

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED**

**REPEAL OF 3 NYCRR SP G 106
PUBLIC ACCESS TO DEPARTMENT OF FINANCIAL SERVICES RECORDS**

**REPEAL OF 11 NYCRR 241
(INSURANCE REGULATION 71)
AVAILABILITY OF DEPARTMENT RECORDS**

**NEW PART 3 TO 23 NYCRR
PUBLIC ACCESS TO DEPARTMENT RECORDS**

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by sections 202 and 302 of the Financial Services Law, section 14 of the Banking Law, section 301 of the Insurance Law, and Article 6 of the Public Officers Law do hereby promulgate the following amendments to Titles 3, 11, and 23 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication of the notice of adoption in the State Register:

Supervisory Procedure Part G 106 of 3 NYCRR is hereby repealed.

Part 241 of 11 NYCRR is hereby repealed.

(ALL MATERIAL HEREINAFTER IS NEW)

New Part 3 is added to 23 NYCRR, to read as follows:

Section 3.1 Records available to the public.

Except as otherwise provided by the Banking Law, Financial Services Law, Insurance Law, Public Officers Law section 87(2), or other provision of law, all records of the department shall be made available to the public in accordance with Public Officers Law Article 6, known as the Freedom of Information Law ("FOIL").

Section 3.2 Records specifically exempted from disclosure.

In accordance with Public Officers Law section 87(2)(a), the department may deny access to records or portions thereof that are specifically exempted from disclosure by state or federal statute, which include, without limitation, applicable provisions of the Banking Law, the Insurance law and the Financial Services Law.

Section 3.3 Designation of records access officers.

One or more records access officers shall be designated by the superintendent or the superintendent's designee from among the attorneys in the office of general counsel, administration, or any other unit of the department.

Section 3.4 Designation of appeals officer.

An appeal made pursuant to Public Officers Law section 89(4)(a) or (5)(c), and section 3.5(d) of this Part, shall be determined by an appeals officer, who shall be designated from among the counsels or attorneys in the office of general counsel and does not serve as a records access officer.

Section 3.5 Request for records.

(a) A person or entity seeking access to records available to the public under FOIL ("FOIL requester") is to make such request, in writing,

(1) on a form prescribed by the department and sent electronically from the department's website at <http://www.dfs.ny.gov>; or

(2) by email to: recordsaccessofficer@dfs.ny.gov; or

(3) by mail to: Records Access Officer, New York State Department of Financial Services, Office of General Counsel, One State Street, 20th Floor, New York, NY 10004.

(b) Requests for records are to be made in accordance with FOIL and reasonably describe the records sought, including applicable dates, titles, names, and other identifying information that will assist the department to locate the requested records.

(c) At the time a FOIL request is made, the FOIL requester may choose to receive copies of records or ask to inspect records in person. If the FOIL requester asks to inspect records, which are not excepted from disclosure under Public Officers Law section 87(2), the department shall contact the FOIL requester to schedule an appointment for the inspection of the records. Records shall be available for inspection from 9:00 a.m. to 5:00 p.m. on each regular working day at the Albany or New York City office of the department's bureau or unit that is charged with maintaining, and possesses, the records requested.

(d) A FOIL requester that is denied access to the records of the department, or portions thereof, may submit a written appeal of the denial in accordance with Public Officers Law section 89(4)(a) or (5)(c), as applicable, to: Appeals Officer, New York State Department of Financial Services, Office of General Counsel, One State Street, 20th Floor, New York, NY 10004, or by sending an email to FOIL.Appeals@dfs.ny.gov.

Section 3.6 Fees and payment for copies or reproductions of records.

(a) Photocopied records or other records. The fee for copies of records photocopied by department staff shall be 25 cents per page not exceeding nine by 14 inches or the actual cost to the department to reproduce any other record.

(b) Email attachments and file transfers. There is no fee for records provided to a requester that are sent electronically as an attachment to email or by file transfer application through the department's secure portal.

(c) Preparation costs. If the department requires more than two hours to prepare one or more copies of a record in response to a FOIL request, the fee charged for such preparation after the first two hours shall be an amount equal to the hourly salary attributed to the lowest paid department employee. Preparation costs shall not include search time or administrative costs.

(d) Outside service. If the department must engage an outside professional service to prepare a copy of a requested record, because the department's information technology equipment is inadequate to prepare such copy, the fee shall be the actual cost charged by such outside professional service to the department.

(e) Time of payment. The department requires payment for copies of records prior to releasing records in response to a FOIL request. The department may require payment for copies of records prior to processing a FOIL request when the request entails the copying of voluminous records.

(f) Waiver of fees. The department may waive the applicable fee for the provision of records on a case-by-case basis, which will be decided based upon the circumstances surrounding the individual request. No organization or entity, except a governmental agency, is entitled to a blanket waiver of fees.

Section 3.7 Trade secret/competitive harm exemption.

(a) Pursuant to Public Officers Law section 89(5), any person or entity that submits records to the department may, at the time of submission, request that the department except those records from disclosure under Public Officers Law section 87(2)(d), ("record submitter"). Where the request for an exception itself contains information that, if disclosed, would defeat the purpose for which the exception is sought, such information also shall be excepted from disclosure. The request for an exception shall be in writing and state the reasons why the records, or portions thereof, should be excepted from disclosure. The records submitted to the department shall be excepted from disclosure and shall be maintained separate and apart from all other records until 15 days after the department has finally determined that the records are not entitled to the exception, or such further time as may be ordered by a court of competent jurisdiction.

(b) Upon the initiative of the department, or upon a request for a record that the department maintains separate and apart from all other records pursuant to Public Officers Law section 89(5), the department shall:

(1) inform the record submitter of the department's intention to determine whether an exception should be continued;

(2) afford the record submitter 10 business days after receipt of notification from the department to submit a written statement in support of the necessity for the continuation of such exception;

(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 to the record submitter a written determination continuing or terminating such exception and stating the reasons therefor. Copies of such determination also shall be served upon the FOIL requester and the Committee on Open Government.

(c) A denial of an exception from disclosure may be appealed by the record submitter, and a denial of access to a record may be appealed by the FOIL requester, in accordance with the following procedures:

(1) within seven business days of receipt of the department's determination, the record submitter or FOIL requester may file a written appeal of the determination with the department's appeals officer; and

(2) the appeal shall be determined by the appeals officer within 10 business days after its receipt. Written notice of the determination shall be served upon the FOIL requester, the record submitter, and the Committee on Open Government. The notice shall contain a statement of the reasons for the determination.

(d) A proceeding to review an adverse determination of appeal pursuant to subdivision (c) of this section may be commenced by the FOIL requester or record submitter pursuant to article 78 of the Civil Practice Law and Rules. Such proceeding, if commenced by the record submitter, must be commenced within 15 days of the service of the written notice containing the adverse determination of appeal in accordance with the provisions of Public Officers Law section 89(5)(d).

(e) The record submitter shall have the burden of proving entitlement to the exception from disclosure provided by Public Officers Law section 87(2)(d), except when the department on its own initiative denies access to a record pursuant to that exception. In such event, the department shall have the burden of proving that the record falls within the exception from disclosure provided in Public Officers Law section 87(2)(d).