

## Records Access Policy

<b>Effective Date:</b>	March 15, 2013
<b>Supersedes:</b>	N/A
<b>Policy Review Date:</b>	To be reviewed every 2 years from effective date
<b>Issuing Authority:</b>	Research Foundation President
<b>Policy Owner:</b>	Vice President, Industry & External Affairs
<b>Contact Information:</b>	(518) 434-7063 <a href="mailto:FOIL@rfsuny.org">FOIL@rfsuny.org</a>

## Reason for Policy

The Research Foundation for The State University of New York ("Research Foundation" or "RF") is subject to the Freedom of Information Law (FOIL). Pursuant to the statute, the RF must promulgate a policy that conforms with the law pertaining to the availability of records and procedures to be followed.

## Statement of Policy

### Section 1 - Purpose and scope:

Pursuant to the Freedom of Information Law (Public Officers Law §§ 84-90), The Research Foundation makes certain records available to the public. This policy prescribes the procedures by which records may be obtained. The Research Foundation has appointed a Records Access Officer to coordinate the Research Foundation's response to requests for information.

### Section 2 - Designation of Records Access Officer and Access to Records:

- (a) The President of the Research Foundation is responsible for ensuring compliance with the Policy herein, and designates the following person as the Records Access Officer:

Peter Taubkin  
Director, External Relations & Corporate Communications  
The Research Foundation for SUNY  
35 State Street  
Albany, NY 12207-2826  
[FOIL@rfsuny.org](mailto:FOIL@rfsuny.org)  
(518) 434-7063

- (b) All requests for records must be directed to the designated Records Access Officer.
- (c) The Records Access Officer is responsible for ensuring appropriate responses to public requests for access to records. The designation of a Records Access Officer 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.

The Records Access Officer shall ensure that Research Foundation central office:

1. Maintain an up-to-date subject matter list.

2. Assist the requester in identifying requested records.
3. Contact persons 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.
4. Upon locating the records, take one of the following actions:
  - a. Make records available for inspection; or,
  - b. Deny access to the records in whole or in part and explain in writing the reasons therefore.
5. Upon request for copies of records:
  - a. Make a copy available upon payment or offer to pay established fees, if any, in accordance with Section 9; or,
  - b. Permit the requestor to copy those records.
6. Upon request, certify that a record is a true copy; and
7. Upon failure to locate records, certify that:
  - a. The Research Foundation does not have possession of such records, or
  - b. The requested records cannot be found after diligent search.

**Section 3 - Location:**

Records shall be available for public inspection and copying at:

The Research Foundation for SUNY  
35 State Street  
Albany, NY 12207-2826

**Section 4 - Hours for public inspection:**

Inspection of records is by appointment between the hours of 9:00 AM and 5:00 PM.

**Section 5 - Requests for public access to records:**

- a. A written request may be required, but oral requests may be accepted at the discretion of the Records Access Officer when records are readily available.
- b. Provided the Records Access Officer has reasonable means available, he or she shall accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail, provided that the written requests do not seek a response in some other form.
- c. If records are publicly available on the internet, the requester shall be informed that the records are accessible via the internet.
- d. A response shall be given within five business days of receipt of a request by:
  1. Informing a person requesting records that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable that person to request records reasonably described;
  2. Granting or denying access to records in whole or in part;

3. Acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than twenty business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within twenty business days from the date of such acknowledgment, providing a statement in writing indicating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.
- e. If the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within twenty business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing within twenty business days of such acknowledgment specifying the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.
  - f. In determining a reasonable time for granting or denying a request under the circumstances of a request, personnel shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.
  - g. A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed.

**Section 6 - Subject matter list:**

- a. The Records Access Officer shall maintain a reasonably detailed list by subject matter of all records in the possession of the Research Foundation, whether or not records are available pursuant to section 87 (2) 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 annually. The most recent update shall appear on the first page of the subject matter list.

**Section 7 - Records containing trade secrets, confidential commercial information, or critical infrastructure information:**

- a. Any person who submits information to the Research Foundation ("provider") may request that the Research Foundation except such records or parts of such records from disclosure as trade secrets, confidential commercial information, or critical infrastructure information pursuant to section 87(2) of the Public Officers Law. The request for an exception shall be made in writing and shall state the reasons why the records should be excepted from disclosure. Such records shall be excepted from disclosure and maintained apart from all other records until fifteen days after the entitlement to such exception has been finally determined.
- b. The Records Access Officer may, prior to release of such records, notify the provider that the provider may provide the Records Access Officer within ten business days a written statement of necessity for excepting such records or parts of such records from disclosure as trade secret, confidential commercial information, or critical infrastructure information.

- c. Within seven business days of receipt of such statement or of the expiration of the period prescribed for submission of such statement, the Records Access Officer shall issue a written determination granting, continuing, terminating or denying the exception and stating the reasons therefore. Copies of such determination shall be transmitted to the person, if any, requesting the records ("requestor") and the provider.
- d. A denial of an exception from disclosure may be appealed by the provider, and a denial of access to the records may be appealed by the requestor. The FOIL Appeals Officer as set forth in Section 8 (g) shall determine the appeal.
  - 1. The appeal shall be in writing and shall be made within seven business days of receipt of a denial. The appeal shall be determined within ten business days of receipt of the appeal. The FOIL Appeals Officer shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals.
  - 2. Written notice of the determination of the appeal and a statement of reasons for the determination shall be served upon the requestor, if any, the provider and the Committee on Open Government.
- e. Records or parts of records identified as trade secrets or confidential commercial information shall be maintained in a safe and secure manner and shall be charged to the custody of the head of the department or office in which the records are filed. That individual shall specify which persons subject to his or her supervision may inspect such records.

**Section 8 - Denial of access to records:**

- a. This section shall apply to all requests for records or parts of records not otherwise subject to Section 7 of this Policy.
- b. Denial of access to records shall be in writing stating the reason therefore and advising the requestor of the right to appeal to the FOIL Appeals Officer.
- c. If requested records are not provided promptly, as required in Section 5 of this Policy, such failure shall also be deemed a denial of access.
- d. Any person denied access to records may appeal within 30 days of a denial.
- e. The time for deciding an appeal by the FOIL Appeals Officer shall commence upon receipt of a written appeal identifying:
  - 1. The date and location of requests for records;
  - 2. A description, to the extent possible, of the records that were denied;
  - 3. The name and return address of the person denied access; and
  - 4. Whether the denial of access was in writing or due to failure to provide records as promptly as required by Section 5 of this Policy.
- f. A failure to determine an appeal within 10 business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.
- g. The following person is the FOIL Appeals Officer and shall determine appeals under this section of the Policy, and Section 7 of the Policy:  
Joshua Toas, Esq.  
Chief Compliance Officer & Assistant Secretary

The Research Foundation for SUNY  
35 State Street  
Albany, NY 12207-2826  
(518) 434-7145

- h. The FOIL Appeals Officer shall 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
- i. The FOIL Appeals Officer shall inform the appellant and the Committee on Open Government of its determination in writing within ten business days of receipt of an appeal. The determination shall be transmitted to the Committee on Open Government in the same manner as set forth subdivision (h.) of this section.

**Section 9 - Fees:**

- a. There shall be no fee charged for:
  - 1. Inspection of records;
  - 2. Search for records; or
  - 3. Any certification pursuant to this part.
- b. Copies may be provided without charging a fee.
- c. Fees for copies may be charged, provided that:
  - 1. The fee for copying records is 25 cents per page for photocopies not exceeding 9 by 14 inches.
  - 2. The fee for photocopies of records in excess of 9 x 14 inches shall not exceed the actual cost of reproduction.
  - 3. The Research Foundation has the authority to redact portions of a paper record and does so prior to disclosure of the record by making a photocopy from which the proper redactions are made.
- d. The fee the Research Foundation may charge for a copy of any other record is based on the actual cost of reproduction and may include only the following:
  - 1. An amount equal to the hourly salary attributed to the lowest paid employee who has the necessary skill required to prepare a copy of the requested record, but only when more than two hours of the employee's time is necessary to do so; and
  - 2. The actual cost of the storage devices or media provided to the person making the request in complying with such request; or
  - 3. The actual cost to the Research Foundation of engaging an outside professional service to prepare a copy of a record, but only when the Research Foundation's information technology equipment is inadequate to prepare a copy, and if such service is used to prepare the copy.

- e. When the Research Foundation has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, or when doing so requires less employee time than engaging in manual retrieval or redactions from non-electronic records, the Research Foundation shall be required to retrieve or extract such record or data electronically. In such case, the Research Foundation may charge a fee in accordance with paragraph (d)(1) and (2) above.
- f. The Research Foundation shall inform a person requesting a record of the estimated cost of preparing a copy of the record if more than two hours of a Research Foundation employee's time is needed, or if it is necessary to retain an outside professional service to prepare a copy of the record.
- g. The Research Foundation may require that the fee for copying or reproducing a record be paid in advance of the preparation of such copy.
- h. The Research Foundation may waive a fee in whole or in part when making copies of records available.

**Section 10 - Public notice:**

A notice containing the title or name and business address of the Records Access Officer(s) and FOIL Appeals Officer and the location where records can be seen or copied shall be posted in a conspicuous location wherever records are kept.

**Section 11 - Severability:**

If any provision of this policy 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 policy or the application thereof to other persons and circumstances.

**Responsibilities**

The following table outlines the responsibilities for compliance with this policy:

Responsible Party	Responsibility
Records Access Officer	Please refer to section 2 (c) for list of responsibilities.
FOIL Appeals Officer	Shall determine appeals under sections 7 and 8 of the policy.

**Definitions**

*Record:* Any information kept, held, filed, produced or reproduced by, with or for the Research Foundation, 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.

*Subject Matter List:* A reasonably detailed current list by subject matter, of all records in the possession of the Research Foundation (regardless of whether access to the record may be denied under Public Officers Law Section 87 (2)), which is updated annually with the date of the most recent update conspicuously indicated on the list.

*Trade Secret:* Courts have frequently relied on the definition of trade secret from Section 757 of the Restatement of Torts, which defines a trade secret as "any formula, pattern, device or compilation of information which is used in one's business, and which gives [the business] an opportunity to obtain an advantage over competitors who do not know or use it."

*Confidential Commercial Information:* Records that are submitted by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial

injury to the competitive position of the subject enterprise. [The phrase “substantial injury to the competitive position of the subject enterprise” was clarified in *Encore College Bookstores, Inc., v. Auxiliary Service Corporation of the State University of New York at Farmingdale, et al.*, 87 N.Y.2d 410 (1995), and discussed in numerous subsequent decisions.]

*Critical Infrastructure Information:* Systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy.

## Related Information

None

## Forms

None

## History

Date	Summary of Change
March 30, 2023	Policy reviewed.
December 7, 2012	New policy Effective 3/15/2013

## Feedback

Was this document clear and easy to follow? Please send your feedback to [webfeedback@fsuny.org](mailto:webfeedback@fsuny.org).

Copyright © 2023 The Research Foundation for The State University of New York