

# *BOARD OF ELECTIONS IN THE CITY OF NEW YORK*

## **RECORDS ACCESS POLICY**

**Adopted: May 14, 2002**  
**Amended: December 8, 2015**

### **PREAMBLE**

In accordance with the provisions of Article 6 of the New York State Public Officers Law, commonly known as the New York State Freedom of Information Law ("FOIL"), the Board of Elections in the City of New York (the "Board"), pursuant to the provisions of Section 87(1) of the Public Officers Law does hereby adopt and promulgate the following procedures for making available to the public for inspection and copying all of the records and materials mandated by such law for such purposes, subject to the provisions of Section 1 of this Policy.

### **Section 1: PRIMACY OF NEW YORK STATE ELECTION LAW**

The Election Law of the State of New York mandates that certain materials and records maintained and/or compiled by a Board of Elections must be available for public inspection and review (including duplication thereof). In addition, the New York State Election Law empowers this Board to adopt Rules, Regulations, Policies and Procedures, consistent with said Election Law. In the event that a conflict arises between the provisions of the New York State Election Law and/or the Rules, Regulations, Policies and Procedures promulgated pursuant to the authority vested in the Board by the Election Law and the provisions of the Public Officers Law and this Records Access Policy, then the provisions of the New York State Election Law and/or the Rules, Regulations, Policies and Procedures promulgated thereunder shall control.

### **Section 2: PUBLIC INSPECTION OF RECORDS**

- (a) Application shall be made in writing either on printed forms prescribed by the Records Access Officer or by written communication containing the same information as contained on the printed forms prescribed by the Board and submitted either in person, by mail, or by email to:

Board of Elections in the City of New York  
32 Broadway, 7<sup>th</sup> Floor  
New York, NY 10004  
Attention: Records Access Officer  
FOILrequests@boe.nyc.ny.us

- (b) The person to whom such request shall be made and from whom such records or copies thereof may be obtained and/or certified shall be the Board's Deputy General Counsel who shall be the "Records Access Officer" of the Board.

The Records Access Officer will contact the applicant 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.

In cases where the Finance Office and/or Payroll Office is required to furnish certain records, requests shall nevertheless be made through the Records Access Officer, who will inform the Finance Officer and/or Director of Payroll to make the necessary arrangements.

In cases where the Candidate Records Unit is required to furnish certain records, such requests shall be made, upon written authorization of the Records Access Officer, directly to the Candidate Records Unit on such forms as the Records Access Officer may prescribe.

The duties of the Records Access Officer shall be to:

- (1) assist the applicant in identifying the record or records sought if necessary, and when appropriate, indicate the manner in which the records are filed, retrieved, or generated to assist the applicant in reasonably describing the records;
- (2) determine whether the record is available for inspection;

- (3) search for the identified record and, upon locating the record, take one of the following actions:
  - (i) review such record and redact any information which would constitute an unwarranted invasion of personal privacy, and thereafter make the record (or redacted copy thereof) promptly available for inspection or schedule an appointment for inspection from 10:00 a.m. to 4:00 p.m. on business day(s) and at the appropriate Board facility; or
  - (ii) deny access to the record in whole or part and explain in writing the reasons therefore;
- (4) upon request, for copies of records, make copies (or redacted copies) available upon payment of the established fees;
- (5) upon request, certify as to the correctness of the copies (or redacted copies) of the records;
- (6) if the record cannot be located, take one of the following actions:
  - (i) certify in writing that the Board is not the legal custodian for such records; or
  - (ii) certify in writing that the record of which the Board is a legal custodian cannot be found after diligent search;
- (7) if access is denied, advise the applicant of the right to appeal;
- (8) pursuant to Section 87(3)(a) of the Public Officers Law, maintain the records of the Board setting forth the final vote of each Commissioner of the Board in every agency proceeding in which that Commissioner vote;
- (9) pursuant to Section 87(3)(b) of the Public Officers Law, maintain the record setting forth the name, public office address, title and salary of every officer or employee of the agency;

- (10) pursuant to Section 87(3)(c) of the Public Officers Law, maintain and update, not less than annually, a reasonably detailed list, by subject matter, of all records maintained by the agency, whether or not available under the Public Officers Law for public inspection and copying.
- (c) Applications will be accepted during the hours of 10:00 a.m. to 4:00 p.m. on each business day.
  - (d) The Records Access Officer shall respond to the applicant, within five (5) business days of a request for inspections or copying of records, by:
    - (1) appointing a time for inspection or copying the requested records;
    - (2) providing a written statement of denial, which shall include notice of the right to appeal to the Records Access Appeals Officer, together with the name, title, business address and telephone number of the Records Access Appeals Officer; or
    - (3) informing the applicant that his request for inspection or copying of records has been reported to the person, association, corporation or other legal entity which filed the records requested with the board, so that such person, association, corporation, or legal entity may have an opportunity to protest the inspection or copying of such records as not being available pursuant to the exception provisions of the Public Officers Law.
  - (e) If more than five (5) business days are required to produce records, an explanation shall be sent within the five (5) business days of the request to the applicant, acknowledging receipt of the request and indicating the reason for and extent of the delay anticipated. If it is known that circumstances prevent disclosure within twenty (20) business days from the date of the acknowledgement, then also provide an date, within a reasonable period of time under the circumstances, for when the request will be granted in whole or part. If access to records is neither granted nor denied within ten (10) business days after the date of acknowledgement of

receipt of request, the request may be construed as a denial of access that may be appealed.

- (f) Inspection shall take place in a room designated by the Board, and in the presence of such Board representatives as may be designated.
- (g) If feasible to the operations of the business of the Board, the Board may furnish copies of such materials at a price of twenty-five (\$0.25) cents per page, up to size 9.00 inches by 14.00 inches per page. If not feasible, the Board may arrange a private contractor to perform the copying with the cost to be paid by the applicant.
- (h) All charges for copying must be paid in advance to the Board.
- (i) Whenever a person, association, corporation, or other legal entity is required to file records with the Board, such a party shall be notified by the Records Access Officer whenever a request is made to inspect or copy such a party's records, unless the request is made by a governmental enforcement agency; so that the party who is required to file that record may have an opportunity to protest the inspection or copying of such records as not being available pursuant to the exempt provisions of the Public Officers Law. The Records Access Officer will inform the applicant of such notice and, after reviewing the argument, if any, of the party who filed the record, will determine whether the record is exempt from public access.
- (j) If records are maintained on the internet, the applicant shall be informed that the records are accessible via the internet and in printed form either on paper or other information storage medium.

**Section 3: APPEALS OF DENIAL OF ACCESS TO RECORDS**

- (a) The Commissioners of the Board of Elections in the City of New York shall constitute the "Records Access Appeals Officer".
- (b) Any person who has been denied access to records by the Records Access Officer may appeal such denial to the Records Access Appeals Officer.

- (c) Appeal must be made within thirty (30) calendar days of the denial.
- (d) Time for deciding on an appeal by the Records Access Appeals Officer shall commence upon receipt by them of the written appeal, which shall identify:
  - (1) the date, location, and manner of the initial request for records;
  - (2) a description, to the extent possible, of the records denied; and
  - (3) the name and return address of the applicant.
- (e) The Records Access Appeals Officer shall, within ten (10) business days of the receipt of a written appeal, review the matter and affirm, modify, or reverse the denial and 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, NY 12231
- (f) The Records Access Appeals Officer shall inform the appellant and the Committee on Open Government of their determination for the appeal in writing within ten (10) business days of the receipt of the appeal. The determination shall be transmitted to the Committee on Open Government in the same manner as set forth subdivision (e) above.
- (g) If the Records Access Appeals Officer determines that the denial of access was erroneous, they shall instruct the Records Access Officer to allow the prompt inspection or copying of the records as requested.
- (h) If the Records Access Appeals Officer affirm or modify the denial, they shall communicate the reasons in writing, by either first class mail or certified

mail and return receipt requested, to the person making the appeal and inform such person of his or her right of judicial appeal.

Adopted unanimously by the Commissioners of Elections in the City of New York at their meeting held on Tuesday, May 14, 2002 and amended on December 8, 2015.