Ct. 1964).

16. The Sponsor's Memorandum, supra note 8, states that the measure "applies to all units of government, including localities and public authorities." A section by section analysis prepared by the author at time of passage states the intention to include all governmental entities from the smallest unit of local government to the major entities of the state. A village, local improvement district or local public authority is subject to the same rules as the state.

17. N.Y. Pub. Officers Law § 87(1).

18. Id. § 87(2).

19. See, e.g., New York Post Corp. v. Moses, 10 N.Y.2d 199, 176 N.E.2d 709, 219 N.Y.S.2d 7 (1961).

B. *Records to Which the Public is Permitted Access*

Although the Law enumerates documents that are subject to inspection, the list is not intended to be exhaustive, but merely to indicate the nature of the documents that are to be made available. Every agency of government is required to make available to the public:[20]

(a) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;[21]

(b) those statements of policy and interpretations which have been adopted by the agency and any documents, memoranda, data, or other materials constituting statistical or factual tabulations which led to the formulation thereof . . . .[22]

In requiring the disclosure of background information the New York Freedom of Information Law goes far beyond the Federal Act's[23] requirement regarding the disclosure of statements of policy and interpretations which provides an exemption for inter-agency and intra-agency memoranda.[24] It is anticipated that documents or memoranda developed by staff members or outside consultants designed to provide recommendations for use in making policy determinations[25] would not be made available, while hard statistical or factual data which led to a determination would be available. The draftsmen were fearful that to allow the disclosure of recom-

20. It is anticipated that the Committee on Public Access to Records created by N.Y. Pub. Officers Law § 88(10) will issue regulations implementing the provisions of § 88. See note 49 infra.

21. N.Y. Pub. Officers Law § 88(1)(a). This language is similar to and based on the Federal Freedom of Information Law which requires the disclosure of "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases . . . ." 5 U.S.C. § 552(a)(2)(A) (1970).

22. N.Y. Pub. Officers Law § 88(1)(b).

23. 5 U.S.C. § 552 (1970).

24. Id. § 552(b)(5). However, one circuit affirmed without opinion a lower court decision that the Federal Act required the NLRB to disclose internal agency memoranda authorizing or refusing to authorize prosecution of cases before the adjudicatory branch of that agency. NLRB v. Sears, Roebuck & Co., 480 F.2d 1195 (D.C. Cir. 1973), cert. granted, 94 S. Ct. 2602 (1974). In another recent case, a court found that exemptions under the Federal Act "must be construed narrowly, in such a way as to provide the maximum access consonant with the overall purpose of the Act." Vaughn v. Rosen, 484 F.2d 820, 823 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974) (footnote omitted), noted, 47 Temple L.Q. 390 (1974).

25. The Federal Freedom of Information Act requires the disclosure of those statements of policy and interpretation which have been adopted by the agency and are not published in the Federal Register. 5 U.S.C. § 552(a)(2)(B) (1970). Consideration was given to similar language in the state legislation, but rejected since there is no publication similar to the Federal Register with comparable circulation. The state has N.Y. Legislative Documents which is published on a regular basis, but has a very limited circulation outside government.

mendations in the form of opinions would result in staff members and others becoming hesitant to express their opinions candidly in writing. Of course, the rules of discovery normally available in the event of litigation concerning a determination should not be affected.[26]

Other documents which an agency must make available include:

(c) minutes of meetings of the governing body, if any, of the agency of government and of public hearings held by the agency;[27]

(d) internal or external audits and statistical or factual tabulations made by or for the agency;[28]

(e) administrative staff manuals and instructions to staff that affect members of the public;[29]

(f) police blotters and booking records.[30]

Payroll records for public employees including their names, addresses, titles, and salaries must also be made available. This information is limited to bona fide members of the news media upon their written request. An exception is provided for the name and address of members of the law enforcement community because of the need to maintain the confidential-

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26. See Verrazzano Trading Corp. v. United States, 349 F. Supp. 1401 (Cust. Ct. 1972).

27. N.Y. Pub. Officers Law § 88(1)(c). The phrase, "if any" was added by chapter 579 of the N.Y. Session Laws to the principal bill in an effort to make it clear that the section only applies to agencies which have formal governing bodies. If the commissioner and deputy commissioners of a department met for a weekly staff meeting, that meeting would not be considered a meeting of a governing body.

28. N.Y. Pub. Officers Law § 88(1)(d). Audits by the Comptroller have generally been considered public documents subject to review by members of the public. There are instances where agencies have had audits made by outside auditors and have not made those audits available to the public. See Thaler v. Murphy, 42 Misc. 2d 1, 247 N.Y.S.2d 816 (Sup. Ct. 1964). It is anticipated that such audits would be made available to the public under this legislation.

29. N.Y. Pub. Officers Law § 88(1)(e). This language is similar to and is based on the Federal Freedom of Information Act which provides for the disclosure of "administrative staff manuals and instructions to staff that affect a member of the public . . . ." 5 U.S.C. § 552(a)(2)(C) (1970).

30. N.Y. Pub. Officers Law § 88(1)(f). This makes it clear that the records maintained by the New York State Division of Criminal Justice Services pursuant to the N.Y. Exec. Law § 837 (McKinney Supp. 1973-74), are not subject to disclosure. The section is intended to include only those records which are created at the time of the arrest. Of course, with the exception of those individuals who are afforded Youthful Offender or equivalent treatment, the records maintained in the court are available for inspection as public documents reflecting the court's proceedings. These documents were available prior to the adoption of the Freedom of Information Law and are protected by virtue of the "grandfather clause" (N.Y. Pub. Officers Law § 88(10)). They are available either as final opinions under § 88(1)(a) or minutes of public hearings held by an agency of government under § 88(1)(c).

ity of the identity of undercover police officers. Therefore, only the titles and salaries of law enforcement officers are listed.[31]

Finally, an agency must make available:

(h) final determinations and dissenting opinions of members of the governing body, if any, of the agency;[32] and

(i) any other files, records, papers or documents required by any other provision of law to be made available for public inspection and copying.[33]

C. *Publication of Guidelines*

It is anticipated that each agency will make and publish rules and regulations to implement the Freedom of Information Law.[34] The detailed implementation of this legislation, as well as the specific identification of the documents which are subject to inspection must be the responsibility of the agency as the agency is the only one in a position to be familiar with the identity of the records. The regulations adopted by each agency should deal with the classification of records available to the public. In addition to identifying the documents subject to inspection, the regulations must provide:

a. The times and places such records are available;
b. The person from whom such records may be obtained;
c. The fees [to be charged] for copies of such information; and
d. The procedures to be followed.[35]

It is, of course, not necessary for each individual agency to adopt reg-

31. N.Y. Pub. Officers Law § 88(1)(g). Previously there was considerable confusion concerning the availability of payroll information. Many agencies made it available and cases have held that it should be made available. Winston v. Mangan, 72 Misc. 2d 280, 338 N.Y.S.2d 654 (Sup. Ct. 1972).

32. N.Y. Pub. Officers Law § 88(1)(h). Section 88(4) of the Law requires the maintenance of such records.

33. Id. § 88(1)(i). This language together with § 88(10) which provides that "[n]othing in this article shall be construed to limit or abridge any existing right of access at law or in equity of any party to public records kept by any agency or municipality" is designed to make it clear that any information which was available to the public prior to the adoption of the Freedom of Information Law or is available by virtue of any other specific section of the law is to continue to be made available; for example, motor vehicle records which are available by virtue of N.Y. Veh. & Traf. Law § 401(2) (McKinney 1970). Section 66-a of the Public Officers Law which is unaffected by the 1974 Freedom of Information Law provides for the inspection of accident records kept by police authorities. Under § 66-a these reports are available only to "any person having an interest therein." N.Y. Pub. Officers Law § 66-a (McKinney 1952).

34. N.Y. Pub. Officers Law § 88(2).

35. Id.

ulations. In the case of a municipality, the governing body may make and publish uniform rules for any or all of the agencies in the municipality.[36]

IV. Limits on Access to Information

A. *Right of Privacy*

The draftsmen were concerned with the rights of those identified by various government documents which might be subject to disclosure by virtue of this legislation. The law authorizes the Committee on Access to Public Documents to spell out rules to be used in preventing the disclosure of information in violation of a person's right of privacy. An unwarranted invasion of privacy includes, but is not limited to the following:

a. Disclosure of such personal matters as may have been reported in confidence to an agency or municipality and which are not relevant or essential to the ordinary work of the agency or municipality;[37]

b. Disclosure of employment, medical or credit histories or personal references of applicants for employment, except such records may be disclosed when the applicant has provided a written release permitting such disclosure;[38]

c. Disclosure of items involving the medical or personal records of a client or patient in a hospital or medical facility;[39]

d. The sale or release of lists of names and addresses in the possession of any agency or municipality if such lists would be used for private, commercial or fund-raising purposes;[40]

e. Disclosure of items of a personal nature when disclosure would result in economic or personal hardship to the subject party and such records are not relevant or essential to the ordinary work of the agency or municipality.[41]

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36. Id. § 88(2)(d). It is anticipated that a town board or a city council would adopt rules to be followed by the zoning board, the planning board and other municipal boards.

37. Id. § 88(3)(a). The Federal Act similarly allows an agency to delete identifying details when it publishes an opinion, statement of policy or interpretation, or staff manual or instructions. 5 U.S.C. § 552(a)(2) (1970). One court, however, has required the Federal Housing Administration to disclose the author of an allegedly erroneous home appraisal. Tennessean Newspapers, Inc. v. FHA, 464 F.2d 657 (6th Cir. 1972).

38. N.Y. Pub. Officers Law § 88(3)(b). The Iowa Freedom of Information Law provides an exception for types of personal information. Iowa Code Ann. § 68A.7 (1973).

39. N.Y. Pub. Officers Law § 88(3)(c).

40. Id. § 88(3)(d). This language prevents the sale of any new lists maintained by the state without the approval of the legislature. Existing legislation authorizes the sale of motor vehicle registration information. N.Y. Veh. & Traf. Law § 202(3) (McKinney 1970). Drivers would not be affected because of the grandfather provisions. See note 30 supra. A Pennsylvania case has denied a newspaper access to the names, addresses and amounts received by public assistance recipients partially on the grounds that such information would be used for political or commercial purposes. McMullan v. Wohlgemuth, 453 Pa. 147, 308 A.2d 888 (1973), appeal dismissed, 415 U.S. 970 (1974).

41. N.Y. Pub. Officers Law § 88(3)(e). This protection goes beyond the privacy protection afforded by the Federal Freedom of Information Act which authorizes the deletion of identifying data. See note 37 supra.

B. *Specific Exemptions*

In addition to the exemptions designed to insure protection of an individual's right of privacy, the new law specifically does not apply to information that is:

a. specifically exempted by statute;[42]

b. confidentially disclosed to an agency and compiled and maintained for the regulation of commercial enterprise, including trade secrets, or for the grant or review of a license to do business and if openly disclosed would permit an unfair advantage to competitors of the subject enterprise, but this exemption shall not apply to records the disclosure or publication of which is directed by other statute;[43]

. . . .

d. part of investigatory files compiled for law enforcement purposes.[44]

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42. N.Y. Pub. Officers Law § 88(7)(a). It is difficult to enumerate information exempted by statute. The most obvious is income tax information. Under the Federal Act, tax information "in connection with an audit of an individual's income tax liability constitutes an 'investigatory file compiled for law enforcement purposes' within the meaning of 5 U.S.C. § 552(b)(7) . . . ." Donlon v. IRS, 479 F.2d 317, 318 (3d Cir.), cert. denied, 414 U.S. 1024 (1973). Other examples would include proceedings involving juveniles in the Family Court and those involving Youthful Offenders.

43. N.Y. Pub. Officers Law § 88(7)(b). The Federal Freedom of Information Act includes an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential . . . ." 5 U.S.C. § 552(b)(4) (1970). Mere lists of names and addresses of employees of Federal agencies have been held not to come under this exemption. Getman v. NLRB, 450 F.2d 670 (D.C. Cir. 1971).

44. N.Y. Pub. Officers Law § 88(7)(d). This language was included at the request of the criminal justice community. It reflects the need to maintain the integrity of criminal justice files and is similar to the Federal Act which exempts "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency . . . ." 5 U.S.C. § 552(b)(7) (1970). The deletion of the reference to information available to a private party is immaterial, since information available prior to the adoption of the New York Freedom of Information Law continues to be available. See note 30 supra. Cases construing the equivalent language in the Federal Act have held that the exemption continues subsequent to the investigation and resultant law enforcement proceedings. In an SEC case the Court of Appeals ruled that the investigatory files exemption remains operative even after the investigation and resultant law enforcement proceedings have terminated. Frankel v. SEC, 460 F.2d 813 (2d Cir.), cert. denied, 409 U.S. 889 (1972). A similar result was reached by the Fifth Circuit in Evans v. Department of Transp., 446 F.2d 821 (5th Cir. 1971), cert. denied, 405 U.S. 918 (1972), where the court ruled that letters written to the Federal Aviation Agency questioning the qualifications of an airline pilot were exempt by virtue of the investigatory field exemption despite the termination of the investigation more than ten years earlier. See also Weisberg v. United States Dept. of Justice, 489 F.2d 1195 (D.C. Cir. 1973), cert. denied, 94 S. Ct. 2405 (1974). A contrary result was reached in Bristol-Myers Co. v. FTC, 424 F.2d 935 (D.C. Cir.), cert. denied, 400 U.S. 824 (1970), where the court limited the exemption:

"If further adjudicatory proceedings are imminent, then the company's request may fall within the category the exemption was designed to control. . . . But the agency cannot, consistent with the broad disclosure mandate of the Act, protect all its files with the label 'investigatory' and a suggestion that enforcement proceedings may be launched at some

V. Implementation of the Act

A. *Committee on Public Access to Records*

The Law also calls for the creation of a Committee on Public Access to Records made up of the Commissioner of the Office of General Services,[45] whose office is required to act as the executive secretary of the Committee; the Director of the Division of the Budget;[46] the Commissioner of the Office for Local Government;[47] and four "public members," two of whom are to be representatives of the media.[48] The Committee on Access to Public Records has the dual responsibilities of advising agencies, and municipalities regarding the Freedom of Information Law by means of guidelines, advisory opinions, regulations or other means deemed advisable;[49] and recommending changes in the Law in order to further the legislative intent.[50]

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unspecified future date." Id. at 939; accord, M.A. Schapiro & Co. v. SEC, 339 F. Supp. 467 (D.D.C. 1972); see 47 Tul. L. Rev. 1136 (1973).

Under the Federal Act it has been held that letters of warning are not within the investigatory files exemption. Wellford v. Hardin, 315 F. Supp. 175 (D. Md. 1970), aff'd, 444 F.2d 21 (4th Cir. 1971), noted in 40 Fordham L. Rev. 921 (1972). Iowa has a similar exemption, added at the suggestion of the criminal justice community. Iowa Code Ann. § 68A.7(5) (1973). See Note, Iowa's Freedom of Information Act: Everything You've Always Wanted To Know About Public Records But Were Afraid To Ask, 57 Iowa L. Rev. 1163 (1972).

45. N.Y. Pub. Officers Law § 88(9)(a). The Office of General Services is primarily responsible for the maintenance of state records. Earlier versions of the Bill designated the Attorney General. N.Y. Sess. Laws ch. 578, § 88(8)(a) (McKinney 1974).

46. N.Y. Pub. Officers Law § 88(9)(a). The Director of the Bureau of the Budget was included because he or members of his staff have knowledge of the bookkeeping of every agency of government.

47. Id.

48. Id. The so-called "public members" will serve staggered terms so that there will not be more than one vacancy per year. Id. Governor Wilson appointed the first "public members" on July 24, 1974. Press Release from Governor Malcolm Wilson, Albany, N.Y., July 24, 1974.

49. See, e.g., Comm. on Public Access to Records, Interim General Guidelines on Public Access to Records, Aug. 23, 1974. The Committee encouraged agencies "to adopt the least restrictive rules and regulations consonant with their agency needs and the legislative intent of providing public access to records." Id. at 1. N.Y. Pub. Officers Law § 88(9)(a)(i). Following the adoption of the Federal Freedom of Information Act, the Department of Justice issued a memorandum widely known as the "Attorney General's Memorandum" spelling out the requirements of the law. U.S. Dep't of Justice, Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act (1967). The author has indicated that he will assist the Committee in the preparation of a similar memorandum.

50. In approving the Freedom of Information Law, Governor Wilson said: "I would hope that one of the first tasks to which the newly created Committee on Public Access of Records addresses itself is a thorough review of the positions of all of the interested parties and agencies with a view toward making recommendations for legislative action next year

B. *Index*

The Law requires every agency or municipality to maintain and make available for inspection, an index showing the records available pursuant to the Freedom of Information Law. The index must be current, organized by subject matter, and maintained in reasonable detail.[51]

VI. Conclusion

The New York Freedom of Information Law became effective on September 1, 1974.[52] It is anticipated that the Committee on Public Access to Records will establish rules concerning the availability of documents created prior to September 1, 1974.[53]

The Law will promote free and open disclosure by government at all levels, thereby clarifying the public's right to information which is constitutionally theirs.

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to relieve any problems of detail that may not have been fully foreseen by those who drafted these measures." Approval Memorandum, supra note 9, at A-320.

51. N.Y. Pub. Officers Law § 88(4). The index requirement was highly controversial. Many individuals in the legislature were concerned with the cost of maintaining the index. For this reason, amendments were proposed to allow an agency to release its internal file index in lieu of preparing a special index for the purpose of complying with the Law. See S 5205C [N.Y.] 1974 Reg. Sess.

52. N.Y. Pub. Officers Law § 89.

53. Id. § 88(4) specifies that agencies may include documents generated prior to September 1, 1974 in the Index. See note 51, supra.