



## Privacy Protection and OpenFOIL

### OpenFOIL and Privacy Concerns: Key Facts

1. OpenFOIL changes the *process* and software by which city agencies comply with the State's Freedom of Information Law. OpenFOIL *does not* (and cannot) *modify* the privacy protections established by the state FOIL or federal privacy protections.

2. OpenFOIL calls for publishing the "content" of each request, and response to each request. It does not require publishing the identity of the person or organization making the request.

3. It is common in the United States for governments using automated FOIL processing systems to publish the topic, status, and response to the request. (As well as the identity of people and organizations making FOIL requests.) Here are some prominent examples of agencies which do this:

- The federal [FOIA Online](#), which processes requests for eight agencies.
- City of Chicago's [FOIA request logs](#) in open data format.
- Port Authority of NY/NJ [FOIL logs](#); this site also includes the actual records request and response.

4. Under the New York State FOIL, logs of FOIL requests and requests themselves are subject to disclosure. In other words, you can FOIL the FOIL requests received by agencies, and Reinvent Albany has. The FOIL request logs sent to us include the name, organization and topic of request. This is all already public information; political beat reporters regularly request FOIL logs from City Hall, and request the FOIL requests of other journalists.

5. The summaries of FOIL requests and records published in the OpenFOIL portal will be redacted to comply with all federal and state privacy laws. The agency FOIL officer will write the topic of each FOIL request. (The Port Authority and Chicago have good request summaries.) Agency FOIL officers are already familiar with special privacy laws applying to their agencies, and they understand how to protect the privacy of the people described in agency records.



6. Responses on the OpenFOIL site will comply with existing privacy protections. Those responses which entirely pertain to non-public information will not be published. Any responses which contain some private information will be redacted by agency FOIL officers, exactly as they are done today.

7. Under State FOIL, people can submit disclosure requests on paper or via email. §2.f of OpenFOIL notes this, and requires agencies to track paper requests in the OpenFOIL portal.

### Privacy Provisions in FOIL and Other Laws

FOIL makes all agency records public, except records or portions of records which would constitute an "unwarranted invasion of personal privacy" if released. FOIL provides examples of specific disclosures of information which would constitute unwarranted invasions of personal privacy: they are included, but not limited to:

- i. Employment, medical, or credit histories;
- ii. Medical or personal records of clients or patients in medical facilities;
- iii. Lists of names and addresses if they would be used for fundraising purposes;
- iv. Personal information which is not relevant to the agency and which would result in economic or personal hardship to the subject of information;
- v. Personal information reported in confidence which is not relevant to the ordinary work of the agency; and
- vi. Personal information contained in a worker's compensation record.

In addition, other subject-matter specific laws make certain agency records public or private. For example, the Election Law states that the names and addresses of registered voters are public information. The Real Property Tax Law makes homeowners' names, addresses, and assessed home values public information. The New York State Penal Code (until very recently) made the name and address of any person with a gun license public information.

The Social Services Law makes information about people applying for or receiving financial assistance private. The Public Health Law makes documents about people



with HIV and AIDS-related illnesses private. The Mental Hygiene Law makes identities, diagnoses, and treatments of persons with chemical dependencies private information. There are too many more examples to list here.

In addition to the laws of New York State, there are Federal laws, like HIPAA and FERPA, which impose even more privacy considerations on city agencies.

City FOIL officers are already dealing with this legal and regulatory privacy regime; they already know what's public and what's not. The State's Department of Health FOIL officers know that when someone requests their FOIL logs, the DOH must redact the names and case numbers. The Office of Mental Health and Hygiene, in their FOIL logs, describes requests for family history as simply "Genealogy" with no other identifying information.

Again, the OpenFOIL bill does not (and cannot) require agencies to disregard these state laws, or other federal privacy laws or regulations. Rather, requests that can be published online will be published online, and requests which would cause an unwarranted invasion of personal privacy or would otherwise violate privacy laws or regulations if published online will not be published online.

11-01-266	Dukam, Tenny Jo	Gibson, McAskill & Crosby, LLP	01/01/2011	Records re complaint # [REDACTED] Legacy Health Care, LLC or Ridgeview Manor, LLC
11-01-267	Dukam, Tenny Jo	Gibson, McAskill & Crosby, LLP	01/01/2011	Records re Complaint # [REDACTED] as outlined in request
11-01-268	Coco, Theresa	Damon Morey LLP	01/01/2011	Record re Nazareth Nursing Home [REDACTED]
11-01-269	Cameron, James D.	Buena Vida	01/01/2011	Records re complaint [REDACTED]
11-01-270	Fass, Steven	United Hospital Fund	01/01/2011	2009 AHCF-1, all O&TC in NYS
11-01-271	Merritt, Charles G.	Merritt Environmental Consulting Corp.	01/01/2011	Environmental records for 1564-1566 York Avenue, NY, NY
11-01-272	Merritt, Charles G.	Merritt Environmental Consulting Corp.	01/01/2011	Environmental records for 1562-1564 33rd Avenue, NY, NY

*Actual FOILED document from NYS Department of Health.  
Redacted by the FOIL officer before public release.*