



City of Johnstown

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Johnstown, New York 12095
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PUBLIC ACCESS TO RECORDS

PURPOSE

1. The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society.
2. These regulations provide information concerning the procedures by which records may be obtained.
3. Personnel shall furnish to the public the information and records required by the Freedom of Information Law.

DESIGNATION OF RECORDS MANAGEMENT OFFICER

1. The City of Johnstown is responsible for insuring compliance with the regulations herein, and has designated the following person as records management officer:

City Records:

City of Johnstown
ATTN: City Clerk
PO Box 160, 33-41 East Main Street
Johnstown, New York 12095
callen@cityofjohnstown.ny.gov

Police Records:

Johnstown Police Department
ATTN: Chief of Police
PO Box 160, 33-41 East Main Street
Johnstown, New York 12095

2. The records management officer is responsible for insuring appropriate agency response to public requests for access to records. The designation of a records management officer shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so.

The records management officer shall insure that agency personnel:

- a. Maintain an up-to-date subject matter list.
 - b. Assist persons seeking records to identify the records sought, if necessary, and when appropriate, indicate the manner in which the records are filed, retrieved or generated to assist persons in reasonably describing records.
3. Contact persons seeking records when a request is voluminous or when locating the records involves substantial effort, so that personnel may ascertain the nature of records of primary interest and attempt to reasonably reduce the volume of records requested.

4. Upon locating the records, take one of the following actions:
 - a. Make records available for inspection; or,
 - b. Deny access to the records in whole or in part and explain in writing the reasons therefor.
5. Upon request for copies of records:
 - a. Make a copy available upon payment or offer to pay established fees, if any, in accordance with Section 8;
6. Upon request, certify that a record is a true copy;
7. Upon failure to locate records, certify that:
 - a. The City of Johnstown is not the custodian for such records, or
 - b. The records of which the City of Johnstown is a custodian cannot be found after diligent search.

LOCATION

Requests for public access to records shall be accepted and records produced at:

City Hall
33-41 East Main Street
Johnstown, New York 12095

HOURS FOR PUBLIC INSPECTION

Requests for public access to records shall be accepted and records produced during regular business hours.

Monday – Friday from 8:00 a.m. to 3:00 p.m.

REQUESTS FOR PUBLIC ACCESS TO RECORDS

1. A written request is required.
2. If records are maintained on the internet, the requester shall be informed that the records are accessible via the internet and in printed form either on paper or other information storage medium.
3. A response shall be given within five (5) business days of receipt of a request by:
 - a. informing a person requesting records that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable that person to request records reasonably described;
 - b. granting or denying access to records in whole or in part;
 - c. acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than twenty business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within twenty business days from the date of such acknowledgment, providing a statement in writing indicating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or
 - d. if the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within twenty business days of such acknowledgment, but circumstances

prevent disclosure within that time, providing a statement in writing within twenty business days of such acknowledgment specifying the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.

4. In determining a reasonable time for granting or denying a request under the circumstances of a request, personnel shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.
5. A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed. Such failure shall include situations in which an officer or employee:
 - a. fails to grant access to the records sought, deny access in writing or acknowledge the receipt of a request within five (5) business days of the receipt of a request;
 - b. acknowledges the receipt of a request within five (5) business days but fails to furnish an approximate date when the request will be granted or denied in whole or in part;
 - c. furnishes an acknowledgment of the receipt of a request within five (5) business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request;
 - d. fails to respond to a request within a reasonable time after the approximate date given or within twenty (20) business days after the date of the acknowledgment of the receipt of a request;
 - e. determines to grant a request in whole or in part within twenty business days of the acknowledgment of the receipt of a request, but fails to do so, unless the agency provides the reason for its inability to do so in writing and a date certain within which the request will be granted in whole or in part;
 - f. does not grant a request in whole or in part within twenty (20) business days of the acknowledgment of the receipt of a request and fails to provide the reason in writing explaining the inability to do so and a date certain by which the request will be granted in whole or in part; or
 - g. responds to a request, stating that more than twenty (20) business days is needed to grant or deny the request in whole or in part and provides a date certain within which that will be accomplished, but such date is unreasonable under the circumstances of the request.

SUBJECT MATTER LIST

1. The records access officer shall maintain a reasonably detailed current list by subject matter of all records in its possession, whether or not records are available pursuant to subdivision two of Section eighty-seven of the Public Officers Law.
2. The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.
3. The subject matter list shall be updated annually.

DENIAL OF ACCESS TO RECORDS

1. Denial of access to records shall be in writing stating the reason therefor and advising the requester of the right to appeal to the individual or body established to determine appeals, [who or which] shall be identified by name, title, business address and business phone number.
2. If requested records are not provided promptly, such failure shall also be deemed a denial of access.

3. the following person or persons or body shall determine appeals regarding denial of access to records under the Freedom of Information Law:

City of Johnstown
ATTN: City Attorney
PO Box 160, 33-41 East Main Street
Johnstown, New York 12095
518-736-4018

4. Any person denied access to records may appeal within thirty (30) days of a denial.
5. The time for deciding an appeal by the individual or body designated to determine appeals shall commence upon receipt of a written appeal identifying:
 - a. the date and location of requests for records;
 - b. a description, to the extent possible, of the records that were denied; and
 - c. the name and return address of the person denied access.
6. A failure to determine an appeal within ten (10) business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.
7. The person or body designated to determine appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government
Department of State
One Commerce Plaza
99 Washington Avenue, Suite 650
Albany, New York 12231

8. The person or body designated to determine appeals shall inform the appellant and the Committee on Open Government of its determination in writing within ten business days of receipt of an appeal. The determination shall be transmitted to the Committee on Open Government.

FEES

1. There shall be no fee charged for:
 - a. inspection of records;
 - b. search for records; or
 - c. any certification pursuant to this part.
2. Copies may be provided without charging a fee.
3. Fees for copies may be charged, provided that:
 - a. the fee for copying records shall not exceed 25 cents per page for photocopies not exceeding 9 x 14 inches. This section shall not be construed to mandate the raising of fees where agencies or municipalities in the past have charged less than 25 cents for such copies;
 - b. the fee for photocopies of records in excess of 9 x 14 inches shall not exceed the actual cost of reproduction; or
 - c. an agency has the authority to redact portions of a paper record and does so prior to disclosure of the record by making a photocopy from which the proper redactions are made.

4. The fee an agency may charge for a copy of any other record is based on the actual cost of reproduction and may include only the following:
 - a. an amount equal to the hourly salary attributed to the lowest paid employee who has the necessary skill required to prepare a copy of the requested record, but only when more than two hours of the employee's time is necessary to do so; or
 - b. the actual cost of the storage devices or media provided to the person making the request in complying with such request; or
 - c. the actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency's information technology equipment is inadequate to prepare a copy, and if such service is used to prepare the copy.
5. When an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, or when doing so requires less employee time than engaging in manual retrieval or redactions from non-electronic records, the agency shall be required to retrieve or extract such record or data electronically. In such case, the agency may charge a fee in accordance with paragraph (3) (a) and (b) above.
6. An agency shall inform a person requesting a record of the estimated cost of preparing a copy of the record if more than two hours of an agency employee's time is needed, or if it is necessary to retain an outside professional service to prepare a copy of the record.
7. An agency may require that the fee for copying or reproducing a record be paid in advance of the preparation of such copy.
8. An agency may waive a fee in whole or in part when making copies of records available.

ACCESSIBLE RECORDS

FOIL is based on a presumption of access, stating that all records are accessible, except records or portions of records that fall within one of the below categories of deniable records. POL § 87(2). An agency may decline to produce records or portions thereof that:

- a. are specifically exempt from disclosure by state or federal statute;
- b. would if disclosed result in an unwarranted invasion of personal privacy;
- c. would if disclosed 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, provided however, that any agency, which is not conducting the investigation that the requested records relate to, that is considering denying access pursuant to this subparagraph shall receive confirmation from the law enforcement or investigating agency conducting the investigation that disclosure of such records will interfere with an ongoing investigation;
 - ii. deprive a person of a right to a fair trial or impartial adjudication;
 - iii. identify a confidential source or disclose confidential information relative to a criminal investigation; or
 - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- f. could if disclosed endanger the life or safety of any person;
- g. are inter-agency or intra-agency communications, except to the extent that such materials consist of:
 - 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;
- h. are examination questions or answers that are requested prior to the final administration of such questions; or
- i. if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; or
- j. [Deemed repealed Dec. 1, 2024] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-a of the vehicle and traffic law.
- k. [Expires and deemed repealed Dec. 1, 2024] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-b of the vehicle and traffic law.
- l. [Expires and deemed repealed Sept. 20, 2025] are photographs, microphotographs, videotape or other recorded images produced by a bus lane photo device prepared under authority of section eleven hundred eleven-c of the vehicle and traffic law.
- m. [Expires and deemed repealed July 1, 2022] are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-b of the vehicle and traffic law.
- n. [Expires and deemed repealed Dec. 1, 2024] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-d of the vehicle and traffic law.
- o. [Expires and deemed repealed Sept. 12, 2024] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-e of the vehicle and traffic law.
- p. [See also, par. (p) below] are data or images produced by an electronic toll collection system under authority of article forty-four-C of the vehicle and traffic law and in title three of article three of the public authorities law. (p) [Expires and deemed repealed Sept. 6, 2024; see also, par. (p) above] are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-d of the vehicle and traffic law.
- q. [Expires and deemed repealed Dec. 1, 2024] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred seventy-four-a of the vehicle and traffic law.
- r. [Expires and deemed repealed Oct. 6, 2026; see also, pars. (r) below] are photographs, microphotographs, videotape or other recorded images prepared under the authority of section eleven hundred eighty-e of the vehicle and traffic law.
- r. [Expires and deemed repealed Dec. 1, 2026; see also, pars. (r) above and below] are photographs, microphotographs, videotape or other recorded images prepared under authority of section eleven hundred eleven-f of the vehicle and traffic law.
- r. [Expires and deemed repealed Dec. 1, 2025; see also, pars. (r) above] are photographs, microphotographs, videotape or other recorded images or information and data prepared under authority of section three hundred eighty-five-a of the vehicle and traffic law.

The categories of records that an agency may decline to produce generally involve the potentially harmful effects of disclosure. They are based in great measure upon the notion that disclosure would in some instances “impair,” “cause substantial injury to,” “interfere with,” “deprive,” “endanger,” etc.

One category of records an agency may decline to disclose that does not deal directly with the effects of disclosure is exception (g), which deals with inter-agency and intra-agency materials. The intent of the exemption is twofold. Written communications transmitted from an official of one agency to an official of another or between officials within an agency may be withheld as exempt insofar as they consist of advice, opinions or recommendations. For example, an opinion prepared by staff which may be rejected or accepted by the head of an agency need not be made available. Statistical or factual information, on the other hand, as well as the policies and determinations upon which an agency relies in carrying out its duties, are available unless a different exemption applies.

There are also special provisions in the law regarding the protection of trade secrets and critical infrastructure information. Those provisions pertain only to state agencies and enable a business entity submitting records to state agencies to request that records be kept separate and apart from all other agency records. When a request is made for records falling within these special provisions, the submitter of such records is given notice and an opportunity to justify a claim that the records would if disclosed result in substantial injury to the competitive position of the submitter’s commercial enterprise. A member of the public requesting records may challenge such a claim.

Generally, the law applies to existing records. Therefore, an agency need not create a record in response to a request. Nevertheless, POL § 87(3) requires that each agency must maintain the following:

- a. a record of the final vote of each member in every agency proceeding in which the member votes;
- b. a record setting forth the name, public office address, title and salary of every officer or employee of the agency;
and
- c. a reasonably detailed current list by subject matter of all records in possession of an agency, regardless of whether the records are accessible.

PUBLIC NOTICE

A notice containing the title or name and business address of the records access officers and appeals person or body and the location where records can be seen or copies shall be posted in a conspicuous location wherever records are kept and/or published in a local newspaper of general circulation.

SEVERABILITY

If any provision of these regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.