

 <p>Category: Legal and Compliance Student Affairs</p> <p>Responsible Office: <a href="#">University Counsel</a></p>	<p><b>Other Requirement Title:</b> FOIL (Compliance with Freedom of Information Law)</p> <p>Document Number: 6601</p> <p>Effective Date: January 01, 1987</p> <p>This procedure item applies to: Community Colleges State-Operated Campuses Statutory Colleges</p>
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## Summary

**PLEASE NOTE: The University is in the rule making process to amend 8 NYCRR Part 311 (Public access to records of State University of New York) in accordance with recent amendments to The Freedom of Information Law. Please see Public Officers Law §§ 84–90 for the current statutory provisions.**

The Freedom of Information Law (Public Officers Law §§ 84–90) requires that the State University of New York (University) make certain records available to the public. The law requires each campus and the system administration of the University to designate records access officers. Requests for information from the campus or the system administration should be directed to the respective records access officer at each location, as appropriate.

All requests for information must be acted upon within five business days. If the University or campus is unable to answer an applicant's request within five days of receipt, it must acknowledge the request and inform the applicant of the approximate and reasonable time when the request will be answered. If the records access officers determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the University or campus shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.

An applicant may appeal if the University or campus has not acted within ten business days of the acknowledgment. The University or campus may either grant or deny access to the records requested, or certify that it does not have or cannot find the records after a diligent search. Records involving trade secrets are subject to separate procedures and requirements under the Freedom of Information Law (FOIL). Appeals from a denial of access may be taken within 30 days.

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## Requirement

### Public Access to Records of the State University of New York

The Freedom of Information Law (Public Officers Law §§ 84–90) requires that the State University of New York

(University) make certain records available to the public. The law requires each campus and the system administration of the University to designate records access officers. Requests for information from the campus or the system administration should be directed to the respective records access officer at each location, as appropriate.

1. Designation of records access officer

a. The chancellor for the system administration of the University and the president of each state-operated campus and community college are responsible for insuring compliance with the regulations herein. For the purposes of central administration of the University, the vice chancellor & secretary of the University, System 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 president 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 president of each campus.

b. Records access officers are responsible for insuring appropriate campus or University 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:

i. maintain an up-to-date subject matter list;

ii. assist the requester in identifying requested records, if necessary;

iii. take one of the following actions upon locating records:

• make records available for inspection; or

• deny access to the records in whole or in part and explain in writing the reasons therefore;

iv. upon request for copies of records, make a copy available upon payment of 25 cents per page;

v. upon request, certify that a record is a true copy; and

vi. upon failure to locate records, certify that:

• the University or campus is not the custodian of such records; or

• the records of which the University or campus is a custodian cannot be found after diligent search.

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.

3. Hours for public inspection

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

4. Requests for public access to records

- - a. A written request may be required, but oral requests may be accepted when records are readily

available.

- b. A response shall be given, regarding any request reasonably describing the records or records sought, within five business days of receipt of the request.
- 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 the records access officer does not provide or deny access to the record sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when the request will be granted or denied. If the records access officer determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the records access officer shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.
- e. Provided the records access officer has reasonable means available, he or she 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.
- f. Failure by the records access officer to comply with the time limitations described herein shall constitute a denial of access.

5. Subject matter list

The University 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 NYS Public Officers Law (Freedom of Information Law).

6. Records containing trade secrets

- a. Any person who submits records to the university may 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 excepted from disclosure. Such records shall be excepted from disclosure and maintained apart from all other records until 15 days after the entitlement to such exception has been finally determined.
- 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 doing so, the record access officer shall:
  - i. notify the person who requested the exception that a determination is to be made whether such exception should be granted or continued; and
  - ii. permit the person who requested the exception, within 10 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 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 therefore. 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 officer shall hear such appeals:

FOIL Appeals Officer  
State University of New York  
State University Plaza  
Albany, New York 12246  
Telephone: (518) 473-1825

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. 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 campus records access officer, the System Administration records access officer or designee, and the vice chancellor for governmental and University relations, or designee, shall have the right to inspect such records.

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 therefore and advising the requester of the right to appeal to the FOIL Appeals Officer.
- c. If requested records are not provided promptly, as required in section four of this policy, such failure shall also be deemed a denial of access.
- d. The following officer shall hear appeals for denial of access to records under the Freedom of Information Law:

FOIL Appeals Officer  
State University of New York  
State University Plaza  
Albany, New York 12246  
Telephone: (518) 473-1825

The time for deciding an appeal by the FOIL appeals officer shall commence upon receipt of a written appeal identifying:

- i. the date of the appeal;
  - ii. the date and location of the requests for records;
  - iii. the records to which the requester was denied access;
  - iv. whether the denial of access was in writing or due to failure to provide records as promptly as required by section four of this policy; and
  - v. the name and return address of the requester.
- e. The FOIL appeals officer shall inform the requester of his or her decision in writing within 10 business days of receipt of an appeal.
- f. The FOIL appeals officer 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  
41 State Street  
Albany, NY 12231-0001

- g. The person or body designated to hear appeals shall inform the appellant and the committee on open government of its determination in writing within seven 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 (f) of this section.

#### 8. Fees

- a. There shall be no fee charged for:
- i. inspection of records;
  - ii. search for records; or
  - iii. any certification pursuant to this policy.

- b. Copies of records shall be provided upon payment of 25 cents per photocopy not in excess of 9" x 14", or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

#### 9. Public notice

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

#### 10. Severability

If any provision of this policy 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 policy or the application thereof to other persons and circumstances.

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## Definitions

**Record** - Any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

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## Related Procedures

There is no related procedures relevant to this requirement.

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## Forms

There are no forms relevant to this requirement.

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## Other Related Information

The following link to FindLaw's [New York State Laws](#) is provided for users' convenience; it is not the official site for the State of New York laws.

[Article 6 of NYS Public Officers Law](#) (Freedom of Information Law)

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of [New York State Consolidated](#).

[Public Access to Records of SUNY \(8 NYCRR Part 311\)](#)

[NYS Department of State Committee on Open Government – Freedom of Information Law](#)

Memorandum to Presidents from the office of University counsel dated June 7, 2005 regarding amendments to New York's Freedom of Information Law (FOIL) that provided those making FOIL requests, and the entities that must respond to such requests, with greater support and guidance.

Memorandum to Presidents from the office of University counsel and vice chancellor for legal affairs dated January 10, 1989 concerning three amendments to the Freedom of Information Law regarding designation of records access officer, records containing trade secrets and denial of access to records.

Memorandum to Presidents from the office of University counsel and vice chancellor for legal affairs dated December 9, 1985 regarding records containing trade secrets

Memorandum to Presidents from the office of University counsel and vice chancellor for legal affairs dated January 2, 1985 regarding increase the copying fee for copies of records from 15 cents to '25 cents per page (the maximum amount which may be charged under the Freedom of 'Information Law for photocopies not in excess of nine inches, by fourteen inches).

Memorandum to Presidents from the office of University counsel and vice chancellor for legal affairs dated July 15, 1983 reassignment of the function of the central administration records access officer.

Memorandum to Presidents from the office of University counsel and vice chancellor for legal affairs dated February 22, 1979 regarding amendments to the Freedom of Information Law and subsequent amended regulations covering public access to University records.

Memorandum to Presidents from the office of University counsel and vice chancellor for legal affairs dated March 9,

1978 the Board of Trustees amended its regulations to conform to the new Freedom of Information Law, which became effective January 1, 1978. Under the new law and regulations, the University is required to amend its procedures to conform to the regulations of the committee.

Memorandum to Presidents from the office of University counsel and vice chancellor for legal affairs dated November 16, 1977 regarding the new Freedom of Information Law, effective January 1, superseded three prior Memoranda to Presidents on the subject of public access to University records.

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## **Appendices**

There are no appendices relevant to this requirement.