

# VOICE STANDARDS FOR FREEDOM OF INFORMATION LAW (FOIL) PROCEDURES

## INTRODUCTION

VOICE personnel shall provide to the public the information and records required by FOIL, as well as records otherwise available by law.

## I. RECORDS

### A. Definition of Records (Public Officers Law (“POL”) § 86(4))

A “record” is any information kept, held, filed, produced or reproduced by, with or for VOICE 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.

### B. Mandated Records (POL § 87(3))

VOICE must maintain the following records:

1. A record setting forth the name, public office address, title, and salary of every officer or employee of VOICE;
2. A reasonably detailed current list by subject matter of all records in the possession of VOICE whether or not available under FOIL for public inspection and copying. The list is to be updated annually, and the date of the most recent update shall be conspicuously indicated. ED-1, the State Education Department’s Records Retention and Disposition Schedule, may be useful in this regard. It is available at:

[http://www.archives.nysed.gov/a/records/mr\\_pub\\_ed1.shtml](http://www.archives.nysed.gov/a/records/mr_pub_ed1.shtml)

VOICE is not required to create a record in response to a FOIL request or to respond to questions. FOIL pertains to requests for and releasability of records. However, see Section VI below concerning electronic records.

## II. RECORDS EXEMPTED FROM PUBLIC ACCESS

### A. The public has access to all records, except that VOICE may deny access to records or portions of records that:

1. Are specifically exempted from disclosure by state or federal statute\* (POL § 87(2) (a));
2. If disclosed, would constitute an unwarranted invasion of personal privacy (POL § 87(2) (b)) (see Section III below);
3. If disclosed, would impair present or imminent contract awards or collective bargaining negotiations (POL § 87(2) (c));

4. Are trade secrets or are submitted to an agency 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 (POL § 87(2) (d));  
\* For example, FERPA, the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.
  5. Are compiled for law enforcement purposes and which, if disclosed, would:
    - a. interfere with law enforcement investigations or judicial proceedings;
    - b. deprive a person of a right to a fair trial or impartial adjudication;
    - c. identify a confidential source or disclose confidential information relating to a criminal investigation; or
    - d. reveal criminal investigative techniques or procedures, except routine techniques and procedures (POL § 87(2) (e)).
  6. If disclosed, would endanger the life or safety of any person (POL § 87(2) (f));
  7. Are inter-agency or intra-agency materials unless they are:
    - a. statistical or factual tabulations or data;
    - b. instructions to staff that affect the public;
    - c. final agency policy or determinations; or
    - d. external audits, including but not limited to audits performed by the comptroller and the federal government (POL § 87(2) (g)).
  8. Are examination questions or answers which are requested prior to the final administration of such questions (POL § 87(2) (h)); or
  9. If disclosed, would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures (POL § 87(2) (i)).
- B. The release of and access to student records is governed by FERPA (the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g). See VOICE Standards for Student Records: Confidentiality, Access, Disclosure and Retention. Generally, information that would tend to identify a student, including but not limited to his/her name, student identification number and parent's name, must be redacted from documents prior to their release. However, if the requester represents the parent or eligible student whose records he/she is requesting and provides a written consent or release, the personally identifying information for his/her client will not be redacted.

### III. UNWARRANTED INVASION OF PERSONAL PRIVACY (POL § 89(2) (b-c))

- A. An unwarranted invasion of personal privacy includes, but shall not be limited to:
  1. Disclosure of employment, medical or credit histories or personal references of applicants for employment;
  2. Disclosure of items involving the medical or personal records of a client or patient in a medical facility;

3. Sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes;
  4. Disclosure of information of a personal nature which, if disclosed, would result in economic or personal hardship to the subject party and such information is not relevant to the work of VOICE; or
  5. Disclosure of information of a personal nature reported in confidence to VOICE and not relevant to the ordinary work of VOICE.
- B. An employee's name, job title and salary are not exempt under this provision.
  - C. To prevent an unwarranted invasion of personal privacy, VOICE staff will delete identifying details such as social security or file number, date of birth and personal/home contact information prior to releasing records.
  - D. Disclosure shall not be construed to constitute an unwarranted invasion of personal privacy when the person to whom a record pertains consents in writing to the disclosure or when a person seeks access to records pertaining to himself/herself.

#### IV. PROCEDURES FOR OBTAINING ACCESS TO RECORDS

- A. Requests to inspect or obtain copies of records maintained by the VOICE office must be submitted in writing, either in person, by mail, by facsimile or electronic mail.
- B. Requests must reasonably describe the records being requested so that an effective search can be conducted (POL § 89(3)). No specific form or format is required for the FOIL request.

#### V. RESPONSES TO FOIL REQUESTS

- A. Within five (5) business days of receipt of a written request for a record reasonably described, VOICE office staff will:
  1. Make such record available to the requester. If records are maintained on the internet, inform the requester that the records may be accessed on VOICE's website (giving the specific location, i.e., the link) and, that if he/she VOICES not have internet access, a printed copy will be provided;
  2. Deny such request in writing, and provide a reason for the denial; or
  3. Acknowledge in writing the receipt of such request and state the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied.If the request or any portion of the request for a record is not reasonably described, inform the requester and include direction, to the extent possible, that would enable that person to reasonably describe the records being sought.
- B. VOICE staff will, as needed, estimate the amount of time it will take to locate and then review documents responsive to the request, and determine whether any or all of the records or portions thereof are releasable. If VOICE staff determine to grant a request in whole or in part, and if circumstances prevent disclosure within twenty (20) business days from

the date of the acknowledgement, he/she shall state, in writing, both the reason for the inability to grant the request within twenty (20) business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.

In accordance with State Regulations, among the factors to consider in determining a reasonable time are: "the volume of a request; 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; and similar factors that bear on the ability to grant access to records promptly and within a reasonable time" (21 NYCRR 1401.5 (d)).

- C. Responses to requests also may be sent by electronic mail provided that the written requests do not seek a response in some other form.
- D. The letter of acknowledgement shall inform the requester that he/she may be charged for copies of records made available under FOIL pursuant to Section VI below. The letter of acknowledgement shall state:  
Section 87(2) (b) (iii) of the Public Officers Law permits an agency to charge a copying fee of 25¢ per page. Once we have obtained the records responsive to your request, we will notify you of the cost. [Once payment is requested, add: Please make your check or money order payable to VOICE Charter School and indicate the FOIL # on the document.] In the event the records requested are voluminous, the requester may be advised of the estimated cost of reproduction and asked to pay for and authorize their reproduction before copies are made. However, copies of records may be released prior to receiving payment. Although VOICE is not required to charge for copies of records that are provided, charges should be imposed when it is cost effective to do so especially when responsive documents are voluminous. VOICE may waive these fees also.
- E. Where a public record is determined to be too voluminous to photocopy, VOICE will direct the requester to the place where the records may be inspected.
  - 1. Records may be inspected or copied at the VOICE office or at the location he/she specifies at a mutually convenient time made by appointment on any regular school day during school hours.
  - 2. Records will be made available for inspection subject to the following conditions:
    - a. No records may be altered or destroyed by the requester;
    - b. No records may be copied or removed by the requester from the location where their inspection has been authorized;
    - c. Records made available for inspection will be kept available for ten (10) business days after the requester has been notified of their availability. Failure of the requester to inspect the records within that time will terminate processing of the request, and the file will be closed.
    - d. If records require redaction prior to disclosure, a request for inspection may be denied and the requester informed that the records are only available as copies, for which appropriate payment must be made.

- F. Where VOICE staff believe that a record or portion of a record is subject to an exemption from disclosure, he/she must redact the record before releasing it and inform the requester of the specific ground(s) for denying access to the record/portion within the relevant time frame.
- G. Upon request, VOICE staff shall certify to the correctness of the copies of the records being provided.
- H. If the records sought do not exist or are not in the possession of VOICE, VOICE staff must inform the requester and, in addition, shall certify, on request, that VOICE is not the custodian of such record(s); or that VOICE is a custodian of such records but a diligent search was conducted and the records were not located
- I. Any letter denying access to records or portions of records also must contain a notice of appeal rights (see Section VII below).

## VI. FEES; ELECTRONIC INFORMATION

- A. Where copies of records are being provided, the records may be provided for no fee. However, if fees are charged, the following fee schedule applies:
  - 1. 25 cents (25¢) per page for documents up to 8 x 14 inches in size, subject to modifications consistent with the law;
  - 2. For other records, the actual cost of reproducing the record, but in accordance with this subsection. In determining the actual cost of reproducing a record, VOICE may include only:
    - a. an amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record;
    - b. the actual cost of the storage devices or media provided to the person making the request in complying with such request;
    - c. the actual cost of engaging an outside professional service to prepare a copy of a record, but only when VOICE 's information technology equipment is inadequate to prepare a copy, if such service is used to prepare a copy; and
    - d. preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of VOICE employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of a VOICE employee's time is needed or if an outside professional service would be retained to prepare a copy of the record.
- B. A request may not be denied on the basis that it is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome because VOICE lacks sufficient staffing or on any other basis if VOICE may engage an outside professional service to provide copying, programming, or other services required to provide the copy, the costs of which VOICE may recover pursuant to Section VI.A above.
- C. When VOICE has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it will be required to do so. When doing so requires less employee time than engaging in manual

retrieval or redactions from non-electronic records, VOICE shall be required to retrieve or extract such record or data electronically.

- D. Any programming necessary to retrieve a record maintained in a computer storage system and to transfer that record to the medium requested or to allow the transferred record to be read or printed shall not be deemed to be the preparation or creation of a new record.
- E. VOICE shall provide records on the medium requested if it can reasonably make such copy or have such copy made by engaging an outside professional service. Records provided in a computer format shall not be encrypted.
- F. VOICE will not enter into or renew a contract for the creation or maintenance of records if such contract impairs the right of the public to inspect or copy the agency's records.
- G. No fee shall be charged for the inspection of or search for records, for a certification that the records are accurate or that a diligent search was conducted and no records were located, or for document(s) that have been printed or reproduced for current distribution to the public.
- H. The above-noted fee schedule is subject to modification consistent with the law.

## VII. APPEALS

### A. Constructive Denial

A requester who is neither granted nor denied access to records within the time limits set forth above or in the acknowledgment letter or any extension letter(s) may consider the request constructively denied and may appeal such denial in accordance with the procedures set forth below.

- B. A requester denied access to any VOICE record may, within 30 days, appeal such denial by writing to principal. To expedite the process, the requester should provide a copy of the request and a copy of the denial of access and give the basis for the appeal. The principal shall issue a written decision on the appeal within ten (10) business days following receipt of the appeal and fully explain in writing the reasons for further denial, or provide access to the record sought.