

Warren County Board of Supervisors

RESOLUTION NO. 346 OF 2018

RESOLUTION INTRODUCED BY SUPERVISORS STROUGH, LEGGETT, BRAYMER, WILD, MCDEVITT, DIAMOND, DICKINSON, GERAGHTY, MAGOWAN, SOKOL AND DRISCOLL

AMENDING THE WARREN COUNTY FREEDOM OF INFORMATION LAW (FOIL) POLICY

WHEREAS, pursuant to Resolution No. 173 of 1974, later amended by Resolution No. 77 of 1978, the Warren County Board of Supervisors adopted regulations establishing the rules and procedures governing the public access to records of the County of Warren and its authorized agencies, and

WHEREAS, the Warren County Board of Supervisors adopted the Warren County Plans and Policies set forth in the Warren County, New York Plans and Policies and Municipal Code, which includes Section III.075 - .083 Freedom of Information Law (FOIL) Policy, by Resolution No. 416 of 2015, and

WHEREAS, the Legislative & Rules Committee of the Warren County Board of Supervisors has recommended revising several portions of the FOIL Policy, now, therefore, be it

RESOLVED, that Chapter III of the Warren County Plans and Policies, entitled County Administrator/Board of Supervisors, is hereby amended to revise Sections III.075-.084, as per the attached Schedule "A" document.

Schedule "A"

Deleted text is in [brackets], new text is in italics

FREEDOM OF INFORMATION LAW FOIL

§ III.075 PURPOSE AND SCOPE.

The purpose of these regulations are to set forth the rules, methods and procedures governing the availability, location and nature of records (as that term is defined herein) of the County of Warren subject to the provisions of N.Y. State Pub. Off. Law Article 6, known as the Freedom of Information Law. (Res. 77 of 1978, passed - -1978)

§ III.076 DEFINITIONS.

For the purpose of these regulations, the following terms are defined as set forth below:

FISCAL OFFICER. The Warren County Treasurer or his or her authorized representative.

PAYROLL RECORD. An itemized record setting forth the name, business address, title and salary of every officer and employee of the County of Warren or its authorized agencies.

RECORD. Any information kept, filed, held, produced or reproduced by, with or for the County of Warren, 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, microfilm, computer tapes or discs, rules, regulations or codes.

WORKDAY. Any day except Saturday, Sunday, a public holiday or a day on which the Warren County Municipal Center is otherwise closed for general business. (Res. 77 of 1978, passed - -1978)

§ III.077 PROCEDURE FOR OBTAINING RECORDS.

(A) Records Access Officer[s] and Custody of Records.

(1) *The Warren County Administrator shall serve as Records Access Officer for all county records excepting payroll records. All FOIL requests directed to any department of Warren County are to be sent to the attention of the Warren County Administrator through the form provided on the Warren County website at <http://www.warrencountyny.gov/contact.php>.*

RESOLUTION No. 346 OF 2018

PAGE 3 OF 8

(2) The following Warren County officers or their authorized representatives are hereby designated as ~~[Records Access Officers, each for his or her respective department and shall be]~~ the custodian of ~~[such]~~ records *maintained by the department listed*, excepting payroll records:

~~[(2) Each of the following are to be contacted at his or her office, having as a business address the Warren County Municipal Center, 1340 State Route 9, Lake George, New York, 12845, such other address as specifically designated herein or through the Warren County website at <http://www.warrencountyny.gov/contact.php>.]~~

Office of the County Administrator	County Administrator
Assigned Counsel	Administrator
Auditor	Auditor
Board of Elections	Commissioners
Board of Supervisors	Clerk of the Board of Supervisors
Budget Officer	Budget Officer
<u><i>Countryside Adult Home</i></u>	<u><i>Director</i></u>
County Attorney	County Attorney
County Clerk	County Clerk
County Treasurer	County Treasurer
District Attorney	District Attorney
Emergency Services	Director/Fire Coordinator
Employment and Training/One-Stop Career Center	Director [c/o Clerk of the Board of Supervisors]
Fire Prevention and Building Codes Enforcement	Administrator
Historian	Historian
Human Resource and Civil Service	Human Resources Director
Information Technology	Director
Motor Vehicles	County Clerk
Office for the Aging	Director
Planning	County Planner
Probation	Director
Purchasing	Purchasing Agent
Public Defender	Public Defender
Public Health	Director

RESOLUTION NO. 346 OF 2018

PAGE 4 OF 8

<u>Public Works (incl. Buildings & Grounds, Airport, Parks, Recreation and Railroad, Up Yonda Farm)</u>	<u>Superintendent of Public Works</u>
Real Property Tax Services	Director
Self-Insurance	Administrator
Social Services	Commissioner of Social Services
<u>Sheriff</u>	<u>Sheriff or his/her designee</u>
Tourism	Director
Veterans Services	Director
Weights and Measures	Sealer of Weights and Measures

~~[(3) As well as each of the following at the business address set forth opposite his or her specific job title]:~~

{Public Works (incl. Buildings & Grounds, Airport, Parks, Recreation and Railroad, Up Yonda Farm)}	{Superintendent of Public Works 4028 Main St. Warrensburg, NY 12885}
{Sheriff}	{Major 1400 State Route Nine Lake George, NY 12845}
{Countryside Adult Home}	{Director 353 Schroon River Road Warrensburg, NY 12885}
{Westmount Health Facility (until 5/15)}	{Director 42 Gurney Lane Queensbury, NY 12804}

~~[(4) (3) Any FOIL request directed to any department of Warren County not specifically set forth herein is to be sent to the attention of the Warren County Administrator through the form provided on [Attorney or to] the Warren County website at <http://www.warrencountyny.gov/contact.php>. FOIL is not generally applicable to courts within the Warren County Municipal Center, which are operated by the Office of Court Administration, an agency of New York State.~~

(B) (1) Any person who wishes to inspect or obtain a copy of any such record may request access to the record by making application to the Records Access Officer. Such application shall be made [in writing to the address provided or] through the form provided on the Warren County website and shall reasonably describe the record or records sought. A person requesting records should supply information regarding dates, file designations or any other information that may help to describe the records sought. ~~[Application forms which comply with the law may be obtained from the Office of the County Attorney or are also available on the Warren County website at <http://www.warrencountyny.gov/contact.php>.]~~

RESOLUTION No. 346 OF 2018

PAGE 5 OF 8

(2) Requests for access to records may be submitted to the ~~[appropriate]~~ Records Access Officer ~~[either personally at such office]~~ on any workday between the hours of 9:00 a.m. and 4:30 p.m. ~~[, by mail, addressed to such officer or to such other officer as the Records Access Officer may specify upon contact or through the Warren County website (<http://www.warrencountyny.gov/contact.php>) directed to the Records Access Officer.]~~ Any request received after 4:30 p.m. is deemed to have been received on the next workday. Upon the receipt of an application in the proper form and at the appropriate time, the Records Access Officer shall cause a search to be made for the requested record. Within five business days of receipt of a FOIL request, the following actions will be taken by the Records Access Officer or his or her designee:

(a) Produce the record(s) for inspection at the Records Access Officer's office or send the requested records to the applicant (and if so requested and upon payment of the appropriate fee, make and certify a copy of the record).

(b) Deny the request as provided in § III.081 of these regulations, providing the reason for the denial and sending a copy of such denial to the County Attorney.

(c) Partially grant and partially deny the request.

(d) Advise the applicant that the record(s) are not in the custody of that specific department, but may be in the custody of another specified department or may be available on the Warren County website or other site on the internet.

(e) Certify that the records cannot be located after diligent search.

(f) Acknowledge receipt of the request, setting an approximate date for a full response and seeking clarification if the request is overly voluminous or unspecific. If circumstances prevent a response within 20 workdays, a statement specifying the reasons for the inability to do so and a date certain must be supplied. The failure to comply with this time limit constitutes a denial which may be appealed.

(3) The Records Access Officer, in his or her discretion, may waive compliance with any formality prescribed by this ~~section [division (B), including the use of county application forms]~~.

(C) Any person wishing to inspect and/or obtain a copy of a payroll record may make written application to the Fiscal Officer ~~[in writing]~~ pursuant to the provisions of ~~the above section [division (B) above]~~ of these regulations ~~[to the Fiscal Officer]~~ at the office of the Fiscal Officer at the Warren County Municipal Center, Lake George, New York. Upon receipt of such an application, the Fiscal Officer shall search for and produce for inspection the payroll record. If the applicant requests a copy of such payroll record, the Fiscal Officer shall provide him or her with one, upon payment of the appropriate fee. (Res. 77 of 1978, passed - 1978)

§ III.078 SUBJECT MATTER LIST.

(A) On behalf of the County of Warren, the ~~[Records Access Officer]~~ custodian of records for each department pursuant to III.077 (A)(2) above shall maintain and make available for inspection and copying at their office a current list, reasonably detailed by subject matter, of all records in the possession of the department, whether or not available under N.Y. Pub. Off. Law Article 6. Such list shall be in conformity with such regulations as may be promulgated by the Committee on Open Government. Any person desiring a copy of such list may request a copy thereof personally, by mail or through the Warren County website and he or she shall be supplied with one copy.

RESOLUTION NO. 346 OF 2018

PAGE 6 OF 8

(B) Each ~~[Records Access Office]~~ county department shall maintain:

(1) A record setting forth the name, public office address, title and salary of every officer or employee of the department; and

(2) A reasonably detailed current list by subject matter, of all records in the possession of the department whether or not available under this article.

(Res. 77 of 1978, passed - -1978)

§ III.079 FEES.

(A) The fees for copies of records shall not exceed \$0.25 per photocopy not in excess of nine inches by 14 inches, or the actual cost of reproducing any other record except when a different fee is otherwise prescribed by law or pursuant to such general rules and regulations as may be promulgated by the Committee on Open Government and any additional fees that may be applicable pursuant to N.Y. Pub. Off. Law Article 6.

(B) Additionally, ~~[a]~~ the Records Access Officer and/or County Attorney has the authority to redact portions of a record pursuant to N.Y. Pub. Off. Law Article 6 and do so prior to disclosure of the record by making a photocopy from which the proper redactions are made. If redaction must be made to an electronic record, and the record must be printed and/or copied several times prior to being produced in response to the FOIL request, the standard copying fee will be charged.

(C) Further fees may be charged based on the actual cost of reproduction as set forth in N.Y. Pub. Off. Law § 87(1)(c), which may include the hourly salary of the lowest paid employee with the needed skill required to prepare a copy of the requested record in the event two or more hours are required as well as the actual cost of any storage device or media provided in response or if necessary, the actual cost of an outside professional to prepare a copy of a record.

(D) The agency shall inform the requestor of the estimated cost of copying, reproducing or preparing a copy and may require the fee to be paid prior to release of any records.

(Res. 77 of 1978, passed - -1978)

§ III.080 PREVENTION OF INVASIONS OF PRIVACY.

In accordance with the provisions of N.Y. Pub. Off. Law § 89~~[, subd. 3]~~ regarding the prevention of unwarranted invasion of personal privacy, the Records Access Officer and/or County Attorney may delete from any record identifying details, the disclosure of which would result in an unwarranted invasion of personal privacy prior to making such record available for inspection and/or copying. In the event that one or more deletion is made from any document, the Records Access Officer shall provide written notice of that fact to the person given access to the record.

(Res. 77 of 1978, passed - -1978)

§ III.081 DENIAL OF ACCESS TO RECORDS.

(A) In accordance with N.Y. Pub. Off. Law Article 6 as well as these regulations, ~~[each]~~ the Records Access Officer shall make available for public inspection and copying a record as described herein, except that ~~[such]~~ the Records Access Officer may deny access to a record or portions thereof that:

RESOLUTION No. 346 OF 2018

PAGE 7 OF 8

- (1) Is specifically exempted from disclosure by state or federal statute;
- (2) If disclosed would constitute an unwarranted invasion of personal privacy under the provisions of N.Y. Pub. Off. Law Article 6, § 89(2);
- (3) If disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- (4) Is a trade secret or is maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- (5) Is 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.
- (6) If disclosed would endanger the life or safety of any person;
- (7) Is an inter-departmental or intradepartmental material which is not:
 - (a) Statistical or factual tabulations or data;
 - (b) Instructions to staff that affect the public; or
 - (c) Final agency policy or determinations.
- (8) Are examination questions or answers which are requested prior to the final administration of such questions.

(B) Denial of access to records shall be in writing stating the reason therefore and advising the applicant of the right to appeal as set forth below.
(Res. 77 of 1978, passed - -1978)

§ III.082 APPEALS.

Within 30 days of a denial, any person whose application to inspect and/or copy records has been denied pursuant to § III.081 of this regulation may appeal such denial to the Chairman of the Board of Supervisors at the Warren County Municipal Center, 1340 State Route 9, Lake George, New York. Such appeal shall be in writing and must set forth: the name and address of the applicant; the specific record(s) requested; the date of denial; and the reasons given for such denial. The Chairman shall, upon receipt of a written appeal, review the matter and in writing, either affirm, modify or reverse the denial. If the Chairman

RESOLUTION No. 346 OF 2018

PAGE 8 OF 8

either affirms or modifies the denial, he *or she* shall, within ten workdays of receipt of the appeal, communicate his or her reasons for such affirmation or modification to the person making the appeal. N.Y. Pub. Off. Law Article 6 notes that in the event of a denial to access to a record, such person may appeal such determination under N.Y. Civ. Prac. L. & R. Article 78. Failure to respond to an appeal within the statutory time period shall constitute a denial of the appeal. The Committee on Open Government *and the Warren County Board of Supervisors* shall be furnished with copies of the application, and the underlying denial of the application as well as the appeal and the determination of that appeal.
(Res. 77 of 1978, passed - -1978)

§ III.083 SEVERABILITY.

If any provision(s) of these regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.
(Res. 77 of 1978, passed - -1978)

§ III.084 EFFECTIVE DATE.

These regulations shall take effect immediately upon adoption by the Warren County Board of Supervisors.
(Res. 77 of 1978, passed - -1978)