



## New York's Freedom of Information Law (FOIL): A Short Guide

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### What is the Freedom of Information Law (FOIL)?

The Freedom of Information Law (FOIL) is a New York state law that gives the public a right to access government records. FOIL applies to nearly all government agencies in New York States, from the governor's office and state agencies to county and local government and public authorities. FOIL does not apply to judicial documents or most documents from the state legislature (although local and county legislatures are covered).

FOIL applies to New York state only. Federal records are covered by the federal Freedom of Information Act (FOIA). Every state has its own version of FOIL/FOIA. Nearly all of these laws were enacted in the 1970's and they have become a cornerstone of modern democracy and democratic accountability..

### Why use FOIL?

FOIL is designed to encourage transparency and accountability in government.

FOIL can be used to:

- Force disclosures of documents and data by public agencies
- Gather information and statistics for advocacy
- Investigative or expose problems in government
- Develop public policy
- Prepare a potential lawsuit
- Journalism and research

### How does the FOIL process work?

1. Write a FOIL request
2. Submit it to the right agency
3. Keep on top of correspondence with the agency
4. Get your response (or reasons for denial)

**If necessary...**

4. File an administrative appeal
5. File a lawsuit (Article 78 Petition)

#### FOIL's PURPOSE

"A free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government."

*-Public Officers Law § 84*

## How do I draft an effective FOIL request?

First, figure out what information you want to obtain or what kinds of records would answer your questions. Under FOIL, agencies are only required to provide you with records, documents or data *that they already have*. They don't have to do research for you to create new records or to answer your question. The key is to think about what information the agency might already have that will help you answer the question. Examples of the kinds of documents that are frequently requested include:

- Policy documents
- Training manuals or instructions to staff
- Email communications between key people
- Database or spreadsheets
- Agency logs or internal reports
- Contracts or agreements
- Audits or assessments

Second, determine which agency has the records you want. Each unit of government runs its own FOIL operation. There is no "central" FOIL office for the whole state or even for the whole city. Be sure to research public sources and know the specific agency you want records from. You can also submit the request to multiple agencies.

Third, put pen to paper and describe the records you want the agency to provide. Keep the request as simple as possible, and be as specific as you can when you describe the records you want. For example, if you can identify records using a title, or by type and subject matter, or by author, you should do so. Also consider specifying a date range for the request. You can optionally include background information that will help the agency locate the records you want.

If you plan to request a variety of information from an agency, it may be beneficial to split up the request into smaller, more manageable pieces. Complicated requests with lots of sub-parts often end up sitting on someone's desk for longer, and the agency might miss or ignore parts of the request. Simple, short requests are usually fulfilled more quickly.

## How do I submit a FOIL request?

Find the correct agency and address the FOIL request to the right person. If in doubt, you can send the request to the head of the agency. We have compiled a list of the FOIL contacts for many of the most important agencies in Western New York. Many agencies allow you to submit requests via email. Some still require requests to be mailed or faxed.

## Do I have to pay any fees or costs?

If you request paper documents from an agency, they can charge you **25 cents per page** for copies. This can add up quickly. Some agencies will voluntarily waive copying fees if the request is in the public interest, but they are not required to do so under the law.

You can try to **avoid fees by asking for records in an electronic format** (e.g. PDF files), delivered by email. Agencies are required to provide records electronically so long as they have the means available to do so.

If an agency intends to charge fees, agencies will usually inform you of the amount before they release the records.

## What happens after I file my request?

The agency has 5 days to acknowledge your FOIL request. At that point, the agency is required either to grant or deny your request or to **give you a specific date** in the future when they will decide whether to grant or deny it. This date must be within a "reasonable period." If any agency doesn't give you a specific date, ask them for one. If they refuse, you can appeal.

It is quite common for agencies not to provide a final response within 5 days but instead to give you a date in the future. This is usually because the agency needs time to find the records and then to review them to determine whether they can be withheld under an exemption. (More on exemptions below!)

Ultimately, the agency will respond with either a grant (i.e. you get your records!) or a denial (they refuse to disclose some or all records). If the agency is refusing to disclose records because information falls within an exemption, they should generally redact only the exempt information and give you the rest of the document. For example, if a record contains private information, the agency should only redact the private information (e.g. names, birth dates) rather than refusing to disclose the entire document.

## What if the agency denies my request, redacts important information, or refuses to disclose the information I need?

If an agency denies your request in any way you have 30 days to file an appeal. The appeal goes to someone higher up in the agency who is authorized to make a final decision on behalf of the agency. Each agency has someone designated to handle FOIL appeals.

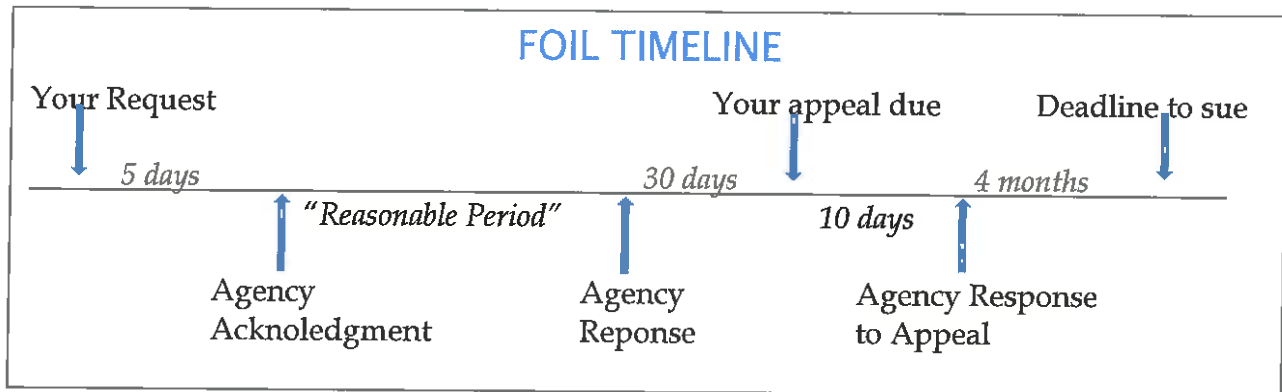
You can also appeal if the agency does not respond within the 5 days period, or if it blows past the deadline it has provided you. (Failure to respond is considered to be a denial).

The agency must respond to your appeal in 10 days.

## What if I don't get my information even after an appeal?

If the agency refuses to give you what you want even after an appeal, you can go to court to sue to force the agency to search for and produce the records. This type of lawsuit is known as an "Article 78" petition.

You have only 120 days (4 months) to file a lawsuit, counting from the date that the agency denies your appeal. This means you need to move quickly to find a lawyer to help. (Feel free to reach out to us at the the Civil Liberties & Transparency Clinic if you are considering litigation.)



## What are FOIL exemptions?

Agencies can withhold records that fall into certain limited categories that are specified by law. All records are presumed to be public, unless an exemption applies. Agencies should redact exempt information where possible, rather than withholding documents in full. Some commonly invoked exemption are:

- Personal privacy [See § 87(2)(b) and § 89(2)]
- Interference with contract awards or union negotiations [See § 87(2)(c)]
- Law enforcement records, but only if disclosure would: [See § 87(2)(d)]
  - interfere with law enforcement investigations or judicial proceedings;
  - deprive a person of a right to a fair trial or impartial adjudication;
  - identify a confidential source or disclose confidential information relating to a criminal investigation;
  - reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- "Inter-agency or intra-agency materials" (i.e. internal communications or memos), **except the agency must disclose:** [See § 87(2)(g)]
  - factual information (as opposed to opinions or internal deliberations), including statistical or factual tabulations or data;
  - instructions to staff that affect the public;
  - final agency policy or determinations; and
  - external audits

## Resources

- **New York State Committee on Open Government**  
An office that oversees and advises the government, public, and news media on Freedom of Information, Open Meetings, and Personal Privacy Protection Laws. The Committee offers guidance in response to phone inquiries, prepares written legal advisory opinions, and provides training to government and other interested groups. The committee's website has lots of resources, including thousands of opinion letters advising members of the public about how FOIL works and the scope of exemptions.

<https://www.dos.ny.gov/coog/>

(518) 474-2518

- **Civil Liberties and Transparency Clinic, UB School of Law**  
We are a legal clinic that represents individuals and community organizations on government transparency and government accountability issues. We have sued on behalf of clients to enforce FOIL requests, and have also helped clients to draft, file, and appeal FOIL requests without suing. The clinic is staffed by law students and supervised by Professor Jonathan Manes. The clinic is happy to speak with community members and organizations to provide brief advice on FOIL issues and to consider whether we can represent you.

<http://www.law.buffalo.edu/beyond/clinics/civil-liberties.html>

[law-cltc@buffalo.edu](mailto:law-cltc@buffalo.edu)

(716) 645-6222

- **Muckrock.com**  
Muckrock is an online "social" requesting platform for FOIL/FOIA. Its website contains thousands of requests and responses from people across the country that are searchable by location, agency, and keyword. It is an invaluable resource to get ideas for how to file requests, and also to see if someone has already asked for what you're interested in.

For a small fee, Muckrock also provides a system to automate and manage filings requests electronically. The website keeps track of all of the correspondence with the agency and has resources to help you move the request along.

<https://www.muckrock.com/>

- **Reporters Committee for Freedom of the Press: NY Open Government Guide**  
The Reporters Committee for Freedom of the Press publishes a detailed guide explaining the law governing FOIL and other transparency laws in New York. It is updated periodically.

<https://www.rcfp.org/open-government-guide/new-york/>