

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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As the Seasons Change, So Does New York's Freedom of Information Law: The Application of NY's FOIL to Law Enforcement Records

In [June 2020](#), New York repealed Civil Rights Law § 50-a and amended portions of the State's Freedom of Information Law (FOIL), resulting in significant changes to the types of law enforcement records subject to public disclosure.

Following these changes, records "**compiled for law enforcement purposes**" which, if disclosed, would "**interfere with law enforcement investigations or judicial proceedings**" remained exempt from disclosure under FOIL.

However, effective Dec. 29, 2021, New York enacted a short-lived procedural hurdle requiring agencies citing this exemption to follow a specific judicial review process. In order for an agency to deny access to records pursuant to this exemption, the law required a judge review the FOIL request and determine whether the records were subject to, or exempt from, disclosure.

After being in effect for about three months, New York has now rescinded this procedural requirement. On Friday, March 18, 2022, Governor Kathy Hochul signed into law a [bill](#) repealing the judicial review. Under the amended law, if the agency citing the FOIL exemption is not the same agency conducting the at-issue investigation, the agency must receive confirmation from the investigating agency that disclosing such records would impede the ongoing investigation. There is no longer any judicial review or other additional requirements for agencies utilizing this FOIL exemption. The amendment is effective retroactive to Dec. 29, 2021.

Law enforcement agencies and public records officers, or those responsible for responding to FOIL requests, should be made aware of this change to the law.

For any questions, please contact [Jacqueline A. Giordano](#), any attorney in Bond's [Labor and Employment practice](#) or the Bond attorney with whom you are regularly in contact.

