

FOIL LAWS

Within five business days of the receipt of a written request for a record reasonably described, the agency must make the record available, deny access in writing giving the reasons for denial, or furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied, which must be reasonable in consideration of attendant circumstances, such as the volume or complexity of the request. The approximate date ordinarily cannot exceed 20 business days from the date of the acknowledgment of the receipt of a request. If it is known within five business days of receipt of the request that more than 20 business days will be needed to grant a request in whole or in part, the agency's acknowledgment must explain the reason and provide a specific date within which it will grant access. Similarly, if the agency acknowledges the receipt of a request and provides an approximate date within 20 business days that cannot be met, it is required to inform the person requesting the record, indicating the reason for the delay, and provide a specific date when it will grant access. When a specific date beyond 20 business days is given, it must be reasonable in relation to the circumstances of the request.

If the agency fails to abide by any of the requirements concerning the time within which it must respond to a request, the request is deemed denied, and the person seeking the records may appeal the denial.

Fees

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.

Denial of access and appeal

Unless a denial of a request occurs due to a failure to respond in a timely manner, a denial of access must be in writing, stating the reason for the denial and advising you of your right to appeal to the head or governing body of the agency or the person designated to determine appeals by the head or governing body of the agency. You may appeal within 30 days of a denial.

Upon receipt of the appeal, the agency head, governing body or appeals officer has 10 business days to fully explain in writing the reasons for further denial of access or to provide access to the records. Copies of all appeals and the determinations thereon must be sent by the agency to the Committee on Open Government (section 89(4)(a)). This requirement will enable the committee to monitor compliance with law and intercede when a denial of access may be improper. A failure to determine an appeal within 10 business days of its receipt is considered a denial of the appeal.

You may seek judicial review of a final agency denial by means of a proceeding initiated under Article 78 of the Civil Practice Law and Rules. When a denial is based upon one of the exceptions to rights of access that were discussed earlier, the agency has the burden of proving that the record sought falls within one or more of the exceptions (section 89(4)(b)).

The Freedom of Information Law permits a court, in its discretion, to award reasonable attorney's fees to a person denied access to records. To do so, a court must find that the person denied access "substantially prevailed", and either that the agency had no reasonable basis for denying access or that it failed to comply with the time limits for responding to a request or an appeal.
