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PART 80. EXAMINATION AND COPYING OF RECORDS

PART 81. ACCESS TO PERSONAL INFORMATION

TITLE 19. DEPARTMENT OF STATE

CHAPTER II. PUBLIC ACCESS TO RECORDS

PART 80. EXAMINATION AND COPYING OF RECORDS

(Statutory authority: Public Officers Law, art. 6, §§ 87, 89; Executive Law, § 91, 96, 156-c[2][a])

80.1 Purpose and scope.

The people's right to know the process of government decisionmaking 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 confidentiality.

80.2 Designation and duties of the records access officer.

The Secretary of State (secretary is responsible for administering the Freedom of Information Law at the Department of State (department) and designates the Public Information Officer as records access officer and may designate assistant records access officers as necessary.

(a) The records access officer shall:

- (1) coordinate the department's response to public requests for access to reasonably described records;
- (2) provide information concerning the nature and location of records;
- (3) maintain a current list of records, indexed according to subject matter, for public inspection;
- (4) respond to all inquiries relating to the availability to the public of the department's records pursuant to the Freedom of Information Law;
- (5) receive and process requests for access to records in the manner prescribed by this Part;
- (6) receive and process requests for the copying of records in the manner prescribed by this Part;
- (7) upon request indicate the manner in which records are filed, retrieved or generated;
- (8) receive the cooperation and assistance of all personnel of the department in the performance of his functions under this Part;
- (9) prescribe the duties of and supervise the assistant records access officer(s) described by the records access officer; and

(10) charge and receive for the copying of records the fee prescribed by section 96 of the Executive Law.

(b) Upon locating the records, the records access officer shall take one of the following actions:

(1) make the records available for inspection; or

(2) make a copy available upon receipt of payment of fees described in section 96 of the Executive Law; or

(3) deny access to the records in whole or in part and explain in writing the reasons for the denial.

(c) Upon request, the records access officer shall certify that a record is a correct copy upon receipt of payment of the applicable fee.

(d) If unable to locate the requested records, the records access officer shall certify that:

(1) the records cannot be found after diligent search; or

(2) the department is not the custodian for such records.

80.3 Subject matter list.

(a) The records access officer shall maintain a reasonably detailed current list by subject matter of all records possessed by the department, whether or not records are available under subdivision 2 of section 87 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.

80.4 Requests for public access to records.

(a) A request for access to records within the possession of the Department of State shall be in writing and substantially identified as a request under the Freedom of Information Law (Public Officers Law, article 6, sections 84-90) and shall reasonably describe the requested records. Such request shall be addressed to the Records Access Officer, NYS Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

(b) A request for access to records may be made by electronic mail. Such request shall be responded to by electronic mail, using forms, to the extent practicable, developed by the Committee on Open Government.

(c) The records access officer may permit individuals to act as agent for or authorized representative of a requester of access to records.

(d) The records access officer shall respond within five business days to a request for access to records that are reasonably described 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 20 business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within 20 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; or

(4) 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 20 business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing within 20 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.

(e) In determining a reasonable time for granting or denying a request under the circumstances of a request, the records access officer shall consider the volume of the request, the ease or difficulty in locating, retrieving or copying 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 department, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.

(f) The records access officer may delete identifying details or particulars in order to prevent any possible unwarranted invasion of privacy as prescribed by the Freedom of Information Law (Public Officers Law, article 6, sections 87[2][b]; 89[2], [2-a], 96). The records access officer shall be prohibited from disclosing any and all such other details and particulars as prescribed by such law, any other laws of the State of New York or the United States, or any agreements between the State of New York and another state or the United States, its agencies or instrumentalities.

80.5 Inspection of records.

(a) Requests for public access to records shall be accepted during all hours the department is regularly open for business. If access to records is granted, records may be inspected by the public at the office of the records access officer every day that the offices of the department are open for business during the hours 9 a.m. through 12 noon, and 1 p.m. through 4 p.m. Records may also be inspected at an office of an assistant records access officer.

(b) If a record is of a type available for inspection under the Freedom of Information Law but contains information, details and/or particulars requiring deletion, a requester shall only be permitted to inspect a copy of the record with deletions.

80.6 Protection of exempt material, trade secrets and critical infrastructure information.

(a) The records access officer may deny access to records or portions thereof that are exempt from disclosure under the laws of the State of New York or the United States, or deny access to records or portions of records that constitute critical infrastructure information or 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.

(1) Any person who submits information to the department, which is not otherwise exempted from disclosure under the laws of the State of New York or the United States, may request that the department except such information from disclosure as critical infrastructure information or a trade secret pursuant to sections 86(5), 87(2) and 89(5) of the Public Officers Law. Where the request itself contains information which, if disclosed, would defeat the purpose for which the exception is sought, such information will also be excepted from disclosure.

(2) The request for an exception must be in writing, specify the information or portions thereof for which the exception is requested, and state the reasons why such information should be excepted from disclosure.

(3) Records or parts of records identified as critical infrastructure information or trade secrets at submission shall be charged to the custody of the head of the division, bureau or office with which they are filed. That individual shall be entitled to inspect these records, shall identify the persons under his or her supervision who may inspect and copy these records and shall specify the safeguards for preventing unauthorized access to these records. The secretary and other persons within the department specifically designated by the secretary shall be entitled to inspect these records. Also, the designated records access officer, assistant records access officer(s), records appeals officer and assistant records appeals officer(s) shall be entitled to inspect and copy these records.

(b) The records access officer shall, at any time, or upon receipt of a request for disclosure of critical infrastructure information or trade secrets, determine whether the request for exception will be granted, continued, terminated or denied. Before doing so, such officer shall:

(1) notify the person who requested the exception that a determination is to be made, and of such person's right to submit a written statement, within 10 business days of the notice, regarding the necessity for granting or continuing the exception from disclosure;

(2) permit the person who requested the exception, within 10 business days of receipt of notification from the department, to submit a written statement of the necessity for the granting or continuation of such exception; and

(3) within seven business days of receipt of such written statement, or within seven business days of the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such exception and stating the reasons therefor; copies of such determination shall be mailed to the person, if any, requesting the record, the person who requested the exception, and the Committee on Open Government.

(c) A denial of an exception from disclosure under subdivision (b) of this section may be appealed by the person submitting the information, and a denial of access to the record may be appealed by the person requesting the record in accordance with the procedure outlined in section 80.7 of this Part.

80.7 Procedure to be followed in the event of denial of access to records or denial of exception from disclosure.

(a) The secretary designates the counsel to the secretary as records appeals officer and may designate other members of the counsel's office as assistant records appeals officer(s) to decide appeals from a denial of access to records or denial of the request for an exception from disclosure under the Freedom of Information Law. The records appeals officer shall prescribe the duties of and supervise the assistant records appeals officer(s). The address of the records appeals officer is: Counsel to the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

(b) Denial of access to requested records and denial of exception from disclosure by the records access officer shall be in writing, stating the reason for the denial and informing the requester of his right to appeal the denial to the records appeals officer. The written notice of denial shall also contain the name, the title, business address and business telephone number of the records appeals officer. Notice of such denial shall also be given to the agent or authorized representative of the requester, if any.

- (c) If the requested records are not provided as required in section 80.4(d) of this Part, the records shall be deemed denied.
- (d) A person who has been denied access to a requested record by the records access officer shall have the right to appeal the denial to the records appeals officer within 30 days of the denial.
- (e) A person who has been denied an exception from disclosure, pursuant to section 80.6 of this Part, shall have the right to appeal the denial by filing a written statement of appeal from the determination of the records access officer with the records appeals officer, within seven business days of receipt of the written notice denying such request.
- (f) In order to perfect a proper and timely appeal, the written statement of appeal received by the records appeals officer from the appellant must set forth:
- (1) the date and the location of the request for access to the department's records, or request for an exception from disclosure;
 - (2) the records, identified with particularity, to which the requester was denied access or was denied an exception; and
 - (3) the name and return address of the requester.
- (g) The records appeals officer shall, within 10 business days, excluding the day of the proper commencement of the appeal, transmit a copy of the appeal to the Committee on Open Government and determine the right of access to records or of exception from disclosure. Where the records appeals officer decides the denial was improper, the records appeals officer shall order the records access officer to allow the requester access to such records or shall order the records access officer to except such records from disclosure. Where the records appeals officer decides the denial was correct, the records appeals officer shall state the reason or reasons therefor and mail a copy of the decision to the appellant on or before the 10th business day of the aforesaid period by ordinary mail. In addition, the records appeals officer shall immediately forward a copy of the decision to the Committee on Open Government.
- (h) A final denial of access or a final denial of exception from disclosure to a requested record by the records appeals officer is subject to court review as provided for under the Freedom of Information Law and the records appeals officer may not disclose the requested record or the record for which an exception from disclosure has been requested until ordered to do so in a final judgment of the court.

80.8 Fees.

Except where fees or exemptions from fees have been established by statutory law, rules or regulations of the department or the Civil Practice Law and Rules, the following rules shall apply to fees:

- (a) There shall be no fee charged for:
- (1) inspection of the itemized record prepared by the records access officer setting forth the name, title and salary of each officer;
 - (2) inspection of the index of records which the department is required to maintain under the Freedom of Information Law (Public Officers Law, article 6, sections 84-90); or
 - (3) inspection of records of the department which are required to be disclosed under the Freedom of Information Law where no deletion of any part of the contents thereof is required under section 80.4(d) of this Part.
- (b) The fee for a copy of a record where no deletion of any part of the contents thereof is required and which is of a size not exceeding 8½ inches in width by 14 inches in length shall be 50 cents per page. If greater in size, the fee shall be a unit per-page charge as determined, from time to time, by the department; excluding, however, the

fixed cost of the salary of the individual who operates the department's mechanical reproduction equipment.

(c) The fee for inspection of a copy of a record where deletion is mandated shall be a charge which reflects the departmental cost of the preparation for public inspection and the production of a copy of the deleted record as determined, from time to time, by the department; excluding, however, the fixed cost of the salary of the individual who operates the department's mechanical reproduction equipment.

(d) Where deletion is mandated, the fee for obtaining a copy of such deleted record by the use of the department's mechanical reproduction equipment shall be a charge which reflects the departmental cost of the preparation of the record for public inspection and its subsequent reproduction by the use of the department's mechanical reproduction equipment as determined, from time to time, by the department; excluding, however, the fixed cost of the salary of the operator of the department's mechanical reproduction equipment.

80.9 Public notice.

The records access officer shall cause public notice to be posted in all buildings occupied by the department, informing members of the public of his business location and telephone number; the time and place records will be made available for inspection and copying; and the notice shall inform the individual of his right to appeal the denial of access to requested records and provide him with the name, business address and telephone number of the records appeals officer.

80.10 Intent.

It is the intent of the department to ensure that information regarding approved real estate courses will be readily available to licensed real estate brokers and salespeople, who are required to attend approved courses as a condition to continued licensure pursuant to article 12-A of the Real Property Law. The Legislature has expressed, through amendments to such law, a strong public policy that such licensees remain knowledgeable about current laws and practices bearing on the real estate brokerage business. To further effectuate this policy, the department will prepare lists described in section 80.11 of this Part, to be available pursuant to this Part. The information contained in the lists will be limited to that already generally available in the public domain by virtue of its nature and of the dissemination of information on lists released pursuant to court order in *New York State Association of Realtors, Inc. v. Paterson*, No. 4514-81 (Supreme Court, Albany County, July 20, 1981).

80.11 (Repealed)

80.12 (Repealed)

80.13 Procedure.

In determining whether the request shall be filled, in addition to any other requirement in this Part, the department may take into consideration the following factors:

- (a) the purpose to which the information shall be put;
- (b) whether any privacy interests may be violated by filling the request;

- (c) whether the uses to which the information may be put can be limited in order to address the concerns in subdivisions (a) and (b) of this section;
- (d) whether the department is prohibited by law from releasing such information; and
- (e) any other factors the department deems relevant to its decision.

80.14 Agreement.

- (a) As a condition to receiving lists described in section 80.11 of this Part, such requester shall enter into an agreement with the department, to be signed by the requester and the Secretary of State or his designee.
- (b) The agreement shall contain such conditions and provisions as are determined necessary by the department to effectuate the request. Such conditions and provisions may include, but are not limited to, the following:
 - (1) the fee which shall be charged by the department for furnishing the list;
 - (2) the uses to which the information may be put, including the incorporation of any affidavits necessary to ensure such;
 - (3) limitations on who may use the information; and
 - (4) any penalties which may be incurred upon failure of the requester to comply with the terms of the agreement.

TITLE 19. DEPARTMENT OF STATE
CHAPTER II. PUBLIC ACCESS TO RECORDS
PART 81. ACCESS TO PERSONAL INFORMATION
(Statutory authority: Public Officers Law, art 6; Executive Law, § 91)

81.1 Purpose and scope.

- (a) It is the responsibility and the intent of the Department of State to fully comply with the provisions of article 6-A of the Public Officers Law, the Personal Privacy Protection Law.
- (b) The department shall maintain in its records only such personal information that is relevant and necessary to accomplish a purpose of the department that is required to be accomplished by statute or executive order, or to implement a program specifically authorized by law.
- (c) Personal information will be collected, whenever practicable, directly from the person to whom the information pertains.
- (d) The department seeks to ensure that all records pertaining to or used with respect to individuals are accurate, relevant, timely and complete.
- (e) These regulations provide information regarding the procedures by which members of the public may assert rights granted by the Personal Privacy Protection Law.

81.2 Designation of privacy compliance officer.

- (a) The director of administration of the Department of State is hereby designated privacy compliance officer and is responsible for ensuring that the department complies with the provisions of the Personal Privacy Protection Law and the regulations herein

and for coordinating the department's response to requests for records or amendment of records.

(b) The address of the privacy compliance officer is: Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

(c) The privacy compliance officer is responsible for:

(1) assisting a data subject in identifying and requesting personal information, if necessary;

(2) describing the contents of systems of records orally or in writing in order to enable a data subject to learn if a system of records includes a record or personal information identifiable to a data subject requesting such record or personal information;

(3) taking one of the following actions upon locating the record sought:

(i) make the record available for inspection, in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(ii) permit the data subject to copy the record; or

(iii) deny access to the record in whole or in part and explain in writing the reasons therefor;

(4) making a copy available, upon request, upon payment of or offer to pay established fees, if any, or permitting the data subject to copy the records;

(5) upon request, certifying that a copy of a record is a true copy; or

(6) certifying, upon request, that:

(i) the department does not have possession of the record sought;

(ii) the department cannot locate the record sought after having made a diligent search; or

(iii) the information sought cannot be retrieved by use of the description thereof, or by use of the name or other identifier of the data subject without extraordinary search methods being employed by the department.

81.3 Proof of identity.

(a) When a request is made in person, or when records are made available in person following a request made by mail, the department may require appropriate identification, such as a driver's license, an identifier assigned to the data subject by the department, a photograph or similar information that confirms that the record sought pertains to the data subject.

(b) When a request is made by mail, the department may require verification of a signature or inclusion of an identifier generally known only by a data subject, or similar appropriate identification.

(c) Proof of identity shall not be required regarding a request for a record accessible to the public pursuant to article 6 of the Public Officers Law.

81.4 Location.

(a) Records shall be made available at the main office of the department, which is located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

(b) Whenever practicable, records shall be made available at a regional office most convenient to a data subject.

81.5 Hours for public inspection and copying.

The department shall accept requests for records and produce records during regular business hours.

81.6 Requests for records.

- (a) All requests shall be made in writing, except that the department may make records available upon an oral request made in person after the applicant has demonstrated proof of identity.
- (b) A request shall reasonably describe the record sought. Whenever possible, the data subject should supply identifying information that assists the department in locating the records sought.
- (c) Requests based upon categories of information described in a notice of a system of records or a privacy impact statement shall be deemed to reasonably describe the record sought.
- (d) Within five business days of the receipt of a request, the department shall provide access to the record, deny access in writing explaining the reasons therefor, or acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied, which date shall not exceed 30 days from the date of the acknowledgment.

81.7 Amendment of records.

Within 30 business days of a request from a data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, the department shall:

- (a) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law; or
- (b) inform the data subject in writing of its refusal to correct or amend the record, including the reasons therefor.

81.8 Denial of request for a record or amendment or correction of a record or personal information.

- (a) Denial of a request for a record or amendment or correction of a record or personal information:
 - (1) shall be in writing, explaining the reasons therefor; and
 - (2) identifying the person to whom an appeal may be directed.
- (b) A failure to grant or deny access to records within five business days of the receipt of a request or within 30 days of an acknowledgment of the receipt of a request, or a failure to respond to a request for amendment or correction of a record within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.
- (c) Any such denial may be appealed to: General Counsel to the Secretary of State, Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

81.9 Appeal.

(a) Any person denied access to a record or denied a request to amend or correct a record of personal information pursuant to section 81.8 of this Part may, within 30 days of such denial, appeal.

(b) The time for deciding an appeal shall commence upon receipt of an appeal that identifies:

(1) the date and location of a request for a record or amendment or correction of a record or personal information;

(2) the record that is the subject of the appeal; and

(3) the name and return address of the appellant.

(c) Within seven business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction or amendment, the person determining such appeal shall:

(1) provide access to or correct or amend the record or personal information; or

(2) fully explain in writing the factual and statutory reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to article 78 of the Civil Practice Law and Rules.

(d) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, the correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law.

(e) The department shall, immediately after deciding same, forward to the Committee on Open Government a copy of any appeal made pursuant to this Part upon receipt, the determination thereof and the reasons therefor at the time of such determination.

81.10 Statement of disagreement by data subject.

(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:

(1) file with the department a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination;

(2) request that such a statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law.

(b) Upon receipt of a statement of disagreement by a data subject, the department shall:

(1) clearly note any portions of the record that are disputed; and

(2) attach a data subject's statement as part of the record.

(c) When providing a data subject's statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law, the department may also include a concise statement of its reasons for not making the requested amendment or correction.

81.11 Fees.

(a) Unless otherwise prescribed by statute, there shall be no fee charged for:

(1) inspection of records; or

(2) search for records.

(b) Unless otherwise prescribed by statute, copies of records shall be provided:

(1) at a rate of 50 cents per photocopy up to 9 × 14 inches; or

(2) upon payment of the actual cost of reproduction, if the record or personal information cannot be photocopied.

(c) The actual cost of reproduction shall be based upon the average unit cost for copying a record, excluding fixed costs of the department, such as operator salaries and overhead.

81.12 [Renumbered]

81.16 to 81.18 [Renumbered]

81.23 [Renumbered]

81.24 [Renumbered]

81.25 [Renumbered]

81.26 to 81.27 [Renumbered]

81.28 [Renumbered]

81.29 [Renumbered]

81.30 to 81.32 [Renumbered]

81.33 [Renumbered]

81.34 [Renumbered]

81.35 [Renumbered]

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