

## **FREEDOM OF INFORMATION LAW FAQ**

### **Who is subject to the Freedom of Information Law?**

Any New York 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 is subject to the Law. Each of those governmental entities is an "agency." The courts are outside its coverage but often must disclose records under other provisions of law. The State Legislature is covered by the Freedom of Information Law, but is treated differently from agencies generally. Private corporations or companies are not subject to the Freedom of Information Law.

### **Who is required to receive and respond to requests via email?**

Every agency subject to the Freedom of Information Law, provided that it has the ability to receive requests for records from the public and transmit records by means of email.

### **To whom should I direct my request?**

A request should be directed to the "records access officer" of the agency, the person having the duty of coordinating an agency's response to a request. The request should reasonably describe the records sought and you should provide sufficient detail to enable agency staff to locate the records. If the agency has email, an email request may be made to the email address designated by the agency for such purpose. The subject line of the email should be clearly marked "FOIL Request."

### **What records are available?**

All records are available, unless an exception permits an agency to deny access. Most of the exceptions are based upon common sense and the potential for harm that would arise by means of disclosure. If disclosure of records would be damaging to an individual or preclude a government agency from carrying out its duties, it is likely that some aspects of the records may be withheld. *NOTE: Not all records are maintained electronically, and some records which are maintained electronically may not be available in a particular electronic format.*

### **How long must I wait to get access to records?**

When an agency receives a request, §89(3) of the Freedom of Information Law requires that it has five business days to grant or deny access in whole or in part, or if more time is needed, to acknowledge the receipt of the request in writing. The acknowledgement must include an approximate date that indicates when an agency will grant or deny the request. The date must be reasonable under the circumstances of the request, and in most instances, it cannot exceed twenty additional business days. If more than twenty additional business days is needed, the agency must provide an explanation and a date certain within which it will grant or deny the request in whole or in part. That date, too, must be reasonable in consideration of the facts (i.e., the volume or complexity of the request, the need to search for records, or the obligation to review records to determine rights of access).

Because an electronic request may be sent at any time, for purposes of determining the date of receipt and the required response time frame, an email request is determined to have been received on the first business day on which it was received during normal business hours. For example, if an email request is sent at 6 pm on Tuesday, it is deemed to have been received at 9 am on Wednesday.

A failure to comply with any of the time limitations imposed by law would constitute a denial of a request that may be appealed in accordance with §89(4)(a) of the Freedom of Information Law. That provision states that an appeal must be made within thirty days of the denial. The appeal should be made to the person designated by the agency to determine appeals or the chief executive of the agency.

The agency is required to respond to the appeal within ten business days of the receipt of the appeal by granting access to the records or fully explaining the reasons for further denial in writing. If a determination on the appeal is not rendered within ten business days, the failure to do so constitutes a denial of the appeal. In that circumstance, you may initiate a proceeding to challenge the denial of access under Article 78 of the Civil Practice Law and Rules.

**Can I inspect records instead of paying the fees?**

Yes. Any person has the right to inspect accessible records at no charge. If portions of the records may be withheld, however, the agency is permitted to require payment for redacted copies of records. If portions of electronic records can reasonably be redacted electronically, prior to disclosure, no payment can be required.

**Does the Freedom of Information Law apply to computer records?**

Yes. The term "record" is defined to include all information kept, held, filed, produced or reproduced by, with or for an agency, in any physical form whatsoever. Therefore, the Freedom of Information Law clearly applies to government records generated, received, or maintained electronically.

**Do I get to choose in which electronic format the records are sent?**

If an agency has reasonable means to convert accessible records from one electronic format into another more desirable format, it must do so at your request.

**Do I have to give a reason why I want public records?**

No. A person requesting records cannot be required to provide a reason or indicate the intended use of the record might be. The only instance in which the purpose of a request is relevant is when the request is for a list of names and residence addresses. Only in that instance is the agency authorized to seek an assurance that the list will not be used for commercial or fund-raising purposes; if it is determined that a list will be used for those purposes, an agency can deny access.

**I asked a local government official a question about his office, but he didn't answer. What can I do to make him answer?**

The Freedom of Information Law pertains to records; it is not intended to be used as a vehicle for cross examining government officials or employees. Therefore, an agency is not required to answer questions or to create a new record in response to questions. While agency staff may answer questions, and many do, that kind of service is separate from the requirements of the Freedom of Information Law, which deals with requests for existing records.

**Do I have a right to know how government spends money?**

Yes. Records reflective of government expenditures are generally available. Also, every agency is required to create a payroll record which indicates the name, public office address, title and salary of every officer or employee of the agency.

**Can an agency deny my request because it is too broad or too vague?**

An agency may reject a request that does not "reasonably describe" records. If the request is too vague to answer, the agency must seek clarification of the request, and when appropriate, indicate the manner in which records are filed, retrieved or generated. Also, the nature of an agency's filing or record retrieval system is relevant to whether a request reasonably describes records. If locating a record involves the equivalent of searching for the needle in the haystack, the request likely does not reasonably describe the record. In that instance, the agency should be contacted to learn how its records are kept or filed.