



Committee on  
Open Government

NEW YORK  
DEPARTMENT OF STATE

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COMMITTEE ON  
OPEN GOVERNMENT

# Your Right to Know

NEW YORK STATE  
OPEN GOVERNMENT LAWS



## **Committee on Open Government**

- **Freedom of Information Law**
- **Open Meetings Law**
- **Personal Privacy Protection Law**

## *The Committee*

The Committee on Open Government is responsible for overseeing implementation of the Freedom of Information Law (Public Officers Law §§ 84-90) and the Open Meetings Law (Public Officers Law §§ 100-111). The Freedom of Information Law governs rights of access to government records, while the Open Meetings Law concerns the conduct of meetings of public bodies and the right to attend those meetings. The Committee also oversees the Personal Privacy Protection Law.

The Committee is composed of 11 members, 5 from government and 6 from the public. The five government members are the Lieutenant Governor, the Secretary of State, whose office acts as secretariat for the Committee, the Commissioner of General Services, the Director of the Budget, and one elected local government official appointed by the Governor. Of the six public members, at least two must be or have been representatives of the news media.

The Freedom of Information Law (“FOIL”) directs the Committee to furnish advice to agencies, the public and the news media, issue regulations and report its observations and recommendations to the Governor and the Legislature annually. Similarly, under the Open Meetings Law, the Committee issues advisory opinions, reviews the operation of the law and reports its findings and recommendations annually to the Legislature.

When questions arise under either the Freedom of Information or the Open Meetings Law, the Committee staff can provide written or oral advice and attempt to resolve controversies in which rights may be unclear. Since its creation in 1974, more than 24,000 written advisory opinions have been prepared by the Committee at the request of government, the public and the news media. In addition, hundreds of thousands of verbal opinions have been provided by telephone. Staff also provides training and educational programs for government, public interest and news media organizations, as well as students on campus.

Opinions prepared since early 1993 that have educational or precedential value are maintained online, identified by means of a series of key phrases in separate indices created in relation to the Freedom of Information Law and the Open Meetings Law.

The indexes can be accessed at the following links:

FOIL Advisory Opinions - [www.dos.ny.gov/coog/foil\\_listing/findex.html](http://www.dos.ny.gov/coog/foil_listing/findex.html)

OML Advisory Opinions - [www.dos.ny.gov/coog/oml\\_listing/oindex.html](http://www.dos.ny.gov/coog/oml_listing/oindex.html)

Each index to advisory opinions is updated periodically to ensure that interested persons and government agencies have the ability to obtain opinions recently rendered.

The website also includes the following:

- The text of the Freedom of Information Law;
- Rules and Regulations of the Committee on Open Government (21 NYCRR Part 1401);
- Model Rules for Agencies;
- Sample Request for Records;
- Sample Request for Records via Email;
- Sample Appeal;
- Sample Appeal When Agency Fails to Respond in a Timely Manner;
- FOIL Case Law Summary;
- Frequently Asked Questions regarding FOIL;

- The text of the Open Meetings Law;
- Model Rules for Public Bodies;
- An Article on Boards of Ethics;
- OML Case Law Summary;
- Frequently Asked Questions regarding OML;
- The text of the Personal Privacy Protection Law (only applies to State Agencies);
- You Should Know, regarding the Personal Privacy Protection Law.

If you are unable to locate information on the website and need advice regarding either the Freedom of Information Law or the Open Meetings Law, feel free to contact:

Committee on Open Government  
NYS Department of State  
One Commerce Plaza  
99 Washington Ave  
Albany, NY 12231  
(518) 474-2518 Tel  
(518) 474-1927 Fax  
coog@dos.ny.gov

# *Freedom of Information*

The Freedom of Information Law, effective January 1, 1978, reaffirms your right to know how your government operates. It provides rights of access to records reflective of governmental decisions and policies that affect the lives of every New Yorker. The law preserves the Committee on Open Government, which was created by enactment of the original Freedom of Information Law in 1974.

## **Scope of the law**

All agencies are subject to the Freedom of Information Law, and FOIL defines “agency” to include all units of state and local government in New York State, including state agencies, public corporations and authorities, as well as any other governmental entities performing a governmental function for the state or for one or more units of local government in the state (§86(3)).

The term “agency” does not include the State Legislature or the courts. For purposes of clarity, “agency” will be used hereinafter to include all entities of government in New York, except the State Legislature and the courts, which will be discussed later.

## **What is a record?**

All records are subject to the FOIL, and the law defines “record” as “any information kept, held, filed, produced or reproduced by, with or for an agency... in any physical form whatsoever. . .” (§86(4)). It is clear that items such as audio or visual recordings, data maintained electronically, and paper records fall within the definition of “record.” An agency is not required to create a new record or provide information in response to questions to comply with the law; however, the courts have held that an agency must provide records in the form requested if it has the ability to do so. For instance, if the agency can transfer data into a requested format, the agency must do so upon payment of the proper fee.

## **Accessible records**

FOIL is based on a presumption of access, stating that all records are accessible, except records or portions of records that fall within one of eleven categories of deniable records (§87(2)).

Deniable records include records or portions thereof that:

- (a) are specifically exempted from disclosure by state or federal statute;
- (b) would if disclosed result in an unwarranted invasion of personal privacy;
- (c) would if disclosed impair present or imminent contract awards or collective bargaining negotiations;
- (d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- (e) are compiled for law enforcement purposes and which if disclosed would:
  - i. interfere with law enforcement investigations or judicial proceedings;
  - ii. deprive a person of a right to a fair trial or impartial adjudication;
  - iii. identify a confidential source or disclose confidential information relative to a criminal investigation; or
  - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (f) could if disclosed endanger the life or safety of any person;
- (g) are inter-agency or intra-agency communications, except to the extent that such materials consist of:
  - 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;
- (h) are examination questions or answers that are requested prior to the final administration of such questions; or
- (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; or
- \* (j) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-a of the vehicle and traffic law.

\* NB Repealed December 1, 2019

\* (k) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-b of the vehicle and traffic law.

\* NB Repealed December 1, 2019

\* (l) are photographs, microphotographs, videotape or other recorded images produced by a bus lane photo device prepared under authority of section eleven hundred eleven-c of the vehicle and traffic law.

\* NB Repealed September 20, 2020

\* (m) are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-b of the vehicle and traffic law.

\* NB Repealed August 30, 2018

\* (n) are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-c of the vehicle and traffic law.

\* NB There are 2 par (n)'s

\* NB Repealed July 25, 2018

\* (n) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-d of the vehicle and traffic law.

\* NB There are 2 par (n)'s

\* NB Repealed August 21, 2019

\* (o) are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-e of the vehicle and traffic law.

\* NB Repealed September 12, 2020

The categories of deniable records generally involve potentially harmful effects of disclosure. They are based in great measure upon the notion that disclosure would in some instances “impair,” “cause substantial injury,” “interfere,” “deprive,” “endanger,” etc.

One category of deniable records that does not deal directly with the effects of disclosure is exception (g), which deals with inter-agency and intra-agency materials. The intent of the exception is twofold. Written communications transmitted from an official of one agency to an official of another or between officials within an agency may be denied insofar as they consist of advice, opinions or recommendations. For example, an opinion prepared by staff which may be rejected or accepted by the head of an agency need not be made available. Statistical or factual information, on the other hand, as well as the policies and determinations upon which an agency relies in carrying out its duties are available, unless a different exception applies.

There are also special provisions in the law regarding the protection of trade secrets and critical infrastructure information. Those provisions pertain only to state agencies and enable a business entity submitting records to state agencies to request that records be kept separate and apart from all other agency records. When a request is made for records falling within these special provisions, the submitter of such records is given notice and an opportunity to justify a claim that the records would if disclosed result in substantial injury to the competitive position of commercial enterprise. A member of the public requesting records may challenge such a claim.

Generally, the law applies to existing records. Therefore, an agency need not create a record in response to a request. Nevertheless, each agency must maintain the following records:

- (a) a record of the final vote of each member in every agency proceeding in which the member votes;
- (b) a record setting forth the name, public office address, title and salary of every officer or employee of the agency; and
- (c) reasonably detailed current list by subject matter of all records in possession of an agency, whether or not the records are accessible. (§87(3))

## **Protection of privacy**

One of the exceptions to rights of access referenced earlier states that records may be withheld when disclosure would result in “an unwarranted invasion of personal privacy” (§87(2)(b)).

Unless otherwise deniable, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy when identifying details are deleted, when the person to whom a record pertains consents in writing to disclosure, or when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him or herself.

When a request is made for records that constitute a list of names and home addresses or its equivalent, the agency is permitted to require that the applicant certify that such list will not be used for solicitation or fund-raising purposes and will not sell, give or otherwise make available such lists to any other person for the purpose of allowing that person to use such list for solicitation or fund-raising purposes (§89(3)(a)).

Since 2010, agencies have been prohibited from intentionally releasing social security numbers to the public (§96-a).

## *How to Obtain Records*

### **Subject matter list**

As noted earlier, each agency must maintain a “subject matter list” (§87(3)(c)). The list is not a compilation of every record an agency has in its possession, but rather is a list of the subjects or file categories under which records are kept. It must make reference to all records in possession of an agency, whether or not the records are available. You have a right to know the kinds of records agencies maintain.

The subject matter list must be compiled in sufficient detail to permit you to identify the file category of the records sought, and it must be updated annually. Each state agency is required to post its subject matter list online. An alternative to and often a substitute for a subject matter list is a records retention schedule. Schedules regarding state and local government outside of New York City are prepared by the State Archives; those applicable in New York City are prepared by the NYC Department of Records and Information Services.

### **Regulations**

Each agency must adopt standards based upon general regulations issued by the Committee. These procedures describe how you can inspect and copy records. The Committee’s regulations and a model designed to enable agencies to easily comply are available on the Committee’s website. See Regulations of the Committee on Open Government and Model Rules for Agencies.

### **Designation of records access officer**

Under the Committee’s regulations, each agency must appoint one or more persons as records access officer. The records access officer has the duty of coordinating an agency’s response to public requests for records in a timely fashion. In addition, the records access officer is responsible for ensuring that agency personnel assist in identifying records sought, make the records promptly available or deny access in writing, provide copies of records or permit you to make copies, certifying that a copy is a true copy and, if the records cannot be found, certify either that the agency does not have possession of the requested records or that the agency does have the records, but they cannot be found after diligent search.

The regulations also state that the public shall continue to have access to records through officials who have been authorized previously to make information available.

### **Requests for records**

An agency may ask you to make your request in writing. See Sample Request for Records. The law requires you to “reasonably describe” the record in which you are interested (§ 89(3)(a)). Whether a request reasonably describes records often relates to the nature of an agency’s filing or recordkeeping system. If records are kept alphabetically, a request for records involving an event occurring on a certain date might not reasonably describe the records. Locating the records in that situation might involve a search for the needle in the haystack, and an agency is not required to engage in that degree of effort. The responsibility of identifying and locating records sought rests to an extent upon the agency. If possible, you should supply dates, titles, file designations, or any other information that will help agency staff to locate requested records, and it may be worthwhile to find out how an agency keeps the records of your interest (i.e., alphabetically, chronologically or by location) so that a proper request can be made.

The law also provides that agencies must accept requests and transmit records requested via email when they have the ability to do so. See Sample Request for Records via Email.

Within five business days of the receipt of a written request for a record reasonably described, the agency must make the record available, deny access in writing giving the reasons for denial, or furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied, which must be reasonable in consideration of attendant circumstances, such as the volume or complexity of the request. The approximate date ordinarily cannot exceed 20 business days from the date of the acknowledgment of the receipt of a request. If it is determined that more than 20 business days will be needed to grant a request in whole or in part, the agency’s acknowledgment must explain the reason and provide a specific date within which it will grant a request in whole or in part. When a response is delayed beyond 20 business days, it must be reasonable in relation to the circumstances of the request.

If the agency fails to abide by any of the requirements concerning the time within which it must respond to a request, the request is deemed denied, and the person seeking the records may appeal the denial. For more information, see Explanation of Time Limits for Responding to Requests.

### **Fees**

Copies of records must be made available on request. Except when a different fee is prescribed by statute (an act of the State Legislature), an agency may not charge for inspection, certification or search for records, or charge in excess of 25 cents per photocopy up to 9 by 14 inches (§87(1)(b)(iii)). Fees for copies of other records may be charged based upon the actual cost of reproduction. There may be no basis to charge for copies of records that are transmitted electronically; however, when requesting electronic data, there are occasions when the agency can charge for employee time spent preparing the electronic data. For more information see 2008 News/Fees for Electronic Information.

## **Denial of access and appeal**

Unless a denial of a request occurs due to a failure to respond in a timely manner, a denial of access must be in writing, stating the reason for the denial and advising you of your right to appeal to the head or governing body of the agency or the person designated to determine appeals by the head or governing body of the agency. You may appeal within 30 days of a denial.

Upon receipt of the appeal, the agency head, governing body or appeals officer has 10 business days to fully explain in writing the reasons for further denial of access or to provide access to the records. Copies of appeals and the determinations thereon must be sent by the agency to the Committee on Open Government (§89(4)(a)). A failure to determine an appeal within 10 business days of its receipt is considered a denial of the appeal.

You may seek judicial review of a final agency denial by means of a proceeding initiated under Article 78 of the Civil Practice Law and Rules. When a denial is based on an exception to rights of access, the agency has the burden of proving that the record sought falls within the exception (§89(4)(b)).

The Freedom of Information Law permits a court, in its discretion, to award reasonable attorney's fees to a person denied access to records. To do so, a court must find that the person denied access "substantially prevailed", and either that the agency had no reasonable basis for denying access or that it failed to comply with the time limits for responding to a request or an appeal.

### ***Access to Legislative Records***

Section 88 of the Freedom of Information Law applies only to the State Legislature and provides access to the following records in its possession:

- (a) bills, fiscal notes, introducers' bill memoranda, resolutions and index records;
- (b) messages received from the Governor or the other house of the Legislature, as well as home rule messages;
- (c) legislative notification of the proposed adoption of rules by an agency;
- (d) transcripts, minutes, journal records of public sessions, including meetings of committees, subcommittees and public hearings, as well as the records of attendance and any votes taken;
- (e) internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;
- (f) administrative staff manuals and instructions to staff that affect the public;
- (g) final reports and formal opinions submitted to the Legislature;
- (h) final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the Legislature;
- (i) any other records made available by any other provision of law; and
- (j) external audits conducted pursuant to section ninety-two of the legislative law and schedules issued pursuant to subdivision two of section ninety of the legislative law.

In addition, each house of the Legislature must maintain and make available:

- (a) a record of votes of each member in each session, committee and subcommittee meeting in which the member votes;
- (b) a payroll record setting forth the name, public office address, title and salary of every officer or employee; and
- (c) a current list, reasonably detailed, by subject matter of any record required to be made available by section 88.

Each house is required to issue regulations pertaining to the procedural aspects of the law. Requests should be directed to the public information officers of the respective houses.

### ***Access to Court Records***

Although the courts are not subject to the Freedom of Information Law, § 255 of the Judiciary Law has long required the clerk of a court to "diligently search the files, papers, records and dockets in his office" and upon payment of a fee make copies of such items. Justice Courts are covered by §2019-a of the Uniform Justice Court Act, which states that "records and dockets of the court except as otherwise provided by law shall be at reasonable times open for inspection to the public..."

Agencies charged with the responsibility of administering the judicial branch are not courts and therefore are treated as agencies subject to the Freedom of Information Law.



# Sample Letters

## Requesting Records (Sample)

*Records Access Officer*

*Name of Agency*

*Address of Agency*

*City, NY, ZIP code*

*Re: Freedom of Information*

*Law Request*

*Records Access Officer:*

*Records Access Officer:*

*Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request records or portions thereof pertaining to (or containing the following) \_\_\_\_\_ (attempt to identify the records in which you are interested as clearly as possible). If my request appears to be extensive or fails to reasonably describe the records, please contact me in writing or by phone at \_\_\_\_\_.*

*If there are any fees for copying the records requested, please inform me before filling the request (or: ... please supply the records without informing me if the fees are not in excess of \$\_\_\_\_\_).*

*As you know, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly. If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.*

*Sincerely,*

*Signature*

*Name*

*Address*

*City, State, ZIP code*

## **Requesting Records via Email (Sample)**

*(It has been suggested that agencies create an email address dedicated to the receipt of requests. It is recommended that you review the website of the agency maintaining the records that you seek in order to locate its email address and its records access officer.)*

*(The subject line of your request should be "FOIL Request".)*

*Dear Records Access Officer:*

*Please email the following records if possible (include as much detail about the record as possible, such as relevant dates, names, descriptions, etc.):*

*OR*

*Please advise me of the appropriate time during normal business hours for inspecting the following records prior to obtaining copies (include as much detail about the records as possible, including relevant dates, names, descriptions, etc.):*

*OR*

*Please inform me of the cost of providing paper copies of the following records (include as much detail about the records as possible, including relevant dates, names, descriptions, etc.).*

*AND/OR*

*If all of the requested records cannot be emailed to me, please inform me by email of the portions that can be emailed and advise me of the cost for reproducing the remainder of the records requested (\$0.25 per page or actual cost of reproduction).*

*If the requested records cannot be emailed to me due to the volume of records identified in response to my request, please advise me of the actual cost of copying all records onto a storage device or other media.*

*If my request is too broad or does not reasonably describe the records, please contact me via email so that I may clarify my request, and when appropriate inform me of the manner in which records are filed, retrieved or generated.*

*If it is necessary to modify my request, and an email response is not preferred, please contact me at the following telephone number:*

\_\_\_\_\_.

*If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name, address and email address of the person or body to whom an appeal should be directed.*

*(Name)*

*(Address, if records are to be mailed).*

## Appeal A Written Denial (Sample)

*Name of Agency Official*

*Appeals Officer*

*Name of Agency*

*Address of Agency*

*City, NY, ZIP code*

*Re: Freedom of Information*

*Law Appeal*

*Dear \_\_\_\_\_:*

*I hereby appeal the denial of access regarding my request, which was made on \_\_\_\_\_ (date) and sent to \_\_\_\_\_ (records access officer, name and address of agency).*

*The records that were denied include: \_\_\_\_\_ (describe the records that were denied to the extent possible and, if possible, offer reasons for disagreeing with the denial, i.e., by attaching an opinion of the Committee on Open Government acquired for its website).*

*As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal. If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.*

*In addition, please be advised that the Freedom of Information Law directs that all appeals and the determinations that follow be sent to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.*

*Sincerely,*

*Signature*

*Name*

*Address*

*City, State, ZIP code*

## Appeal A Denial due to an Agency's Failure to Respond in a Timely Manner (Sample)

*FOIL Appeals Officer*

*Name of Agency*

*Address of Agency*

*City, NY, ZIP code*

*Re: Freedom of Information*

*Law Appeal*

Dear \_\_\_\_\_:

*I requested (describe the records) by written request made on \_\_\_\_\_ (date). More than five business days have passed since the receipt of the request without having received a response... or... Although the receipt of the request was acknowledged and I was informed that a response would be given by \_\_\_\_\_ (date), no response has been given. Consequently, I consider the request to have been denied, and I am appealing on that basis.*

*As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal. If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.*

*In addition, please be advised that the Freedom of Information Law directs that all appeals and the determinations that follow be sent to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.*

*Sincerely,*

*Signature*

*Name*

*Address*

*City, State, ZIP code*