

**LEGISLATIVE, RULES & GOVERNMENTAL OPERATIONS COMMITTEE**

**LEGISLATIVE AGENDA**

**OCTOBER 29, 2024**

***Committee Members: Supervisors Strough, Conover, Wild, Driscoll, Maday, Geraci and Thoms  
Chair of the Board shall serve as an Ex-Officio member when needed in accordance  
with Section C(4) of the Rules of the Board***

I. Committee meeting called to order by Committee Chair

II. Approval of minutes of prior Committee meeting - *October 3, 2024*

III. Privilege of the Floor/Public Comment

IV. Action Agenda/New Business Items:

1. Request: To approve revisions to the Warren County Freedom of Information Law (FOIL) Policy in order to be consistent with recent amendments passed by the State Legislature.

Rationale: In September 2024 the Legislature passed amendments to the Freedom of Information Law which created the requirement that public employees receive notification in the event the agency is responding to a request seeking the employee's disciplinary records; the amendments also require the County to adopt a policy to give effect to these amendments and provide same to the Committee on Open Government.

V. Discussion Items: None.

VI. Referrals/Pending Items:

1. Cattaraugus County Legislature Resolution No. 268 of 2024, "*Urging New York State Public Service Commission to Reject National Grid's Proposed Rate Increases for Electric and Natural Gas*". Following discussions with National Grid representatives, Committee determined it was preferable to draft a resolution tailored to Warren County's interests; Mr. Wild to draft for presentation at future Committee meeting.

VII. Privilege of the Floor to discuss any additional items to come before the Committee

VIII. Motion to adjourn

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*Attachments:*

1) *Request to amend FOIL Policy (Action Agenda/New Business Item 1)*

# ***RESOLUTION REQUEST FORM NO. 20***

## ***MISCELLANEOUS***

***\*Please List All Other Requests Not Covered by Previous Resolution Request Forms Here.  
Please attach any backup information available and be as detailed as possible.***

**DEPARTMENT NAME: County Attorney**

**DATE: 10/29/24**

- (a) Purpose of Request: **Amending Warren County Policy Governing Freedom of Information Law Requests and Appeals**
- (b) Details: **The proposed amended FOIL policy includes mandatory statutory changes under Chapter 302 of the Laws of 2024 which became effective on September 4, 2024 requiring notice to public employees in the event their disciplinary records are requested, and clarifying the procedure for processing payments due from FOIL request**
- (c) Previous Resolution Number: **49 of 2024**
- (d) Where are the Funds (if required)? List Budget Code, Object Code, Full Title\* and Amount: **N/A**

**Sample: A.8021 470 Planning & Community Development – Contract**

\* as listed in budget and LOGOS

**SCHEDULE “A”  
WARREN COUNTY POLICY GOVERNING  
FREEDOM OF INFORMATION LAW  
REQUESTS AND APPEALS.**

**SECTION 1: PURPOSE AND SCOPE.**

1. The Freedom of Information Law (hereinafter, “FOIL”) was enacted in 1977 as Article 6 of the Public Officers Law and was patterned from the federal Freedom of Information Act (hereinafter, “FOIA”), to provide the public with means to access governmental records.
2. The legislative intent for FOIL’s enactment was to ensure a free press and to allow members of the general public to seek accountability for governmental actions and to thwart governmental secrecy. By enacting this policy, the County of Warren reaffirms the legislative intent of FOIL for all County operations.
3. The Warren County Policy Governing Freedom of Information Law Requests and Appeals (hereafter, “Policy”) shall be effective upon enactment for all FOIL requests and FOIL appeals filed after the effective date and shall govern, replace and supersede all prior FOIL policies for the County of Warren. FOIL requests and FOIL appeals filed prior to the effective date of this Policy shall be governed by the County’s prior FOIL policy.
4. The County of Warren presumes that all County records are open for public inspection, subject only to the extent that records or portions of records fall within the ambit of at least one statutorily authorized reason for denial contained in section 87(2)(a) of the Public Officers Law.

**SECTION 2: DEFINITIONS.**

1. “Appeal Officer” is the Warren County Officer designated by this Policy as responsible for coordinating responses to all FOIL Appeals filed with the County of Warren, as provided by section 89(4) of the Public Officers Law.
2. “Designated Department Head” is the appointed head of a County department or office who is designated and delegated authority, in writing, by the Records Access Officer to receive FOIL requests and provide FOIL responses.
3. “Disciplinary Records” shall mean any record created in furtherance of a disciplinary proceeding, including but not limited to: (a) complaints, allegations, and charges against an employee; (b) the name of the employee complained of or charged; (c) the transcript of any disciplinary trial or hearing, including exhibits; (d) the disposition of the disciplinary proceeding; and (e) the final written opinion or decision of the disciplinary proceeding. Disciplinary records shall not include: warnings or counseling memoranda.

4. "Record" shall mean, any information kept, held, filed, produced or reproduced by, with or for Warren County, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.
5. "Records Access Officer" is the Warren County Officer responsible for supervising, overseeing and coordinating the County's compliance with initial response to a FOIL request, pursuant to section 89(3) of the New York State Public Officers Law, 22 NYCRR 1401.2, and Section 3 of this Policy.
6. "Subject Matter List" shall mean, a reasonably detailed current list, by subject matter, of all records in Warren County's possession, which shall be sufficiently detailed to permit identification of the category of record sought.

### **SECTION 3: DESIGNATION AND DUTIES OF THE RECORDS ACCESS OFFICER AND CERTAIN DESIGNATED DEPARTMENT HEADS**

1. The Warren County Administrator is designated as the Records Access Officer, (hereafter, "RAO") and shall be responsible for ensuring Warren County maintains compliance with its responsibilities to produce requested documents under Public Officers Law § 89(3) and 21 NYCRR 1401.2 (collectively, "FOIL Law and Regulations").
2. The Records Access Officer shall:
  - a. Serve as the County's primary point of contact for FOIL requests, to include requests received electronically through the County's website;
  - b. Provide administrative oversight for the implementation and operation of the FOIL Policy, to include the County's timely response to all FOIL requests received from any source and maintaining and publishing a subject matter list on the Warren County website which is also available upon request, without charge;
  - c. Designate and delegate authority to specific County Department Heads, in writing, to serve as "Designated Department Heads" authorized to receive and respond to FOIL requests on behalf of the Record Access Officer and the County;
  - d. Maintain and publish a current list of County Department Head Offices that are authorized to serve as "Designated Department Heads;"
  - e. Assist individuals seeking County records in reasonably describing the records sought, by referring individuals to the subject matter list and when appropriate advising how County records are indexed and/or filed; and

- f. Contact individuals requesting records when a request is deemed voluminous or when the production of records involves substantial effort by County employees, so that the individual may review and restrict the FOIL request to reduce the volume of records sought and/or the time to complete the FOIL request.
3. Upon the Records Access Officer receiving a FOIL request that reasonably describes records maintained by the County, the Records Access Officer shall:
  - a. Forward the FOIL request to the appropriate Designated Department Head for review and response; or
  - b. Contact the appropriate County officers or employees and request that they search for records that are responsive to the FOIL request.

#### **SECTION 4: DUTIES OF DESIGNATED DEPARTMENT HEADS**

1. Each Designated Department Head shall respond to a FOIL request for records maintained by their department and shall not provide County records maintained by any other County department or employee. If a FOIL request seeks records the Designated Department Head believes are maintained elsewhere in the County or the request encompasses records from multiple county offices, then the Designated Department Head shall refer the FOIL request back to the Records Access Officer to ensure only one response is provided by the County.
2. If a Designated Department Head receives a FOIL request from any person, then a copy of the FOIL request shall be forwarded to the Records Access Officer for administrative tracking.
3. If a Designated Department Head receives or responds to a FOIL request, then the Designated Department Head shall complete all responsibilities required by the Records Access Officer in responding to the FOIL request.
4. The Designated Department Head shall provide to the Records Access Officer the following for each FOIL response issued:
  - a. The date the FOIL request was received;
  - b. A complete copy of the original FOIL request received, if not received from the Records Access Officer;
  - c. The date the FOIL response was released to the requester;
  - d. A complete copy of the FOIL response, to include the name and contact information to whom the FOIL response was provided;
  - e. Any exemptions to disclosure claimed by the Designated Department Head in the FOIL response; and
  - f. If the FOIL response contains redactions, then a complete *unredacted* copy of the FOIL response shall be provided.

#### **SECTION 5: FOIL REQUESTS FOR PUBLIC ACCESS TO RECORDS.**

1. All requests for records must be made in writing. No oral requests or request for information will be accepted or responded to in any manner by any County officers or employees. It is strongly recommended and encouraged that all requests for records be submitted through the Warren County website <https://warrencountyny.gov/form/contact-foil>, or by submission of a paper copy of the County's FOIL request form enclosed at Attachment "A" or [other](#) similar form approved by the RAO.
2. The requesting party shall specify in the request the type of medium in which they prefer records to be provided. Absent a stated preference, the presumption shall be that the requesting party prefers a physical copy of the papers and shall pay any fees incurred. If records are being produced in paper copies, then Record Access Officer shall receive payment prior to release of the records.
3. If Warren County records are maintained on the Warren County website or otherwise readily accessibly to the general public online, then the requesting party shall be informed of the location for the records on the County's website and no further record production shall be required.
4. Requests for records may be submitted to the Records Access Officer on any business day between the hours of 9:00 o'clock in the forenoon and 4:30 o'clock in the afternoon, in person, by mail, or electronically, to be considered received on that day. Any requests received outside of the designated hours will be considered received on the following business day.
5. The Records Access Officer or Designated Department Head shall provide the requesting party one of the following responses, in writing, within five (5) business days after receipt of a FOIL request:
  - a. Informing the requesting party that the request does not reasonably describe a record maintained by Warren County and including directions, when practicable, which may aid the requesting party to reasonably describe the records sought. The writing shall also state that this determination does not constitute a denial by the County to provide the records requested, and therefore, may not be appealed;
  - b. Granting or denying access to records sought in whole or in part; or
  - c. Acknowledging receipt of a request in writing and including an approximate date when a response to the request will be provided. If the approximate date exceeds twenty (20) business days, the acknowledgment will also include the reason for the delay in response.
6. The Records Access Officer or Designated Department Head shall not deny a request for records without first locating all records which are responsive to the FOIL request.

7. The blanket denial of a FOIL request is strictly prohibited. No denial of a FOIL request may occur without the requested records first being identified and inspected for potential release.
8. For twelve (12) months after a FOIL response is released, the Records Access Officer and the Designated Department Head shall retain all communications to and from a requesting party, as well as a complete copy of redacted and unredacted records provided by the FOIL response.
9. A FOIL request and FOIL response for records which appears to involve property damage personal injuries to any person, or other potential, future legal claims against the County, shall be provided by blind copy at the time of release to the County Attorney, in electronic format.
10. Certifications requested in accordance with FOIL Law shall be provided by the Records Access Officer or the applicable Designated Department Head responsible for responding to the request, in the form provided at Attachment "B" or similar form approved by RAO.
- ~~10.~~11. When a requesting party seeks documents relating to a county employee's disciplinary records, the Records Access Officer shall provide written notice of the request to the county employee whose records are being sought. If a Designated Department Head receives a request for an employee's disciplinary records, the Designated Department Head must provide a copy of the request and anticipated response to the Records Access Officer. Notice to employees shall be completed provided by utilizing the a form similar to the notice enclosed provided at Attachment "C."

## **SECTION 6: DENIAL OF ACCESS AND APPEALS.**

1. Denial of access to a County record, in whole or in part, shall be provided in writing to the requesting party. Failure of the Records Access Officer or the Designated Department Head to acknowledge a FOIL request within five (5) business days of receipt or to provide the records on or before the date provided in the acknowledgment, shall be deemed a constructive denial of the FOIL request.
2. If the Records Access Officer or the Designated Department Head denies a FOIL request in whole or in part, the denial response shall advise the requesting party of their right to appeal and shall provide the FOIL Appeal Officer's name and contact information to where appeals may be received.
3. Any person denied access, as defined in section 6(1) of this Policy or pursuant to Article 6 of the New York State Public Officers Law, may appeal the decision within thirty (30) days of the denial date.
4. The Warren County Attorney is the designated FOIL Appeals Officer, with a principal office located at the Warren County Municipal Center, 1340 State Route 9, Lake George, New York 12845, and a contact phone number of (518) 761-6463.

5. All appeals shall be submitted to the FOIL Appeals Officer in writing by completing the electronic form on the County Attorney website or by mailing in a printed copy of the appeal letter. The appeal must specify the following to be considered:
  - a. The date and location of the requested records;
  - b. A description of the records that were denied; and
  - c. The name and return address of the person who requested the records and now seeks to appeal the denial of records.
6. The FOIL Appeal Officer shall determine the FOIL appeal, in writing, within ten (10) business days of receipt, with the day of receipt being on any business day between the hours of 8:30 o'clock in the forenoon and 4:00 o'clock in the afternoon, in person, by mail, or electronically, to be considered received on that day. Any appeal received outside of the designated hours will be considered received on the following business day.
7. The FOIL Appeal Officer's written determination shall be provided to:
  - a. The requesting party whose FOIL request was denied;
  - b. The Records Access Officer;
  - c. The Designated Department Head, if any;
  - d. The Clerk of the Board of Supervisors in care of the members of the Board; and
  - e. The New York State Committee on Open Government.
8. The FOIL Appeal Officer may treat any FOIL Appeal letter which includes a request for one or more records not requested by the original FOIL request as a newly-submitted FOIL request, instead of a FOIL appeal. By doing so, the FOIL Appeal Officer shall respond to any requests appropriate for appeal and refer any new requested items to the Records Access Officer for further action under this Policy.
9. If a FOIL Appeal attempts to appeal a letter that does not constitute a denial, such as a letter which informed the requesting party that the FOIL request did not reasonably describe records sought or that the County does not maintain the records sought, then the FOIL Appeal Officer shall inform the requesting party that the FOIL Appeal is not deemed an appeal and that the matter was returned to the Records Access Officer for further assistance with the request.

#### **SECTION 7: FEES.**

1. The Records Access Officer, a Designated Department Head, or the FOIL Appeal Officer, is required to charge for the following:
  - a. Twenty-Five cents (\$.25) per page for photocopies that do not exceed 9 by 14 inches; and

- b. For the actual cost to produce the document for disclosure.
2. In calculating the actual cost of production, the following must be considered when determining the fee for a FOIL request:
  - a. The hourly salary of the lowest paid employee who has the skill required to prepare a copy of the requested records, when producing the records will take more than two (2) hours of the employee's time;
  - b. The actual cost of the storage device or media provided to the requesting party; and
  - c. The actual cost to Warren County when an outside professional service must be hired or retained to prepare a copy of a record.
3. The Records Access Officer, a Designated Department Head, or FOIL Appeal Officer must notify the requesting party of the estimated cost of preparing a copy of the records and receive full payment prior to preparing a copy of the requested records. Such notification must include:
  - a. The reason for the imposed fee;
  - b. The title and salary of the employee performing the work if the work is anticipated to exceed two hours;
  - c. The total number of pages being printed to respond to the FOIL request;
  - d. The estimated total amount and date payment is due in order for work to proceed on the FOIL request;
  - e. The types of payment accepted by the County and the location where the payment must be delivered by the due date; and
  - f. That failure to pay the total amount due within thirty (30) days of written notification will result in the County finding the FOIL request abandoned and closing the matter without further action. The requesting party is permitted to resubmit their FOIL request upon tendering payment and the resubmission shall be treated as a new FOIL request.
4. If while preparing the response to a FOIL request, the Records Access Officer, a Designated Department Head, or the FOIL Appeal Officer, determines the cost exceeds the initial estimate, written notification must be made to the requesting party that additional payment is required in order to continue with the preparation and release of the FOIL response and the requested records. The County shall make reimbursement when overpayment is made.
5. Other fees may be imposed upon a requesting party contrary to the above-referenced fees if authorized by state, federal, or local law.

6. The Records Access Officer, a Designated Department Head, or the FOIL Appeal Officer shall not waive a fee for photocopies or the actual cost of production.

7. All fees or charges imposed on the requesting party shall be paid directly with the Warren County Treasurer. The Records Access Officer, Designated Department Head, or FOIL Appeal Officer shall not receive or accept cash payment directly from a requesting party. Any County employee who receives or accepts a personal or cashier's check shall promptly delivery the check to the Warren County Treasurer and provide notice of payment to the Records Access Officer.

6.8. When payment is requested, the Records Access Officer, Designated Department Head, or FOIL Appeal Officer shall provide a copy of the FOIL request and amount due to the Warren County Treasurer upon notification to the requesting party.

7.9. The Records Access Officer, Designated Department Head, or FOIL Appeal Officer shall not produce responsive records until the required payment was received. If payment is tendered in a form other than cash, money order or a certified bank check, then payment shall not be deemed received until the payment the Warren County Treasurer receives confirmation that the tendered payment has cleared. For example, payment by personal check may require up to ten (10) business days before cleared by the County's financial institution.

8.10. The withholding of records until receipt of payment shall not be considered a denial of records.

9.11. The failure to pay all fees imposed under this policy within thirty (30) days of issuing written notice shall require the requesting party to submit a new FOIL request.

## **SECTION 8: REQUESTS FOR RECORDS FROM THE COUNTY COMPUTER NETWORK AND SERVER**

1. Records maintained on the Warren County computer network and server (hereafter, "server"), including but not limited to requests for electronic mail ("email") communications stored in the County's email archives, must be retrieved in accordance with the Warren County Computer Use Policy, resolution 144 of 2023, effective March 17, 2023, and any future amendments to the Computer Usage Policy.
2. Warren County maintains voluminous emails that are archived on the County server. The archived emails are indexed in such a manner that requires the Director, Information Technology to formulate and run Boolean searches for responsive records, followed by a separate manual review of potentially responsive emails to identify emails responsive to the FOIL request.
3. Persons requesting emails from the County's email archives shall provide the following information as part of the FOIL request in order for the request to reasonably describe the records sought and in order for the County to undertake reasonable efforts to identify the

archived emails requested. The failure to provide the following information requested may result in the FOIL request being determined to not reasonable describe the records sought, or the assessment of fees to a FOIL request.

4. A FOIL request seeking email records shall, at a minimum, include in the FOIL request the following:
  - a. The name of the individual or email address which sent the email requested;
  - b. The name of the individual or email address which received the email requested;
  - c. The date and time the email was sent, or in the alternative, the narrow date range (i.e. less than seven (7) days) during which the email was sent. FOIL requests providing no date and time, or a date range greater than seven days may result in the FOIL request being determined to not reasonably describe the records sought, or the assessment of fees to the FOIL request; and
  - d. Specific keywords which clearly identify the subject matter requested and limit the retrieval of records unrelated to the FOIL request. The County Director of Information Technologies shall run a Boolean search using only the specific keywords provided by the FOIL request and shall not be required to interpret any FOIL request to create any other or additional Boolean search terms for use in searching for responsive records to any FOIL request.
5. The failure of a requesting party to provide each required item of information stated above may prohibit Warren County from being able to complete the FOIL request and constitute a failure by the requesting party to reasonably describe a record.
6. Requesting individuals should avoid using the following words or phrases as keyword search terms in FOIL requests for archived emails from the County's server. Each of the words and phrases below is ambiguous and prevents County personnel from conducting an electronic search for specific records which may be available and responsive to a FOIL request.:
  - "relating to;"
  - "concerning"
  - "approximately"
  - "associated with;"
  - "about"FOIL requests using such terms may be deemed to constitute a failure by the requesting party to reasonably describe a record maintained by the County.
7. It is strongly encouraged that persons requesting County email records utilize the Email Request Form enclosed on the bottom of Attachment "A."

## **SECTION 9: MISCELLANEOUS.**

1. All requests for records under this Policy by Warren County officials or employees which do not pertain to their scope of work with the County shall be treated as a FOIL request. The Records Access Officer, a Designated Department Head, or the FOIL Appeal Officer may not waive applicable fees for requests from Warren County officials or employees.
2. The Chair of the Warren County Board of Supervisors shall be deemed the Conflict Record Officer and Conflict Appeal Officer and shall decide any FOIL requests or FOIL appeals to which the Records Access Officer or FOIL Appeal Officer has a conflict.
3. Records shall be available for public inspection upon appointment only at the Office of the Warren County Administrator or Designated Department Head. Please contact the appropriate office to schedule an appointment date and time during business hours.
4. A copy of this policy shall be published on the Warren County website and shall be physically posted in the Warren County Municipal Center and the Human Services Building. Copies may be obtained, in person, from the Warren County Administrator's office during business hours.
5. With the exception of redactions specifically required by state or federal statute, it is in the discretion of the Records Access Officer to post, publish, or publicly make available any FOIL request and FOIL response submitted by any person which the Record Access Officer deems to be of public interest.

#### **SECTION 10: SEVERABILITY.**

1. If any provision of this Policy or the application thereof to any person is found to be invalid by a court of competent jurisdiction, such judgment shall not affect the validity of the other provisions of these regulations or the application thereof.

#### **SECTION 11: EFFECTIVE DATE.**

1. This policy shall take effect immediately upon adoption by the Warren County Board of Supervisors for all FOIL requests filed thereafter.

**ATTACHMENT A**  
**FREEDOM OF INFORMATION LAW ("FOIL") REQUEST FORM**

**Instructions:**

1. Only existing County records and documents will be produced. The County does not create records or documents to respond to a FOIL request.
2. You must reasonably describe the record(s) you seek to inspect. Please refer to the County's subject matter index for assistance in writing your request. [www.warrencountyny/FOIL](http://www.warrencountyny/FOIL)
3. Failure to provide ALL information requested below may delay the County's response your request, may hinder the County's ability to identify responsive records, and result in the County's response failing to produce all records you seek to obtain through this request.

**REQUESTOR'S CONTACT INFORMATION:**

Your Name (Print: First and Last): \_\_\_\_\_

Phone Number (Include area code): \_\_\_\_\_

Email Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**DESCRIPTION OF REQUESTED RECORD(S):**

Type of Record(s): \_\_\_\_\_

Date of Record: \_\_\_\_\_ *(if not known, provide shortest time range possible)*

Location of Record or Department Which Created Record: \_\_\_\_\_

Specific Description of Record Requested: \_\_\_\_\_

**REQUESTED RESPONSE FORMAT (check all requested):**

\_\_\_\_\_ Photocopies (8 x11 paper)                      \_\_\_\_\_ Inspection only

\_\_\_\_\_ Other (Describe): \_\_\_\_\_

**REQUEST FOR COUNTY ELECTRONIC MAIL ("EMAIL") RECORDS:**

*County email records are saved in an archive storage system which are searchable by keywords. The County does not generate or provide keywords for a FOIL request. If you are seeking archived emails, then you must provide the keywords which would be in the records you seek and the search results must provide a reasonable number of emails relevant to your request.*

Requested email was sent to (name of recipient or email address): \_\_\_\_\_

Requested email was sent from (name of sender or email address): \_\_\_\_\_

Date of email, or Date Range: \_\_\_\_\_  
*(if date not known, please provide shortest time range possible)*

Subject or Keywords for data search: (List key words that would be in the emails you seek)

\_\_\_\_\_

**ATTACHMENT B**  
**CERTIFICATION**  
**PUBLIC OFFICERS LAW § 89(3)(a)**

I, \_\_\_\_\_, do hereby certify the following in accordance with Section 89(3)(a) of the Public Officers Law:

1. On \_\_\_\_\_, 20\_\_\_\_, the undersigned received your Freedom of Information Law ("FOIL") request, filed on \_\_\_\_\_, 20\_\_.

2. On \_\_\_\_\_, 20\_\_, a FOIL response was sent to you which stated that following a diligent search of records based upon your FOIL request, the County of Warren (could/could not) locate responsive records.

3. [if records provided, then add this paragraph] Therefore, the FOIL Response provided to you represents true and accurate copies of original records responsive to your request which are maintained by the County of Warren.

Dated: \_\_\_\_\_, 20\_\_\_\_  
Lake George, New York

By: \_\_\_\_\_  
Name: X  
Title: RAO/Designed Department Head  
Department:

**Warren County Records  
Access Officer**

# Memo

**To:** Employee Name  
**From:** \_\_\_\_\_, Records Access Officer **or** Designated Department Head  
**Date:** Date  
**Re:** FOIL Request for Disciplinary Records

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Warren County received a Freedom of Information Law (hereafter, "FOIL") request seeking a copy of your disciplinary records. You are receiving this notice as required by section 87(6) of the Public Officers Law and the Warren County Policy Governing FOIL Requests and Appeals, section 5, paragraph (11), which requires the County to provide an employee notification of a request for the employee's disciplinary records.

The FOIL request was submitted by \_\_\_\_\_ on (date). The County's FIL response is enclosed for your records. Questions may be directed to the Records Access Officer.

Encl. a/s



**State of New York  
Department of State  
Committee on Open Government**

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One Commerce Plaza  
99 Washington Ave.  
Albany, New York 12231

(518) 474-2518  
Fax (518) 474-1927

**FOIL AO 19867**

September 16, 2024

*By Electronic Mail Only*

*The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence.*

Dear:

As you know, as of September 4, 2024, article six of the Freedom of Information Law (“FOIL”) was amended by [Chapter 302 of the Laws of 2024](#) to include a mandate that “[a]ll agencies subject to the requirements of this article shall develop a policy regarding providing a notification to public employees in the event that the agency is responding to a request for such employee’s disciplinary records.” [Public Officers Law \(“POL”\) § 87\(6\)](#).

We are writing in response to your request for an advisory opinion concerning the implementation of the mandate and the notification it contemplates. In order to provide such advice we must look to the [text of the amendment](#) and the legislative intent included with the [memorandum accompanying the amendment](#). In the following advisory, we seek to address your inquiries.

**Does POL § 87(6) require notification to current *and* former public employees, or just currently employed public employees?**

The text of the amendment does not define the term “public employee” for purposes of notification. We suggest that FOIL responsible entities look to holdings of courts finding that the 2020 amendment to FOIL, which required that law enforcement disciplinary records be subject to review and disclosure, applies equally to former law enforcement employees and current law enforcement employees.

**Is there a penalty if an agency does not provide the notification? If there is a penalty, what is the penalty?**

The text of the amendment does not include language imposing a penalty for non-compliance with the notification requirement nor does it include a remedy for public employees if notification is not provided to them in accordance with the statute. The memo accompanying the amendment is also silent on this matter.

**What must be included in the notification and when must it be sent?**

Although the text of the amendment does not make it clear when the required notification must be made – stating only that it is required “in the event that an agency *is responding* to a request” (emphasis added) – the memo accompanying the amendment contains some language which may explain the intention of the legislature on this question. The memo provides: “[t]his legislation simply recognizes that these impacted public employees should have *minimum* notice when their personal information *has been released* to the public” (emphasis added), suggesting that it is the legislature’s intention that the required notification be “minimal” and be made to the employee *after* the records have been released. The intention regarding the timing of the minimal notification (*i.e.*, after the release of the requested records) is strengthened by the following language from the memo: “[this amendment] would simply ensure that if a public employee’s personal information *has been released to the public*, then such affected employee would have notice of such release” (emphasis added).

**Where must the notification to the public employee be sent? E.g., work address? Email address? Home address? If notification must be sent to a home address or email address, what if the agency does not have those addresses? If notification must be sent to a former public employee, what is an agency to do if it does not possess a current address for that former public employee?**

The amendment requires that agencies develop a policy regarding the required notification but does not establish specific procedures for issuing the notification. We recommend that agency heads use their best judgement as to the most appropriate form of notification. While the text is silent on this matter, it is our opinion that the notification should be in writing so that the agency has evidence of compliance and that notice by either regular mail or email is sufficient. Agencies should make reasonable efforts to notify former employees and document their efforts to do so.

**Does the legislation require that the affected public employee be provided with a copy of the FOIL request that is the subject of the POL § 87(6) notification and/or copies of the records that are provided to the requestor in response to the request?**

As noted above, the amendment requires that agencies develop a policy regarding the required notification, but it does not establish specific procedures for issuing the notification. The [memo](#) accompanying the bill indicates that it is the intention of the legislature that the required policy and notification requirement “have no effect on the release of information that is now permissible” pursuant to FOIL. We understand this to mean that the legislature intends that whatever policy a FOIL responsible entity adopts to effectuate the new notice requirement, such policy may not serve as an impediment to hinder or delay the required production of affected records in response to a FOIL request.

While the text of the amendment does not reflect a proactive requirement on the part of the agency to provide the public employee a copy of the FOIL request or the responsive records, it is important to note that the request and responsive records are, themselves, “records” subject to rights of access under FOIL. See previously prepared advisory opinions on this topic linked below.

#### **Request for Request**

[10059](#), [11260](#), [13471](#), [14068](#), [16507](#), [16558](#), [17692](#), [19168](#)

**What records are considered “disciplinary records”?**

Although not specifically raised as one of your questions, we have also been asked what constitutes a “disciplinary record” and, specifically, whether “counseling memos” are considered disciplinary records. We suggest that in the absence of a statutory definition of the term “disciplinary record” as it applies to non-law enforcement employees, FOIL-responsible agencies look to [POL § 86\(6\)](#), which defines “law enforcement disciplinary records,” for guidance.

Thank you for your inquiry.

Very truly yours,

*/s/ Shoshanah Bewlay*

Shoshanah Bewlay  
Executive Director