

## **POLICY MEMORANDUM 4 FOR ALL DIVISION STAFF AND VOLUNTEERS**

**SUBJECT:** Freedom of Information

**PURPOSE:** To explain requirements associated with Freedom of Information, effective December 1, 2013.

### **DISCUSSION:**

New York State Public Officer's Law Article Six addresses Freedom of Information. Requests for information from a third party that is, or appears to be, made pursuant to Freedom of Information Law (FOIL) shall be forwarded within 24 hours of receipt to the Freedom of Information Officer. Supervisors shall also be made aware of this request within 24 hours.

Requests should be submitted through the New York State Division of Veterans' Affairs website or by completing the relevant form and faxing it to the New York State Division of Veterans' Affairs at (518) 474-6924. Requests can also be mailed to the New York State Division of Veterans' Affairs Central Office.

Requests are available at the Division of Veterans' Affairs Central Office from 9:00 a.m. to 5:00 p.m. on days in which the State is generally open.

The fees for copies of records 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.

The Division of Veterans' Affairs will make available for public inspection and copying all records, except those that:

- (a) are specifically exempted from disclosure by state or federal statute;
- (b) if disclosed would constitute an unwarranted invasion of personal privacy under New York State or Federal law;
- (c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- (d) are trade secrets or are submitted to the Division of Veterans' Affairs 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 commercial 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; or
- iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(f) if disclosed could 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;
- iii. final agency policy or determinations;
- iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or

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

(i) if disclosed, would jeopardize the capacity of the Division of Veterans' Affairs or an entity that has shared information with the Division of Veterans' Affairs to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures.

The Division of Veterans' Affairs shall post information related to Public Officer's Law Article Six and Six-A on its website. Such information shall include, at a minimum, contact information for the persons from whom records of the agency may be obtained, the times and places such records are available for inspection and copying, and information on how to request records in person, by mail, and, if the agency accepts requests for records electronically, by e-mail. This posting shall be linked to the website of the committee on open government.

The Division of Veterans' Affairs shall provide records on the medium requested by a person, if the agency 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.

Disclosure shall not be construed to constitute an unwarranted invasion of personal privacy when identifying details are deleted, when the person to whom a record pertains consents in writing to disclosure, when upon presenting reasonable proof of identity a person seeks access to records pertaining to him or her, or when a record or group of records relates to the right, title, or interest in real property, or relates to the inventory, status, or characteristics of real property, in which case disclosure and providing copies of such record or group of records shall not be deemed an unwarranted invasion of personal privacy, provided that nothing herein shall be construed to authorize the disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law.

Within five business days of the receipt of a written request for a record reasonably described, the Division of Veterans' Affairs shall make such record available to the person requesting it, deny such request in writing, or furnish a written acknowledgment of the receipt upon such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied, including where appropriate, a statement that access to the record will be determined in accordance with New York State law.

The Division of Veterans' Affairs shall not deny a request on the basis that the request is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome because the Division of Veterans' Affairs lacks sufficient staffing or on any other basis if the Division of Veterans' Affairs may engage an outside professional service to provide copying, programming, or other services required to provide the copy, the costs of which the Division of Veterans' Affairs may recover.

The Division of Veterans' Affairs may require a person requesting lists of names and addresses to provide a written certification that such person will not use such lists of names and addresses for solicitation or fund-raising purposes and will not sell, give, or otherwise make available such lists of names and addresses to any other person for the purpose of allowing that person to use such lists of names and addresses for solicitation or fund-raising purposes.

If the Division of Veterans' Affairs determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the Division of Veterans' Affairs shall state, in writing, both the reason for the inability to grant the request within twenty 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.

Upon payment of, or offer to pay, the fee prescribed therefor, the Division of Veterans' Affairs 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.

The Division of Veterans' Affairs may not prepare any record not possessed or otherwise maintained. The Division of Veterans' Affairs will retrieve or extract a record or data maintained in a computer storage system if it can be done with reasonable effort.

The Division of Veterans' Affairs shall accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail, using forms, to the extent practicable, consistent with the form or forms developed by the committee on open government and provided that the written requests do not seek a response in some other form.

Any person denied access to a record may within thirty days appeal in writing such denial to the Director of the Division of Veterans' Affairs, who shall within ten 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.

The Division of Veterans' Affairs shall immediately forward to the committee on open government a copy of such appeal when receiving the ensuing determination thereon.

Any person who, with intent to prevent the public inspection of a record, willfully conceals or destroys any such record shall be guilty of a violation.

Questions should be directed to the Freedom of Information Officer or General Counsel.

Violations of this Policy Memorandum can lead to adverse administration action up to and including dismissal.

This Policy Memorandum is effective until revoked or amended.