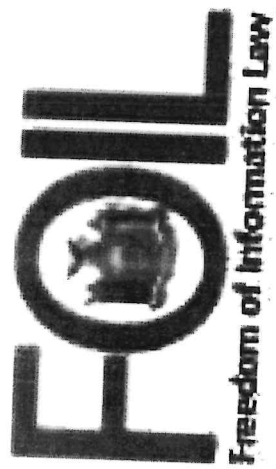




**Committee on
Open Government**

Freedom of Information Law: Refresher and Update

May 13, 2024



Public Officers Law

Article 6

Sections 84-90



Committee on
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Enactment

- The original law was enacted in 1974 and was limited in scope – access to 9 categories of records.
- Repealed and replaced with the current law in 1978 – presumption of access



Who is covered by FOIL?

FOIL governs access to agency records and the term “agency” is defined as:

“any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature.”



“Records”

POL §86(4) "Record" means any information kept, held, filed, produced or reproduced by, with or for an agency ... in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.



Reasonably Describe Records

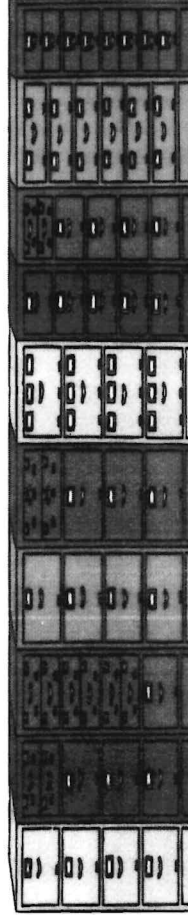
Has the applicant provided sufficient detail to allow the agency to identify the records sought?

How does your agency maintain its files?

Can the agency locate or retrieve the record with reasonable effort?

Would locating the record involve searching for the “needle in the haystack”?

Answer may be very different depending on whether they are paper or electronic records.



Email Requests

- Agencies must accept requests via e-mail.
- Agency cannot require a requestor to use its form (including electronic forms and portals), but can require that requests be made in writing
- Unless there are personal privacy concerns, an applicant for records should be permitted to remain anonymous



Permissible Grounds for Denial

- (g) are inter-agency or intra-agency materials which are not:
 - i. statistical or factual tabulations or data;
 - ii. instructions to staff that affect the public;
 - iii. final agency policy or determinations; or
 - iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or
- (h) are examination questions or answers which are requested prior to the final administration of such questions;
- (i) if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures;

REMAINDER RELATE TO RECORDS MAINTAINED PURSUANT TO VEHICLE AND TRAFFIC LAW



Unwarranted Invasion of Personal Privacy

Examples:

- Employment application of person not hired
- Home telephone numbers or personal cell numbers
- Medical information
- Public employee home addresses
- Lists of names and addresses of natural persons if used for solicitation or fund-raising purposes
- Mugshots

**** Public Employees enjoy a lesser degree of privacy than others**



Law Enforcement

2. Disclosure would cause one of the harms envisioned by the statute:
 - i. interfere with law enforcement investigations or judicial proceedings, provided however, that any agency, which is not conducting the investigation that the requested records relate to, that is considering denying access pursuant to this subparagraph shall receive confirmation from the law enforcement or investigating agency conducting the investigation that disclosure of such records will interfere with an ongoing investigation;
 - ii. deprive a person of a right to a fair trial or impartial adjudication;
 - iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
 - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures



Certification

1. When an agency indicates that it does not maintain or cannot locate a record, an applicant for the record may seek a certification to that effect. Section 89(3) of FOIL states, in part that, upon request, an agency “shall certify that it does not have possession of such record or that such record cannot be found after diligent search.”
2. When an agency provides a copy of a record, the applicant may request a certification that the copy provided is a “correct” copy of the original. This is not a certification that the content is accurate, but that the copy is a true copy of the original.



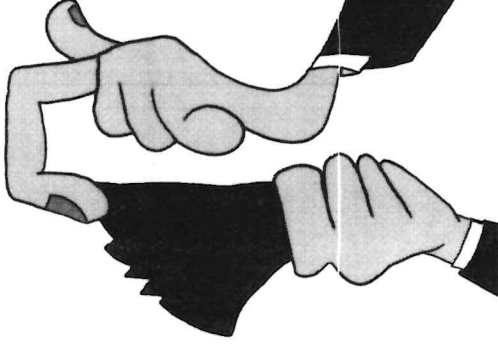
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Fees

Two Fee Structures (Cannot be combined!):

1. \$.25 per photocopy for copies up to 9x14 inches
 - Agency may not charge for search or review time
2. Actual cost of reproduction for all other records
 - This is the cost of preparing a copy of the record
 - Hourly salary of lowest paid employee capable of preparing copy – but only if it takes at least 2 hours
 - Cost of electronic storage device
 - Cost of having copy made by third party vendor
 - May not charge for search or review time



QUESTIONS??

- ANYONE is welcome to contact our office by phone or by email with questions (government employees, members of the public, media representatives, etc.)
- (518) 474-2518
- coog@dos.ny.gov



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