Memorandum to Presidents

Date: March 9, 1978

From: Office of the University Counsel
      and Vice Chancellor for Legal Affairs

Subject: Freedom of Information Law V

The Committee on Public Access to Records has amended its regulations to conform to the new Freedom of Information Law which became effective January 1, 1978 (Public Officers Law, Article 6; see Memorandum to Presidents, Vol. 77, No. 20, dated November 16, 1977). A copy of the Committee regulations is attached (Attachment A). Under the new law and regulations, the University is required to amend its procedures to conform to the regulations of the Committee. In response to these requirements the Board of Trustees adopted the attached set of revised regulations at its February 22, 1978 meeting (Attachment B).

You will note that several changes have been made in the procedures governing access to State University records. The campus is no longer required to designate a fiscal officer. Under the old law, the fiscal officer was responsible for providing information on salary, title and business address of each employee. All requests for information will now be coordinated by one person, the records access officer. Each records access officer is required to maintain a reasonably detailed current list by subject matter of all records in the possession of the college or center, whether or not such records might be made available to the public.

If a campus is unable to answer a request within five days of receipt, it must acknowledge the request and inform the member of the public of the approximate time when the request will be answered. A new provision of the Committee's regulations permits an applicant to appeal if the campus has not acted within ten business days of the acknowledgment. Previously, appeals could be taken only after an "unreasonable" delay.

Attachments

Walter J. Relihan, Jr.
This memorandum addressed to:

Presidents, State-operated Campuses

Copies for information only sent to:

Presidents, Community Colleges
Deans, Statutory Colleges
President Rose
Vice President Cook
CHAPTER XXV
COMMITTEE ON PUBLIC ACCESS TO RECORDS
PART 1401

PUBLIC ACCESS TO RECORDS OF STATE AND
LOCAL AGENCIES, INCLUDING COUNTIES,
CITIES, TOWNS, VILLAGES, SCHOOL DISTRICTS
AND FIRE DISTRICTS

Statutory authority: Public Officers Law, §89(1)(b)(iii)

1401.1 Purpose and scope
1401.2 Designation of records access officer
1401.3 Location
1401.4 Hours for public inspection
1401.5 Requests for public access to records
1401.6 Subject matter list
1401.7 Denial of access to records
1401.8 Fees
1401.9 Public notice
1401.10 Severability

Section 1401.1 Purpose and scope.

(a) 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.
Access to such information should not be thwarted
by shrouding it with the cloak of secrecy or con-
fidentiality.

(b) This Part provides information concerning the
procedures by which records may be obtained from
an agency as defined by subdivision three of
Section eighty-six of the Public Officers Law.
No agency regulations shall be more restrictive
than this Part.

(c) Agency personnel shall furnish to the public the
information and records required by the Freedom
of Information Law, as well as records otherwise
available by law.

(d) Any conflicts among laws governing public access
to records shall be construed in favor of the
widest possible availability of public records.
Agencies shall amend existing regulations or adopt new regulations to implement the Freedom of Information Law in conformity with this Part.

1401.2 Designation of records access officer.

(a) The governing body of a public corporation and the head of an executive agency or governing body of other agencies shall be responsible for insuring compliance with the regulations herein, and shall designate one or more persons as records access officer by name or by specific job title and business address, who shall have the duty of coordinating agency response to public requests for access to records. The designation of one or more records access officers 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.

(b) The records access officer is responsible for assuring that agency personnel:

1) Maintain an up-to-date subject matter list;

2) Assist the requester in identifying requested records, if necessary;

3) Upon locating the records, take one of the following actions:

   (i) Make records available for inspection; or

   (ii) Deny access to the records in whole or in part and explain in writing the reasons therefor;

4) Upon request for copies of records:

   (i) Make a copy available upon payment or offer to pay established fees, if any; or

   (ii) Permit the requester to copy those records;

5) Upon request, certify that a record is a true copy; and
(6) Upon failure to locate records, certify that:

(i) The agency is not the custodian for such records, or

(ii) The records of which the agency is a custodian cannot be found after diligent search.

1401.3 Location. Each agency shall designate the locations where records shall be available for public inspection and copying.

1401.4 Hours for public inspection.

(a) Each agency shall accept requests for public access to records and produce records during all hours they are regularly open for business.

(b) In agencies which do not have daily regular business hours, a written procedure shall be established by which a person may arrange an appointment to inspect and copy records. Such procedure shall include the name, position, address and phone number of the party to be contacted for the purpose of making an appointment.

1401.5 Requests for public access to records.

(a) An agency may require that a request be made in writing or may make records available upon oral request.

(b) An agency shall respond to any request reasonably describing the record or records sought within five business days of receipt of the request.

(c) A request shall reasonably describe the record or records sought. Whenever possible a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.

(d) If the agency does not provide or deny access to the record sought within five business days of receipt of a request, the agency shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within ten business days after the date of acknowledgment of receipt of a request, the request may be construed as a denial of access that may be appealed.
1401.6 Subject matter list.

(a) Each agency 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.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

1401.7 Denial of access to records.

(a) The governing body of a public corporation or the head, chief executive or governing body of other agencies shall hear appeals or shall designate a person or body to hear appeals regarding denial of access to records under the Freedom of Information Law.

(b) Denial of access shall be in writing stating the reason therefor and advising the person denied access of his or her right to appeal to the person or body established to hear appeals, and that person or body shall be identified by name, title, business address and business telephone number. The records access officer shall not be the appeals officer.

(c) If an agency fails to respond to a request within five business days of receipt of a request as required in Section 1401.5(d) of this Part, such failure shall be deemed a denial of access by the agency.

(d) Any person denied access to records may appeal within thirty days of a denial.

(e) The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of written appeal identifying:

(1) The date and location of a request for records;

(2) the records that were denied; and
(3) the name and return address of the appellant.

(f) The agency shall transmit to the Committee on Public Access to Records copies of all appeals upon receipt of an appeal. Such copies shall be addressed to:

Committee on Public Access to Records
Department of State
162 Washington Avenue
Albany, New York 12231

(g) The person or body designated to hear appeals shall inform the appellant and the Committee on Public Access to Records of its determination in writing within seven business days of receipt of an appeal. The determination shall be transmitted to the Committee on Public Access to Records in the same manner as set forth in subdivision (f) of this section.

(h) A final denial of access to a requested record, as provided for in subdivision (g) of this section, shall be subject to court review, as provided for in Article 78 of the Civil Practice Law and Rules.

1401.8 Fees. Except when a different fee is otherwise prescribed by law:

(a) There shall be no fee charged for the following:

(1) Inspection of records;

(2) Search for records; or

(3) Any certification pursuant to this Part.

(b) An agency may provide copies of records without charging a fee; or

(c) An agency may charge a fee for copies of records provided that:

(1) The fee for copying records shall not exceed 25 cents per page for photocopies not exceeding 9 by 14 inches. This section shall not be construed to mandate the raising of fees where agencies in the past have charged less than 25 cents for such copies.
(2) In agencies which do not have photocopying equipment, a transcript of the requested records shall be made upon request. Such transcripts may either be typed or handwritten. In such cases, the person requesting records may be charged for the clerical time involved in making the transcript.

(3) The fee for copies of records not covered by paragraphs (1) and (2) of this subdivision shall not exceed the actual reproduction cost, which is the average unit cost for copying a record, excluding fixed costs of the agency such as operator salaries.

1401.9 Public notice. Each agency shall publicize by posting in a conspicuous location and/or by publication in a local newspaper of general circulation:

(a) The location where records shall be made available for inspection and copying.

(b) The name, title, business address and business telephone number of the designated records access officer.

(c) The right to appeal by any person denied access to a record and the name and business address of the person or body to whom an appeal is to be directed.

1401.10 Severability. If any provision of this Part 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 this Part or the application thereof to other persons and circumstances.
Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York

Part 311
Public Access to University Records

Section 311.1 General Procedures. For the purposes of compliance with the Freedom of Information Law, the chancellor, for the central administration of the university, and the chief administrative officer of each State-operated institution shall:

[(a) designate as fiscal officer the officer charged with the duty of preparing payrolls for the unit, who shall comply with the provisions of paragraph g of subdivision 1 of section 88 of the Public Officers Law (Freedom of Information);]

[(b)] (a) designate a records access officer who shall compile a list, reasonably detailed, by subject matter of [any records required by the Freedom of Information Law to be made available for public inspection and copying which are produced, filed or first kept or promulgated after September 1, 1974] all records in its possession, whether or not records are available pursuant to the provisions of Article 6 of the Public Officers Law (Freedom of Information Law). This list shall be updated not less than twice each year;

[(c)] (b) designate the time and place where the records access officer shall be available for the receipt of applications for records, to be submitted in writing on approved forms. Except for unusual circumstances, each records access officer or designee shall be available during regular business hours on regular working days;

[(d)] (c) charge such fees for the duplication of records as shall be established by the chancellor or the vice chancellor for finance and business; and

[(e)] (d) conspicuously post or otherwise make known to the public the name, title, business address and business telephone of the records access officer for the State-operated unit together with the hours such officer or other representative shall be available for filing requests for information. Such notice shall also include notification of the right of appeal from a denial of access to information.

311.2 Appeals. [Appeals from a denial of access to information by any officer of the university] If an officer of the university denies access to information or does not respond within appropriate time limits, appeals may be taken, in writing, on approved forms, to the university counsel and vice chancellor for legal affairs with offices at [99 Washington Avenue] University Plaza, Albany, New York, as the authorized representative of the chancellor.

311.3 Duties of records access officer. Each records access officer shall:

(a) coordinate the institution's response to public requests for access to records;

[(a)] (b) assist the applicant in identifying the record or records sought;

[(b)] (a) determine, preliminarily, whether the record is available for inspection;

(c) maintain a current list of all agency records by subject matter;

[(c)] (e) search for the identified record, and upon locating the record, take one of the following actions:
(1) review such records and delete any information which would constitute an unwarranted invasion of personal privacy and thereafter make the record promptly available for inspection or schedule an appointment for inspection; or

(2) deny access to the record and explain in writing the reasons therefor;

[(d)] (f) upon request for copies of records:

(1) make copies available upon payment or offer to pay established fees, or

(2) where agency does not have facilities for reproduction of records, permit the applicant to copy those records:

[(e)] (g) upon request, certify to the correctness of the copies of the records;

[(f)] (h) if the record cannot be located, take one of the following actions:

(1) certify in writing that the agency is not the legal custodian for such record, or

(2) certify in writing that the record of which the agency is a legal custodian cannot be found; and

[(g)] (i) if access is denied, advise the applicant of the right to appeal to the authorized representative of the chancellor of the university.

311.4 Forms. The chancellor or his designee shall prescribe a standard form or forms to be employed by an applicant seeking access to university records or appealing from a denial of such application.