

FREEDOM OF INFORMATION LAW

Frequently Asked Questions

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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. 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.

Do I contact the Committee on Open Government to get public records?

The Committee does not maintain records generally. To obtain records, you must contact the agency that you believe maintains possession of the records. For example, if you are interested in obtaining minutes of a school board meeting, your request should be made to the school district.

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.

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.

How long must I wait to get access to records?

Section 89(3) of the Freedom of Information Law states in part the following:

"Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date when such request will be granted or denied..."

If neither a response to a request nor an acknowledgment of the receipt of a request is given within five business days, or if an agency delays responding for an unreasonable time after it acknowledges that a request has been received, a request may be considered to have been constructively denied. In such a circumstance, the denial may be appealed in accordance with §89(4)(a) of the Freedom of Information Law. That provision states in relevant part the following:

"...any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive, or governing body, who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought."

In addition, it has been held that when an appeal is made but a determination is not rendered within ten business days of the receipt of the appeal as required under §89(4)(a) of the Freedom of Information Law, the appellant has exhausted his or her administrative remedies and may initiate a challenge to a constructive denial of access under Article 78 of the Civil Practice Rules [Floyd v. McGuire, 87 AD 2d 388, appeal dismissed 57 NY 2d 774 (1982)].

How much can I be charged for public records?

An agency may charge up to 25 cents per photocopy not in excess of 9 by 14 inches, or in the case of records that cannot be photocopied, the actual cost of reproduction (for example, photographs, computer disks, tape recordings, etc.), unless otherwise prescribed by statute. An agency cannot charge for search or clerical time.

Can I inspect records instead of paying the fees?

Yes. Any person has the right to inspect accessible records at no charge. However, there may be situations in which some aspects of a record—but not the entire record—may be properly withheld. In that event, an applicant would not have the right to inspect the record. However, the agency may prepare a redacted copy and charge the established fee.

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 have to give a reason why I want public records?

No. An agency cannot ask a requester why he or she wants records or what the intended use of the record might be. The only instance in which an agency can ask why a person

wants a record is when the request is for a list of names and home addresses. The agency is 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 these 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 the government spends money?

Yes. Records reflective of government expenditures are generally available. Also, an 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.