

Logs show citizens want material

Information laws prove very popular

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In 1975, a state Supreme Court justice told the city of Rochester that it had to turn over municipal records requested by a citizen through the state's Freedom of Information Law.

The law, commonly known by the acronym FOIL, was then only a year old, and the ruling from then-Justice David Boehm clearly spelled out to government agencies the breadth of the law. The city had wanted to know the reasons the records were being sought and the response, affirmed by the courts, was basically, "None of your business."

"Why you want it and who you are and what you intend to do with it are irrelevant," said Robert Freeman, the executive director of the state's Committee on Open Government and New York's go-to official with questions about access to government records and meetings.

Now, four decades later as we once again mark the national Sunshine Week initiative, have we made progress with government transparency? A review of Freedom of Information logs from some local governments and school districts would seem to say we have.

The *Democrat and Chronicle* filed Freedom of Information requests for FOIL logs — who requested information through FOIL and what happened — from school districts in Greece and the city of Rochester and eight local governments. Denials of FOILs were relatively rare, the records show.

Only Monroe County did not provide a response, asking for more time to compile the data.

Anecdotally, however, residents who often file FOILs say they still encounter initial resistance, and have to push and prod to remind officials of the rules. Only recently, local environmental activist Judy Braiman said, a school district access officer asked her the very question that Justice Boehm ruled in 1975 was irrelevant: Why did she want the information she was seeking and what did she plan to do with it?

The official said, "What's your interest, anyways," according to Braiman, who has been filing regular FOILs since 1983. That question, she said, is one she is occasionally asked, and she has to remind officials that the records are public, regardless of her intentions.

"It repeats itself constantly," she said.

Freeman is not surprised that Braiman and others may get occasional pushback from officials. With the turnover of elected officials and records access officers, local governments, as well as state officials, often have to be reacquainted with FOIL's mandates, he said.

"Certainly there is familiarity with the law on the part of government and the public," he said. "At the same time the cast of characters is constantly changing."

FOIL allows for exemptions to the law, permitting officials to withhold certain records. Among the exemptions, for example, are records that would be an invasion of public privacy and records created as part

of an ongoing criminal investigation.

But, even with exemptions, FOIL encourages officials to lean toward openness.

‘Temporary’ job

When FOIL was created in 1974, Freeman was moved into a temporary job to help the public and government officials navigate the new law. Obviously, the temporary nature of the job changed, and Freeman is still the state’s FOIL guru.

Now, Freeman’s office is the source of opinions about what is and isn’t public under the Freedom of Information Law.

The media are constant users of FOIL, as are insurance companies and lawyers with litigation against state and local governments. But, across New York, residents also use the law, seeking everything from environmental information to the résumés of public officials.

“There are any number of, let’s call them citizens’ groups,” Freeman said. “They crop up around the state. In so many instances they’ve used the Freedom of Information Law.”

Richard Barone, an Irondequoit activist and chairman of a group called Citizens for Better Government, estimates that he’s filed over 1,000 FOIL requests for government information. He, too, said he sometimes has to remind officials of the parameters of the law.

“In order to see that government is complying with the law, you need information,” he said. “Talking with someone verbally at Town Hall is worthless.”

Barone’s FOILs have varied from records of groups using the new Irondequoit Public Library — Barone says the town has wrongly let groups use the public space for free — to records of nearby home sales that he used to fight his assessment.

Well entrenched

FOIL is now so well entrenched that it is a noun and a verb (“I plan to FOIL a record”).

“It’s even becoming an adjective,” Freeman said, noting that people will ask of him, “Is this FOIL-able?”

For Freeman, the more people who use FOIL, the better. It can provide a window into government that otherwise might be shuttered.

To sample how local governments and schools respond to FOIL, the *Democrat and Chronicle* sought FOIL logs from 2015 and, in some cases, past years for comparison. Some were able to provide older records; some weren’t.

The City School District, for instance, did not begin maintaining FOIL logs until recently. The town of Victor, however, was able to provide records from 2007 and 2015.

Others provided records from 2015, still providing insight into who does file FOILs and how the schools and governments responded.

The Rochester City School District received 103 open-records requests in 2015. The most came from

Democrat and Chronicle schools reporter Justin Murphy, filing 16. Others filed four or fewer. District spokesman Chip Partner said the numbers generally have been steady. Twenty-four FOILs were filed in the first two months of this year.

Most sought records related to program and construction bids and contracts. At least nine requests pertained to student directory information, including names, addresses and phone numbers. Charter schools often ask for that information as part of their marketing efforts. The requests were approved, excluding students whose parents opted out of such disclosures. Four sought former- Superintendent Bolgen Vargas' separation agreement.

Meanwhile, the city of Rochester received 3,821 open records requests in 2015, compared with 3,290 the year before and 2,536 back in 2005.

The city's logs are more detailed than the City School District's, allowing for a comparison of openness across the years.

For 2014 and 2015, representing the first two years of Mayor Lovely Warren's administration, the city was consistent in approving 20 percent of FOILs without redaction, and 24 percent with some redaction while denying 5 percent. Others are recorded as information not found or with some other outcome, described as some combination of approved, denied, or not maintained, with the city referring the inquiry to a different agency. "Not maintained" means the agency doesn't keep a record that answers the request.

Compare that to 2005, the final year of then-Mayor William A. Johnson Jr.'s administration, which approved 35 percent without redaction, 38 percent with some redaction and denied 3 percent.

The increase in requests between 2014 and 2015 can be attributed almost entirely to requests for police records. By far, most requests are to the Police Department, with the majority seeking incident and accident reports. Those requests have doubled since 2005.

There has been an uptick, said James Smith, director of the city's Bureau of Communications and Special Events. But how much of it is more requests, versus expanded record keeping is unclear. In the past, the police might approve a standard request and it would be sent out without being logged by the city's communications office. Now it is recorded.

The city is working toward a new, more dynamic records management system, making greater use of technology and the city's website, Smith said. Certain reports and other recurring items could be accessible online. Police reports present a challenge, given personal or sensitive information that might be included.

The most frequent requestors are from insurance companies and law firms seeking accident reports and property records. Sixty percent involve police records, in some fashion. Roughly 3 percent relate to city budget and finance.

Also of note from the various FOIL logs examined:

» The Greece Central School District received 44 FOIL requests in 2015. Fourteen of them were from George Hubbard, a former school board member with a long history of conservative advocacy on fiscal matters.

They asked for highly specific details about the district's finances and tax rates and the way student performance is calculated.

» The town of Webster received 293 FOIL requests in 2015, with four denials. Three of these were for police reports, one for a building plan. A sixth of these requests were for police reports from the Webster Police Department. The majority of requests came from lawyers and Realtors for information on specific houses or buildings. The town received 176 requests in 2005 with four denials.

» The town of Victor received 163 FOIL requests in 2015. Only one was denied “because of solicitation,” as the requester could not provide proof that he wasn’t going to use names and contact information for solicitation.

The bulk of the requests had to do with environmental reports or building plans for projects such as the Gullace development between Church Street and Lynaugh Road, or the Silverton Glenn development. The town collected \$53.79 on charges for printed requests — the majority of the responses were emailed to the requester and were therefore free.

The town received 148 requests in 2007 — the first year the town started recording FOIL requests. A little less than half the requests were printed and paid for, rather than emailed, and the town collected \$428.06 on those requests.

» There were 288 FOIL requests submitted to Irondequoit in 2015. Nineteen of those were submitted by Barone, who asked for information ranging from records of the Town Board’s various votes related to the new library on the town campus, to additional library information including construction contracts and all the bids submitted from companies vying to pave the library parking lot.

Many of the other requests concerned citizens seeking police and accident reports, and others seeking information about particular addresses throughout the town. Judging by the requests, other areas of interest for residents in 2015 included the town’s bow hunting program and the salaries of union-represented employees.

» The town of Gates received 62 FOIL requests in 2015. As in most communities, the bulk of those requests came from lawyers and developers seeking information on particular properties.

» In Greece, citizens filed 332 FOIL requests in 2015. Numerous requests were for police and accident reports and photos, and again, many were from developers and lawyers seeking information about particular properties. The town denied two requests related to fire investigations, one for records related to the notorious and so-far unsolved 1978 arson fire at the Holiday Inn on East Ridge Road that left 10 people dead, and another for records related to a fire at a former home improvement store.

According to the records, the town denied requests in only a handful of instances, including once when the town was asked for road project records that were actually held by Monroe County and another time when it wasn’t clear what the requestor had asked for and the town was unable to seek clarity because no contact information had been provided.

» The town of Henrietta received 249 FOIL requests in 2015. Of those, 23 came from Henrietta resident Jill Mangino, whose husband is a longtime employee of the town’s highway department.

Mangino was among those who urged the town’s ethics board to take action against Supervisor Jack Moore after he acknowledged making racially insensitive remarks while speaking to town employees.

» The town of Pittsford received 33 FOIL requests in 2015. Many of them were from real estate developers or law firms seeking property records or information about permits that had been issued.

» Alone among the government bodies with which the *Democrat and Chronicle* filed FOILs, Monroe County did not provide anything but promises.

The request, worded very much the same as the others, was filed with the county on Feb. 3. A routine written acknowledgment of the request was received the next day, with a thumbs-up/ thumbs-down response promised by Feb. 12. When it failed to arrive, a reporter called and was given a verbal promise of Feb. 26. A week later, the *Democrat and Chronicle* received a verbal commitment that a response would arrive by March 4.

On March 4 the *Democrat and Chronicle* received a letter in which the county gave itself another 20 business days to decide whether it would provide the information requested. To say this is unusual would be a lie. Many local government agencies seem to be able to handle FOIL requests in an expeditious manner; the *Democrat and Chronicle* filed one recently with the village of Fairport, for instance, and received a written denial (a proper denial under the law, as it turned out) the very next day.

But some larger government bodies — New York state agencies for sure, and sometimes local agencies — have a habit of taking the maximum time the law allows to decide on a FOIL, and then stringing it out even longer by giving themselves time extensions. In some cases they may be overwhelmed by the volume of requests.

The state's FOIL is now in its fifth decade, and most of the state is cognizant of what it is and what it requires, Freeman said. But there is no shortage of questions from both those in charge of information and those seeking it. The state's Committee on Open Government hosts a website with advisory opinions and "our website gets literally millions of hits every year," Freeman said.

The committee also provides information and opinions about open meeting laws.

"When we talk about FOIL and open meeting laws, they're here to stay," Freeman said.

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Richard Barone of Irondequoit has been filing freedom of information requests for years.

WILL YURMAN/ STAFF PHOTOGRAPHER



Judy Braiman of Pittsford has been filing for Freedom of Information Act material since the 1980s. She displays a letter for information related to her position as president of Rochesterians Against the Misuse of Pesticides.

ANNETTE LEIN/ STAFF PHOTOGRAPHER



Robert Freeman, executive director of the NY state Committee on Open Government.

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