

RECENT FREEDOM OF INFORMATION LAW CHANGE GIVES FOIL LEGAL TEETH

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An amendment to the New York State Freedom of Information Law (FOIL) (Public Officers Law § 89) was recently signed into law by the Governor as Chapter 22 of the Laws of 2005. (For bill text, please visit our [Government Legal Resources section](#) and click on New York State Senate and insert bill number S.3460). FOIL applies to public entities such as school districts, BOCES and charter schools¹.

Prior to the enactment of Chapter 22, a public entity subject to FOIL was required to furnish a written acknowledgment of a FOIL request within five business days of receipt (see Public Officers Law § 89[3]). Provided this initial acknowledgment was furnished, there was no additional time limit by which the FOIL request needed to be formally granted or denied. Because there was no outer time frame, there were significant delays in the release of public information (see [Matter of New York Civil Liberties Union v. City of Schenectady, 3 N.Y.2d 657 \[2004\]](#); [2004 Report to the Legislature by the Committee on Open Government](#)).

The new law has changed this and now requires that a FOIL request be granted within twenty business days from the date of the initial acknowledgment. If circumstances prevent the request from being granted within the twenty day period, the public entity must provide a written statement detailing the reason for its inability to grant a timely request, and a date certain (which must be within a "reasonable" period of time) when the request will be granted. Under the new law, failure to comply will be deemed a denial of the FOIL request, which would entitle the party requesting the information to bring an appeal to enforce their request for information.

Entities should review and revise their FOIL policies to ensure that these time frames are complied with to avoid an appeal and potential court intervention.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific guidance.

¹Pursuant to Education Law § 2854 (1)(e), charter schools are subject to the provisions of Articles 6 and 7 of the Public Officers Law, which includes the Freedom of Information Law (Public Officers Law § 89).