



The FOIL Manual details the Office of the Actuary's official Policy regarding requests, production and inspection of public records pursuant to New York's Freedom of Information Law

# FOIL Manual

New York City  
Office of the Actuary

Effective January 1, 2020

Sherry S. Chan, Chief Actuary

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## 2020 OA FOIL Manual

### **Introduction**

This Policy supersedes any prior policy or practices regarding this issue and details the Office of the Actuary's (OA) policy regarding requests, production and inspection of public records pursuant to the Freedom of Information Law (FOIL) contained in Article 6 (§§ 84-90) of the New York Public Officers Law. The Policy is issued in accordance with 21 NYCRR Part 1401. To the extent that this Policy conflicts with any provision of law, the provisions of law shall apply.

OA personnel shall provide to the public the information and records required by FOIL, as well as any records available by law and not otherwise protected.

### **Records Access Officer**

The Chief Actuary, the OA agency head, designates the below employee to serve as the OA's Records Access Officer and to ensure compliance with this Policy:

Marlene Markoe-Boyd  
Records Access Officer  
New York City Office of the Actuary  
255 Greenwich Street, 9<sup>th</sup> Floor  
New York, NY 10007  
(212) 312-0119  
[mmarkoe-boyd@actuary.nyc.gov](mailto:mmarkoe-boyd@actuary.nyc.gov)

The designation of a records access officer shall not be construed to prohibit OA officials who are authorized to make records or information available to the public from continuing to do so.

### **Responsibilities of the Records Access Officer**

The Records Access Officer is responsible for providing appropriate OA responses to requests for records. The Records Access Officer shall:

- (a) Maintain an up-to-date subject matter list.
- (b) Assist members of the public in identifying requested records.
- (c) If necessary, contact requestors to ascertain the nature of records of primary interest and attempt to reasonably reduce the volume of records requested.

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- (d) Upon locating the records, take one of the following actions:
  - (i) Provide access to the records; or
  - (ii) Deny access to the records in whole or in part.
- (e) Upon request, certify that a record is a true copy.
- (f) Upon failure to locate records certify that:
  - (i) The OA is not the custodian for such records; or
  - (ii) The OA is a custodian of the records, but such records cannot be found after a diligent search.

### **Hours and Location of Inspection**

The OA is generally not open to the public and does not maintain business hours for such purpose. Therefore, a request to inspect and copy records on OA premises must be made by appointment to occur within OA business hours by contacting the Records Access Officer.

The OA's functions involve analyzing personal Identifying Information as defined in Chapter 12 of Title 23 of the Administrative Code of the City of New York. Therefore, the Records Access Officer must provide a suitable location for any inspection and take reasonable steps to secure confidential information.

In no event shall the Records Access Officer or any other OA employee permit a member of the public to remove original agency records from the premises.

### **Procedures for Making Requests**

Any request for access to OA records shall be in writing and addressed to the Records Access Officer. The request shall reasonably describe the records sought, and whenever possible supply information regarding the dates or other information that will enable the Records Access Officer to identify the records sought.

To the extent practical, requests for access to records may be made, or processed by the Records Access Officer, through NYC OpenRecords for purposes of logging and tracking requests and responses. FOIL request should be addressed to the Records Access Officer at [FOIL@actuary.nyc.gov](mailto:FOIL@actuary.nyc.gov) and, whenever practical, submitted via NYC OpenRecords.

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The OA will not accept open or ongoing FOIL requests and will not create new records in response to FOIL requests.

### **Timing and Procedures for Responding to Requests**

Within five business days of the receipt of a request for access to records, the Records Access Officer shall, in writing, either:

- (a) grant or deny access to records in whole or in part;
- (b) inform the requestor that the request or portion thereof does not reasonably describe the records sought, and, to the extent possible, provide direction that would enable that person to reasonably describe the records sought; or
- (c) acknowledge receipt of a request and provide a statement of the reason for the inability to grant the request within five business days, and provide an approximate date within a reasonable period, generally not to exceed 20 business days, when the request will be granted in whole or in part.

If receipt of the request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part, but circumstances prevent disclosure within that period, the Records Access Officer shall provide a written statement prior to the end of such period specifying the reason for the inability to provide access to such records within that period, and provide a date certain, within a reasonable time period given the circumstances of the request, when the request will be granted in whole or in part.

In determining a reasonable time for granting or denying a request, the Records Access Officer 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.

Failure to comply with the time limitations described herein shall constitute a denial of a request. Such denial may be appealed to the FOIL Appeals Officer.

If records are maintained on the internet, a link to such records may be provided. However, the requester may still request that the records be provided in a printed form or in another reasonable information storage medium.

The OA retains the authority to redact non-public portions of records prior to disclosure.

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### Subject Matter List

The Records Access Officer shall maintain a reasonably detailed list of OA records by subject matter whether or not those records are available pursuant to FOIL. The Subject Matter List shall be sufficiently detailed to permit identification of the category of record sought and shall be updated annually. The 2020 Subject Matter List is annexed hereto as Appendix A.

### Denial of Access to Records

Denial of access to records shall be in writing, state the reason for the denial, and advise the requester of the right to appeal to the FOIL Appeals Officer. The FOIL Appeals Officer shall determine appeals regarding denial of access to records and be identified in any denial as follows:

Keith M. Snow  
FOIL Appeals Officer  
New York City Office of the Actuary  
255 Greenwich Street, 9<sup>th</sup> Floor  
New York, NY 10007  
(212) 312-0111  
[ksnow@actuary.nyc.gov](mailto:ksnow@actuary.nyc.gov)

### FOIL Appeals

Any person denied access to records may appeal to the FOIL Appeals Officer within 30 days of the denial. FOIL appeals should be addressed to the FOIL Appeals Officer at [FOIL@actuary.nyc.gov](mailto:FOIL@actuary.nyc.gov) and, whenever practical, submitted via NYC OpenRecords.

Appeals shall be decided by the FOIL Appeals Officer within ten business days of the receipt of the appeal. The time for deciding an appeal shall commence upon receipt of a written appeal identifying:

- (a) the date of the request and means by which the request was submitted;
- (b) a description, to the extent possible, of the records to which access was denied; and
- (c) the name and return address (or email address) of the person denied access.

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Failure to determine an appeal within ten business days of its receipt (by either granting access to the records sought or fully explaining in writing the reasons for the continued denial) shall constitute a denial of the appeal.

The FOIL Appeals Officer shall transmit to the Committee on Open Government copies of all appeals, upon receipt of such appeals, and determinations of such 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

### Fees

Except as provided herein or by law, there shall be no fee for the inspection of records, the search for records, or the certification of records. Although copies of records may be provided without a fee, a fee may be charged provided that:

- (a) it not exceed 25 cents per page for copies that are 9 x 14 inches or smaller; or
- (b) it shall not exceed the actual cost of reproduction of copies of records in excess of 9 x 14 inches in size.

The fee that the OA may charge for a copy of a record that is based on the actual cost of reproduction is limited to:

- (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 of engaging an outside professional service to prepare a copy of a record, but only when the OA's information technology staff is unable, or the OA's equipment is inadequate, to prepare a copy.

When the OA has the ability to retrieve or extract a record 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 retrieve or extract

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such record electronically. In such case, the agency may charge a fee in accordance with the above paragraphs.

The OA shall inform the requestor of the estimated cost of preparing a copy of the record if more than two hours of an OA employee's time is needed, or if it is necessary to retain an outside professional service to prepare a copy of the record.

The OA may require that the fee for copying or reproducing a record be paid in advance of the preparation of such copy.

### **Public Notice**

This Policy and the contact information for the Records Access Officer and FOIL Appeals Officer shall be publicly posted on the OA's website.

### **Severability**

If any provision or application of this Policy is adjudged invalid by a court of competent jurisdiction to any person, such determination shall not affect or impair the validity of the other provisions or applications of this Policy to any other person or circumstance.

# Appendix A



## Appendix A

### 2020 OA Subject Matter List

#### **Fiscal Notes**

Division: Actuarial Services

Description: Fiscal Notes are issued pursuant to § 50 of the Legislative Law for retirement bills affecting the New York City Employees' Retirement System (NYCERS), New York City Teachers' Retirement System (TRS), New York City Board of Education Retirement System (BERS), New York City Police Pension Fund (POLICE), or New York Fire Department Pension Fund (FIRE) (collectively NYCERS). Fiscal Notes are organized by calendar year and fiscal note number and are sequentially numbered based on date of issuance within such year's legislative session.

Records: Fiscal notes, financial analyses, requests for fiscal notes, related correspondence, and copies of proposed legislation and supporting legislative documentation.

#### **Pension Valuation**

Division: Actuarial Services

Description: Used to calculate, update and generate information regarding actuarial liabilities and costs for the NYCERS. These records are arranged by retirement system and fiscal year.

Records: Contribution Letters, Comprehensive Annual Financial Reports (CAFR), Leave Without Pay (LWOP) reporting, Valuation Reports, and related material.

#### **Benefit Certifications**

Division: Certification Services

Description: Used to certify certain NYCERS benefits. These records are arranged by member name and retirement system.

Records: Reports of Actuary, actuarial memoranda regarding benefit calculations and compliance, and related material.

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#### **Valuation Assumptions and Methods**

Division: Actuarial Services

Description: Actuarial mechanisms used to determine employer contributions for the NYCERS. The records are arranged by valuation date and by retirement system.

Records: Assumption and methods memoranda, including “Gold Books” and “Silver Books,” detailing demographic and economic assumptions, actuarial cost method, and actuarial asset valuation method.

#### **Annual Statements**

Division: Actuarial Services

Description: Actuarial information, tabular analysis, changes in personnel and plan provisions, and amendments to laws impacting the NYCERS. These records are arranged by fiscal year and retirement system.

Records: Annual statements of the NYCERS, including Variable Supplements Funds (VSF) and Tax-Deferred Annuity Programs (TDA).

#### **Audits**

Division: Actuarial Services/Certification Services

Description: Documents, arranged by auditor and fiscal year, used in support of actuarial audits pursuant to Chapter 96 of the New York City Charter, accounting audits of the NYCERS financial reporting, and audits performed by the New York State Department of Financial Services (DFS).

Records: Work files used to support the various independent audits of the financial statements of the NYCERS, TDAs and VSFs.

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#### **Employer Rates**

Division: Actuarial Services

Description: Documents used to provide employer contribution rates, theoretical employer rates for new hires, and increases in employer rates based on increases in salaries.

Records: Rate calculation reports and related material.

#### **FactBook**

Division: Actuarial Services

Description: Historical pension-related information, arranged by fiscal year and retirement system, used for reference purposes.

Records: FactBook compilation.

#### **Miscellaneous Financial Reports**

Division: Actuarial Services

Description: Various financial reporting (other than Annual Statements), arranged by fiscal year and retirement system, used in the City CAFR, each NYCERS CAFR, and audited financial statements.

Records: Financial reports and related material.

#### **Transferrable Earnings (SKIM)**

Division: Actuarial Services

Description: Documents and information, arranged by each VSF and year, used to determine transferable earnings related to funding and payment of VSF benefits.

Records: Letters and memoranda reporting calculations and transferable earnings.

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#### **Other Post-Employment Benefits (OPEB) Valuation**

Division: Actuarial Services

Description: Documents and information, arranged by fiscal year and component participating unit, used to determine actuarial liability and cost of OPEB for purposes of reporting in the City's CAFR, the component units' financial statements, and the OPEB Report.

Records: OPEB Report and related reporting.

#### **Pension Fund Policy Development Records**

Division: Actuarial Services/Certification Services

Description: Documents detailing policy decisions and program development process determinations during early stages of the establishment of the NYCERS. These records are arranged by retirement system and year.

Records: Report on the Police Pension Fund (1857-1912), Police Pension Fund Notes, New Entrants Retirement System – Personal Notes (1920-1960), Fire Department Pension Fund Notes (1940-1967), and subsequent tiers and retirement programs for the NYCERS including copies of adopted mortality tables, minutes of meetings, and sample original calculations.

#### **Attorney-Client Communications**

Division: Legal/Executive

Description: Privileged communications from the Office of the Corporation Counsel and internal counsel regarding legal policies and practices, and pension benefit administration.

Records: Confidential attorney-client communications.

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#### **Personnel Files**

Division: Administration

Description: Documents regarding employees' employment history and employee benefit files, which are arranged alphabetically by the surname of the employee.

Records: Applications, performance evaluation reports, union membership, health insurance enrollment, copy of resume, job descriptions, correspondence, personnel history questionnaire, terms and conditions of employment, disciplinary memoranda, extended leaves of absence, educational and professional achievements, documented sick leave and FMLA documents, retirement and separation documents, and other employment related documents.

#### **Vendor Contract Files**

Division: Administration

Description: Documentation, arranged by year and vendor name, regarding the agency's purchases and contracts.

Records: Requests for proposals, solicitations, purchase orders and vendor payments.

#### **Office Policies and Reporting**

Division: Administration

Description: Documentation, arranged by policy or reporting type and year, regarding the agency's policies, practices and compliance reporting.

Records: Time and Leave Policy for Managers and Non-Managers, agency's Code of Conduct, miscellaneous practice guides, and reporting under local law and directives.

#### **Equal Employment Opportunity (EEO)**

Division: EEO

Description: Documentation, arranged by fiscal year, regarding the agency's EEO Policy, Annual EEO Plan, EEO case files, and EEO tracking logs.

Records: Written policies and related material, reporting and tracking.