The Freedom of Information Law (Chapter 933, Laws of 1977; Public Officers Law, Section 84 et seq.) was substantially amended during the 1977 legislative session. The new law, the relevant portion of which is attached, takes effect on January 1, 1978. All three prior Memoranda to Presidents on the subject, Vol. 74, Nos. 23, 30 and 40, are therefore superseded. You may find them useful for comparison purposes.

The old statute listed specifically described records as available to the public, but went on to describe exceptions which had no necessary relation to that limited list. This, in conjunction with the preliminary statement of legislative intent which implied that all government records should be made available to the public, created a considerable degree of confusion.

The new statute retains the same statement of legislative intent, but its substantive provisions more clearly declare that inter-agency or intra-agency letters and memoranda, which merely discuss or debate proposed policies or actions, are exempt. Internal materials are subject to disclosure, under the new law, only in the event that documents are "instructions to staff that affect the public" or constitute "final agency policy or determinations". As before, "statistical or factual tabulations or data" are subject to disclosure. A proposed budget, though largely factual and numerical, would not fall within the "statistical or factual tabulation" category prior to final agency action.

The new law requires each campus to maintain a list by subject matter of all records in the possession of the agency. It requires that a second list be maintained of those categories of documents actually made available by the law. All requests for information must be acted upon within five business days. The campus may either grant access, deny access, or certify that it does not have or cannot find the record after diligent search. Appeals from a denial of requested information may be taken within 30 days to the Office of University Counsel.
The Committee on Public Access to Records is charged with adopting rules and regulations governing administration and procedure under the new law. By March 1, 1978, the University must promulgate uniform rules applicable to all campuses. This will require minor amendments to the existing Trustees regulations found in Part 311 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York. That set of regulations, you'll recall, was appended to Memorandum to Presidents, Vol. 74, No. 30, dated August 27, 1974.

Accordingly, following the promulgation of amended regulations by the Trustees and any new procedural rules to be formulated by the Committee on Public Access to Records, each campus will be required to publish local rules. After January 1, 1978, and prior to the announcement of any new University-wide regulations, the current campus procedures should be followed unless such procedures are in conflict with the express provisions of the new law.

Walter J. Relihan, Jr.

Attachment

This memorandum addressed to:

Presidents, State-operated Campuses

Copies for information only sent to:

Presidents, Community Colleges
Deans, Statutory Colleges
President Rose
Vice President Cooke
FREEDOM OF INFORMATION LAW

Section 84. Legislative declaration.
§ 85. Short title.
§ 86. Definitions.
§ 87. Access to agency records.
§ 88. Access to state legislative records.
§ 89. General provisions relating to access to records; certain cases.
§ 90. Severability.

§ 84. Legislative declaration. The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizens, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible.

The people’s right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public’s business and that the public, individually and collectively and represented by a free press, shall have access to the records of government in accordance with the provisions of this article.

§ 85. Short title. This article shall be known and may be cited as the “Freedom of Information Law.”

§ 86. Definitions. As used in this article, unless the context requires otherwise:
1. “Judiciary” means the courts of the state, excluding any municipal or district court, whether or not of record.

2. “State legislature” means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof.

3. “Agency” means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature.

4. “Record” means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, 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 disks, rules, regulations or codes.

§ 87. Access to agency records. 1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions
of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

i. the times and places such records are available;

ii. the persons from whom such records may be obtained, and

iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

(a) are specifically exempted from disclosure by state or federal statute;

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

(c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(d) are trade secrets or are maintained for the regulation of commercial enterprise 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;

ii. deprive a person of a right to a fair trial or impartial adjudication;

iii. identify a confidential source or disclose confidential information relating to a criminal investigation;

iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures.

(f) if disclosed would endanger the life or safety of any person;

(g) are inter-agency or intra-agency materials which are not:

i. statistical or factual tabulations or data;

ii. instructions to staff that affect the public; or

iii. final agency policy or determinations; or

(h) are examination questions or answers which are requested prior to the final administration of such questions.

3. Each agency shall maintain:

(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 the possession of the agency, whether or not available under this article.

§ 88. Access to state legislative records. 1. The temporary president of the senate and the speaker of the assembly shall promulgate rules and regulations for their respective houses in conformity with the provisions of this article, pertaining to the availability, location and nature of records, including, not not limited to:

(a) the times and places such records are available;

(b) the persons from whom such records may be obtained;

(c) the fees for copies of such records, which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:
(c) bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions and amendments thereto, and index records;

(d) messages received from the governor or the other house of the legislature, and

(h) rule messages;

(c) legislative notification of the proposed adoption of rules by an agency;

(d) members' code of ethics statements;

(e) transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereof and records of any votes taken;

(f) internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;

(e) administrative staff manuals and instructions to staff that affect members of the public;

(h) final reports and final opinions of committees, subcommittees, or commissions of the legislature;

(i) any other files, records, papers or documents required by law to be made available for public inspection and copying.

3. Each house shall maintain and make available for public inspection and copying:

(a) a record of votes of each member in every session and every committee and subcommittee meeting in which the member votes;

(b) a record setting forth the name, public office address, title, and salary of every officer or employee; and

(c) a current list, reasonably detailed, by subject matter of any records required to be made available for public inspection and copying pursuant to this section.

§ 89. General provisions relating to access to records; certain exceptions. The provisions of this section apply to access to all records, except as hereinafter specified:

(i) The committee on public access to records is continued and shall consist of the lieutenant governor or the delegate of such officer, the secretary of state or the delegate of such officer, whose office shall act as the secretary for the committee, the commissioner of the office of general services or the delegate of such officer, the director of the budget or the delegate of such officer, and six other persons, none of whom shall hold any other state or local public office, to be appointed as follows: four by the governor, at least two of whom are or have been representatives of the news media, one by the temporary president of the Senate, and one by the speaker of the assembly. The persons appointed by the temporary president of the Senate and the speaker of the assembly shall be appointed to serve, respectively, until the expiration of the terms of office of the temporary president and the speaker to which the temporary president and speaker were elected. The four persons presently serving by appointment of the governor for fixed terms shall continue to serve until the expiration of their respective terms. Thereafter, their respective successors shall be appointed for terms of four years. The committee shall hold no less than four meetings annually. The members of the committee shall be entitled to reimbursement for actual expenses incurred in the discharge of their duties.

(ii) The committee shall:

i. furnish to any agency advisory guidelines, opinions or other appropriate information regarding this article;

ii. furnish to any person advisory opinions or other appropriate information regarding this article;

iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;
in request from any agency such resistance, services and information as will enable the committee to effectively carry out its powers and duties; and

v. report on its activities and findings, including recommendations for changes in the law, to the governor and the legislature annually, on or before December fifteenth.

2. (a) The committee on public access to records may promulgate guidelines regarding disclosure of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

i. disclosure of employment, medical or credit histories or personal references of applicants for employment;

ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;

iii. sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes;

iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or

v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

i. when identifying details are deleted;

ii. when the person to whom a record pertains consents in writing to disclosure;

iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him.

3. Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date when such request will be granted or denied. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight.

4. (a) Any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within seven business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. In addition, each agency shall immediately forward to the committee on public access to records a copy of such appeal and the determination thereon.

(b) Any person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

5. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.

§ 20. Severability. If any provision of this article 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 the article or the application thereof to other persons and circumstances.