

21 NYCRR PART 1401

PUBLIC ACCESS TO RECORDS OF STATE AND LOCAL AGENCIES, INCLUDING COUNTIES, CITIES, TOWNS, VILLAGES, SCHOOL DISTRICTS AND FIRE DISTRICTS

[1401.1 Purpose and scope](#)

[1401.2 Designation of records access officer](#)

[1401.3 Location](#)

[1401.4 Hours for public inspection](#)

[1401.5 Responses to request for records](#)

[1401.6 Subject matter list](#)

[1401.7 Denial of access to records](#)

[1401.8 Fees](#)

[1401.9 Public notice](#)

[1401.10 Severability](#)

1401.1 Purpose and scope.

- (a) The people's right to know the process of government decision making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.
- (b) This Part provides information concerning the procedures by which records may be obtained from an agency as defined by subdivision 3 of section 86 of the Public Officers Law. No agency regulations shall be more restrictive than this Part.
- (c) Agency personnel shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.
- (d) Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.
- (e) Agencies shall amend existing regulations or adopt new regulations to implement the Freedom of Information Law in conformity with this Part.

1401.2 Designation of records access officer.

- (a) The governing body of a public corporation and the head of an executive agency or governing body of other agencies shall be responsible for insuring compliance with the regulations herein, and shall designate one or more persons as records access officer by name or by specific job title and business address, and when requests are accepted via email, an email address, who shall have the duty of coordinating agency response to public requests for access to records. The designation of one or more records access officers shall not be construed to prohibit officials

who have in the past been authorized to make records or information available to the public from continuing to do so.

(b) The records access officer is responsible for assuring that agency personnel:

- (1) Maintain an up-to-date subject matter list.
- (2) Assist persons seeking records to identify the records sought, if necessary, and when appropriate, indicate the manner in which the records are filed, retrieved or generated to assist persons in reasonably describing records.
- (3) Contact persons seeking records when a request is voluminous or when locating the records sought involves substantial effort, so that agency personnel may ascertain the nature of records of primary interest and attempt to reasonably reduce the volume of the records requested.
- (4) Upon locating the records, take one of the following actions:
 - (i) make records promptly available for inspection; or
 - (ii) deny access to the records in whole or in part and explain in writing the reasons therefor.

(5) Upon request for copies of records:

- (i) make a copy available upon payment or offer to pay established fees, if any; or
- (ii) permit the requester to copy those records.

(6) Upon request, certify that a record is a true copy.

(7) Upon failure to locate records, certify that:

- (i) the agency is not the custodian for such records; or
- (ii) the records of which the agency is a custodian cannot be found after diligent search.

1401.3 Location.

Each agency shall designate the locations where records shall be available for public inspection and copying.

1401.4 Hours for public inspection.

(a) Each agency shall accept requests for public access to records and produce records during all hours they are regularly open for business.

(b) In agencies which do not have daily regular business hours, a written procedure shall be established by which a person may arrange an appointment to inspect and copy records. Such procedure shall include the name, position, address and phone number of the party to be contacted for the purpose of making an appointment.

1401.5 Responses to requests for records.

(a) An agency may require that a request be made in writing or may make records available upon oral request.

(b) When an agency maintains requested records on the internet, a response shall inform a requester that the records are accessible via the internet and in printed form either on paper or other information storage medium.

(c) An agency shall respond to a request within five business days of the receipt of a request by:

(1) informing a person requesting records that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable that person to request records reasonably described;

(2) granting or denying access to records in whole or in part;

(3) acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than twenty business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within twenty business days from the date of such acknowledgment, providing a statement in writing stating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or

(4) if the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within twenty business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing within twenty business days of such acknowledgment stating the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.

(d) In determining a reasonable time for granting or denying a request under the circumstances of a request, agency personnel shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on an agency's ability to grant access to records promptly and within a reasonable time.

(e) A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed. Such failure shall include situations in which an agency:

(1) fails to grant access to the records sought, deny access in writing or acknowledge the receipt of a request within five business days of the receipt of a request;

(2) acknowledges the receipt of a request within five business days but fails to furnish an approximate date when it will grant or deny a request in whole or in part;

(3) furnishes an acknowledgment of the receipt of a request within five business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request;

(4) fails to respond to a request within a reasonable time after the approximate date given or within twenty business days after the date of its acknowledgment of the receipt of a request;

(5) determines to grant a request in whole or in part within twenty business days of its acknowledgment of the receipt of a request, but fails to do so, unless the agency provides the reason for its inability to do so in writing and a date certain within which the request will be granted in whole or in part;

(6) does not grant a request in whole or in part within twenty business days of its acknowledgment of the receipt of a request and fails to provide the reason in writing explaining its inability to do so and a date certain by which the request will be granted in whole or in part; or

(7) responds to a request, stating that more than twenty business days is needed to grant or deny the request in whole or in part and provides a date certain within which it will do so, but such date is unreasonable under the circumstances of the request.

1401.6 Subject matter list.

(a) Each agency shall maintain a reasonably detailed current list, by subject matter, of all records in its possession, whether or not records are available pursuant to subdivision 2 of section 87 of the Public Officers Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) Each agency shall update its subject matter list annually, and the date of the most recent update shall be conspicuously indicated on the list.

(d) Each state agency that maintains a website shall post its current list on its website and such posting shall be linked to the website of the Committee on Open Government. Any state agency that does not maintain a website shall arrange to have its list posted on the website of the Committee on Open Government.

1401.7 Denial of access to records.

(a) The governing body of a public corporation or the head, chief executive or governing body of other agencies shall determine appeals or shall designate a person or body to hear appeals regarding denial of access to records under the Freedom of Information Law.

(b) Denial of access shall be in writing stating the reason therefor and advising the person denied access of his or her right to appeal to the person or body designated to determine appeals, and that person or body shall be identified by name, title, business address and business telephone number. The records access officer shall not be the appeals officer.

(c) If an agency fails to respond to a request as required in section 1401.5 of this Part, such failure shall be deemed a denial of access by the agency.

(d) any person denied access to records may appeal within 30 days of a denial.

(e) the time for deciding an appeal by the individual or body designated to determine appeals shall commence upon receipt of written appeal identifying:

- (1) the date and location of requests for records;
- (2) a description, to the extent possible, of the records that were denied; and
- (3) name and return address of the appellant.

(f) A failure to determine an appeal within ten business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.

(g) The agency shall transmit to the Committee on Open Government copies of all appeals upon receipt of an appeal. Such copies shall be addressed to: the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Suite 650, Albany, NY 12231.

(h) The person or body designated to hear appeals shall inform the appellant and the Committee on Open Government of its determination in writing within 10 business days of receipt of an appeal. The determination shall be transmitted to the Committee on Open Government in the same manner as set forth in subdivision (g) of this section.

(i) A final denial of access to a requested record, as provided for in subdivision (g) of this section, shall be subject to court review, as provided for in article 78 of the Civil Practice Laws and Rules.

1401.8 Fees. Except when a different fee is otherwise prescribed by statute:

(a) An agency shall not charge a fee for the following:

- (1) inspection of records for which no redaction is permitted;
- (2) search for, administrative costs of, or employee time to prepare photocopies of records;
- (3) review of the content of requested records to determine the extent to which records must be disclosed or may be withheld; or
- (4) any certification required pursuant to this Part.

(b) An agency may charge a fee for photocopies of records, provided that:

- (1) the fee shall not exceed 25 cents per page for photocopies not exceeding 9 by 14 inches. This section shall not be construed to mandate the raising of fees when an agency in the past has charged less than 25 cents for such copies;
- (2) the fee for photocopies of records in excess of 9 x 14 inches shall not exceed the actual cost of reproduction; or
- (3) an agency has the authority to redact portions of a paper record and does so prior to disclosure of the record by making a photocopy from which the proper redactions are made.

(c) The fee an agency may charge for a copy of any other record is based on the actual cost of reproduction and may include only the following:

- (i) an amount equal to the hourly salary attributed to the lowest paid employee who has the necessary skill required to prepare a copy of the requested record, but only when more than two hours of the employee's time is necessary to do so; and
- (ii) the actual cost of the storage devices or media provided to the person making the request in complying with such request; or
- (iii) the actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency's information technology equipment is inadequate to prepare a copy, and if such service is used to prepare the copy.

(d) When an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, or when doing so requires less employee time than engaging in manual retrieval or redactions from non-electronic records, the agency shall be required to retrieve or extract such record or data electronically. In such case, the agency may charge a fee in accordance with paragraph (c)(i) and (ii) above.

(e) An agency shall inform a person requesting a record of the estimated cost of preparing a copy of the record if more than two hours of an agency employee's time is needed, or if it is necessary to retain an outside professional service to prepare a copy of the record.

(f) An agency may require that the fee for copying or reproducing a record be paid in advance of the preparation of such copy.

(g) An agency may waive a fee in whole or in part when making copies of records available.

1401.9 Public notice.

Each agency shall publicize by posting in a conspicuous location and/or by publication in a local newspaper of general circulation:

(a) The locations where records shall be made available for inspection and copying.

(b) The name, title, business address and business telephone number of the designated records access officers.

(c) The right to appeal by any person denied access to a record and the name and business address of the person or body to whom an appeal is to be directed.

1401.10 Severability.

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.