

**Overview of “50-a Repeal”  
S.8496 (Bailey)/A.10611 Rules (O’Donnell)**

Section 50-a of the civil rights law, which provides the confidentiality of the personnel records of police officers, fire fighters and correction officers in New York State, except through a court order is repealed.

The public officers law is amended in the following manner:

- Law enforcement disciplinary records - any record created in furtherance of a law enforcement disciplinary proceeding, including:
  - the complaints, allegations, and charges against an employee;
  - the name of the employee complained of or charged;
  - the transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing;
  - the disposition of any disciplinary proceeding; and
  - the final written opinion or memorandum supporting the disposition and discipline imposed including the agency's complete factual findings and its analysis of the conduct and appropriate discipline of the covered employee.
- Law enforcement disciplinary proceeding - the commencement of any investigation and any subsequent hearing or disciplinary action conducted by a law enforcement agency.
- Law enforcement agency:
  - a police agency or department of the state or any political subdivision thereof
  - a sheriff's department,
  - state and local departments of corrections and community supervision
  - a local probation department
  - individuals employed as firefighters or firefighter/paramedics.
- Technical infraction - a minor rule violation by a person employed by a law enforcement agency as defined above, solely related to the enforcement of administrative departmental rules that:
  - do not involve interactions with members of the public
  - are not of public concern, and
  - are not otherwise connected to such person's investigative, enforcement, training, supervision, or reporting responsibilities.
- The public officers (Freedom of Information Law) adds the following:
  - A law enforcement agency, as defined above, responding to a request for disciplinary records **must** redact:
    - items involving the medical history of the individual, unless they are relevant to the person's misconduct during the disposition of the investigation;
    - the home addresses, personal telephone numbers, personal cell phone numbers, personal e-mail addresses of the individual, except where

required under the Taylor Law, or as otherwise required by law. This not prohibit other provisions of law regarding work-related, publicly available information such as title, salary, and dates of employment;

- social security number(s)
  - disclosure of the use of an employee assistance program, mental health service, or substance abuse assistance service by the individual, unless “mandated by a law enforcement disciplinary proceeding that may otherwise be disclosed pursuant to this article.”
- A law enforcement agency, as defined above, responding to a request for disciplinary records **may** redact any portion of “records pertaining to technical infractions” as defined above.
- This act shall take effect immediately.

# STATE OF NEW YORK

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8496

## IN SENATE

June 6, 2020

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Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law and the public officers law, in

relation to the disclosure of law enforcement disciplinary records; and to repeal section 50-a of the civil rights law relating thereto

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Section 50-a of the civil rights law is REPEALED.

§ 2. Section 86 of the public officers law is amended by adding four new subdivisions 6, 7, 8 and 9 to read as follows:

**6. "Law enforcement disciplinary records" means any record created in furtherance of a law enforcement disciplinary proceeding, including, but not limited to:**

**(a) the complaints, allegations, and charges against an employee;**

**(b) the name of the employee complained of or charged;**

**(c) the transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing;**

**(d) the disposition of any disciplinary proceeding; and**

**(e) the final written opinion or memorandum supporting the disposition and discipline imposed including the agency's complete factual findings and its analysis of the conduct and appropriate discipline of the covered employee.**

**7. "Law enforcement disciplinary proceeding" means the commencement of any investigation and any subsequent hearing or disciplinary action conducted by a law enforcement agency.**

**8. "Law enforcement agency" means a police agency or department of the state or any political subdivision thereof, including authorities or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law, a sheriff's department, the department of corrections and community supervision, a local department of correction, a local probation department, a fire department, or force of individuals employed as firefighters or firefighter/paramedics.**

**9. "Technical infraction" means a minor rule violation by a person employed by a law enforcement agency as defined in this section as a police officer, peace officer, or firefighter or firefighter/paramedic, solely related to the enforcement of administrative departmental rules that (a) do not involve interactions with members of the public, (b) are not of public concern, and (c) are not otherwise connected to such person's investigative, enforcement, training, supervision, or reporting responsibilities.**

§ 3. Section 87 of the public officers law is amended by adding two new subdivisions 4-a and 4-b to read as follows:

**4-a. A law enforcement agency responding to a request for law enforcement disciplinary records as defined in section eighty-six of this article shall redact any portion of such record containing the information specified in subdivision two-b of section eighty-nine of this article prior to disclosing such record under this article.**

**4-b. A law enforcement agency responding to a request for law enforcement disciplinary records, as defined in section eighty-six of this article, may redact any portion of such record containing the information specified in subdivision two-c of section eighty-nine of this article prior to disclosing such record under this article.**

§ 4. Section 89 of the public officers law is amended by adding two new subdivisions 2-b and 2-c to read as follows:

**2-b. For records that constitute law enforcement disciplinary records as defined in subdivision six of section eighty-six of this article, a law enforcement agency shall redact the following information from such records prior to disclosing such records under this article:**

(a) items involving the medical history of a person employed by a law enforcement agency as defined in section eighty-six of this article as a police officer, peace officer, or firefighter or firefighter/paramedic, not including records obtained during the course of an agency's investigation of such person's misconduct that are relevant to the disposition of such investigation;

(b) the home addresses, personal telephone numbers, personal cell phone numbers, personal e-mail addresses of a person employed by a law enforcement agency as defined in section eighty-six of this article as a police officer, peace officer, or firefighter or firefighter/paramedic, or a family member of such a person, a complainant or any other person named in a law enforcement disciplinary record, except where required pursuant to article fourteen of the civil service law, or in accordance with subdivision four of section two hundred eight of the civil service law, or as otherwise required by law. This paragraph shall not prohibit other provisions of law regarding work-related, publicly available information such as title, salary, and dates of employment;

(c) any social security numbers; or

(d) disclosure of the use of an employee assistance program, mental health service, or substance abuse assistance service by a person employed by a law enforcement agency as defined in section eighty-six of this article as a police officer, peace officer, or firefighter or firefighter/paramedic, unless such use is mandated by a law enforcement disciplinary proceeding that may otherwise be disclosed pursuant to this article.

2-c. For records that constitute "law enforcement disciplinary records" as defined in subdivision six of section eighty-six of this article, a law enforcement agency may redact records pertaining to technical infractions as defined in subdivision nine of section eighty-six of this article prior to disclosing such records under this article.

§ 5. This act shall take effect immediately.

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**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S8496

**SPONSOR:** BAILEY

**TITLE OF BILL:**

An act to amend the civil rights law and the public officers law, in relation to the disclosure of law enforcement disciplinary records; and to repeal section 50-a of the civil rights law relating thereto

**PURPOSE:**

To repeal Civil Rights Law § 50-a.

**SUMMARY OF PROVISIONS:**

Section 1 repeals Civil Rights Law § 50-a.

Section 2 defines law enforcement agency (including police agencies and departments, sheriffs departments, the Department of Corrections and Community Supervision, local corrections and probation departments, fire departments, and forces of individuals employed as firefighters or firefighter/paramedics), law enforcement disciplinary proceeding, law enforcement disciplinary records, and technical infraction.

Section 3 requires a law enforcement agency responding to a request for law enforcement disciplinary records to redact specific categories of personal information from the record before disclosing the record, and allows the agency to redact portions of the record that only contain minor, technical infractions that do not involve interactions with the public, are not of public concern, and are not connected to the officer's investigative, enforcement, training, supervision, or reporting responsibilities.

Section 4 provides the specific types of personal information that must be redacted from a law enforcement agency's response to a request for disciplinary records.

Section 5 provides the effective date.

**JUSTIFICATION:**

Section 50-a of the New York State Civil Rights Law creates a special right of privacy for the "personnel records used to evaluate performance toward continued employment or promotion" of police officers, correction officers, and firefighters/paramedics employed by the State or political

subdivisions, as well as those of peace officers working for the Department of Corrections and Community Supervision or local probation departments.

This exemption was adopted in 1976 by the Legislature in order to prevent criminal defense attorneys from using these records in cross-examinations of police witnesses during criminal prosecutions. However, current law, as narrowly interpreted by the Court of Appeals, prevents access to both the records of the disciplinary proceedings themselves and the recommendations or outcomes of those proceedings.

According to the 2014 annual report by the State Committee on Open Government to the Governor and the State Legislature, "this narrow exemption has been expanded in the courts to allow police departments to withhold from the public virtually any record that contains any information that could conceivably be used to evaluate the performance of a police officer."

Due to the interpretation of § 50-a, records of complaints or findings of law enforcement misconduct that have not resulted in criminal charges against an officer are almost entirely inaccessible to the public or to victims of police brutality, excessive use of force, or other misconduct. The State Committee on Open Government has stated that § 50-a "creates a legal shield that prohibits disclosure, even when it is known that misconduct has occurred." FOIL's public policy goals, which are to make government agencies and their employees accountable to the public, are thus undermined. Police-involved killings by law enforcement officials who have had histories of misconduct complaints, and in some cases recommendations of departmental charges, have increased the need to make these records more accessible.

FOIL already provides that agencies may redact or withhold information whose disclosure would constitute an unwarranted invasion of privacy. Recent changes to the Civil Service Law have created additional, non-discretionary protections against the release of certain sensitive information such as contact information. Furthermore, this bill adds additional safeguards in the FOIL statute. Finally, courts have the ability to protect against improper cross-examination and determine if police records are admissible in a trial, without the denial of public access to information regarding police activity created by § 50-a. The broad prohibition on disclosure created by § 50-a is therefore unnecessary, and can be repealed as contrary to public policy.

Repeal of § 50-a will help the public regain trust that law enforcement officers and agencies may be held accountable for misconduct.

#### **LEGISLATIVE HISTORY:**

New Bill

#### **FISCAL IMPLICATIONS:**

TBD

**LOCAL FISCAL IMPLICATIONS:**

TBD

**EFFECTIVE DATE:**

Immediately

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