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## **PART 311**

### **PUBLIC ACCESS TO RECORDS OF STATE UNIVERSITY OF NEW YORK\***

#### **Sec**

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#### **§ 311.1 Designation of records access officer.**

(a) The chancellor for system administration of the university and the chief administrative officer of each State-operated institution are responsible for insuring compliance with the regulations herein. For the purposes of system administration of the university, the Secretary of the University, Central Administration Services, or designee, State University Plaza, Albany, NY 12246, FOIL@suny.edu, shall serve as records access officer. A records access officer shall be designated by the chief administrative officer of each campus. The name, title and business address, and when requests are accepted via email, an email address, of the records access officer may be obtained from the office of the chief administrative officer of each campus.

(b) Records access officers are responsible for insuring appropriate agency response to public requests for access to records. The designation of 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. Records access officers shall insure that personnel:

- (1) maintain an up-to-date subject matter list;
- (2) assist the requester in identifying requested records, if necessary;
- (3)  
contact persons seeking records when a request is voluminous or when locating the records involves substantial effort, so that personnel may ascertain the nature of the records of primary interest and attempt to reasonably reduce the volume of records requested;
- (4) upon locating the records, take one of the following actions:
  - (i) make records available for inspection; or
  - (ii) deny access to the records in whole or in part and explain in writing the reasons therefore;
- (5) upon request for copies of records, make a copy available upon payment of established fees, if any, in accordance with Section 311.18.
- (6) upon request, certify that a record is a true copy; and

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

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

**§ 311.2 Location.**

Records shall be available for public inspection and copying at the records access office or at the location at which they are maintained.

**§ 311.3 Hours for public inspection.**

Requests for public access to records shall be accepted and records produced during all regular business hours.

**§ 311.4 Requests for public access to records.**

(a) A written request may be required, but oral requests may be accepted in the discretion of the records access officer.

(b) The records access officer shall accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail, provided that the written requests do not seek a response in some other form.

(c) A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.

(d) If agency records are maintained on the internet, the requester shall be informed that the records are accessible via the internet and in printed form either on paper or other information storage medium.

(e) A response shall be given within five business days of receipt of a request by:

- (1) informing the requester that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable the requester 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 indicating 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 specifying 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.

(f) In determining a reasonable time for granting or denying a request under the circumstances of a request, records access officers 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 campus or system administration, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.

(g) Failure by the records access officer to comply with the time limitations described herein shall constitute a denial of access.

**§ 311.5 Subject matter list.**

(a) Each records access officer shall maintain a reasonably detailed current list, by subject matter, of all records in his or her possession, whether or not records are available pursuant to subdivision 2 of section 87 of the Public

Officers Law (Freedom of Information Law).

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

(c) The subject matter list shall be updated annually. The date of the most recent update shall appear on the first page of the subject matter list.

**§ 311.6 Records containing trade secrets.**

(a) Any person who submits records to the university may at the time of submission request that the university except such records or parts of such records from disclosure as trade secrets pursuant to sections 87(2)(d) and 89(5) of the Public Officers Law. The request for an exception shall be made in writing to the records access officer at the campus where the records have been submitted and shall state the reasons why the records should be accepted from disclosure. Such records shall be accepted from disclosure and maintained apart from all other records until 15 days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction. Where the request for exception itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

(b) The records access officer shall, at any time, or upon receipt of a request for access to such records, determine whether the request for exception will be granted, continued, terminated or denied. Before making such determination, the records access officer shall:

(1) notify the person who requested the exception that a determination is to be made whether such exception should be granted or continued; and

(2) permit the person who requested the exception, within ten business days of receipt of such notification, to submit a written statement of the necessity for granting or continuing such exception.

(c) Within seven business days of receipt of such statement or within seven business days of the expiration of the period prescribed for submission of such statement, the records access officer shall issue a written determination granting, continuing, terminating or denying the exception and stating the reasons therefor. Copies of such determination shall be transmitted to the person, if any, requesting the records, the person who requested the exception and the Committee on Open Government.

(d) A denial of an exception from disclosure may be appealed by the person submitting the records and a denial of access to the records may be appealed by the person requesting the records. The following person shall determine such appeals:

Chief Operating Officer, or Designee

State University of New York

State University Plaza

Albany, NY 12246

Telephone: (518) 320-1400

The appeal shall be in writing and shall be made within seven business days of receipt of a denial. The appeal shall be determined within 10 business days of receipt of the appeal. Written notice of the determination and a statement of reasons for the determination shall be served upon the person, if any, requesting the records, the person who requested the exception and the Committee on Open Government.

(e) A proceeding to review a denial of an exemption from disclosure or a denial of access to the records may be brought under Article 78 of the New York Civil Practice Law and Rules by the person submitting the records or the person requesting the records, within 15 days of service of the denial.

(f) Records or parts of records identified as trade secrets shall be maintained in a safe and secure manner and shall be charged to the custody of the head of the department or office in which the records are filed. That individual shall specify which persons subject to his or her supervision may inspect such records. The records access officer, the Secretary of the University, or designee, and the Chief Operating Officer, or designee, shall have the right to inspect such records.

**§ 311.7 Denial of access to records.**

(a) This section shall not apply to records or parts of records alleged to contain trade secrets.

(b) Denial of access to records shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the FOIL Appeals Officer, who shall be identified by name, title, business address and business telephone number.

(c) If requested records are not provided promptly, as required in section 311.4, such failure shall also be deemed a denial of access.

(d) The following person shall determine appeals for denial of access to records under the Freedom of Information Law:

Chief Operating Officer, or Designee

State University of New York

State University of Plaza

Albany, NY 12246

Telephone: (518) 320-1400

(e) Any person denied access to records may appeal within thirty days of a denial.

(f) The time for deciding an appeal by the individual designated to determine appeals shall commence upon receipt of a written appeal identifying:

- (1) the date and the location of the requests for records;
- (2) a description, to the extent possible, of the records to which the requester was denied access; and
- (3) the name and return address of the person denied access.

(g) 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.

(h) The person or body designated to determine appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government

Department of State

One Commerce Plaza, Suite 650

99 Washington Avenue

Albany, NY 12231

(i) The person or body designated to determine appeals shall inform the appellant and the Committee on Open Government of its determination in writing within ten 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 (h) of this section.

**§ 311.8 Fees.**

(a) There shall be no fee charged for:

- (1) inspection of records for which no redaction is permitted;
- (2) search for, the administrative costs of, or employee time to prepare photocopies of records; or
- (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 pursuant to this Part.

(b) Fees for photocopies of records may be charged, provided that:

- (1) the fee shall not exceed 25 cents per page for photocopies not larger than 9 by 14 inches; and
- (2) the fee for photocopies of records in excess of 9 by 14 inches shall not exceed the actual cost

of reproduction.

(c) Fees for other records may be charged based on the actual cost of reproduction of a record, which may include only the following:

(1) an amount equal to the hourly salary attributed to the lowest paid employee who has the requisite skill 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;

(2) the actual cost of the storage devices or media provided to the requester in complying with the request; or

(3) the actual cost to engage an outside professional service to prepare a copy of a record, but only when system administration or campus is unable, due to technological limitations, to prepare a copy of the record and if such service is used to prepare the copy;

(d) When system administration or the campus 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 retrieval or extraction of such record or data must be accomplished electronically. In such case, a fee may be charged in accordance with paragraph (c)(1) and (2) above.

(e) The requester shall be informed of the estimated cost of preparing a copy of a record if more than two hours of an employee's time is needed, or if it is necessary to retain an outside professional service to prepare a copy of the record.

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

**§ 311.9 Public notice.**

A notice containing the title or name and business address of the records access officer and appeals person or body and the location where records can be seen or copied shall be posted in a conspicuous location wherever records are kept.

**§ 311.10 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.

**\*Please refer to the University Policy on Freedom of Information Law Compliance for names and addresses of current contacts in relation to this regulation.**