

# THE TOWN OF PLATTSBURGH

## FOIL REQUEST PROCEDURE

**Introduction:** The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Shrouding it with the cloak of secrecy or confidentiality should not thwart access to such information. The following is the Town of Plattsburgh procedure to be followed whenever a Freedom Of Information Law (FOIL) request is made. The steps to be taken are in compliance with PUBLIC OFFICERS LAW, ARTICLE 6 SECTIONS 84-90.

It is the intent of this procedure to best serve the requests of the public as well as to ensure that the integrity and custody of records is maintained.

### Procedure

The Town of Plattsburgh has determined that the Town Clerks Office, as the official keeper of the records, shall be the department responsible for administering any requests made for access, review or copies of information under the Freedom of Information Law, FOIL. All FOIL requests that are made must be made to the Town Clerks Office and any information that is made available either for review or copying will come from the Town Clerk's Office and be handled by personnel from that same office. The following procedure is to be adhered to so as to safeguard original documents and maintain the custody and integrity of those documents.

#### 1.) RESPONSE TO REQUESTS

Upon receiving a FOIL request §89(3) of the Freedom of Information Law requires that **an agency has five business days to grant or deny access in whole or in part, or if more time is needed, to acknowledge the receipt of the request in writing.** The acknowledgement must include an approximate date that indicates when the agency will grant or deny the request. The date must be reasonable under the circumstances of the request, and in most instances, it cannot exceed twenty additional business days. **If more than twenty additional business days is needed, the agency must provide an explanation and a date certain within which it will grant or deny the request in whole or in part.** That date, too, must be reasonable in consideration of the facts (i.e., the volume or complexity of the request, the need to search for records, or the obligation to review records to determine rights of access).

#### 2.) REVIEW OF MATERIALS

Each agency or department shall make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

- (a) are specifically exempted from disclosure by state or federal statute;
- (b) if disclosed would constitute an unwarranted invasion of personal privacy under provisions of subdivision two of section eighty-nine of the Freedom Of Information Law;
- (c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

- (d) 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;
- (e) are compiled for law enforcement purposes and which if disclosed, would;
  - i. interfere with law enforcement investigations or judicial proceedings
  - ii. deprive a person of a right to a fair or impartial adjudication;
  - iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
  - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (f) if disclosed could endanger the life or safety of any person;
- (g) are inter-agency or intra-agency materials which are not;
  - i. statistical or factual tabulations or data;
  - ii. instructions to staff that affect the public;
  - iii. final agency policy or determinations; or
  - iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or
- (h) are examination questions or answers which are requested prior to the final administration of such questions;
- (i) 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; or
- (j) are photographs, microphotographs, videotapes or other recorded images prepared under the authority of section eleven hundred eleven-a of the vehicle and traffic law.

**It is the responsibility of the affected agency or department to review and ensure that the above exempted materials are not accessed and or are redacted so as to comply with all state and federal laws.**

A letter will accompany any request for a list of names and addresses from the person requesting such information providing certification that such person will not use such lists of names and addresses for solicitation or fund raising purposes and will not sell, give or otherwise make available such lists of names and addresses for solicitation or fund raising purposes.

### 3.) **REPRODUCTION COSTS**

Copies of records must be made available on request. Except when a different fee is prescribed by statute, an agency may not charge for inspection, certification or search for records, or charge in excess of 25 cents per photocopy up to 9 by 14 inches (section 87(1)(b)(iii)). Fees for copies of other records may be charged based upon the actual cost of reproduction.

Chapter 223 section 87(1)(c) of Public Officers Law defines the basis for determining the actual cost of reproducing records electronically. In those

instances in which substantial time is needed to prepare a copy (i.e., at least two hours of an employee's time), the legislation now permits an agency to charge a fee based on the cost of the storage medium used as well as the hourly salary of the lowest paid employee who has the skill needed to prepare the records. The legislation also allows an agency whose information technology equipment is incapable of preparing a copy, to charge the actual cost of engaging a private professional service to do so. In either case, the applicant for a record must be informed in advance if more than two hours of an employee's time or an outside professional service is needed to prepare a copy of the record.

Chapter 223 also codifies judicial findings that denial of access of records due to a shortage of staff is not permissible. Section 80(3)(a) of the Public Officers Law now provides that a local government cannot deny a request due to insufficient staff whenever an outside service can be retained to accommodate the applicant and if the applicant agrees to pay the actual cost of reproducing the records.

#### **4.) AVAILABILITY AND CUSTODY OF ORIGINALS**

If and when an appointment is made for the review/inspection of records, while an agency is not required to do so, to ensure the custody and integrity of the original records it shall be the procedure of the Town of Plattsburgh to make staff persons available to observe the applicant for records while the records are being reviewed. The Town will endeavor to provide a staff member for no more than two hours a day for the review of records at no charge to the applicant however, if the applicant wishes to extend the hours of review and agrees to pay the salary in accordance with Chapter 223 Section 80(3)(a) of Public Officers Law every attempt will be made to provide the original records for such a supervised review. It will be the responsibility of the assigned staff member to deliver the requested records to the applicant and return the requested records to the appropriate department or department head.

Should it become evident that portions of requested records may be withheld the agency is permitted to require payment for redacted copies of records prior to their review or inspection.