

September 23, 1974

Mr. Abraham M. Neuwirth  
District Principal  
Bellmore Union Free School District  
Town of Hempstead  
Bellmore, New York 11710

Dear Mr. Neuwirth:

Thank you for your letter of September 10, 1974. I apologize for my delay in responding.

Although the Committee has not formally considered the question raised in your letter, I believe the answer to be reasonably clear.

Section 88(5) of the statute reads: "In addition to the requirements imposed by subdivision one of this section, each agency or municipality controlled by a board, commission or other group having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding in which he votes." It would seem clear from this section that the Law requires you to keep a record of the ayes and noes of each member on each final vote, regardless of what your past practice has been.

If you would like to discuss this matter further or if I can be of any other assistance to you, please do not hesitate to call me.

Very truly yours,

Carmine J. Clemente  
Counsel

CJC/sd  
cc: Louis R. Tomson

September 23, 1974

Mr. Abraham M. Neuwirth  
District Principal  
Bellmore Union Free School District  
Town of Hempstead  
Bellmore, New York 11710

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If you would like to discuss this matter further or if I can be of any other assistance to you, please do not hesitate to call me.

Very truly yours,

Carmine J. Clemente  
Counsel

CJC/sd  
cc: Louis R. Tomson

P  
PAYROLL

#2

September 24, 1974

Raymond A. Dworakowski, Esq.  
Bridge and Dworakowski  
1345 Statler Hilton  
Buffalo, New York 14202

Dear Mr. Dworakowski:

Thank you for your letter of September 5, 1974, wherein you ask for a clarification of Section 88(1)(g) of the Freedom of Information Law. I apologize for my delay in responding.

The Committee has not yet formally considered the question raised in your letter; however, as we have said in the attached staff memorandum, "at first glance, this provision [Section 88(1)(g)] seems to limit prior rights to access held by taxpayers and citizens". A recent case in Supreme Court, Nassau County, held that a taxpayer has a right to examine municipal payroll records and the holding in this case is clearly preserved by Section 88(10) of the Law, which states, "nothing in this Article shall be construed to limit or abridge any existing right at law or in equity ..."

Additionally, discussions with legislative staff have revealed that in the past a number of government agencies had denied access to newsmen, who were neither residents nor taxpayers. In light of this and the previously mentioned case law, I think it unlikely that this section was intended to limit access to payroll records; rather, the section emphasizes that newsmen have a right of access to payroll information regardless of resident or taxpaying status.

Therefore, it is my opinion that the public's right to inspect municipal payroll records is preserved through both Section 88(1)(i) [General Municipal Law Section 51 being the "other provision of Law" mentioned therein] and Section 88(10) of the Freedom of Information Law.

Raymond A. Dworakowski, Esq. -2-

September 24, 1974

If you would like to discuss this matter further, please contact me at Area Code 518, 474-2518.

Very truly yours,

Carmine J. Clemente  
Counsel

CJC/sd  
Attachment

cc: Louis R. Tomson

September 24, 1974

Mr. Francis E. Yankowski  
Executive Director  
Troy Urban Renewal Agency  
251 River Street  
Troy, New York 12180

Dear Mr. Yankowski:

This letter will confirm our September 16, 1974, telephone conversation wherein I informed you that your letter to Attorney General Lefkowitz, dated September 3, 1974, regarding the Freedom of Information Law, had been referred to this office for attention.

The Committee on Public Access to Records has not formally considered the questions raised in your letter. However, as I mentioned in our telephone conversation, the legal staff is engaged in research which bears upon these questions, and is presently preparing for Committee consideration a legal brief on the term "unwarranted invasion of personal privacy". Accordingly, since both of the questions posed in your letter turn upon a definition of the phrase "unwarranted invasion of personal privacy", I will hold your letter until the staff has completed its research and the Committee has had a chance to fully consider the matter.

In the interim, and as agreed in our conversation, I am enclosing a copy of a staff memorandum entitled, "Freedom of Information Law Historical Perspective".

If I can be of any further assistance, please do not hesitate to call me at 474-2513.

Sincerely,

Carmine J. Clemente  
Counsel

CJC/sd  
Enclosure

cc: Honorable Louis J. Lefkowitz

Louis R. Tomson

= Any person

#4

September 24, 1974

Mr. Vincent Ziccolella  
District Principal  
Greenburgh-Graham  
Union Free School District  
1 South Broadway  
Hastings-on-Hudson, New York 10706

Dear Mr. Ziccolella:

Thank you for your letter of September 9, 1974. I apologize for my delay in responding.

Section 88(6) of the Freedom of Information Law says that all agencies "shall make the records promptly available to any person ..." It would seem to me that previous statutes which limited the right of access to records to residents or taxpayers would no longer apply. This Law places no restriction or qualification upon the right to inspect municipal or state records; indeed, Section 88(6) represents a statutory extension of the right ~~to~~ access to public records.

OK on original

Very truly yours,

Carmine J. Clemente  
Counsel

CJC/sd

cc: Louis Tomson

PRIVACY  
#5

September 25, 1974

Honorable Ira M. Ball  
Chairman  
State Bingo Control Commission  
162 Washington Avenue  
Albany, New York 12231

Dear Chairman Ball:

Victor A. Coccoziello, your Counsel, in a letter to our Executive Director, Louis R. Tomson, dated August 2, 1974, has raised the following questions:

1. Does Section 88(3) of the Freedom of Information Law preclude the Bingo Control Commission from furnishing the names and addresses of organizations conducting bingo to bona-fide charitable or religious organizations which use such lists for the purpose of soliciting bingo funds?
2. Is the Freedom of Information Law prospective only?

The Committee has not yet considered the questions raised in Mr. Coccoziello's letter, and I must stress that this letter sets out my current opinion as Counsel.

Section 88(3) and 88(7) of the Law, which we often refer to in conversation as the "exception provisions", do not impose any duties upon an agency. Reliance upon the provisions of these sections by an agency is discretionary, not mandatory, except in a case where another statute specifically prohibits disclosure. Therefore, you may continue your practice of releasing to any member of the public, lists containing names and addresses of licensee organizations conducting bingo in New York State. Nothing in this Law requires that you withhold these lists from the public. The "exception provisions" of the statute merely permit you to delete identifying details [Section 88(2)] or withhold [Section 88(7)(c)] information which constitutes an "unwarranted invasion of personal privacy", they do not require the withholding of such information

September 25, 1974

In answer to Mr. Coccoziello's second question, I believe that this Law is not prospective only, and to construe it as such would be inconsistent with the stated legislative purpose of making "government the public's business". The evolution of the public's right to inspect government records in New York State has been a history of continually broadening public access. We should recognize that the Freedom of Information Law is a remedial statute enacted to remedy the inadequacies of its predecessors and that it should be liberally construed. To hold that this statute is prospective only would ignore this Law in its historical perspective.

If I can be of any further assistance to you, please contact me at (518) 474-2518.

Very truly yours,

Carmine J. Clemente  
Counsel

CJC/sd  
cc: Victor A. Coccoziello, Esq.

Louis R. Tomson



MISC

#6

October 7, 1974

The Honorable W. Carmine Donnino  
Counsel  
NYS Dept. of Correctional Services  
Building #2  
State Campus, Albany, New York 12226

Dear Mr. Donnino:

As agreed in our telephone conversation of October 4,  
I am forwarding for your information copies of:

- 1) a staff memo entitled, Freedom of Information Law,  
Historical Perspective;
- 2) a letter from Ralph J. Marino to Michael Whiteman  
dated May 28, 1974, and
- 3) a letter with attachment from Louis P. Contiguglia  
to Lou Tomson dated July 29, 1974.

Please note that the language found on page two of  
Senator Marino's letter is to some extent inconsistent with  
the information found in the attachment to Lou Contiguglia's  
letter.

I thought the exchange of ideas we had last Friday was  
useful and I look forward to meeting you for lunch.

Very truly yours,

Carmine J. Clemente  
Counsel

CJC/sd

enc. (3)

bcc: L. Tomson  
L. Grumet

October 11, 1974

#7

Rev. John J. Martinez, S.J.  
Director  
Ellicott District Concerned Taxpayers  
472 Emslie Street  
Buffalo, New York 14212

Dear Father Martinez:

Enclosed is a copy of the Freedom of Information Law and the Interim General Guidelines for Public Access to Records which the Committee on Public Access to Records has issued pursuant to the Freedom of Information Law. These guidelines were sent to the chief elected officials of each local government in the state on August 23, 1974.

The guidelines suggest that each agency designate at least one person by name or specific job title to be a Records Access Officer. As yet, the Committee on Public Access to Records has no comprehensive listing of names and titles of Records Access Officers.

We suggest that you contact the specific agency you are interested in for the name of those Records Access Officers.

The Committee will be meeting again on October 31, 1974 to consider regulations for adoption which would replace the interim guidelines. A copy will be sent to you as soon as they are available. If I can be of any help to you in connection with implementation of the Freedom of Information Law, please give me a call at (518) 474-2858.

Sincerely,

Lawrence Zawisza  
Assistant Municipal  
Liaison Officer

Enclosure

LZ:lbb

#8

October 15, 1974

Dr. Leighton Wilklow  
Supervising Principal  
Barker Central School  
1628 Quaker Road  
Barker, NY 14012

Dear Dr. Wilklow:

Please find enclosed rather poor and slightly marked  
copies of the Thibadeau and Van Allen cases.

If I can be of further assistance, please feel free  
to call.

Very truly yours,

Robert J. Freeman  
Counsel

g

RF/sd

enc.

October 15, 1974

#9

Mr. T. J. Szymanski, Esq.  
Assistant County Attorney  
Erie County  
25 Delaware Avenue  
Buffalo, New York 14202

Dear Mr. Szymanski:

Thank you for the preliminary draft of your local law implementing the New York State Freedom of Information Law.

The Committee on Public Access to Records will act on regulations for local municipalities, school boards and fire districts during their meeting on October 31, 1974.

Regulations adopted by the Committee will have the force of law for municipalities, school boards and fire districts throughout the state.

While we cannot predict what regulations will ultimately be adopted by the Committee, we can list some points you may wish to consider before presenting a draft local law for consideration by the County Legislature.

The intent of the law, as you know, is to broaden, rather than restrict, public access to records. We were therefore pleased to note that your draft Section II affirms that nothing in the local law shall limit or abridge any existing right of access of any party to public records kept by any agency or municipality. You may, however, wish to specify that oral, as well as written, requests for records will be honored and that the public continue to have access to any and all agency and municipal officials, in addition to designated Records Access Officers, who have traditionally been authorized to make records and information available.

The Committee on Public Access to Records may specify a procedure for examining and copying records, including recommendations governing response time. You may therefore wish to include a phrase in your

Mr. I. J. Szymanski

-2-

OCTOBER 10, 1974

section on examination and copying specifying that examination and copying will be undertaken "in conformity with such regulations as may be issued by the Committee on Public Access to Records," as you did in other sections of your draft.

You may also wish to specify that regulations should be posted in every place where records are kept.

Again, thank you for submitting to us your draft regulations governing implementation of the New York State Freedom of Information Law. If we can be of any further assistance, please do not hesitate to call.

Sincerely,

Larry Zawisza  
Assistant Municipal  
Liaison Officer

LZ:LBB

October 17, 1974

#10

Mr. John Doyle  
First Deputy County Attorney  
Department of Law  
307 County Office Building  
Rochester, New York 14614

Dear Mr. Doyle:

Thank you for your copy of the proposed guidelines for Monroe County implementing the Freedom of Information Act.

The Committee on Public Access to Records will act on draft regulations for local municipalities, school boards and fire districts during their meeting on October 31, 1974.

Regulations adopted by the Committee will have the force of law for municipalities, school boards and fire districts throughout the state.

While we cannot predict what regulations will ultimately be adopted by the Committee, we can list some points which you may wish to consider prior to adoption of your regulations.

The Committee may specify procedures governing access to, and copying of, records. You may therefore wish to note that your procedure for obtaining records, charging fees and granting or denying access to records may be modified to conform with such regulations as may be promulgated by the Committee on Public Access to Records, as you note in other sections of your draft.

As you know, the intent of the Freedom of Information Law is to broaden, rather than restrict, public access to records. We were therefore pleased to note that the Records Access Officer is allowed by your regulations to waive the use of a form to obtain access to records and to waive fees for photocopies. You may, however, wish to specify that oral as well as written requests for records will be honored, and that the public will continue to have

Mr. John Doyle

-2-

October 17, 1974

access to any local and municipal officials, in addition to the Records Access Officer or his representative(s), who have traditionally been authorized to make records or information available. You may also wish to allow the general public, as well as bona fide members of the news media, to have access to county payroll records.

You may also wish to specify that regulations governing access to records should be posted in every place where records are kept.

Again, thank you for submitting to us your draft regulations governing implementation of the New York State Freedom of Information Law. If we can be of any further assistance, please do not hesitate to call.

Sincerely,

Larry Zawisza  
Assistant Municipal  
Liaison Officer

LZ:1b

October 17, 1974

#11

Mr. James A. Haynes  
County Attorney  
Chenango County  
Norwich, New York 13815

Dear Mr. Haynes:

Thank you for your letter of October 7, 1974.

The Committee on Public Access to Records will act on draft regulations for local municipalities, school boards and fire districts during their meeting on October 31, 1974.

Regulations adopted by the Committee will have the force of law for municipalities, school boards and fire districts throughout the state.

We are enclosing one in a series of draft regulations for local agencies and municipalities which our staff has been discussing with various municipal associations during the past several weeks.

Some of the provisions of this particular rough draft may be of interest to you as you work on regulations for adoption by your Board of Supervisors.

We would appreciate any comments you may have on the content of our rough draft.

If we can be of any further assistance, please do not hesitate to call.

Sincerely,

Larry Zawisza  
Assistant Municipal  
Liaison Officer

Enclosure

LZ:1b



October 17, 1974

Dr. Paul E. Kirsch  
Superintendent of Schools  
50 Iroquois Drive  
Salamanca, New York 14774

#12

Dear Dr. Kirsch:

Thank you for the copy of your working draft of the Salamanca City Central School District regulations for implementing the New York State Freedom of Information Law.

The Committee on Public Access to Records will act on draft regulations for local municipalities, school boards and fire districts during their meeting on October 31, 1974.

Regulations adopted by the Committee will have the force of law for municipalities, school boards and fire districts throughout the state.

While we cannot predict what regulations will ultimately be adopted by the Committee, we can list some points you may wish to consider as you prepare regulations for the City Central School District.

Because regulations which the Committee on Public Access to Records will adopt will have the force of law in your school district, you may wish to state in your draft regulations that procedures specified in your draft will be modified in conformity with such regulations as may be issued by the Committee.

As you know, the intent of the law is to broaden, rather than restrict, public access to records. You may therefore wish to specify that oral, as well as written, requests for records will be honored and that the public will continue to have access to any school district officials, in addition to the Records Access Officer or his representative(s), who have traditionally been authorized to make records or information available. You may also wish to allow the general public, as well as bona fide members of the news media, to have access to the school districts payroll records.

Dr. Paul E. Kirsch  
October 17, 1974  
Page -2-

You may also wish to specify that regulations governing access to records should be posted in every place where records are kept.

Again, thank you for submitting to us your draft regulations governing implementation of the New York State Freedom of Information Law. If we can be of any further assistance, please do not hesitate to call.

Sincerely,

Larry Zawisza  
Assistant Municipal  
Liaison Officer

LZ:1bb

STH / FRI, 110.  
October 23, 1974

# 13

Phyllis S. Jaffe  
Staff Attorney  
BOCES  
Yorktown Heights, NY 10598

Dear Ms. Jaffe:

Thank you for your letter of September 17, 1974, wherein you ask whether certain materials fall within the purview of the Freedom of Information Law (Law).

The Committee has not yet formally considered the question raised in your letter; however, I feel the answer to be reasonably clear. The four documents enclosed in your letter of the 17th appear to contain only statistical and/or factual information, most of it in tabular form. It's hard to envision a more clear example of the type of record described in 88(1)(d).

The Governor, in his regulations, defines a statistical tabulation to mean a collection or orderly presentation of numerical data logically arranged in columns and rows graphically. A factual tabulation is a collection of statements of objective information logically arranged and reflecting objective reality, actual existence, or an actual occurrence. It seems clear that all the material enclosed in your letter fit within either or both of these definitions and is therefore accessible to "any person."

I might mention that because the material is found in Section 88(1) does not necessarily mean it must be made available to the public. You may determine that the statute through an exemption permits you to withhold the information, or that on the facts your agency could successfully assert the governmental secrecy privilege. In this regard, I mentioned during our phone conversation of October 10 the case of Sorley v. Village of Rockville Center, 30 A.D. 2d 822 and Cirale v. 80 Pine Street Corp., 35 NY 2d 113. The ultimate determination on access is yours; but, in my opinion, the material is accessible under Section 88(1), no exemption applies and I do not think this is a case for the governmental secrecy privilege. If you would

Phyllis S. Jaffe

-2-

October 23, 1974

like to discuss the matter further, please contact me at  
area code 518-474-2518.

It's been a pleasure to be of assistance.

Very truly yours,

Carminc J. Clemente  
Counsel

CJC/sd

bcc: Lou Tomson

October 29, 1974

#14

Mr. and Mrs. F. Bendel

[Redacted address]

Dear Mr. and Mrs. Bendel:

Assemblyman Herbst has referred your letter to this office, the Committee on Public Access to Records, which has responsibility for implementing the Freedom of Information Law.

With regard to your problem, there is little doubt that you should have access to information that you are seeking. Prior to the enactment of the Freedom of Information Law, you had the right to gain access to the information under Section 51 of the General Municipal Law. The new law preserves all rights of access to information that a citizen had previously.

First, a request for the records should be made in the office of the County Clerk. If he denies access to the record, you may appeal to him, as the head of the agency. He must decide your appeal within seven business days of the appeal. If he further denies access on appeal, you may bring a court action.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman

RJF/sd

cc: Assemblyman Lawrence Herbst

October 29, 1974

#15

Ms. Joan Washburn  
[REDACTED]

Dear Ms. Washburn:

Although the Committee on Public Access to Records has not dealt with your problem directly, in my opinion, property record cards held by assessors are generally accessible under the Freedom of Information Law.

I use the word "generally" because the records may be reasonably withheld at the times during which they are being used by the agency.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman

RJF/sd

*Law*

October 30, 1974

*#16*

Ms. Gertrude Rowse  
Village Clerk  
14 Baker Street  
P.O. Box 719  
Patchogue, NY 11772

Dear Ms. Rowse:

Your interest in complying with the Freedom of Information Law is much appreciated. I detect two questions in your request for advice. First, what should be included in your subject matter list, and second, are the documents noted accessible under the Law?

Although the Committee on Public Access to Records has not dealt with these issues directly, in my opinion, the indexing section requires you to maintain a reasonably detailed subject matter list which makes reference to any records kept in your office, regardless of whether they are accessible or not. Interpreting this section to include only accessible records would effectively deny the public its right to know what records an agency or municipality possesses. Without knowledge of what is held, the public would be unable to make a request and therefore, the right to challenge a denial of access would also be subverted.

With regard to the documents, all three are generally accessible under the Freedom of Information Law. I use the word "generally" because the records may be reasonably withheld during the times in which they are being used by public officials.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

PAYROLL  
PRIVACY  
FEES  
NOTE

November 6, 1974

#17

Mr. Thomas G. Spencer  
Chief Executive Officer  
Executive Department  
Division of Alcoholic Beverage  
Control  
State Liquor Authority  
Two World Trade Center  
New York, New York 10047

Dear Mr. Spencer:

Your interest in complying with the Freedom of Information Law is much appreciated. As you may know, the Committee on Public Access to Records met on October 31 and adopted draft regulations applicable to all governmental units. It is anticipated that the regulations will become effective in approximately one month.

I will comment only upon those sections of Divisional Order 677 which I hope I can clarify.

Section 3 dealing with minutes of meetings establishes a fee of fifty cents per page. The draft regulations permit a maximum fee of twenty-five cents for copying standard sized items (8 1/2" x 11" and 8 1/2" x 14").

Section 6 limits access to payroll information to members of the news media. The Committee has interpreted Section 88(1)(g) of the Freedom of Information Law differently. That section was intended to break down the barriers that members of the news media might encounter in obtaining information. For example, Section 51 of the General Municipal Law permits access to taxpayers and registered voters. Section 2116 of the Education Law permits access to residents of a school district. The intent of the Law is to enable members of the news media to gain access to records which they formerly could not obtain since they were not taxpayers, voters, or residents of a specific governmental unit. Further, Section 88(6) of the Law states that accessible records shall be made available to "any person," regardless of status or interest. Consequently, payroll information is accessible to any person, and not only to members of the news media.



Mr. Thomas G. Spencer

-2-

November 6, 1974

Section 7 of the divisional order pertains to final determinations and dissenting opinions of the agency. Under the Law, a roll call vote must be recorded unless the vote is unanimous. You are quite correct that there need not be an opinion when approval is given.

With regard to unwarranted invasions of personal privacy, the Committee has not yet issued guidelines on the subject. However, the statute is permissive; an agency may allow access to all of its records, but it has the discretionary power to deny access or to delete identifying details if it is considered that disclosure might constitute an unwarranted invasion of personal privacy.

Also, some of the privacy provisions serve to confuse rather than clarify. For example, under Section 88(3)(e), there might be an unwarranted invasion by releasing records of a personal nature which are relevant to the work of an agency.

As stated earlier, the draft regulations set a maximum fee of twenty-five cents per copy. I might add that an agency may choose to charge nothing, particularly with respect to items which have customarily been given free of charge.

The draft regulations allow a request to be made orally or in writing. If a record is requested in person or by phone, and the record is readily identifiable, there is no requirement that the request be made in writing.

I will send you a copy of the draft regulations as soon as possible. I hope that I have been of some assistance, and I am sure that the draft regulations will be of substantial assistance in attempting to comply with the Law.

I thank you once again for your interest.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

A

November 6, 1975

#18

Mr. John T. Attanasio



Dear Mr. Attanasio:

Thank you for your interest in the Freedom of Information Law.

Although this office does not generally deal with problems such as yours, I have attempted to obtain information concerning review of your civil service examination for the position of state trooper. On your behalf, I contacted the Office of Counsel of the Division of State Police. Counsel informed me that the Division has regulations different than those adopted by the Civil Service Commission, and that there is no procedure whereby a candidate can review the results of an examination.

I regret that I cannot be of greater assistance. Should any questions arise regarding the Freedom of Information Law, please feel free to contact me.

Very truly yours,

Robert J. Freeman  
Counsel

Committee on Public Access  
to Records  
162 Washington Avenue  
Albany, New York 12231  
telephone: (518) 474-2518  
474-2791

RJF/sd

fees

November 7, 1974

#19

Mr. Grover W. Radley, Jr., Esq.  
85 Otsego Street  
Ilion, New York 13357

Dear Mr. Radley:

The Committee on Public Access to Records recently adopted regulations which will become effective on approximately December 1.

The regulations provide that a maximum fee of twenty-five cents for copying a standard sized page (8 1/2" x 11" or 8 1/2" x 14") may be charged by an agency or municipality. There is no provision which permits charging a fee for any kind of search. The law clearly indicates that no fee may be charged for inspection of records, and it logically follows that no search fee is allowable.

The Freedom of Information Law, however, does not supersede the provision of pre-existing laws. If there is a village law which authorizes charging a fee for a tax search, the new law has no effect. If, however, there is no such pre-existing provision, the proposed regulations permit only the above mentioned fees for copying.

Furthermore, Section 4-402(e) of the Village Law states that the Village Clerk shall produce for inspection the books, records and papers of his office, and shall furnish a copy of any portion thereof...at the rate of twenty cents per folio. The quoted statute similarly contains no authorization to charge a search fee.

My opinion is that if no provision enables the village to charge for the search, there should be none. <sup>Search</sup> Certainly the Freedom of Information Law has not authorized charging a fee of this nature.

ok charging

I hope that I have been of assistance.

Very truly yours,

Robert J. Freeman  
Counsel

JF/od

November 8, 1974

#20

Mr. Robert Wunder  
[REDACTED]

Dear MR. Wunder:

As you may know, public access to records is now governed by the Freedom of Information Law, and this Committee is responsible for its implementation.

In response to your question, you are not required to complete an application form in order to gain access to the records sought. The Committee recently adopted regulations which should become effective on approximately December 1. There is a provision which appears to apply specifically to your question. It states that:

"Where a request for records is required, such request may be oral or in writing. However, written request shall not be required for records that have been customarily available without written request."

I hope that I have been of assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

cc: Lawrence W. Reitch

discharge papers

November 8, 1974

#21

Mr. Matt Matteo  
State of New York  
Office for Local Government  
Agency Building 4  
Empire State Plaza  
Albany, New York 12223

Dear Mr. Matteo:

Public access to military discharge and separation papers is effectively a matter within the discretion of the individual to whom the documents pertain.

An individual has three options from which he can choose. First, there is no requirement that he must file the papers with the County Clerk. Second, he may file them with the County Clerk unconditionally. And third, he may file the papers with the County Clerk, stipulating that they may be sealed, and, therefore, inaccessible to a requester under the Freedom of Information Law or any pre-existing statute that grants access to records.

Consequently, if the discharge and separation papers are filed with the Clerk without stipulating that they be sealed, they are accessible records under the Freedom of Information Law.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

~~Confidential~~  
fees

November 12, 1974

#22

Mr. Gerald Schoonover

[Redacted]

Dear Mr. Schoonover:

Your interest in the Freedom of Information Law is much appreciated.

In addition to answering your specific question, I believe that I can clarify some underlying issues as well.

With regard to making copies with your own machine, your intimation that there should be no charge is quite correct.

The Committee on Public Access to Records recently adopted regulations which should become effective on approximately December 1. The section dealing with fees provides that an agency or municipality (which includes school districts) may charge a fee for copying, "which shall not exceed the actual copying cost which is the average unit cost for copying a record, excluding fixed costs..." Consequently, if an individual copies the records himself, either manually or mechanically, and the school district incurs no actual copying costs, there should be no fee assessed.

Secondly, the regulations state that the maximum fee for copying records "shall not exceed twenty-five cents per page for photocopies not exceeding 8 1/2 by 14 inches." Therefore, the one dollar minimum fee for copying will violate the regulations when they become effective.

And third, although it is true that Section 2116 of the Education Law remains effective, the Freedom of Information Law broadens accessibility. Under the new law, access to records of a school district is accessible to "any person," not only to a "qualified voter of the district."

I hope that I have sufficiently responded to your problem.

Very truly yours,

Robert J. Freeman  
Counsel

RJE/sd

November 12, 1974

# 23

Mr. Edward Krause  
[REDACTED]

Dear Mr. Krause:

Please excuse the delay in responding to your correspondence.

Although I can identify with your problem having been raised on a main road, the Freedom of Information Law can not assist you in obtaining the information sought.

If there were statistical or factual tabulations dealing with the number of trailers stopped on Route 4, that information would indeed be considered accessible information. Essentially, the public may have access to existing records available under the Law. However, if no such record exists, the police have no duty to create such a record.

I hope that I have been of some assistance.

Very truly yours;

Robert J. Freeman  
Counsel

RJF/sd

"Agency"  
LAW ENFORCEMENT

November 22, 1974

#24

Mr. Harold G. Beyer, Jr., Esq.  
Assistant Albany County ~~District~~ Attorney  
County Court House  
Albany, New York 12207

Dear Mr. Beyer:

Thank you for your letter of September 24 wherein you inquired whether the Office of the District Attorney is a "law enforcement agency" within the terms of §88(1)(g) of the Freedom of Information Law, and I apologize for the delay in my response.

Although the Committee has not yet addressed the question raised in your letter, our Counsel feels that the answer is reasonably clear. The attached memorandum explores the question and concludes that the District Attorney's office is a "law enforcement agency" as the term is used in §88(1)(g) of the Freedom of Information Law.

If we can be of any further help with this or any other matter arising under the Freedom of Information Law, please feel free to call on us.

Very truly yours,

Dennis J. Denspey  
Law Clerk

DJD/sd

enc.

cc: Mr. Ralph Smith, Esq.  
Albany Cty. District Attorney  
bcc: John Clemente  
Lou Tomson



November 22, 1974

John Clemente, Counsel

Dennis Dempsey, Law Clerk

Employment Records - Albany County D.A.'s Office

**FACTS:**

On September 25, 1974, our office received a letter from Harold G. Beyer, Jr., Assistant Albany County Attorney, dated September 24, 1974, requesting assistance as to whether the Office of the District Attorney is a "law enforcement agency" within the scope of §88(1)(g) of the Law, which reads in part:

...In the case of the state police and other law enforcement agencies, the records shall list the officials or employees' title and salary only, without identifying individual employees...

**DISCUSSION:**

The New York State Constitution provides for the Office of District Attorney under Article 13, §13, entitled "Law Enforcement and other officers" (McKinney 1973-1974 Cum. Supp.) The County Law includes among the district attorney's duties the "prosecution of crimes and offenses cognizable by the courts of the county for which he shall have been elected or appointed" (§700[1][McKinney 1972]) and the preservation of records for his office (§700[7][McKinney 1972]). However, there is no statute which specifically defines his office as a "law enforcement agency."

Some counties treat the problem of district attorneys' records with specific statutes. For example, Nassau County does not permit disclosure of records of "the police department, the county attorney's office, or the district attorney's office," (County Government Law of Nassau County, ch. 879, §2207[3], Laws of 1936, as am'd.) Case law has held that §66-a of the Public Officers Law, which allows disclosure of police reports relating to accidents to interested persons, overrides §2207[3] to some extent, but that it does not go so far as to permit disclosure of a district attorney's records (Scott v. Nassau County, 43 Misc. 2d 648, 252, NYS 2d 135 [Sup. Ct. Nassau Cty. 1964]). In any event, Albany County has not enacted any similar provision.

The Criminal Procedure Law contains two relevant statutes. §1.20(34)(g) (McKinney 1971) includes "an investigator employed in the office of the district attorney..." in its definition of "police officer." §240.10(3)(a) (McKinney 1971) exempts from discovery in a criminal action "reports, memoranda or other internal documents or work papers made by district attorneys, police officers or other law enforcement agents, in connection with the investigation, prosecution or defense of a criminal action..." For the purposes of criminal procedure, the Legislature apparently considers the district attorney's office to be so closely connected to law enforcement that it must be granted the same privileges and immunities accorded the police, including the privilege of keeping certain records secret.

Presumably, a district attorney's office could divide its personnel into two categories: administrative and investigative/prosecutorial. All salary records for administrative personnel should be made available while those of investigative/prosecutorial personnel would be given statutory protection. Unfortunately, that does not appear to be a viable solution. Although the larger district attorneys' offices might have large staffs where a division of responsibility is technically possible, district attorneys' offices in other counties are frequently not as large and, therefore, cannot be classified since members of the staff often perform varying functions, some administrative and some investigative.

#### CONCLUSIONS:

Considering the duties of the Albany County District Attorney's Office and the role it plays in the enforcement of laws, I believe that it is as a "law enforcement agency" as the term is used in §88(g) of the act.

November 25, 1974

#25

Mr. William K. Sanford  
Executive Secretary  
Association of Towns of the  
State of New York  
90 State Street  
Albany, New York 12207

Dear Mr. Sanford:

Thank you very much for your letter of  
November 18, 1974.

The draft regulations the Committee considered  
at its October 31, 1974, meeting included many of  
your recommendations and were the subject of a lengthy  
and vigorous debate.

The regulations ultimately adopted by the  
Committee reflect their consensus on how to balance  
the agency need for maintaining effectiveness against  
the people's right to know the process of government  
decision making.

Allow me to provide a rationale for the sections  
of the regulations you found objectionable.

1401.2(A): Records Access Officers required by  
this section may be appointed from within the ranks  
of agency personnel. Additional personnel need not  
be hired.

Records Access Officers have the duty of  
coordinating agency response to requests for access  
to records. They are not the only persons from which  
records may be obtained. Of course, the head of the  
agency or municipality still has the duty of insuring  
compliance with the regulations.

Agencies and municipalities are required by  
Section 1401.9, Public Notice, to post the name, title,  
business address and business telephone number to make  
it as easy as possible for the public to discover  
who they can ask for help in obtaining access to  
records.

1401.6(B)(2): Certain extraordinary circumstances (such as examination of records to determine whether their release would constitute an unwarranted invasion of personal privacy) may make it impossible to respond to a request for records within five working days after receipt of the request. So that the requester can know that his request is not being ignored, Committee regulations require an agency or municipal official to acknowledge the request within five days after its receipt, and estimate how long it will take to properly act on the request.

1401.6(E): Subparagraph (f) was added to Section 1401.6 in order to insure that in those smaller municipalities where it might be necessary to go to another building to use a photocopying machine, no records could leave an office without the express permission of agency or municipal personnel.

It is the opinion of the Committee Counsel that refusal of an agency or municipal official to allow records to be removed from an office will not result in institution of Article 78 proceedings to force removal.

1401.8(a)(2): Committee regulations do not override any statute in effect prior to September 1, 1974, which mandate search fees.

Section 1401.8 provides that no fee be charged for search except where fees or exemptions from fees have been established by law, rule or regulation, prior to September 1, 1974.

It is the opinion of Counsel to the Committee that providing no charge for search, except as noted above, does not violate Article VIII, Section 1 of the New York State Constitution.

1401.8(c)(1): A fee of 25 cents per page for photocopies not exceeding 8 1/2 x 14 inches was mandated to prevent agencies and municipalities from discouraging access to records by charging excessive copying fees.

However, in cases where copies to be reproduced exceed 8 1/2 x 14 inches in size, the actual copying costs which is the average unit cost of copying excluding fixed costs of the agency such as operator salaries, may be charged.

NOVEMBER 25, 1974

It should be noted that in the 524 city, county, town and village governments which responded to a Committee questionnaire, 63% charge 25 cents per page or less for photocopies (24% of these governments charge no fee at all).

It is the opinion of the Committee Counsel that providing free photocopies does not violate Article VIII, Section 1 of the State Constitution.

These regulations are naturally subject to amendment by the Committee during future meetings.

Your objections will be presented to the Committee for their consideration.

Again, Thank you for your continued interest in the Committee's activities, and your comments on the regulations adopted by the Committee.

If you have any additional comments, please do not hesitate to call me at 474-2858.

Sincerely,

Larry Zawisza  
Municipal Liaison  
Officer

LZ:1bb

November 25, 1974

#26

Mr. Richard Elfers  
[REDACTED]

Dear Mr. Elfers;

Your letter of August 28, 1974, to Attorney General Lefkowitz has been referred to this office for attention, and I apologize for the delay in responding. In your letter, you indicate you have been refused information about the salaries of individuals in your school system and you would like advice on the matter prior to making a new request and presumably, implementing the appeal procedure provided for in the statute.

The Committee has not specifically considered the question posed in your letter, however, I feel the answer is quite clear. Section 51 of the General Municipal Law as applied through 88(1)(i) of the Freedom of Information Law would require school boards to make information about the salaries of individuals in the school system available to any member of the public who so requests. We are so advising your school board by carbon copy of this letter.

Very truly yours,

Carmine J. Clemente  
Counsel

CJC/sd

cc: Attorney General Lefkowitz

Pearl River School Board

November 26, 1974

#27

Ms. Joyce S. Clemons  
Village Clerk  
Records Access Officer  
Village of Copenhagen  
Copenhagen, New York 13626

Dear Ms. Clemons:

As you may be aware, the Committee met and adopted regulations on October 31. I believe that many questions that you might have relating to implementation of the Freedom of Information Law are answered by the provisions in the regulations.

With regard to your specific questions, birth and death records may be disclosed at your discretion. Section 4174 of the Public Health Law states that the "Commissioner or any other person authorized by him" shall issue certified copies of birth and death records" unless in his judgment it does not appear to be necessary or required for a proper purpose..." What is a "proper purpose" is not defined. Therefore, in my opinion, disclosure of birth and death records is within your discretion, as Clerk.

Also in your capacity as Clerk, you may act to prevent what might constitute an unwarranted invasion of personal privacy. Agencies and municipalities do not have any duty to withhold information which if disclosed, might result in an unwarranted invasion of personal privacy. Again, a decision to disclose such information is within your discretion.

As to your second question, inquiries should not be made regarding the purposes for inspecting records. The Committee has resolved that information accessible under the new law "shall be made equally accessible to any person, without regard to status or interest."

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

November 26, 1974

#28

Mr. Robert Rosofsky  
[REDACTED]

Dear Mr. Rosofsky:

Your letter has been referred to this office from the office of the Attorney General. The Committee on Public Access to Records has the responsibility of implementing New York's Freedom of Information Law.

In addition to enactment of the Freedom of Information Law, which grants access to records, Congress recently passed Public Law 93-380. The new federal law states that parents of students have the right to inspect the records of their children and may challenge the content of the records to insure that they are not inaccurate or misleading. An opportunity to correct or delete such information must be provided.

The law also provides that, when a student has reached eighteen years of age, he may inspect his own records and is accorded any rights which formerly had been accorded his parents.

Therefore, if you are eighteen years of age or older, you have a right to inspect records pertaining to you, and you also have the opportunity to amend inaccurate or misleading information. Further, access to your records should be available to you wherever your records are kept.

I hope I have been of assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

cc: Honorable Louis Lefkowitz,  
Attorney General  
Department of Law



November 26, 1974

#29

Mrs. Marilyn L. Cole, Clerk  
Town of Cato  
R. D. 1  
Cato, New York 13033

Dear Mrs. Cole:

Although the Committee has not dealt with your question specifically, in my opinion, the public should generally have access to assessment cards.

I use the word "generally" because specific assessment cards may be reasonably withheld at the times during which they are actually being used by the assessors. When they are not being used, any person, including groups of persons, should be permitted to inspect and copy the cards.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

Misc.

December 2, 1974

#30

Mrs. Delores Marcy  
School Nurse Teacher  
St. James Institute  
50 Summit Avenue  
Albany, New York 12209

Dear Mrs. Marcy:

Pursuant to our phone conversation, enclosed is a copy of Public Law 93-380 which you requested.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

enc.

~~PAROLE BOARD~~  
MINUTES of  
BUSINESS MTGS of  
Bd of PAROLE

December 3, 1974

#31

Mr. Donald H. Zuckerman  
Assistant Attorney-in-Charge  
The Legal Aid Society  
Criminal Appeals Bureau  
Parole Revocation Defense Unit  
15 Park Row  
New York, New York 10038

Dear Mr. Zuckerman:

Please accept my apologies for the delay in replying to your letter of September 17 regarding access to minutes of the business meetings of the Board of Parole.

Although the Committee has not dealt specifically with your question, in my opinion, the blanket statements made by Mr. Donnino in his letter of October 11 to you are not entirely accurate.

First, the Board of Parole assuredly is an agency as defined in Section 87 of the Freedom of Information Law, and as such, many of the Law's provisions apply to the Board.

Second, some aspects of the minutes should not be "shrouded with the cloak of confidentiality." Decisions concerning purely administrative matters, for example, should be made public. Further, with some effort, other decisions reflected in the minutes might be disclosable after deleting identifying details, such as names of parolees whose cases were considered by the Board.

Third, Section 212(10) of the Corrections<sup>LAW</sup> is somewhat confusing. If any action taken by the Board "shall not be reviewable if done in accordance with law," is not any action taken by the Board reviewable? Perhaps the rules of the Department of Corrections are invalid if, for instance, they do not provide the requisite administrative due process.

With regard to your problem, Mr. Donnino's reply may be considered a final agency denial pursuant to Section 88(8) of the Law. To review the matter further, an article seventy-eight

Mr. Donald H. Zuckerman -2-

December 3, 1974

proceeding must be initiated.

I hope that I have been of some assistance. Should additional problems relating to the Law arise, please feel free to call.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

OK on original

December 3, 1974

#32

Mr. Donald R. Dashnaw  
Town Clerk  
Town of Schuyler Falls  
Morrisonville, New York 12962

Dear Mr. Dashnaw:

Disclosure of vital statistics such as birth and death records is discretionary.

Section 4174(a) of the Public Health Law provides that the Commissioner of the Department of Health or any person authorized by him (e.g., a town clerk) shall

"upon request, issue to any applicant a certified copy of the record of any death registered under the provisions of this chapter, unless he is satisfied that the same does not appear to be necessary or required for judicial or other proper purposes..."

What is a "proper purpose" is not defined. Consequently, disclosure of such information is discretionary.

I hope that I have been of assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

MISC.

December 4, 1974

#33

Ms. Glenda Baugh  
Port Chester Daily Item  
50 Westchester Avenue  
Port Chester, New York

Dear Ms. Baugh:

Enclosed please find a copy of the memorandum, Freedom of Information Law Historical Perspective, which you requested.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

enc.

copy person

December 5, 1974

#34

Honorable Murray Sharkey  
County Legislator  
4 Dove Court  
Latham, New York 12110

Dear Mr. Sharkey:

The Office of the Attorney General has forwarded your letter to this Committee, which has the responsibility of implementing the Freedom of Information Law.

Your question involves whether a county legislator is entitled to any special status with regard to access to records.

The Committee has dealt with the issue and on October 31 resolved that "information accessible under the Freedom of Information Law shall be made equally accessible to any person, without regard to status or interest."

I believe, however, that the regulations promulgated by the Committee may be of some assistance in expediting your request. Section 1401.6 of the regulations provides:

"(b)(1) An agency or municipal official shall respond promptly to a request for records. Except under extraordinary circumstances, his response shall be made no more than five working days after receipt of the request by the agency or municipality, whether the request is oral or in writing.

(2) If for any reason more than five days is required to produce records, an agency or municipal official shall acknowledge receipt of the request within five days after the request is received. The acknowledgment should include a brief explanation of the reason for delay and an estimate of the date production or denial will be forthcoming."

Hon. Murray Sharkey

-2-

December 5, 1974

I have enclosed copies of the resolutions and the regulations promulgated by the Committee.

If I can be of further assistance, please feel free to call.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

enc.

cc: Department of Law



RIP PERSON

December 10, 1974

# 35

Edward V. K. Cunningham, Jr., Esq.  
Van DeWater and Van DeWater  
54 Market Street  
P. O. Box 112  
Poughkeepsie, New York 12602

Dear Mr. Cunningham:

The information requested by the firm of Alberi, Periconi & Alberi is a matter of public of record and should be made available to any person. However, although the information itself may be accessible, failure to respond to the request as made may have been proper.

Under the Freedom of Information Law, an agency or municipality should copy and certify identifiable records regardless of the scope of the request. So-called "fishing expeditions" are permissible if the request meets the standard of being identifiable.

However, an agency or municipality has no duty to create a record to comply with a request even if the request involves information that is accessible. Therefore, if the Town has not prepared a list citing all properties which were subject to a tax increase during a given period, which apparently is the situation, it has no duty to do so under the Law.

If the Town has created a statistical or factual tabulation containing the information sought, it should be furnished promptly to the requester.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

cc: Lou Tomson

December 10, 1974

#36

Mr. James A. Runkel  
Dist. Supt. of Schools  
Wayne-Finger Lakes  
Board of Cooperative Educational Services  
Finger Lakes Educational Center  
Stanley, New York 14561

Dear Mr. Runkel:

The question of the usage of form AC-375 issued by the Comptroller remains unresolved.

As you have correctly intimated, payroll records should be made equally accessible to "any person," including members of the news media. Presumably, a member of the news media could enter your office and seek access to these records without identifying himself, thereby avoiding completing the form and providing written notice. Or a member of the news media could seek the records merely as a member of the public.

Nevertheless, the regulations promulgated by the Department of Audit and Control requiring written notice remain effective.

In my opinion, to comply with the Law as it now exists, if a member of the news media identifies himself as such and seeks access to payroll records, the form should be completed.

I agree that current provisions are confusing and somewhat contradictory. Hopefully, the conflict will be resolved shortly by means of legislation or a change in the regulations.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

ANY PERSON

Privacy

STUDENT RECORDS

PARROT

December 10, 1974

#37

Mr. John P. Howland  
Business Manager, District Clerk  
Dundee Central School  
Dundee, New York 14837

Dear Mr. Howland:

As you have correctly stated, the Committee resolved that records shall be made available to "any person." However, the resolution refers specifically to information accessible under the Freedom of Information Law.

Under the new Law, information may be withheld if its disclosure might constitute an "unwarranted invasion of personal privacy." Since no guidelines have yet been issued with regard to privacy, a determination to disclose or withhold is in the discretion of the legal custodian of the records (e.g., a clerk).

More relevant to disclosure of student information is Public Law 93-380, which was recently enacted by Congress. It provides essentially that any record relating to a student in possession of an educational institution is accessible only to the parents of the student, if he is a minor. After the student reaches majority, only he may have access to the records. Consequently, disclosure of any information pertaining to a student, including addresses, may not be disclosed to any person except the parents of the student.

Your second question, regarding lists of employees' addresses requires a different conclusion. Section 88(1)(g) of the Freedom of Information Law provides that payroll information, including the name, address, title and salary of every employee must be made available to any person, without regard to status or interest. Many agencies, however, have objected to disclosing the home addresses of their employees. Since the Law does not state whether home or business address must be disclosed, in my opinion, you may in your discretion disclose either the business address or the home address.

Mr. Hohn P. Howland

-2-

December 10, 1974

With regard to the second part of this question, as noted previously, students names and addresses may not be disclosed to insurance agents pr to any other person, except a parent.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

cc: L. Tomson

Real Estate  
Assessments

December 10, 1974

Dante J. Alberi, Esq.  
Alberi, Periconi & Alberi  
100 Stevens Avenue  
Mount Vernon, New York 10550

#38

Dear Mr. Alberi:

Your letter has been forwarded by the Office of the Attorney General to this Committee, which has the responsibility of implementing the Freedom of Information Law.

The request made by your firm for a certified list of all real estate in the Town of Fishkill which was subject to a tax increase from 1973 to 1974 may or may not be accessible. As such, the information requested is a matter of public record and it may be inspected and copied.

However, your request involves access to a "list" containing information. Under the Law, an agency or municipality is under no duty to create a record to comply with a request. Therefore, if no list containing the information sought exists, the Town of Fishkill has no duty to prepare such a list.

If, however, the Town has created a statistical or factual tabulation containing the desired information, a copy of the same should be furnished promptly.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

cc: Hon. Louis Lefkowitz, Attorney General  
Department of Law  
Attention: Hon. Donald Hirshorn  
Van DeWater and Van DeWater  
54 Market Street  
P.O. Box 112  
Poughkeepsie, New York 12602  
Attention: Edward V.K. Cunningham, Jr.  
L.R. Tomson

§ 51  
G171L

December 11, 1974

#39

Mr. Albert Carnes  
Chief Building Inspector  
Town of Brookhaven  
Building Department  
20 Mddford Avenue  
Patchogue, New York 11772

Dear Mr. Carnes:

I thank you for clarifying the issues discussed in our telephone conversation.

First, in my opinion, the plans are accessible under the Freedom of Information Law in most cases. Section 144 of the Education Law defines "public records" as

"any book, paper, map, photograph, microphotograph or other information storage device regardless of physical form or characteristic which is the property of the state or of any state agency, department, division, board, bureau, commission, county, city, town, village, district or any subdivision thereof by whatever name designated in or which any entry has been made by law, or which any officer or employee of any of said bodies has received or is required to receive for filing."

Similarly, Section 51 of the General Municipal Law permits access to

"All books of minutes, entry or account, and the books, bills, vouchers, checks, contracts or other papers connected with or used or filed in the office of, or with any officer, board or commission acting for or on behalf of any county, town, village or municipal corporation in this state or any body corporate or other unit of government in this state..."

December 11, 1974

Although the Freedom of Information Law does not specifically refer to the plans in question, Section 88(1)(i) of the Law preserves and includes any existing right of access. (e.g., Section 51 of the General Municipal Law).

It is accurate to state that copies of such blueprints would not be "true legal copies." However, the Law does not require that they be. The certification requirement under the Law means only that duplicates be copies of whatever an agency or municipality has in its possession. Such copies are intended to be used for information, not as legal documents.

The fees for copying this kind of record fall within the scope of section 1407.8(c)(3) of the regulations, which states that the fee for copying

"shall not exceed the actual copying cost which is the average unit cost for copying a record, excluding fixed costs of the agency such as operator salaries."

The only circumstances in which such records might properly be withheld involve what might constitute an unwarranted invasion of personal privacy. For example, if perhaps a blueprint contained within it a trade secret, its disclosure might result in economic hardship. Although, I am unfamiliar with this kind of record, I would doubt that disclosure would have such an effect in most cases. Moreover, an agency or municipality has no duty to prevent an unwarranted invasion of personal privacy. However, it may do so in its discretion.

In view of the foregoing, in my opinion, disclosure of the plans described is mandatory under the Freedom of Information Law, unless disclosure might constitute an unwarranted invasion of personal privacy, in which case discretion should be used by a public official.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

cc: LRT

~~request for records~~  
GENERAL REQUESTS  
2

December 11, 1974

#40

Mrs. Shirley Zeller  
Town Clerk  
Town of Deerpark  
Huguenot, New York 12746

Dear Mrs. Zeller:

As we discussed earlier today, your question regarding access to the docket book held by the Town Justice will be dealt with by the Office of Court Administration.

As you may be aware, the Committee adopted regulations on October 31, which have been effective statewide since November 29. In several instances, the provisions adopted by the Town of Deerpark are inconsistent with those promulgated by the Committee. I have enclosed a copy of the regulations which I believe will be of some assistance.

If you have any further questions, please do not hesitate to call.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

Attachment



December 12, 1974

#41

Ms. Elaine Valery  
Chairman  
Representatives of the Citizens Committee  
19 Dewey Avenue  
Batavia, New York 14020

Dear Ms. Valery:

Your letter of November 22 sent to the State Education Department has been forwarded to this Committee, which has the duty of implementing the Freedom of Information Law.

Section 88(1)(a) through (i) of the Law grants access to certain kinds of records including statistical or factual tabulations. I believe that it is this kind of information that the Citizens Committee is seeking.

If a record has been created containing this information, it should be made available to any person. However, if no such tabulation has been made and no such record exists, an agency or municipality has no duty to create the record to comply with a request.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman

RJF/sd

cc: Commissioner Hamilton  
Genesee County Dept. of Social Services  
3837 West Main Road  
Batavia, New York 14020

Mr. Gilbert Harwood, Counsel  
Department of State

LRT?

Misc

December 12, 1974

#42

Dante J. Alberi, Esq.  
Alberi, Periconi & Alberi  
100 Stevens Avenue  
Lincoln Building  
Mount Vernon, New York 10550

Dear Mr. Alberi:

I regret that the difficulties between your firm and the Town of Fishkill have not yet been resolved.

Under the Freedom of Information Law the Committee has neither enforcement power nor the authority to mete out sanctions for failure to comply with the Law or the regulations. The burden of enforcing the Law rests with the public.

As such, the only means of recourse is through the appeals process provided in the Law. If you continue to be dissatisfied with the Town's decision after having appealed, an article seventy-eight proceeding should be instituted.

I hope that I have been of assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd  
cc: LRT

fees

December 12, 1974

#43

Ms. Marian H. Carson  
Town Clerk of Hanover  
Silver Creek, New York 144136

Dear Ms. Carson:

Your interest in complying with the regulations promulgated by the Committee is much appreciated.

In my opinion, the Town of Hanover should adopt a fee policy consistent with the regulations.

Section 88(2)(c) of the Freedom of Information Law authorizes an agency or municipality to set fees "to the extent authorized by this article or other statute" (emphasis supplied). According to the information you have supplied, the Town has charged a fee of one dollar per copy based on policy and a resolution, rather than based on any statutory provision.

Section 66 of the Public Officers Law authorized public officials to set fees consistent with those of the County Clerk, in this instance one dollar. However, the enactment of the Freedom of Information Law repealed that section, and its fee provisions are no longer applicable.

Consequently, since no prior fee was established by law, I believe that the Town of Hanover should comply with the regulations promulgated by the Committee.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd

cc: LRT

SCHOOL DISTRICT

SUMMONS &  
COMPLAINT

December 12, 1974

#44

Mr. Frank E. Fee Jr.  
Editor  
The Post-Journal  
P.O. Box 190  
Jamestown, New York 14701

Dear Mr. Fee:

Your comments concerning the provisions of the Freedom of Information Law are much appreciated.

With regard to access to the summons and complaint, in my opinion, these records should be available through the school district. In addition to the specific records listed in subsections "a" through "h" of section 88(1) of the Law, subsection "i" preserves all access to all records available pursuant to the provisions of any prior enactment.

Section 2116 of the Education Law, for example, states:

"The records, books and papers belonging to or appertaining to the office of any officer of a school district are hereby declared to be the property of such district and shall be open for inspection by any qualified voter of the district at all reasonable hours, and any such voter may make copies thereof."

The Freedom of Information Law preserves the right of access reflected in the Education Law, and the Committee has extended access further, resolving that these records shall be made available to "any person" (as opposed to only qualified voters).

Thus, it appears certain that the summons and complaint should be considered accessible records, since they belong to an officer of the school district.

Moreover, the same records are accessible pursuant to Section 255 of the Judiciary Law.

Mr. Frank E. Fee Jr.

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December 12, 1974

With reference to the problem of appeals, governmental units have no duty to report the results of such appeals to the Committee, and no survey concerning appeals has been made. Presently, an undertaking of this nature would be impossible due to the small size of the staff.

I agree that this area should be reconsidered. Perhaps the Legislature will note the problem and attempt to remedy the situation.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Counsel

RJF/sd  
cc: LRT

MISC

December 13, 1974

#45

Mr. David J. Buckley  
Chief of Personnel  
Police Department  
County of Suffolk  
Hauppauge, New York 11787

Dear Mr. Buckley:

In response to your letter of December 9, 1974, to Mr. Louis Grumet, former Municipal Liaison Officer with the Committee, please find enclosed herewith a copy of the general regulations adopted by the Committee on October 31, 1974. These regulations became effective on November 29, 1974 and have the force and effect of law.

Section 88(2) of the Freedom of Information Law requires each agency and municipality to make and publish rules and regulations on public access to its records pursuant to the general regulations issued by the Committee.

Also enclosed is a copy of the resolutions adopted by the Committee on October 31, 1974, to advise agencies and municipalities on implementing the Freedom of Information Law.

Mr. Larry Zawisza is now the Municipal Liaison Officer for the Committee.

Thank you for your interest.

Very truly yours,

Dennis M. O'Leary  
State Agency Liaison Officer

DO'L/sd

Enc.

PAYROLL

December 18, 1974

# 46

Mr. Robert Retallick

[REDACTED]

Dear Mr. Retallick:

This is in response to your question regarding the availability of payroll records of the Upstate Medical Center under the Freedom of Information Law.

Any person has the right to inspect and copy a record setting forth the name, address, title and salary of every officer and employee of the Upstate Medical Center.

Section 88(1)(g) of the Freedom of Information Law provides that each agency shall make available for public inspection and copying an itemized record setting forth name, address, title and salary of every officer or employee of an agency except law enforcement agencies. This record is to be made available for inspection by the officer charged with the duty of certifying payrolls.

The Freedom of Information Law specifically provides that payroll information shall be made available to bona fide members of the news media. However, the Committee on Public Access to Records has interpreted Section 88(1)(g) as a means of breaking down barriers to access that members of the news media may have encountered in the past. For example, Section 51 of the General Municipal Law permits access to taxpayers and registered voters; Section 2116 of the Education Law permits access to residents within a school district. The intent of the Law is to enable members of the news media to gain access to records which they formerly could not obtain since they were not taxpayers, voters, or residents of a specific governmental unit. Further, Section 88(6) of the Law states that accessible records shall be made available to "any person," regardless of status or interest (see enclosed resolution).

Mr. Robert Retaillick

-2-

December 18, 1974

In addition, Section 1401.3(b) of the regulations promulgated by the Committee states that payroll records shall be made "available to any person, including bona fide members of the newsmedia."

I have enclosed copies of the Law, the regulations and resolutions for your perusal.

I hope that I have been of some assistance. Should further questions arise regarding the Law, please feel free to call..

Very truly yours,

Robert J. Freeman  
Deputy Counsel

RJF/sd

Enc.



December 19, 1974

#47

Mr. Edward S. Spector  
Village Attorney  
Village of Kenmore  
Municipal Building  
Kenmore, New York 14217

Dear Mr. Spector:

I believe that the major issue posed is whether the materials used in the preparation of minutes are accessible under the Freedom of Information Law.

As you are aware, it is the duty of the village clerk to keep a record of the meetings of the board of trustees of the village (Village Law, section 4-402; People ex. rel. Mershon v. Shaw, 1898, 34 App. Div. 61, 54 NYS 218). Minutes of such meetings are official records and are subject to public inspection pursuant to Village Law, Section 51 of the General Municipal Law, and Section 88(1)(c) of the Freedom of Information Law.

Whether or not these tapes are included among the categories of public records that are open to public inspection and copying must be determined by an examination of existing statutory and decisional law and administrative opinions.

Section 88(1) of the Freedom of Information Law delineates general classifications of records which must be accessible to the public. Section 88(1)(c) provides that "minutes of meetings... and of public hearings" shall be made available for public inspection and copying. The law does not specifically state, however, that materials used to formulate such records shall also be made available. This omission is significant because another sub-section of the act, Section 88(1)(b), specifies that materials that were used in the formulation of certain types of records are to be made public. Under the rules of statutory construction, where the intention of the law-making body is not otherwise clear, the inclusion of subjects or things or persons on which one section of the law is to operate implies an exclusion of these subjects, things, or persons, from the operation of every other section of the law, except as expressly mentioned (82 Corpus Juris Secundum 679). This doctrine is well established in New York Law (Jackson v. Citizens Casualty Co., 277 NY 385, 14 N.E. 2d 446, Deth v. Cassimora, 245 App. Div. 156, 281 NYS 1114). In the case at hand.

Mr. Edward S. Spector

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December 19, 1974

This rule of construction suggests a legislative intent to exclude whatever preliminary materials are used to compile minutes, including the tapes in question here, from the scope of public access.

In addition, an opinion of the State Comptroller appears to have dealt with your specific question. The opinion held:

"There is no requirement that the village clerk use a tape recorder as an aid in transcribing the minutes of proceedings of the board of trustees. This Department is of the opinion that while the official minutes are public records open to inspection..., recording tapes employed by the clerk as an aid in transcribing the minutes of proceedings of the board are not such a public record as must be made available for public inspection" (18 Op. State Compt. 83, 1962).

Section 51 of the General Municipal Law permits public access to "books of minutes," but is limited in its scope by the same rules of statutory construction as those governing section 88(1)(e) of the Freedom of Information Law. Since the provisions of the two statutes overlap to a great degree, no significant advantage can be gained by invoking one law in favor of the other.

In my opinion, the Freedom of Information Law does not compel disclosure of tape recordings used as an aid in compiling minutes of the meeting. Moreover, the available statutory, decisional and administrative law clearly supports the conclusion that the final, official minutes of the meeting, and not the tapes used to compile them, are the records subject to public access.

To answer your subsidiary questions, if a different conclusion had been reached and if the tapes were considered to be accessible under the Law, they would have been accessible to "any person" (see section 88(6) and the enclosed resolution). The fee would be based on the actual cost of reproducing the tape, excluding any overhead or fixed costs.

I hope that I have been of some assistance. Should any further questions arise, please feel free to call.

Very truly yours,

Robert J. Freeman  
Deputy Counsel

RJF/sd  
enc.

December 24, 1974

#48

Mr. Terrance K. Schruers  
Business Manager  
Sidney Central School  
District Office  
95 West Main Street  
Sidney, New York 13838

Dear Mr. Schruers:

Your interest in complying with the regulations promulgated by the Committee is much appreciated.

In two instances it appears that the policy adopted by the Sidney Central School District is inconsistent with the provisions found in the regulations.

First, the policy provides that forms are to be used in all cases in which records are inspected or copied. Section 1401.6(a) of the regulations provides that a request "may be oral or in writing" and that a "written request shall not be required for records that have been customarily available without written request." Consequently, although a request in writing may be permissible in some cases, it should not be required in all cases.

Second, the fee for copying a record, pursuant to Section 1401.8(c)(1), "shall not exceed twenty-five cents per page for photocopies not exceeding 8 1/2 by 14 inches." The one dollar fee adopted by the District far exceeds the maximum charge allowable under the regulations. If a record is larger or of a different nature than those records contemplated in Section 1401.8(c)(1), the fee "shall not exceed the actual copying cost which is the average unit cost for copying a record, excluding fixed costs...such as operator salaries" and other overhead costs [Section 1401.8(c)(3)].

The staff is in the process of preparing model regulations. The model will be sent to you when it is completed. I believe that it will be of substantial assistance.

Should any further problems arise regarding the Freedom of Information Law, please feel free to contact me.

VERY TRULY YOURS  
ROBERT J. FREEMAN  
Dir. Council

on  
and  
page

MISC.

December 24, 1974

#49

Mr. Alex Radzvilla, Clerk  
Montrose Improvement District  
East Main Street  
Peekskill, New York

Dear Mr. Radzvilla:

In my opinion, the Montrose Improvement District is an agency as defined by the Freedom of Information Law.

Section 87(2) of the Law includes within its scope any "fire district, water district, sewage district, drainage district or special district established by law for any public purpose."

Therefore, I believe that the Montrose Improvement District is subject to the provisions of the Freedom of Information Law.

I hope that I have been of some assistance.

Very truly yours,

Robert J. Freeman  
Deputy Counsel

RJF/sd

December 27, 1974

#50

Mr. Jerry C. Hiller  
Legislative Assistant  
Clinton County Legislature  
P.O. Box 989 - Court House  
Plattsburgh, New York 12901

Dear Mr. Hiller:

Your interest in complying with the regulations promulgated by the Committee is much appreciated.

Generally, I believe that the regulations adopted by the Clinton County Legislature are consistent with those adopted by the Committee. There are two areas, however, which in my opinion merit reconsideration merely for purposes of clarification.

First, pursuant to Section II (Designation of Fiscal Officer), it is unclear that any person, and not only bona fide members of the news media, may have access to payroll records.

Second, pursuant to Section III (Fees), subdivisions "A" and "B" seemingly conflict. Our staff's research indicates that actual copying cost (such as the cost anticipated by subdivision "B") rarely exceeds six cents per page. If subdivision "B" is intended to apply to all documents, a twenty-five cent fee would usually far exceed actual costs. I would guess that the County Legislature intended to charge twenty-five cents per page for photocopies "not exceeding 8 1/2 by 14 inches" pursuant to the Committee's regulations [Section 1401.8(c)(1)], and that the actual cost of copying should be charged for copying other records pursuant to Section 1401.8(c)(3).

The staff is currently preparing a set of model regulations. The model will be sent to you as soon as it is completed. I believe that it will be of substantial assistance and will further clarify your responsibilities under the Law.

K

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I hope that I have been of some assistance. Should any further questions arise regarding the Freedom of Information Law, please feel free to call.

Very truly yours,

Robert J. Freeman  
Deputy Counsel

RJF/sd