

Category: **PERSONNEL**

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Subject: FREEDOM OF INFORMATION LAW (FOIL) PROCEDURES

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SUMMARY OF CHANGES

This regulation supersedes Chancellor's Regulation D-110 dated July 8, 2008, and has been revised to reflect changes in the Public Officers Law that became effective on August 8, 2008 and January 2, 2009.

Changes:

- There is now a basis for determining the actual cost of reproducing (but not searching for) records maintained in electronic storage devices or media.
- Records must be provided on the medium requested if it can be accomplished reasonably or by engaging an outside professional service. Records provided in computer format may not be encrypted.
- In renewing a contract for the creation or maintenance of records, the contract may not impair the right of the public to inspect or copy records.
- An agency shall not deny a request because it is voluminous or burdensome if an outside professional service may be engaged to provide copying, programming or other such services, the cost of which may be recovered.
- An unwarranted invasion of personal privacy includes the sale or release of names and (work) addresses of public employees if such lists would be used for solicitation. (Former provision referred to "commercial purpose;" "solicitation" was substituted.) A requester may be required to give a written certification that the information will not be used for solicitation.
- When a record or data maintained in a computer storage system can be retrieved or extracted with reasonable effort, the agency is required to do so. Any programming necessary to retrieve a record and to transfer it to the medium requested shall not be deemed to be the creation of a new record.

ABSTRACT

This regulation governs requests made pursuant to the Freedom of Information Law (NYS Public Officers Law §84, et seq. and 21 NYCRR Part 1401) to inspect or obtain copies of records maintained by the New York City Department of Education. This regulation supersedes Chancellor's Regulation D-110, *Freedom of Information Law (FOIL)*, dated July 8, 2008.

INTRODUCTION

Department of Education personnel shall provide to the public the information and records required by FOIL, as well as records otherwise available by law.

I. RECORDS

A. Definition of Records (Public Officers Law ("POL") § 86(4))

A "record" is any information kept, held, filed, produced or reproduced by, with or for the New York City Department of Education ("DOE") 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.

B. Mandated Records (POL § 87(3))

The DOE must maintain the following records:

1. A record of the final votes taken by the Panel for Educational Policy, the Citywide Councils on Special Education and High Schools, and the Community Education Councils;
2. A record setting forth the name, public office address, title, and salary of every officer or employee of the DOE;
3. A reasonably detailed current list by subject matter of all records in the possession of the DOE whether or not available under FOIL for public inspection and copying. The list is to be updated annually, and the date of the most recent update shall be conspicuously indicated. ED-1, the State Education Department's Records Retention and Disposition Schedule, may be useful in this regard. It is available at: http://www.archives.nysed.gov/a/records/mr_pub_ed1.shtml

The DOE is not required to create a record in response to a FOIL request or to respond to questions. FOIL pertains to requests for and releasability of records. However, see Section VII below concerning electronic records.

II. RECORDS EXEMPTED FROM PUBLIC ACCESS

A. The public has access to all records, except that the DOE may deny access to records or portions of records that:

1. Are specifically exempted from disclosure by state or federal statute* (POL § 87(2) (a));
2. If disclosed, would constitute an unwarranted invasion of personal privacy (POL § 87(2) (b)) (see Section III below);
3. If disclosed, would impair present or imminent contract awards or collective bargaining negotiations (POL § 87(2) (c));
4. Are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise (POL § 87(2) (d));

* For example, FERPA, the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

5. Are compiled for law enforcement purposes and which, if disclosed, would:
 - a. interfere with law enforcement investigations or judicial proceedings;
 - b. deprive a person of a right to a fair trial or impartial adjudication;
 - c. identify a confidential source or disclose confidential information relating to a criminal investigation; or
 - d. reveal criminal investigative techniques or procedures, except routine techniques and procedures (POL § 87(2) (e)).
 6. If disclosed, would endanger the life or safety of any person (POL § 87(2) (f));
 7. Are inter-agency or intra-agency materials unless they are:
 - a. statistical or factual tabulations or data;
 - b. instructions to staff that affect the public;
 - c. final agency policy or determinations; or
 - d. external audits, including but not limited to audits performed by the comptroller and the federal government (POL § 87(2) (g)).
 8. Are examination questions or answers which are requested prior to the final administration of such questions (POL § 87(2) (h)); or
 9. If disclosed, would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures (POL § 87(2) (i)).
- B. The release of and access to student records is governed by FERPA (the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g). See Chancellor's Regulation A-820, *Student Records: Confidentiality, Access, Disclosure and Retention*. Generally, information that would tend to identify a student, including but not limited to his/her name, student identification number and parent's name, must be redacted from documents prior to their release. However, if the requester represents the parent or eligible student whose records he/she is requesting and provides a written consent or release, the personally identifying information for his/her client will not be redacted (see Attachment No. 1).

III. **UNWARRANTED INVASION OF PERSONAL PRIVACY (POL § 89(2) (b-c))**

- A. An unwarranted invasion of personal privacy includes, but shall not be limited to:
 1. Disclosure of employment, medical or credit histories or personal references of applicants for employment;
 2. Disclosure of items involving the medical or personal records of a client or patient in a medical facility;
 3. Sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes;
 4. Disclosure of information of a personal nature which, if disclosed, would result in economic or personal hardship to the subject party and such information is not relevant to the work of the DOE; or
 5. Disclosure of information of a personal nature reported in confidence to the DOE and not relevant to the ordinary work of the DOE.
- B. An employee's name, job title and salary are not exempt under this provision.
- C. To prevent an unwarranted invasion of personal privacy, the Central Records Access Officer, Central FOIL Designee or local Records Access Officer (see Section IV) shall delete identifying details such as social security or file number, date of birth and personal/home contact information prior to releasing records.

- D. Disclosure shall not be construed to constitute an unwarranted invasion of personal privacy when the person to whom a record pertains consents in writing to the disclosure or when a person seeks access to records pertaining to himself/herself.

IV. DESIGNATION AND RESPONSIBILITIES OF THE CENTRAL RECORDS ACCESS OFFICER, CENTRAL FOIL DESIGNEES AND LOCAL RECORDS ACCESS OFFICERS

- A. The Chancellor shall designate an individual to act in the capacity of Central Records Access Officer (CRAO). The CRAO is the sole person authorized to receive and act on requests to inspect or obtain records maintained by the central DOE offices and any other location within the DOE that does not fall within one of the Integrated Service Centers (ISCs), the Children First Network (CFN); District 79 or the Citywide District for Special Education (District 75), or a Community Education or Citywide Council.
- B. Each central office shall designate an individual as Central FOIL Designee (CFD), forward his/her name and contact information to the CRAO and update the information as needed. In the event that a central office receives a FOIL request in the first instance, the CFD shall forward a copy of the request to the CRAO in order to maintain an accurate central record of all FOIL requests.
- C. The ISC or CFN Senior Counsel acts as the Records Access Officer (RAO) for each ISC/CFN. The RAO is the sole person authorized to receive and act on requests to inspect or obtain records of the schools and offices that the ISC/CFN supports. The RAO shall forward a copy of each FOIL request to the CRAO in order to maintain an accurate central record of all FOIL requests. The CRAO will assist the RAO in responding to requests and may review records prior to their release.
- D. Similarly, District 79 and District 75 also shall designate individuals to act as RAOs (one each) for their school and office records.
- E. The Administrative Assistant in each Community Education Council ("CEC") or Citywide Council (Special Education or High School) shall act as the RAO for that Council. Requests for Council documents shall be submitted in writing, either in person, by mail, electronic mail, or by facsimile directly to the Council's Administrative Assistant.
- F. If the CRAO is the first to receive a FOIL request for records from the ISC/CFN, District 75/79 or a Community or Citywide Council, the request will be forwarded to the RAO to be acknowledged and processed.
- G. Each CFD and RAO shall compile and maintain a reasonably detailed current list by subject matter of all records in the possession of the office, ISC/CFN, D75/79 or Council, whether or not such records are accessible under the law and provide an updated copy of the list to the CRAO annually (see Section I.B.3 above).

V. PROCEDURES FOR OBTAINING ACCESS TO RECORDS

- A. Requests to inspect or obtain copies of records maintained by the central DOE offices, and any other location within the DOE that does not fall within one of the ISCs, CFN, District 79 or 75, or a Community or Citywide Council, shall be submitted in writing, either in person, by mail, by facsimile or electronic mail, to:

Central Records Access Officer
Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007
Fax: (212) 374-5596
FOIL@schools.nyc.gov

Requests must reasonably describe the records being requested so that an effective search can be conducted (POL § 89(3)). No specific form or format is required for the FOIL request.

- B. Requests to inspect or obtain copies of ISC/CFN, District 79 or 75, or Community Education or Citywide Council records, including records maintained within a particular school, may be submitted in a similar manner to the appropriate RAO or may be made by submitting the request in writing to the CRAO, pursuant to Section V.A.
- C. FOIL requests submitted by representatives of the press/media should be sent to the Office of Communications and Media Relations. Responses will be coordinated with the CRAO.

VI. RESPONSES TO FOIL REQUESTS

- A. Within five (5) business days of receipt of a written request for a record reasonably described, the CRAO or his/her designee (for central records) or the RAO (for ISCs, the CFN, Districts 75/79 and Community Education or Citywide Councils) shall:
 - 1. Make such record available to the requester. If records are maintained on the internet, inform the requester that the records may be accessed on the DOE's website (giving the specific location, i.e., the link) and, that if he/she does not have internet access, a printed copy will be provided;
 - 2. Deny such request in writing, and provide a reason for the denial; or
 - 3. Acknowledge in writing the receipt of such request and state the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied.

If the request or any portion of the request for a record is not reasonably described, inform the requester and include direction, to the extent possible, that would enable that person to reasonably describe the records being sought.

- B. The CRAO or RAO shall consult with the custodian of the records, as needed, estimate the amount of time it will take to locate and then review documents responsive to the request, and determine whether any or all of the records or portions thereof are releasable. If the CRAO or RAO determines to grant a request in whole or in part, and if circumstances prevent disclosure within twenty (20) business days from the date of the acknowledgement, he/she shall state, in writing, both the reason for the inability to grant the request within twenty (20) 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.

In accordance with State Regulations, among the factors to consider in determining a reasonable time are: "the volume of a request; 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; and similar factors that bear on the ability to grant access to records promptly and within a reasonable time" (21 NYCRR 1401.5 (d)).

- C. Responses to requests also may be sent by electronic mail provided that the written requests do not seek a response in some other form.
- D. The letter of acknowledgement shall inform the requester that he/she may be charged for copies of records made available under FOIL pursuant to Section VII below. The letter of acknowledgement shall state:

Section 87(2) (b) (iii) of the Public Officers Law permits an agency to charge a copying fee of 25¢ per page. Once we have obtained the records responsive to your request, we will notify you of the cost. [*Once payment is requested, add: Please make your check or money order payable to New York City Department of Education and indicate the FOIL # on the document.*]

In the event the records requested are voluminous, the requester may be advised of the estimated cost of reproduction and asked to pay for and authorize their reproduction before copies are made. However, copies of records may be released prior to receiving payment. Although the DOE is not required to charge for copies of records that are provided, charges should be imposed when it is cost effective to do so especially when responsive documents are voluminous. The DOE may waive these fees also.

- E. The CRAO or his/her designee shall forward copies of the request and acknowledgement to the CFD of the office(s) maintaining the records sought, or RAO. The CFD or the RAO, as appropriate, shall gather the records from the appropriate office, school, or CEC. The CFD or RAO shall release or deny access to the records requested within the time frame set forth in the acknowledgement letter. In some cases, the records will be forwarded to the CRAO for release. If the records cannot be released by the date indicated, the CRAO or RAO must send a letter extending the response date and provide a reason for needing additional time to respond to the request (see Section VI.B).
- F. Where a public record is determined to be too voluminous to photocopy, the CRAO, CFD, or RAO will direct the requester to the place where the records may be inspected.
1. Records may be inspected or copied at the office of the appropriate CFD/RAO or CRAO or at the location he/she specifies at a mutually convenient time made by appointment on any regular business day, usually between 9:00 a.m. and 5:00 p.m. In the event that the records are maintained at a school, any appointment must be scheduled on a school day.
 2. Records will be made available for inspection subject to the following conditions:
 - a. No records may be altered or destroyed by the requester;
 - b. No records may be copied or removed by the requester from the location where their inspection has been authorized;
 - c. Records made available for inspection will be kept available for ten (10) business days after the requester has been notified of their availability. Failure of the requester to inspect the records within that time will terminate processing of the request, and the file will be closed.
 - d. If records require redaction prior to disclosure, a request for inspection may be denied and the requester informed that the records are only available as copies, for which appropriate payment must be made.
- G. Where the CFD, RAO, or the CRAO believes that a record or portion of a record is subject to an exemption from disclosure, he/she must redact the record before releasing it and inform the requester of the specific ground(s) for denying access to the record/portion within the relevant time frame.
- H. Upon request, the CRAO, CFD, or RAO shall certify to the correctness of the copies of the records being provided (see Attachment No. 2).
- I. If the records sought do not exist or are not in the possession of the DOE, the CFD, CRAO or RAO must inform the requester and, in addition, shall certify, on request, that the DOE is not the custodian of such record(s); or that the DOE is a custodian of such records but a diligent search was conducted and the records were not located (see Attachment No. 2).
- J. Any letter denying access to records or portions of records also must contain a notice of appeal rights (see Section VIII below). Copies of cover letters of responses by a CFD and extension letters (see Section VI.D above) should be sent to the CRAO.

VII. FEES; ELECTRONIC INFORMATION

- A. Where copies of records are being provided, the records may be provided for no fee. However, if fees are charged, the following fee schedule applies:
1. 25 cents (25¢) per page for documents up to 8½ x 14 inches in size, subject to modifications consistent with the law;
 2. For other records, the actual cost of reproducing the record, but in accordance with this subsection. In determining the actual cost of reproducing a record, an agency may include only:
 - a. an amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record;

- b. the actual cost of the storage devices or media provided to the person making the request in complying with such request;
 - c. the actual cost of engaging an outside professional service to prepare a copy of a record, but only when the agency's information technology equipment is inadequate to prepare a copy, if such service is used to prepare a copy; and
 - d. preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of agency employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed 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 an outside professional service would be retained to prepare a copy of the record.
- B. A request may not be denied on the basis that it is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome because the agency lacks sufficient staffing or on any other basis if the agency may engage an outside professional service to provide copying, programming, or other services required to provide the copy, the costs of which the agency may recover pursuant to Section VII.A above.
- C. When an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so. 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.
- D. Any programming necessary to retrieve a record maintained in a computer storage system and to transfer that record to the medium requested or to allow the transferred record to be read or printed shall not be deemed to be the preparation or creation of a new record.
- E. An agency shall provide records on the medium requested if it can reasonably make such copy or have such copy made by engaging an outside professional service. Records provided in a computer format shall not be encrypted.
- F. No agency shall enter into or renew a contract for the creation or maintenance of records if such contract impairs the right of the public to inspect or copy the agency's records.
- G. No fee shall be charged for the inspection of or search for records, for a certification that the records are accurate or that a diligent search was conducted and no records were located, or for document(s) that have been printed or reproduced for current distribution to the public.
- H. The above-noted fee schedule is subject to modification consistent with the law.

VIII. APPEALS

A. Constructive Denial

A requester who is neither granted nor denied access to records within the time limits set forth above or in the acknowledgment letter or any extension letter(s) may consider the request constructively denied and may appeal such denial in accordance with the procedures set forth below.

- B. A requester denied access to any DOE record may, within 30 days, appeal such denial by writing to:

The General Counsel
Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007
FAX: (212) 374-5596
FOIL@schools.nyc.gov

To expedite the process, the requester should provide a copy of the request and a copy of the denial of access and give the basis for the appeal. The General Counsel shall issue a written decision on the appeal within ten (10) business days following receipt of the appeal and fully explain in writing the reasons for further denial, or provide access to the record sought. A copy of the appeal and the written determination shall be forwarded to the Committee on Open Government. A copy of the written determination shall be forwarded to the CFD/RAO also.

IX. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

Telephone:	<i>Office of Legal Services</i> N.Y.C. Department of Education 52 Chambers Street – Room 308 New York, NY 10007 FOIL@schools.nyc.gov	Fax:
212-374-6888		212-374-5596

* Address: NYS Department of State, Committee on Open Government, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

In addition, copies of the FOIL law, state regulations, advisory opinions and other information on FOIL can be found on the Committee's website at <http://www.dos.state.ny.us/coog>.

PARENT'S CONSENT TO RELEASE OF STUDENT RECORDS

I, _____, am the parent/guardian of
print name

_____,
print name of student, date of birth

_____, who attends/attended the New York City
student ID #

Public Schools in _____. The last school he/she attended
year/time period

was/is _____ in
name and address of school

_____. The student is under the age of 18.
borough

(Please provide any additional information that might be helpful in locating the student records
(e.g., address or name, if different when he/she attended)):

I give consent to the New York City Department of Education to release my child's student records
including _____
specify records

to _____
provide name and address of person, agency, or company

Purpose of disclosure: _____

signature of parent/guardian

date

STUDENT'S CONSENT TO RELEASE OWN STUDENT RECORDS

I, _____, _____,
print name date of birth

_____ attended the New York City Public Schools
student ID #

in _____. The last school I attended was
year/time period

_____ in _____.
name and address of school borough

I am at least 18 years old.

(Please provide any additional information that might be helpful in locating your records (e.g., former address, name, if different when you attended)):

I give consent to the New York City Department of Education to release my student records, including

specify records

to _____
provide name and address of person, agency or company

Purpose of disclosure: _____

signature of former student

date

RECORDS CERTIFICATION SAMPLE

I, John Doe, the Records Access Officer and an Assistant Director of the Division of School Facilities in the New York City Department of Education, hereby certify that the attached records are true and accurate copies of the boiler repair for Jones High School in Queens from 2006 to 2008.

I further certify that these records were made and kept in the regular course of business of the Department of Education, and it is in the regular course of business of the Department of Education to make and maintain such records.

John Doe

July 1, 2008

(See Certification Blanks on the following pages)

CERTIFICATION OF DILIGENT SEARCH CONDUCTED AND NO RECORDS FOUND

SAMPLE CERTIFICATION

I, Jane Doe, hereby certify that I am the Senior Counsel and Records Access Officer of the Bronx Integrated Service Center ("ISC") of the New York City Department of Education, and in that capacity I have the authority to make this certification.

I also certify that, at my direction, staff members conducted a diligent search of the records that are in the custody and control of P.S. 555, and no records responsive to this FOIL request (OORS report concerning Sam Smith for an incident of March 18, 2005) were located.

Jane Doe

July 1, 2008

N.B. Either Certification may be made by the CRAO, RAO, CFD, or a Principal, Office/Unit Director or other supervisor.

(See Certification Blanks on the following pages)

RECORDS CERTIFICATION

I, _____, the Records Access Officer and
name

_____ of the
title

_____ of the New York City Department of Education,
office/school

hereby certify that the attached records are true and accurate copies of

describe records

_____.

I further certify that these records were made and kept in the regular course of business of the Department of Education, and it is in the regular course of business of the Department of Education to make and maintain such records.

signature

date

DILIGENT SEARCH CONDUCTED AND CERTIFICATION OF NO RECORDS FOUND

I, _____, hereby certify that
name

I am the Records Access Officer and _____
title

of the _____ of the New York City
office/school

Department of Education, and in that capacity I have the authority to make this certification. I also certify that, at my direction, staff members conducted a diligent search of the records that are in the custody and control of _____
place/office/school

and no records responsive to this FOIL request were located.

signature

date