

## FOIL REQUESTS: BASIC STEPS

### SUNSHINE WEEK: YOUR RIGHT TO KNOW

Some basic steps in the process for filing a request for public records under Freedom of Information laws. Nearly all government agencies are subject to FOI laws. But be aware that FOI does not apply to private entities, nor to hospitals or other nonprofits that might seem like they should be public. If you don't understand something here or run into a situation involving a New York state or local agency, check out the state Committee on Open Government, which maintains a robust website at [www.dos.ny.gov/coog/](http://www.dos.ny.gov/coog/). The site, which covers the Open Meetings Law as well as the FOI law, includes sample request letters, an extensive FAQ section, and other helpful tips.

#### 1 Determine what you are looking for.

There are many federal, state and local government bodies that run schools, towns, cities, counties and special entities, such as fire districts. Virtually all are subject to Freedom of Information laws. More information on them is available on the Internet, in phone books and at local libraries.

**Pro tip I:** Check the agency's website for information about the records it keeps, but checking with someone at the agency can also help.

**Pro tip II:** You do not have to give a reason for your records request.

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#### Contact the records access officer.

A successful FOIL request often begins with a phone call. A records access officer may be willing to help you understand how records are kept (i.e., chronologically, alphabetically, etc.) and whether they are available electronically. Knowing which documents or reports might contain the information desired can save a lot of headaches.

**Pro tip:** You can only ask for records that already exist; you can't ask the agency to create a record that responds to your request.

**Request the records.** The request should be in writing. Most agencies accept them via email, postal mail or in person. Some local governments provide a FOIL form. Try to be as specific as possible when describing the records you are seeking because agencies aren't required to create documents to fulfill a request.

**Pro tip I:** Asking for the record in electronic form, if it exists in a format you can use, can save potential copying costs.

**Pro tip II:** If you're not sure whether what you're requesting is a public document, look at the advisory opinions posted on the website of the New York state Committee on Open Government.

They're sorted by topic; you'll almost certainly find one that fits your situation. Citing those opinions, or the legal citations they contain, will lend credibility to your request or appeal.

**Pro tip III:** If none of the other avenues to identify the documents you want work, ask for the agency's subject matter list. This is a list of all the subjects or file categories under which records are kept by the

agency.

**4 The waiting game.** Agencies have five business days to respond to your FOIL request by granting access, denying access or acknowledging the receipt if more time is needed. Many requests are fulfilled within 20 days, though agencies can extend deadlines if they wish. Generally they must fulfill the request within 20 business days.

**Pro tip:** If the agency extends the time it needs to fulfill your request, it is supposed to give you a target date of when it will be fulfilled. If it doesn't, press the responding official for a deadline.

**5 Acceptance/denial.** Your request can either be completely or partly fulfilled or wholly or partly denied. While most records are considered public, some are exempt from the scope of the law to protect the privacy of private citizens, law enforcement proceedings and trade secrets.

**Pro tip:** Grounds for denial include: law forbids disclosure; protection of personal privacy; potential harm to imminent contract awards or collective bargaining negotiations; reveal trade secrets; certain law enforcement documents; certain inter- or intra-agency communications.

**6 If your request is denied, you can appeal.** The records access officer must cite in writing the reasons for denying your request and identify the appropriate person to whom the appeal should be addressed. The law stipulates that you have 30 days to appeal a denied request. The agency then has 10 business days to respond. If the government agency persists in denying what you think is a valid request for public records, you can pursue the matter in court.

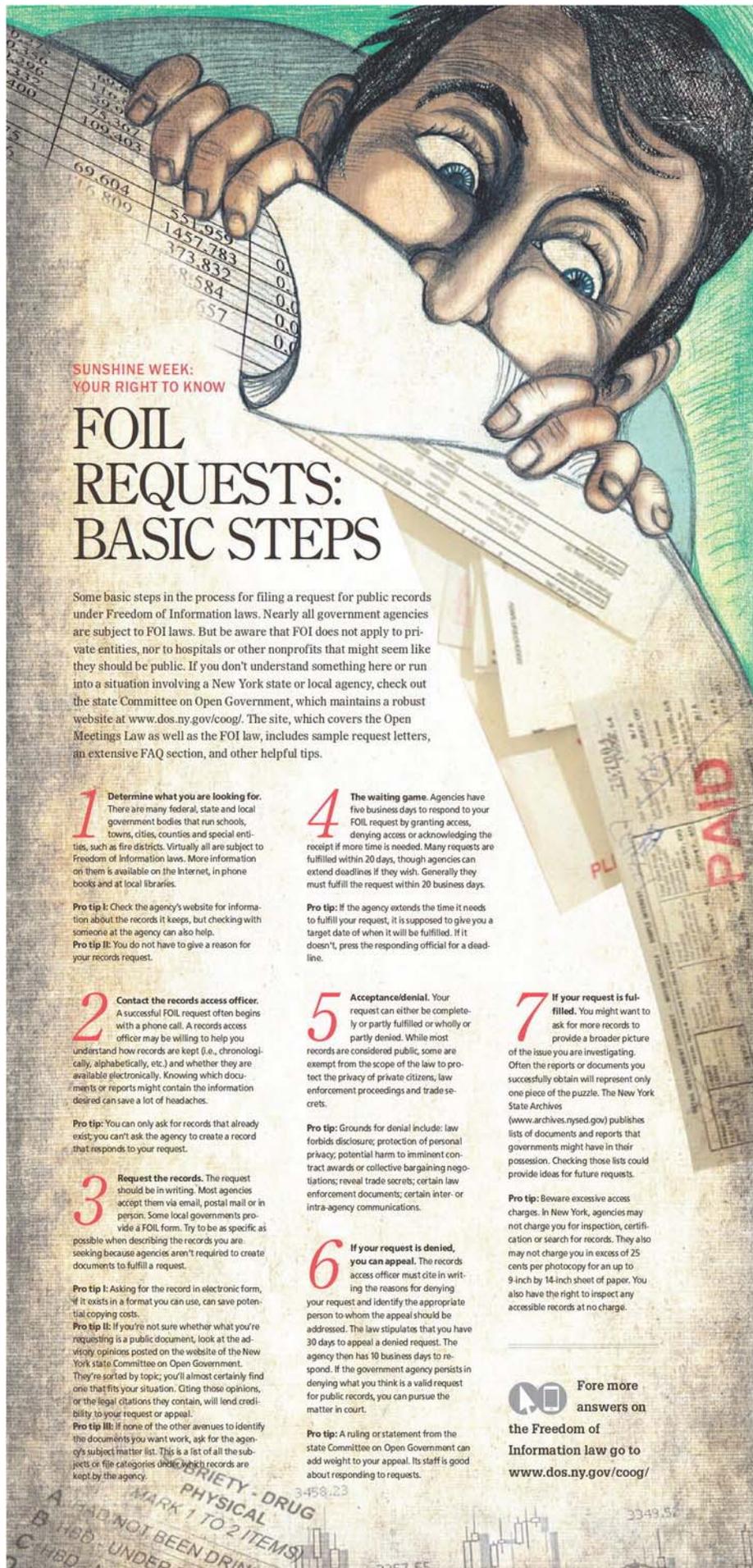
**Pro tip:** A ruling or statement from the state Committee on Open Government can add weight to your appeal. Its staff is good about responding to requests.

#### **7 If your request is fulfilled.**

You might want to ask for more records to provide a broader picture of the issue you are investigating.

Often the reports or documents you successfully obtain will represent only one piece of the puzzle. The New York State Archives ([www.archives.nysed.gov](http://www.archives.nysed.gov)) publishes lists of documents and reports that governments might have in their possession. Checking those lists could provide ideas for future requests.

**Pro tip:** Beware excessive access charges. In New York, agencies may not charge you for inspection, certification or search for records. They also may not charge you in excess of 25 cents per photocopy for an up to 9-inch by 14-inch sheet of paper. You also have the right to inspect any accessible records at no charge.



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**NO** For more answers on the Freedom of Information law go to [www.dos.ny.gov/coog/](http://www.dos.ny.gov/coog/)

## JAMES WARREN/GANNETT ILLUSTRATION

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