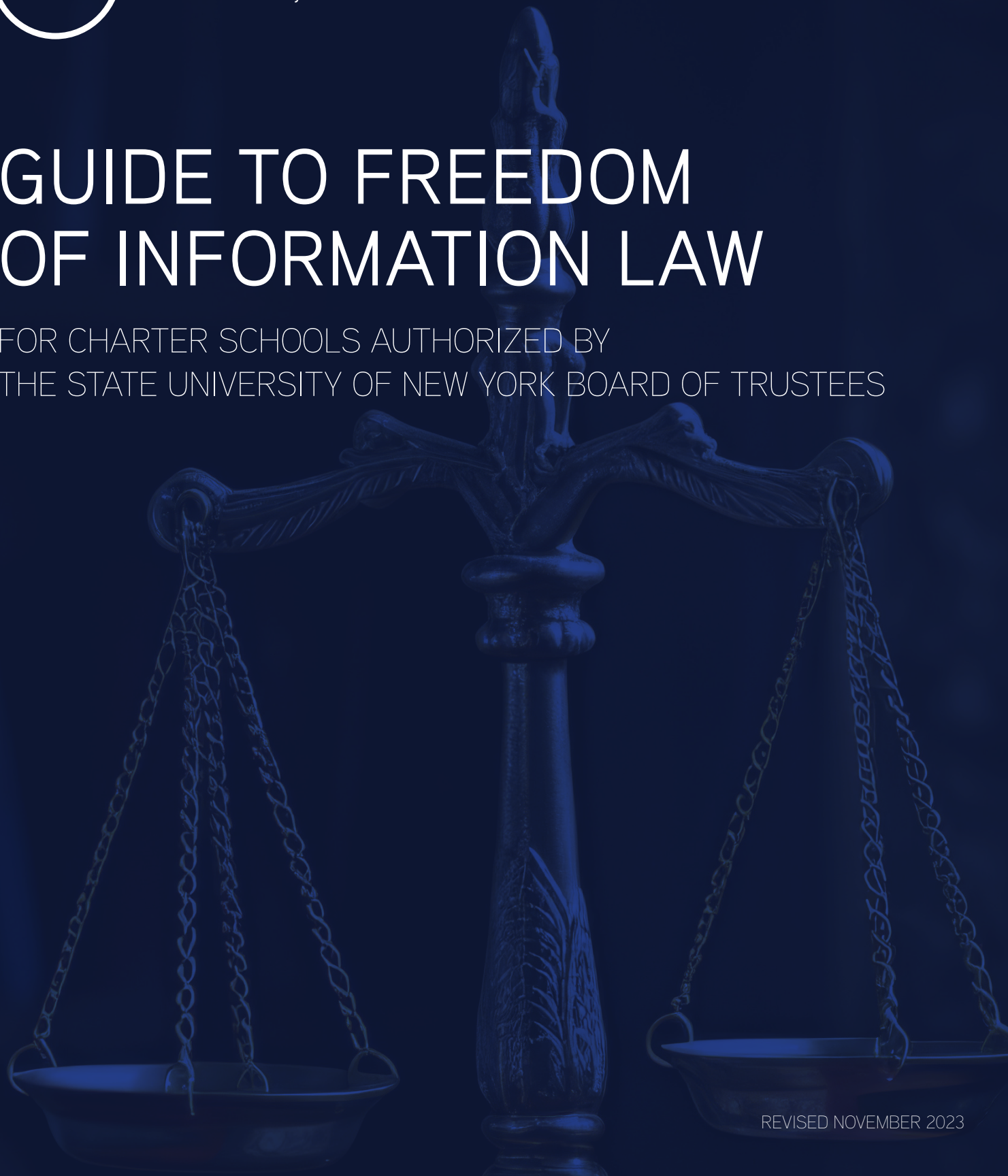




# GUIDE TO FREEDOM OF INFORMATION LAW

FOR CHARTER SCHOOLS AUTHORIZED BY  
THE STATE UNIVERSITY OF NEW YORK BOARD OF TRUSTEES



REVISED NOVEMBER 2023

# INTRODUCTION

Charter schools, like other public schools, must provide the public with access to certain records in accordance with New York State's Freedom of Information Law. See Public Officers Law, Article 6 (hereinafter, "FOIL"). FOIL makes the workings of state and local government and charter schools more transparent. The full text of FOIL can be accessed on the [website of the Committee on Open Government](#) ("COOG").

This guidance details an education corporation's obligations under FOIL. The below Initial FOIL Action Items are required once an education corporation's is approved by the authorizer. Further information about each action item is provided in the guidance.

## Initial FOIL Action Items

1. Adopt a compliant FOIL policy;
2. Draft and post a compliant FOIL notice at a designated school facility and on the education corporation's website. The FOIL notice must include: the location(s) where records shall be made available for inspection and copying; the name, title, business address, and business telephone number of the designated records access officer(s); and, the right to appeal and the name and business address of the person or body to whom an appeal is to be directed;
3. Create and post on the education corporation's website a list of records, organized by subject matter, that are kept by the education corporation. This subject matter list must be conspicuously dated and include a link to the [COOG website](#);
4. Create and update a record setting forth the names, public office addresses, titles, and salaries for every officer or employee of the education corporation; and,
5. Create and keep a record of all trustee votes.

The below Annual FOIL Action Items are required on an annual basis and should be included in the education corporation's annual compliance review.

## Annual FOIL Action Items

1. Update and date the list of records, organized by subject matter, that are kept by the education corporation. Post the updated list, with a link to the [COOG website](#), on the education corporation's website;
2. Confirm the FOIL policy is current; and,
3. Confirm the FOIL notice is posted at a designated school facility and on the education corporation's website.

If you have any questions regarding the information provided in this guidance, please contact the legal department of the SUNY Charter Schools Institute at [charter.legal@suny.edu](mailto:charter.legal@suny.edu).

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# APPLICABILITY

The Charter School Act of 1998 states that charter schools are subject to FOIL. See Education Law § 2854(1) (e). Charter schools become subject to FOIL once the school's charter has final approval from the authorizer (e.g., State University of New York Board of Trustees or the New York State Education Department Board of Regents). Under FOIL, the public “**agency**” is the education corporation.

Further, the [Model Charter Agreement](#) Section 7.2 provides that:

**7.2** Freedom of Information and Open Meeting Laws. The Education Corporation shall maintain and implement policies in order to ensure that it is in compliance with Articles Six (“**FOIL**”) and Seven (“**Open Meetings Law**”) of the New York Public Officers Law and all corresponding regulations.

- a. The Education Corporation shall: (i) issue FOIL “regulations” in accordance with the regulations of the Committee on Open Government; (ii) maintain a FOIL policy for each school accessible to parents; and (iii) post and have accessible the required notices and lists, as applicable, set forth in Article 6 of the Public Officers Law.

Repeated and egregious violations of this provision may allow an authorizer to place a charter on probation or have its charter revoked or denied renewal.

## FOIL OBLIGATIONS OF THE EDUCATION CORPORATION

### Records Defined

A “**record**” is defined by FOIL as “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.” This includes records in any and all formats including electronic, audio, and video.

**Note:** It is illegal to conceal or destroy records with the intent to prevent public inspection.

### Records of Final Votes, Officer and Employee List, and Subject Matter List

FOIL requires the education corporation to create and keep three records. These records are:

1. The final vote of each education corporation trustee in every voting proceeding;
  - o **Note:** This can be met by properly reflecting trustee votes in meeting minutes kept pursuant to the Open Meetings Law.
2. A list of the names, public office addresses, titles, and salaries for every officer or employee of the education corporation, including the education corporation trustees; and,
  - o **Note:** The trustees’ office addresses should be listed as the office of the education corporation set forth in the bylaws and their salary should be listed as zero.

3. An annually updated and prominently dated list, by subject matter, of all records in the possession of the education corporation, whether or not public under FOIL. This list must be posted on the education corporation's website and the posting must include a link to the [COOG website](#). One way to compile such a list is to start with the various areas of school operations and then list what documents or records each area creates or receives. For example, the list may contain some or all of the following:
  - School Contracts
    - Management Contract Records
    - Outside Contract Records
    - Students with Disabilities Contractor Records
  - Personnel Files
    - Generally
    - Fingerprint Clearance Records
    - Certification Records
  - Safety Records
    - School SAVE Plan
    - Reports of Fire Department Inspections
  - Student Health Records
    - Student Immunization Records
    - Student Medical Records
    - Student Accident Reports

### **Policy and Notice Requirements**

The education corporation must adopt and implement a FOIL policy and provide proper notice of its FOIL procedures to the public in both a physical location and on its website. The education corporation may use the model policy provided by the COOG available in **Appendix A** of this document. This policy shall provide:

- The purpose of the policy;
- The designated records access officer and their duties;
- The designated records appeals officer and their duties;
- The locations where records are available for inspection and copying;
- The hours in which requests for public records will be accepted;
- Information on how to request records in person, by mail, and, if the school accepts requests for records electronically, by email; and,
- The education corporation's policies for handling requests and appeals.
  - **Note:** These must comply with the required FOIL procedures discussed in Section IV below.

Per COOG Regulation § 1401.9, a FOIL notice must be posted at a designated school facility and on the education corporation's website and should contain the following information:

- The locations where records are available for inspection and copying;
- The name, title, business address, business email address, and business telephone number of the records access officer; and,
- The right to appeal by any person denied access to a record and the name, title, business address, business email address, and business telephone number of the records appeals officer.

The education corporation may use the model notice provided by the COOG available in **Appendix B** of this document.

## REQUIRED FOIL PROCEDURES

### Receiving Records Requests

A records request is deemed **"received"** at the earliest time within regular business hours, as listed in the FOIL policy, that it is in the possession of the records access officer. For example, if a request is sent by email at 7pm on a Tuesday, but the education corporation's FOIL policy states that it only accepts requests on weekdays 9am to 5pm, then the request is deemed received 9am on the following Wednesday.

The request must be for a **"reasonably described record."** This standard is satisfied when the requester provides enough information for the education corporation to locate the record. If the request does not reasonably describe the record sought, the education corporation must deny the request in writing and offer to assist the requester in identifying the record sought (e.g., by describing how records are filed, retrieved, or generated at the education corporation). Once the request reasonably describes the records sought, the request is deemed received.

If the request seeks copies of the record in a particular format (e.g., electronic or paper copies), reasonable efforts must be made to produce the record in the format requested. Additionally, if the request seeks the records in an electronic format, the format must not be encrypted.

**Note:** There is no obligation to create a new record or to translate or explain the context of a record in response to a request. Only existing records kept and maintained by the education corporation need to be produced, though the education corporation may be required to extract or redact portions of a record in order to enable its production. If the record does not exist, the education corporation must still respond to the request in writing and state that there is no responsive document to the specific request.

## Responses

**Within five business days** of receiving the request, the education corporation must do one of the following:

- Make the record available to the requester;
- Deny the request, in whole or in part, in writing; or,
- Send a written acknowledgment of the request and provide an **“approximate reasonable date”** by which the request will be fulfilled based on the particular circumstances. If it will take more than 20 business days from the date of acknowledgment to fulfill the request, the education corporation must provide a written reason as to why it will take longer than 20 days and provide a **“date certain”** for when the records will be produced in whole or in part. The date certain is more definite than an “approximate reasonable date” and is a self-imposed deadline that must be reasonable given the circumstances.

## Fees

The education corporation may charge up to \$0.25 per page for paper copies up to 9x14 inches in size plus applicable postage if the requester would like the paper copies mailed. For pages larger than 9x14 inches, the education corporation may charge the actual cost of copying the records plus postage. For electronic records, if it will take more than two hours to complete the request, the education corporation may charge a fee based on the hourly wage of the lowest paid employee capable of doing the work, in addition to the cost of any electronic medium such as CDs or flash drives (some records are too large to email) and applicable postage. If such work needs to be sent out because the school does not have the capability to fulfill the request, then the actual cost may be charged. Such fees can be estimated and charged upon receipt of the request.

**Note:** No fee may be charged if an identical record has been prepared for a prior request within the past six months and an electronic copy is still available. If more than one request is made for an identical record before the request has been fulfilled, any fees must be split equally among the requesters. Upon payment of the fee, or offer to pay the fee, a copy of the record must be provided.

## Denials

A request cannot be denied simply because it is too voluminous or burdensome. Likewise, undue hardship or a shortage of employees does not relieve the education corporation from its obligations under FOIL. See *United Federation of Teachers v. N.Y.C. Health and Hospitals*, 428 N.Y.S.2d 823 (1980). The education corporation needs to provide specific justifications for each denial. If a record is reasonably able to be redacted or edited to remove exempted information, the redacted record should be made available to the requester with an explanation for the redaction.

All partial and full denials must be in writing and inform the requester of their right to appeal to the records appeals officer as well as the records appeals officer’s name, title, business address, business email address, and business telephone number.

For specific questions regarding denials, education corporations should consult the COOG or a lawyer.

## Appeals

A requester may appeal the partial or full denial of a request to the records appeals officer in writing within 30 days of the denial.

**Within 10 business days** of receiving the appeal, the education corporation must:

- Explain in writing the reasons for further denial or provide access to the record; and,
- Forward the appeal and the determination to the COOG at:

**Committee on Open Government, Department of State  
One Commerce Plaza, 99 Washington Avenue, Suite 650  
Albany, New York 12231**

If the requester is still unsatisfied with the education corporation's handling of the records request, they may bring a lawsuit within four months of the final appeal determination. This type of lawsuit is called an Article 78 proceeding and the state court will analyze whether the education corporation complied with FOIL. If the state court finds that the education corporation failed to properly respond to the request or failed to appropriately follow required FOIL procedures, the education corporation may need to pay for attorneys' fees and litigation costs.

## EXEMPTIONS FROM FOIL

FOIL exempts several categories of information from public disclosure. For a complete list of records exempted from FOIL, see FOIL § 87(2). The exemptions most relevant to education corporations are:

### ***Family Educational Rights and Privacy Act ("FERPA")***

FERPA (20 U.S.C. § 1232g) gives parents (or students over the age of 18) the right to obtain copies of their children's (or their own) educational records and forbids schools from disclosing personally identifiable information about students without their parents' consent (or their own consent if the student is over 18). It is important to note that "**personally identifiable information**" includes direct identifiers, such as a student's name, address, or identification number, and indirect identifiers, such as a student's date of birth, or other information which can be used to distinguish or trace an individual's identity. A school may disclose "**directory information**" to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's (or student's) right to restrict the disclosure of such information, and the period of time within which a parent or student has to notify the school in writing that they do not want any or all of those types of information designated as "directory information." If you have a situation where it is unclear whether records requested through FOIL contain information protected by FERPA and you are unsure how to proceed, you should consult the COOG or a lawyer.



## ***Individuals with Disabilities Education Act (“IDEA”)***

IDEA (20 U.S.C. § 1400) prevents disclosure of information regarding a student’s disability including, but not limited to, Individualized Education Plans (“IEPs”), referrals to the Committee on Special Education, and records of related service providers. All records with personally identifiable information about students with disabilities is protected under IDEA.

## ***Unwarranted Invasion of Personal Privacy***

Charter schools’ personnel are required to report suspected or actual incidents of abuse or neglect both in school and outside of school. Though not considered an “educational record” under FERPA, privacy concerns exempt individual abuse reports from disclosure under FOIL if their release would make a particular student’s identity “traceable” in any way.

With FERPA and IDEA protecting student information, the unwarranted invasion of personal privacy exemption largely covers the privacy of adults. This exemption includes information such as home addresses, home telephone numbers, and social security numbers. Generally, if the records are relevant to the performance of a trustee’s or employee’s official duties, disclosure is likely permissible rather than an unwarranted invasion of personal privacy. See N.Y. Comm. on Open Gov’t, FOIL-AO-17085 (Mar. 27, 2008).

Information about charter school employees relating to their duties must be made available. These records include information related to the hiring and firing of teachers, substantiated claims of misconduct that affect an employee’s status, salaries, years of service, position requirements, general educational background (degrees, not grades), and anything else related to the function of the position. The disclosure of unsubstantiated charges of misconduct, on the other hand, has been considered by courts to be an unwarranted invasion of privacy, so they need not be included in reports made public under FOIL.

**Note:** If a request seeks a list of names and business addresses, the charter school may request a written certification from the requester that the information will not be used for solicitation or fundraising purposes.

According to FOIL, it is not an unwarranted invasion of privacy when:

- Identifying details are redacted or deleted;
- The person to whom the record pertains consents in writing to the disclosure; or,
- The requester is the one whom the record pertains, and they have presented reasonable proof of their identity.

**Note:** If a record is reasonably able to be redacted or edited to remove the identifying details, the redacted record should be made available to the requester with an explanation for the redaction.

## ***Inter-Agency or Intra-Agency Materials***

Inter-agency materials are materials created between two or more agencies, such as between the education corporation and the SUNY Charter Schools Institute. Intra-agency materials are materials created within the education corporation and its employees, such as communications giving advice, opinions, suggestions, or recommendations. This exception exists as a recognition that employees’ opinions are of a different nature than final agency actions, and that agencies can often make better decisions by having an environment in which employees can express opinions without being subject to public disapproval.

It is important to note that statistical or factual tabulations of data do not fit under this exception (neither do instructions to employees affecting the public, final agency policies or determinations, or external audits), even if those tabulations include some aspect of opinion or suggestion. Courts have held this to be a very strict distinction, such that evaluations (e.g., teacher evaluation records) that would be exempt as opinion if done using descriptive terminology, have been held to be subject to FOIL if done using a numerical rating system because they are closer to data rather than opinions. For this reason, it is important for schools to be aware of the nature of the systems they use for internal evaluations.

The courts also understand that sometimes agencies don't have the internal staff to accomplish what they need. Therefore, outside consultant findings are treated as intra-agency communications. They are not subject to FOIL if they contain ideas, recommendations, or advice, but are subject to FOIL if they contain statistical or factual information or instructions that affect the public. Please note that your authorizer is a governmental agency covered by FOIL, and therefore, communications with your authorizer may also fall into this exception category as inter-agency materials.

**As discussed above, this exception does not apply to:**

- Statistical or factual tabulations or data;
- Instructions to staff that affect the public;
- Final charter school policies or determinations; or,
- External audits including, but not limited to, audits performed by the comptroller and the federal government.

**Note:** If a record is reasonably able to be redacted or edited to remove the exempted communications (advice, opinions, suggestions, or recommendations), the redacted record should be made available to the requester with an explanation for the redaction.

***Other Exemptions***

The education corporation may also deny access to records that:

- Are specifically exempted from disclosure by state or federal statute (e.g., FERPA and IDEA);
- If disclosed, would impair present or imminent contract awards or collective bargaining negotiations;
- Are trade secrets or are submitted to the agency by a commercial enterprise or derived from information obtained from a commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise;
- Are compiled for law enforcement purposes and which, if disclosed, would:
  - Interfere with law enforcement investigations or court proceedings;
  - Deprive a person of a right to a fair trial or impartial adjudication;
  - Identify a confidential source or confidential information relating to a criminal investigation; or,
  - Reveal criminal investigative techniques or procedures, except routine techniques and procedures;

- If disclosed, could endanger the life or safety of any person;
- Are examination questions or answers which are requested prior to the final administration of such questions; or,
- If disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, encompassing both electronic information systems and infrastructures (e.g., computer passwords).

# APPENDIX A

## MODEL FOIL POLICY

### PUBLIC ACCESS TO RECORDS OF \_\_\_\_\_ (INSERT EDUCATION CORPORATION NAME)

#### Section 1: Purpose and scope

1. 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 of confidentiality.
2. These regulations provide information concerning the procedures by which records may be obtained.
3. 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.
4. Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

#### Section 2: Designation of records access officer

1. The Board of Trustees is responsible for insuring compliance with the regulations herein, and designates the following person(s) as records access officer(s):

(Job title or name) \_\_\_\_\_  
(Business address) \_\_\_\_\_  
(if requests are accepted via e-mail, e-mail address) \_\_\_\_\_

2. The records access officer is responsible for insuring appropriate agency response to public requests for access to records. The designation of a records access officer 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.

The records access officer shall insure that agency personnel:

- a. Maintain an up-to-date subject matter list.
- b. 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.
- c. 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 records of primary interest and attempt to reasonably reduce the volume of records requested.

- d. 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 therefor.
- e. Upon request for copies of records:
  - i. Make a copy available upon payment or offer to pay established fees, if any, in accordance with Section 8; or,
  - ii. Permit the requester to copy those records.
- f. Upon request, certify that a record is a true copy; and
- g. Upon failure to locate records, certify that:
  - i. (insert name of education corporation) is not the custodian for such records, or
  - ii. The records of which (insert name of education corporation) is a custodian cannot be found after diligent search.

### Section 3: Location

Records shall be available for public inspection and copying at:

(Location) \_\_\_\_\_  
 (Address) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### Section 4: Hours for public inspection

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

These hours are: \_\_\_\_\_

### Section 5: Requests for public access to records

1. A written request may be required, but oral requests may be accepted when records are readily available.
2. If 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.
3. A response shall be given within five business days of receipt of a request by:
  - a. 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;
  - b. granting or denying access to records in whole or in part;

- c. 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
  - d. 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.
- 4. In determining a reasonable time for granting or denying a request under the circumstances of a request, 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 the ability to grant access to records promptly and within a reasonable time.
- 5. 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 officer or employee:
  - a. 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;
  - b. acknowledges the receipt of a request within five business days but fails to furnish an approximate date when the request will be granted or denied in whole or in part;
  - c. 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;
  - d. fails to respond to a request within a reasonable time after the approximate date given or within twenty business days after the date of the acknowledgment of the receipt of a request;
  - e. determines to grant a request in whole or in part within twenty business days of the 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.
  - f. does not grant a request in whole or in part within twenty business days of the acknowledgment of the receipt of a request and fails to provide the reason in writing explaining the inability to do so and a date certain by which the request will be granted in whole or in part; or

- g. 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 that will be accomplished, but such date is unreasonable under the circumstances of the request.

## **Section 6: Subject matter list**

1. The records access officer 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 two of Section eighty-seven of the Public Officers Law.
2. The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.
3. The subject matter list shall be updated annually. The most recent update shall appear on the first page of the subject matter list.

## **Section 7: Denial of access to records**

1. Denial of access to records shall be in writing stating the reason therefor and advising the requester of the right to appeal to the individual or body established to determine appeals, [who or which] shall be identified by name, title, business address and business phone number.
2. If requested records are not provided promptly, as required in Section 5 of these regulations, such failure shall also be deemed a denial of access.
3. The following person or persons or body shall determine appeals regarding denial of access to records under the Freedom of Information Law:

(name) \_\_\_\_\_  
(job title) \_\_\_\_\_  
(business address) \_\_\_\_\_  
\_\_\_\_\_  
(phone#) \_\_\_\_\_

4. Any person denied access to records may appeal within thirty days of a denial.
5. The time for deciding an appeal by the individual or body designated to determine appeals shall commence upon receipt of a written appeal identifying:
  - a. the date and location of requests for records;
  - b. a description, to the extent possible, of the records that were denied; and
  - c. the name and return address of the person denied access.
6. 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.

7. 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  
99 Washington Avenue, Suite 650  
Albany, NY 12231**

8. 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 subdivision (f) of this section.

## **Section 8: Fees**

1. There shall be no fee charged for:
  - a. inspection of records;
  - b. search for records; or
  - c. any certification pursuant to this part.
2. Copies may be provided without charging a fee.
3. Fees for copies may be charged, provided that:
  - a. the fee for copying records 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 where agencies or municipalities in the past have charged less than 25 cents for such copies;
  - b. the fee for photocopies of records in excess of 9 x 14 inches shall not exceed the actual cost of reproduction; or
  - c. 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.
4. 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:
  - a. 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
  - b. the actual cost of the storage devices or media provided to the person making the request in complying with such request; or
  - c. 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.



5. 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 (4)(1) and (2) above.
6. 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.
7. An agency may require that the fee for copying or reproducing a record be paid in advance of the preparation of such copy.
8. An agency may waive a fee in whole or in part when making copies of records available.

### **Section 9: Public notice**

A notice containing the title or name and business address of the records access officers and appeals person or body and the location where records can be seen or copies shall be posted in a conspicuous location wherever records are kept and/or published in a local newspaper of general circulation.

### **Section 10 Severability**

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

## APPENDIX B

### MODEL PUBLIC FOIL NOTICE

#### YOU HAVE A RIGHT TO SEE PUBLIC RECORDS

The amended Freedom of Information Law, which took effect on January 1, 1978, gives you the right of access to many public records.

\_\_\_\_\_(INSERT EDUCATION CORPORATION NAME) has adopted regulations governing when, where, and how you can see public records.

The regulations can be seen at all places where records are kept. According to these regulations, records can be seen and copied at:

(*Location*)\_\_\_\_\_

(*Address*)\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The following officials will help you to exercise your right to access:

2) Agency officials who have in the past been authorized to make records available

3) Records Access Officer(s)

(*name*)\_\_\_\_\_

(*job title*)\_\_\_\_\_

(*business address*)\_\_\_\_\_

\_\_\_\_\_

(*phone #*)\_\_\_\_\_

If you are denied access to a record, you may appeal to the following person(s) or body:

(*name*)\_\_\_\_\_

(*job title*)\_\_\_\_\_

(*business address*)\_\_\_\_\_

\_\_\_\_\_

(*phone #*)\_\_\_\_\_



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