



University at Buffalo

Civil Rights and
Transparency Clinic
School of Law

Self-Help Guide

How to Submit a Freedom of Information Law Request in New York without a Lawyer

Updated December 2022

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DISCLAIMER

The University at Buffalo School of Law Civil Rights & Transparency Clinic created this guide to assist people in obtaining government records under the New York Freedom of Information Law (“FOIL”). The information in this Guide is not legal advice and should not be relied on as legal advice.

This Guide includes instructions, sample forms, and checklists to help you follow the necessary steps during the FOIL process. However, every situation is different. Not everything in this Guide may apply to your situation or request.

This Guide is not legal advice. For more help, you may contact the Clinic, whose contact information is at the end of this Guide. While the Clinic may provide some free consultation, it does not provide legal representation unless you enter into a separate agreement with the Clinic, known as a retainer agreement. If you speak to an attorney in the Clinic, that attorney will not represent you in court, file papers on your behalf, or otherwise represent you as your legal counsel. Clinic services do not extend beyond these materials or a brief contact regarding the materials unless explicitly agreed to in a written retainer agreement. Using this Guide for your matter does not guarantee legal success in that matter.

We hope this Guide is helpful in your pursuit of your transparency goals!

INTRODUCTION

This Guide is for anyone who has requested information under the New York State Freedom of Information Law (FOIL). This Guide also assists users who have been improperly ignored, denied, or charged an unreasonable fee for their request for information. The Manual also provides the information you need when determining whether to pursue a pro se lawsuit and illustrates the tools you need.

This Guide is broken up into six sections to assist users at each step of the process. These sections cover: The requirements for a FOIL request, the internal appeal process used by agencies to reconsider a request that has been ignored, denied, or charged an unreasonable fee, the process of suing after completing an appeal, instructions for creating the three documents needed to file a lawsuit, and the process for filing the documents and appearing in court.

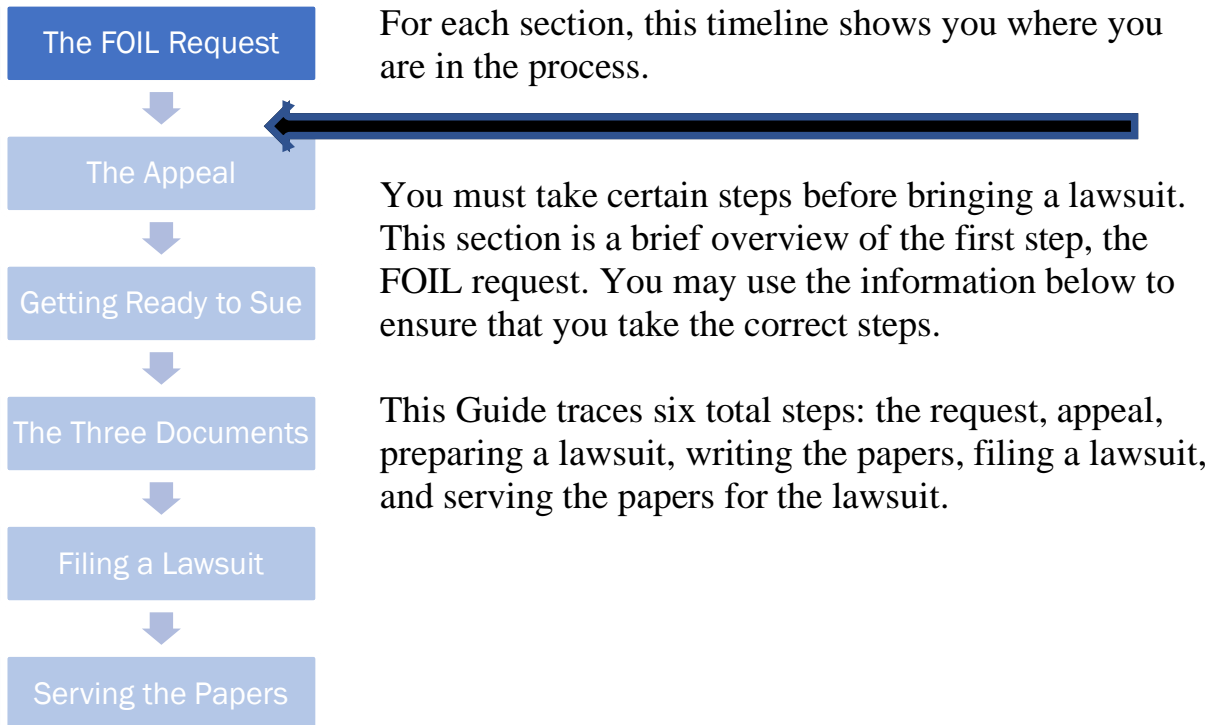
The Guide provides sample forms, instructions, and checklists which all act as information on how to file a lawsuit. The Guide is interactive! The hyperlinks work and provide quick access to documents. Everything has been selected to make the process as easy as possible.

The Guide was produced by the University at Buffalo School of Law Civil Rights and Transparency Clinic for use by anyone seeking transparency from the New York State government. This Manual is not a substitute for legal advice or representation by a lawyer.

Keep an eye out for **Notes** in blue. These are helpful tips and answers to commonly asked questions. Example Note:

Note: “Agency” has a specific definition. For the legal definition of “agency” when it comes to FOIL, you can look to Public Officers Law § 86(3). For more helpful definitions, look to the end of this Guide for our FOIL dictionary.

SECTION I: THE FOIL REQUEST



A. *What Is A FOIL Request?*

A FOIL request is how people access government records as a member of the public. The New York [Freedom of Information Law](#) (FOIL) gives the public access to government records.¹ Any person can make a FOIL request by letter, e-mail, or an [online form](#).²

Many New York agencies provide directions for making a FOIL request on their website. They may provide an address, a particular officer to direct the request to, or when to expect a response. It may also be worth your time to call the agency to ask where to send your request. If there are no directions on the website and no one answers the phone, you can address your FOIL request to the “Records Access Officer” and send the request directly to the agency’s address.

Sample FOIL request letters are available online.³

¹ Freedom of Information Law, N.Y. Public Officers Law, Article 6, §§ 84-90. The law is available online through the New York Coalition on Open Government, but it may not be the most current form. See <https://opengovernment.ny.gov/system/files/documents/2022/05/foil-law-text-03222022.pdf>.

² <https://openfoil.ny.gov/#/newfoilrequest>

³ <https://opengovernment.ny.gov/sample-letters#sample-letters>

Sample FOIL Request

<p>Requesting Records (Sample)</p> <p>Records Access Officer Name of Agency Address of Agency City, NY, ZIP code</p> <p>Re: Freedom of Information Law Request</p> <p>Records Access Officer:</p> <p>Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request records or portions thereof pertaining to (or containing the following)</p> <hr/> <p>(attempt to identify the records in which you are interested as clearly as possible).</p> <p>If my request appears to be extensive or fails to reasonably describe the records, please contact me in writing or by phone at _____.</p> <p>If there are any fees for copying the records requested, please inform me before filling the request (or: ... please supply the records without informing me if the fees are not in excess of \$_____).</p> <p>As you know, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly. If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.</p> <p>Sincerely, Signature Name Address City, State, ZIP code</p>

B. Can You Get Records from Anyone You Want?

You can get records from state and local government agencies in New York State. FOIL requires agencies and any other governmental entities performing a function for the state or a local government to release records. FOIL also gives the public access to certain records from the New York State Legislature. However, FOIL does not cover other states (outside New York) or the federal government. Those governments have their own freedom of information laws.

Note: The term “Agency” has a specific definition in Public Officers Law § 86(3). For other definitions, see the FOIL Dictionary in this Guide.

C. What Information Can You Ask For?

You can request any record of an agency including audio and video recordings (files), electronic data, or paper records. Agencies should provide records in the form you request, if possible. For example, if you wanted an excel file instead of a PDF, the agency is usually required to give you the excel file.

Note: The law defines “record” as “any information kept, held, filed, produced or reproduced by, with or for an agency... in any physical form ...” § 86(4).

The primary assumption of FOIL is that the government agency must disclose all records unless they are exempt from disclosure. An agency may deny certain records, or portions of the records, if a specific exemption applies. You can find a full list of the exemptions [here](#) under section 87(2).⁴

FOIL has its limits. For example, you **CANNOT** use FOIL to make the government answer a specific question or make it create a document that doesn't exist.

FOIL only allows access to records that the agency already has. Example: you can request a list of incidents where officers were sent to investigate UFO sightings; but if they do not keep track of UFO sightings, you cannot ask them to go back and make a list of them. You cannot use FOIL to ask a particular question. Example: you can request “records of disciplinary reports from 12/1/2019 to 12/20/2020” but not “was Agent Mulder disciplined in December 2019?”

Note: If the record doesn't already exist, they have no obligation to create a record for you. FOIL gives access to records already in existence.

When making your request try to be as clear as possible about what you want. In the example above, the person wants to know “was Agent Mulder disciplined in December 2019?” They should make their request for “any and all disciplinary records for Agent Mulder from 12/1/2019 to 12/30/2019.” Also consider if this request will truly show you what you want to know. If you know that there was an incident with Agent Mulder in December, you may need to consider that a disciplinary report may have been filed in January and a request only for documents in December would not show this disciplinary record.

⁴ <https://dos.ny.gov/coog/foil2.html>

D. Does It Cost Anything?

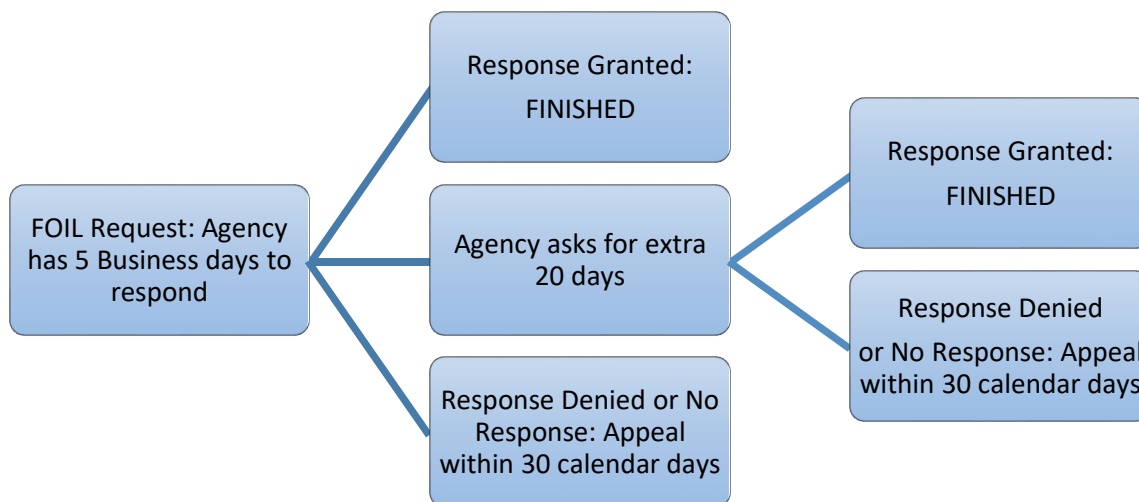
Yes, there may be a charge. FOIL allows the agency to charge a “reasonable fee” for documents. You may request a waiver of the fee and there are some limits on what the agency may reasonably charge you.

For paper documents an agency usually can only charge \$.25 per page. For electronic documents, the agency should not charge for most small requests. The agency may be able to charge a fee based on the hourly rate of an agency employee for larger requests.

E. How Long Should It Take to Get the Documents?

If everything works perfectly, five business days! FOIL requires the agency to contact you in five business days. The agency can grant or deny your request (or part of the request) or ask for more time and give an estimate of how long it will take (typically up to 20 business days).

See the below timeline for reference:



Note: Visit the Committee on Open Government’s website for more information on timing.⁵

⁵ <https://opengovernment.ny.gov/explanation-time-limits-response>

F. When Your Request Is Denied

If your request is denied, you have options. If the agency says the records don't exist or are exempt from disclosure you can now appeal within 30 calendar days from the denial. The next page discusses other possibilities. While this table is not exhaustive, it should help you to understand your options.

Agency does not respond

- Double check!
- Did you send the request to the right place?
- Consider sending a follow up email or telephone call to check on the request.
- If your follow up doesn't receive a response, it's time to appeal.

Agency charges a high a fee.

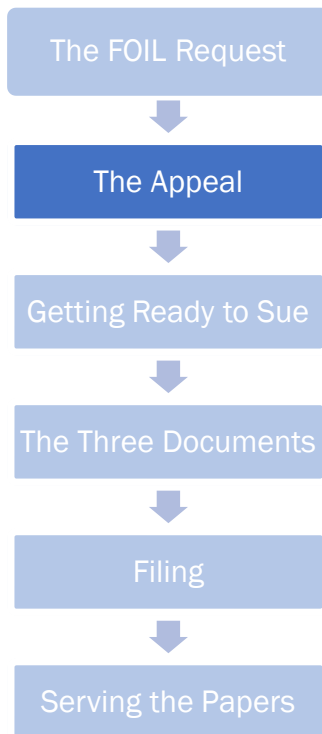
- Ask the agency to waive the fee.
- Offer to "scan" the records with a phone by visiting the agency.
- Ask for the records in electronic version instead of paper.
- Appeal if none of these options work.

The agency sends a letter every 20-business days saying it will respond or try to respond in another 20-business days.

- Consider asking for a specific date that the agency will produce the records.
- After waiting a reasonable time or if the agency seeks an unreasonable amount of time to respond, then Appeal.

Note: Agencies frequently do not respond. Sometimes your request was done incorrectly and disregarded by the agency. A phone call can often resolve the confusion and may save you the effort of appealing.

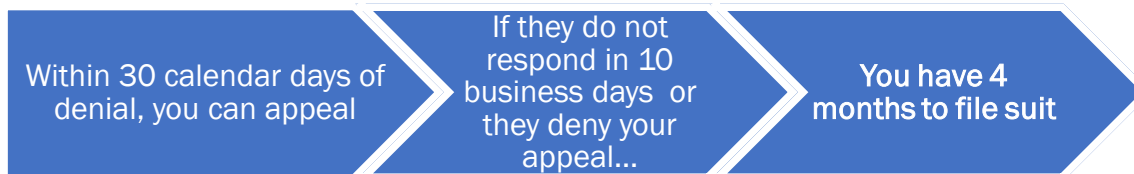
SECTION II: THE APPEAL



An appeal occurs after your FOIL request has met an unfavorable result. An appeal, also known as an internal appeal or administrative appeal, is a request to the same agency to reconsider their decision to deny or not respond. An appeal must occur before a lawsuit can be filed or the lawsuit may be thrown out.

A. What is an Appeal?

An appeal asks the agency to reconsider its decision. This means sending a written letter to the agency's appeal officer. You can find a sample appeal letter at [Open Government Foil Appeal Letter Sample](#).⁶



In your letter, you should state that the purpose is to appeal the decision previously made by the agency on a specific date, the date you made your initial request, where you sent the request, and what was requested.

Note: When determining who to contact, many agencies name their appeal officer on their website. You may also send your appeal to the “head, chief executive or governing body” of the government agency. This is usually the highest official in the agency. You can also contact the agency to ask.

⁶ <https://opengovernment.ny.gov/appeal-written-denial-sample-letter>

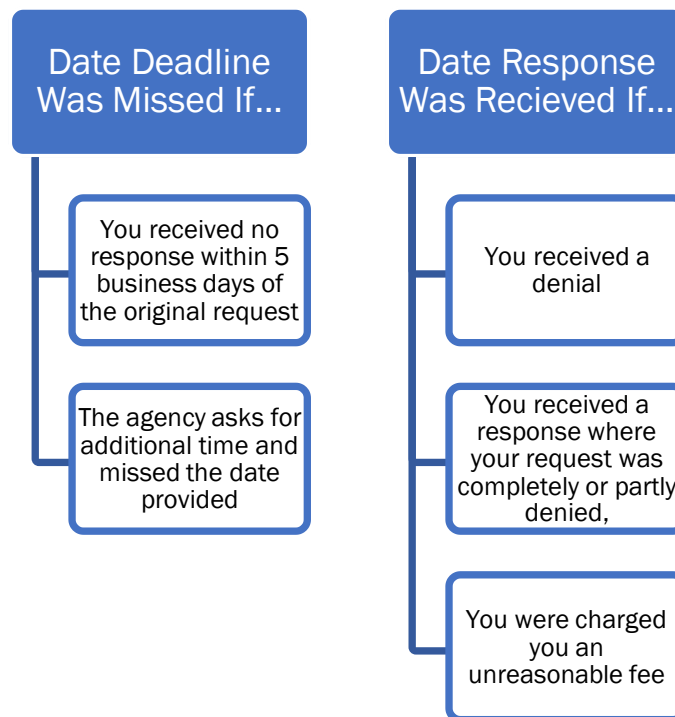
B. When To Appeal?

You have up to 30 calendar days to appeal, but when that 30 calendar days begin depends on what response you received and when.

If your request was denied (even only partially), the agency charged an unreasonable fee, or the agency asked for more than twenty days to respond, then the 30 calendar days starts when you have received the response. Once you appeal, the agency has 10 business days to respond.

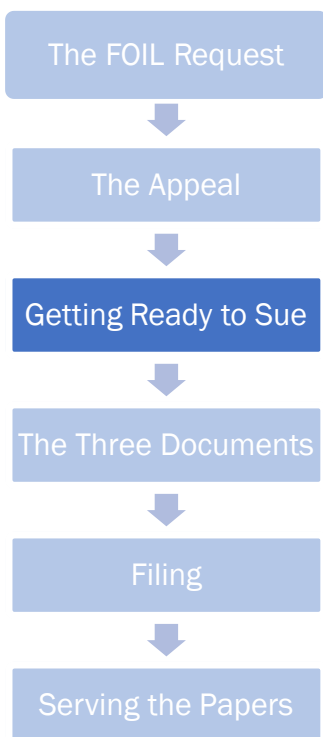
There is no hard deadline for an agency to respond to a FOIL request. While agencies are supposed to respond within 5 days of your request, an agency may delay a very long time. You may appeal that delay whenever you feel the agency is acting unreasonably. The law says that most FOIL requests should be fulfilled within twenty (20) business days. You should be concerned if an agency is continually or indefinitely extending the deadline! Now is the time to hold the agency accountable.

Note: If the agency ignores a FOIL request, you can appeal 5 business days after the request. If 30 calendar days runs out, you lose the right to appeal!



If you appeal and the agency denies your appeal or doesn't respond within 10 days, you are ready to prepare a lawsuit.

SECTION III: PREPARING TO SUE



A. What to Expect

Now that you've made your request and your appeal, the next option you have is filing a lawsuit. This section will help you decide whether to file a lawsuit with a brief overview of things to consider.

B. Things to Keep in Mind

There are some key factors to keep in mind when making your decision to file a lawsuit: location, time, and cost.

Location

You will file your lawsuit in the New York State Supreme Court, but you **MUST** file your lawsuit in the Supreme Court in the same county **where the agency has their headquarters**.⁷ New York State Supreme Court is the state's trial court, which is the lowest court in New York, and every county has its own Supreme Court. Filing where the agency has their headquarters may mean that you must file, and potentially have an in person appearance occur in a different county than the one you live in.

The [NY Courts website](#) has a court locator function which will give you the address for any court.⁸ For example, the Erie County Supreme Court is located at 25 Delaware Avenue, Buffalo, NY 14202. Do you see a Supreme Court with multiple addresses? Try to find the one where the Clerk for the court is located. For example, in Erie County the office is listed as the "Chief Clerk's Office." The Clerk works for the judge and handles the filing of the paperwork. You can also call the Clerk to verify where the paperwork should be sent.

⁷ You may be able to find the agency's headquarters through the New York business database search, which can be found at this web address: <https://apps.dos.ny.gov/publicInquiry/>

⁸ www.nycourts.gov/courts/

Note: Consider the distance. You must return to this court for any hearings. You may be able to ask the judge to hold hearings remotely, but this is not guaranteed. Account for travel time.

Time

Filling out the correct paperwork, doing any necessary research, and filing with the court all take time. You need to make sure that you have the time to complete all the necessary steps before your filing deadline. The deadline for filing a lawsuit of this kind is 4 months after your appeal has been denied.

You will also need to serve notice to the agency after filing the lawsuit. This service will have to occur by the earlier of 120 days after you file your lawsuit or 15 days after the four months has passed. We recommend that you budget approximately two weeks to complete service after you file your lawsuit. While a friend or relative over the age of 18 can do this for you, it will take time and may be very time consuming if you need to travel to serve the agency.

Make sure to plan time to attend hearings and respond to the agency and judge. A hearing may last for thirty minutes or maybe even longer. You will be given an exact date and time to appear.

Cost

It will cost you money to file your lawsuit with the court. You may be able to have fees waived if you are not able to pay them. If your fees are not waived, it will cost around \$350 to file a FOIL lawsuit. You will be responsible for the costs of obtaining an Index Number, a Request for Judicial Intervention (defined in the next section), and a motion fee. A list of the most up to date costs for these can be found on the [NY Courts website](https://nycourts.gov/forms/filingfees.shtml).⁹

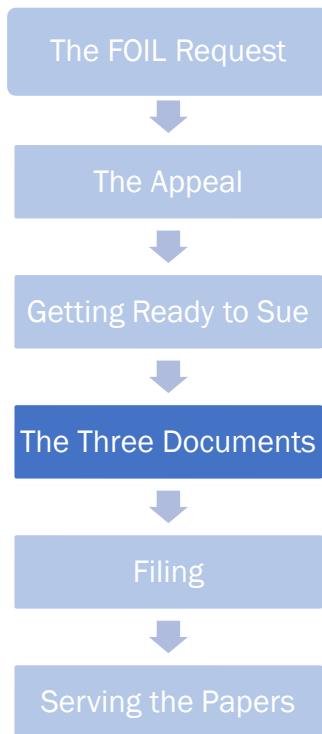
You will also be responsible for serving your papers on the agency. While you can ask a friend or relative, you may also consider to hiring a process server. This will be an additional cost but may be appropriate if the agency is located far away and travel is not appropriate for you.

⁹ <https://nycourts.gov/forms/filingfees.shtml>

If the court where you file is far away, consider the costs of travelling to hearings there. Even a local court may be located in areas where parking is costly. Take time to consider options before traveling to the court.

Note: You can ask the agency to reimburse you for the fees you paid. It is rare, but legally permissible.

SECTION IV: WRITING THE PAPERS



This Section shows you how to fill in all of the forms to file a lawsuit. It is broken up into three parts. It explains how to write a Request for Judicial Intervention, Notice of Petition, and Verified Petition. These may sound complicated, but this Guide will walk you through all of them step by step.

Note: We created a video resource to help you fill out these forms. It walks you through the steps in this section of the Guide.¹⁰

We will go through these documents one at a time starting with the Request for Judicial Intervention, sometimes referred to as an RJI. First, we will need to be able to open the fillable forms. They are labeled as Appendix A, Appendix B, and Appendix C. You will need to use Microsoft Word to fill out most of these forms. If you do not have access to Microsoft Word on your computer, we recommend visiting your local library for access to the program. Once you have opened the documents, you are ready to begin.

Before you start writing, make sure you have your FOIL request, your Appeal, and any communications the agency sent to you or that you sent to them.

We will be discussing a sample scenario in order to explain the usefulness of the fillable forms. Kate Smith will be filing a lawsuit against the Orange City Schools. Kate is interested in gaining information about how the schools have adapted to coming back to in person learning after COVID. She has already completed the initial request for documents “containing information about in person instruction,” received an initial denial, and sent in the administrative appeal. Kate hasn’t heard back from the agency about the appeal but it has been over a month, so she is going to move forward with a lawsuit. Since she has completed all of the administrative options under FOIL, she is left only with the option to bring a lawsuit.

A. Request for Judicial Intervention

¹⁰ <https://youtu.be/LDbmBnLMZ6E>

A Request for Judicial Intervention (RJI) is the first document. An electronic version can be filled out on the Office of Court Administration’s [website](#).¹¹ It is relatively simple to complete.

A copy of the RJI form is also included as Appendix A.


This form is fillable, meaning you can simply click in the purple spots and type in your answers. These answers will be saved as you move through the form but may not be saved if you close the form and try to reopen it. We recommend answering all of the questions in one sitting to ensure none of your answers are lost. We will show you how to save your answers at the end.

At the top of the form, you should select “supreme” court, then whichever county you will be filing the paperwork in. Remember that this must be the county of the agency’s headquarters. You will not have an index number yet so we will skip the next line.

Next, we will fill out the “Caption.” You will need to add your name in the box titled “Plaintiff/petitioner.” If you are bringing this suit as a part of your job, such as a journalist for a newspaper, you will want to put your employer in this box.

The next box is for the name of the defendant/respondent. You should just put the official name of the agency here. You do not need to write a specific person’s name; you should not put the name of the FOIL agent or whatever person sent your denial from the agency.

¹¹ www.nycourts.gov/forms/rji/UCS-840-fillable.pdf

Reset Form		UCS-840 (rev. 02/01/2022)	
 REQUEST FOR JUDICIAL INTERVENTION SUPREME COURT, COUNTY OF ERIE			
Index No: _____		Date Index Issued: _____	
CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.		For Court Use Only:	
Kate Smith		IAS Entry Date	
Plaintiff(s)/Petitioner(s)		Judge Assigned	
-against- Orange City Schools		RIJ Filed Date	
Defendant(s)/Respondent(s)			
NATURE OF ACTION OR PROCEEDING Check only one box and specify where indicated.			

The next section is the “Nature of the action or proceeding.” All FOIL proceedings are under the “Special Proceedings” section. You should select “CPLR Article 78.” Do not select any other options in this section.

The form then gives you a place to give the “Status of the proceeding.” If you have followed our Guide in order, you should be answering “No” to all of the questions here. If you have done any of the things it asks about, make sure to answer with that information.

<input type="radio"/> Child-Parent Security Act (specify): <input type="radio"/> Assisted Reproduction <input type="radio"/> Surrogacy Agreement <input type="radio"/> CPLR Article 75 – Arbitration [see NOTE in COMMERCIAL section] <input checked="" type="radio"/> CPLR Article 78 – Proceeding against a Body or Officer <input type="radio"/> Election Law <input type="radio"/> Extreme Risk Protection Order <input type="radio"/> MHL Article 9.60 – Kendra’s Law <input type="radio"/> MHL Article 10 – Sex Offender Confinement (specify): <input type="radio"/> Initial <input type="radio"/> Review <input type="radio"/> MHL Article 81 (Guardianship) <input type="radio"/> Other Mental Hygiene (specify): _____ <input type="radio"/> Other Special Proceeding (specify): _____	<input type="radio"/> Emergency Medical Treatment <input type="radio"/> Habeas Corpus <input type="radio"/> Local Court Appeal <input type="radio"/> Mechanic’s Lien <input type="radio"/> Name Change/Sex Designation Change <input type="radio"/> Pistol Permit Revocation Hearing <input type="radio"/> Sale or Finance of Religious/Not-for-Profit Property <input type="radio"/> Other (specify): _____	
STATUS OF ACTION OR PROCEEDING Answer YES or NO for every question and enter additional information where indicated.		
Has a summons and complaint or summons with notice been filed?	YES NO	
	<input type="radio"/> <input checked="" type="radio"/>	If yes, date filed: _____
Has a summons and complaint or summons with notice been served?	<input type="radio"/> <input checked="" type="radio"/>	If yes, date served: _____
Is this action/proceeding being filed post-judgment?	<input type="radio"/> <input checked="" type="radio"/>	If yes, judgment date: _____
NATURE OF JUDICIAL INTERVENTION Check one box only and enter additional information where indicated.		
<input type="radio"/> Infant’s Compromise <input type="radio"/> Extreme Risk Protection Order Application <input type="radio"/> Note of Issue/Certificate of Readiness		

We are now done with the first page. The first section on the second page is not relevant to you. You should move on to the “parties” section. We will show you how to fill out this section if you are not represented by an attorney. If you are represented by an attorney, you should not follow these instructions.

First, you should select the box “un-rep.” Then enter your name and enter “petitioner” in the “role” box. In the next column you should enter your address,

phone number, and email. Select “no” in the “issue joined” column and leave the final column blank.

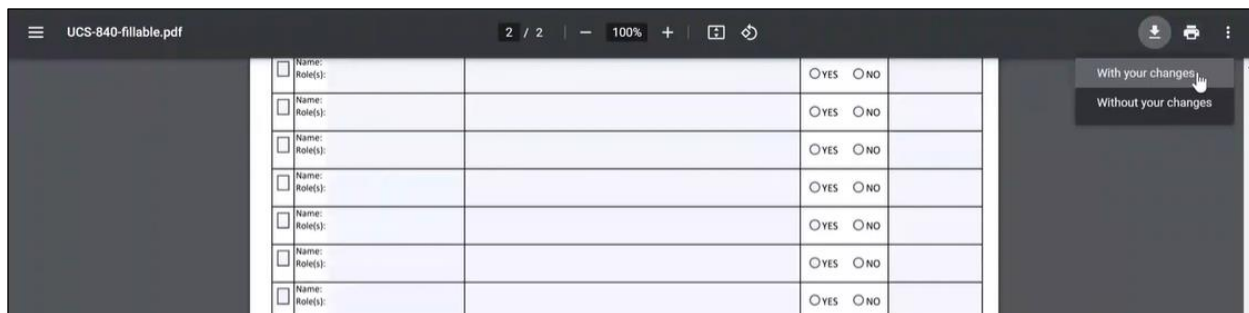
Now you may fill in the agency’s name and enter “respondent” in the “role” box. Make sure you have the correct contact information for the agency. You can find this information on the agency’s website. Again select “no” and leave the final column blank.

PARTIES				
For parties without an attorney, check the “Un-Rep” box and enter the party’s address, phone number and email in the space provided. If additional space is required, complete and attach the RJI ADDENDUM (UCS-840A).				
Un-Rep	Parties	Attorneys and Unrepresented Litigants	Issue Joined	Insurance Carriers
	List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 rd party plaintiff, etc.)	For represented parties, provide attorney’s name, firm name, address, phone and email. For unrepresented parties, provide party’s address, phone and email.	For each defendant, indicate if issue has been joined.	For each defendant, indicate insurance carrier, if applicable.
<input checked="" type="checkbox"/>	Name: Kate Smith Role(s): Petitioner	4445 Amherst rd., Buffalo, 716-444-5555, ksmith@buffalo.edu	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Name: Orange City Schools Role(s): Respondent		<input type="radio"/> YES <input checked="" type="radio"/> NO	

Finally, you can sign the form. Don’t worry about “Attorney Registration Number” but it may be best to save signing and dating until after you complete all your other documents.

<p>I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.</p>	
Dated: _____	_____
_____	Signature
Attorney Registration Number	Print Name

You are now ready to save your answers. If you have a printer available, go ahead and click print and all of your answers will be printed on the form. If you would like to just save the form as it is and print it later, click the download button. It should prompt you to choose to save “with your changes” or “without.” You want to select “with your changes” to ensure your answers are saved.



B. Notice of Petition

Now you are ready to move on to the Notice of Petition. This Form is titled “Appendix B - Notice of Petition.” You will need to open it using Microsoft Word.

A Notice of Petition lets the agency that you are suing know that you are suing. It tells the agency the date the lawsuit started, what date the agency needs to respond, and when to come to court.

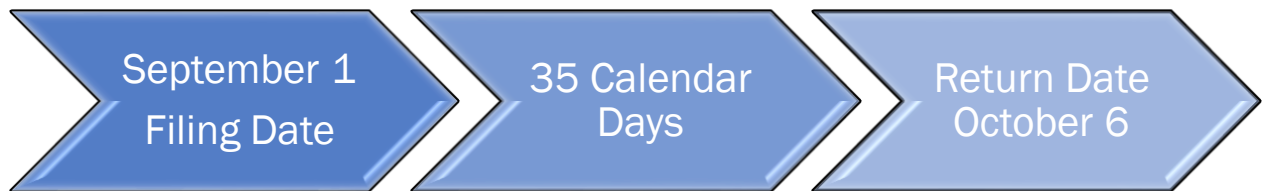
First you will need to fill in the caption, the header for all your filings, with the information you just added to the Request for Judicial Intervention. Double click on the “County” in brackets. It should turn gray. Delete the word “county” and type the name of the county you used in the first form. Do the same for “petitioner’s name” and “agency’s name.”

SUPREME COURT OF THE STATE OF NEW YORK		
COUNTY OF ERIE		
-----X		
Kate Smith,	:	Index No. []/[]
Petitioner,	:	
For a Judgment Pursuant to Article 78	:	
of the Civil Practice Law and Rules	:	
-against-	:	<u>NOTICE OF PETITION</u>
Orange City Schools,	:	
Respondent.	:	
-----X		

Next you will need to fill in the information in this first paragraph. Enter your name. You will need to do some planning before filing out the next section. You will need to decide when you are going to have this paperwork completed and notarized. You will then need to decide when, time and date, that you want to have your hearing.

You pick the return date. This date is when a potential hearing or judgement will be made by the court. To keep it simple we recommend giving yourself 35 calendar days from when you file everything. If 35 days later falls on a weekend, simply select the following Monday.

Timeline



When you pick the return date keep in mind the things you need to do between when you file the paperwork and the return date including serving the agency, giving them time to respond, and responding to their response if you choose.

Remember, there is a deadline for serving the government agency. It is the earlier of (a) 120 days from the day that you file your completed papers or (b) the date the statute of limitations expires, which is four months, plus 15 days, which is almost always earlier. If you follow our recommended timeline, you should file and serve before the deadlines expires.

Note: You can give yourself more than 35 days, but you always have to do two things: (1) serve by the deadline in the law and (2) give the government agency 20 days to respond in writing after they are served.

You already know what county you need to file in so you should use that information to determine the “courthouse location” and the “name of the courthouse.” There is more information about gathering those inputs on the New York State Courts website.

Next, click on “without fees and without redactions.” A list of options will drop down and you should choose the option that best represents what you want.

Without fees and without redactions should be used when you are being charged an unreasonable fee or when the agency has given some of the records but has heavily redacted information from the records that you believe you are entitled to see. If the agency has denied your request entirely, choose the blank option. Then click on “responsive to petitioner’s FOIL request” and change it to the option with a semicolon. We just want to have a semicolon at the end of the line.

(1) Ordering Respondent to produce all documents responsive to Petitioner's FOIL request; *

(2) Awarding Petitioner its costs pursuant to Public Officers Law 89(4)(c); and

(3) such other and further relief as the court deems just and proper.

In our example, the school sent us the first page of a PowerPoint used at a meeting to discuss the in-person instruction but claimed that the rest of the PowerPoint was exempt because it was an intra-agency communication used in the deliberative process. So, Kate will choose the “without fees and without redactions” option because they have redacted a large portion of the documents requested.

PLEASE TAKE NOTICE that upon the Verified Petition of Petitioner Kate Smith, duly verified on the May 5th, 2022 and the attached exhibits, petitioner will, at 9:30a.m. on the 5th of June, 2022 at the Courthouse at 25 Delaware Ave, Orange, New York in the Erie County Courthouse request that this court issue a judgment, pursuant to the Civil Practice Law and Rules (CPLR), granting the following relief to the petitioner:

(1) Ordering Respondent to produce all documents responsive to Petitioner's FOIL request; *

(2) Awarding Petitioner its costs pursuant to Public Officers Law 89(4)(c); and

(3) such other and further relief as the court deems just and proper.

Now you should fill out the rest of the bracketed sections on this page.

The final section is on the top of the next page. Here you will need to fill out information about the agency. Make sure to use information about the agency’s headquarters. All this information should be available online. You are now ready to save or print this form.

C. *Verified Petition*

Before you begin make sure that you have four types of documents:

1. Copy of your FOIL request
2. Copies of any letters or emails from the Government Agency including their acknowledgment of your request (if any) and their denial of your request (if any).
3. Copy of your administrative appeal
4. Copy of the agency’s denial of your administrative appeal (if any).

This form will also need to be completed on Microsoft Word. Fill out the information in the header and in points 1 through 3, which includes your name, the agency’s name, and the county where the agency is located.

For point 4, look at your FOIL request. Enter the information from your original FOIL request as it appears on your email, letter, or online request form. Type your exact request, in quotes, into the section labeled “what records you requested.”

<p>Respondent agency is located.</p> <p>4. On March 10th 2022, Petitioner sent Orange City Schools a FOIL request seeking all documents about returning to in person classroom instruction. A copy of the FOIL request is attached as Exhibit A.</p>

Paragraphs 5 and 6 are about what the agency said and did in response to your request. Fill out point 5 if it applies to you. If they did not respond at all, delete points 5 and 6. If the agency responded to your request but said something other than what is in points 5 and 6, you will need to edit the sentences to make sure they reflect what actually happened.

Note: If you reference a document twice, you use the same reference number each time. You don’t need to include multiples copies of the document. For example, if “Exhibit A” shows up twice, list it each time as “Exhibit A.”

We will add what the agency said in our example here. The agency denied our FOIL request saying that the information would cause a risk to public safety, so we will put exactly that into point 5.

5. Orange City Schools acknowledged the request on March 20th 2022 and provided one slide of a PowerPoint. The agency then stated that the agency would not produce the records requested because: it would cause a risk to public safety. A copy of the agency's denial is attached as Exhibit B.
- 6.

Notice that point 6 is gone. Since point 6 no longer made sense after editing point 5 in our example, we have gone ahead and removed that point. Feel free to do the same for any of the points in this form that do not match what happened in your case. You should use the existing points as an outline for what should be in your petition, meaning you should add and delete things to form it to best fit your story.

We then renamed point 7 to “6” to keep the numerical order. Points 7 and 8 are about your administrative appeal. If you have not appealed you may not be ready to start a lawsuit! Go back and consult section II.

Fill out point 7 and 8 to match the information on your appeal and any denial you received from the agency. Make sure you use the exact language from the denial and put the language in quotations. If you did not receive a denial to your appeal from the agency delete point 8. You can still sue if you sent a proper appeal, and the agency did not respond within ten business days.

We also decided in our example to delete point 8 because the agency never responded to our appeal, and it didn't make sense to keep the point describing their response to our appeal when we did not receive one.

Note: If the agency did not respond to your request or appeal, you can say that. Instead of saying “On November 4, the Buffalo Police Department denied the request,” you would say “the Buffalo Police Department failed to respond to this request after 30 days.”

Since we waited a reasonable amount of time after our appeal but did not receive a denial, we will update this section to reflect that. You want to make sure that that court has all the information they need to know what happened and make their decision.

7. I have a right to the records requested under FOIL. The government agency has not produced the records that I seek. The government agency's obligation under FOIL to disclose the requested records is mandatory, not discretionary.
- ▲ 8. I exhausted my administrative remedies when I appealed the agency's denial of my FOIL request and the agency has not responded within a reasonable time to my appeal.

You can now move on to the "Requested Relief" section. You should be able to easily fill out all the bracketed sections here with the information you have already entered.

REQUESTED RELIEF

WHEREFORE, [YOUR NAME], respectfully requests that a judgment be entered herein as follows:

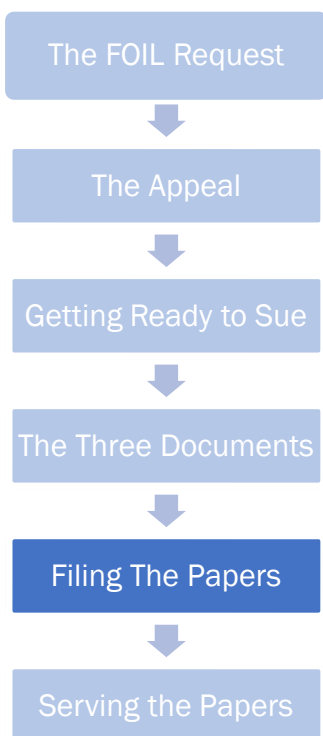
- A. Directing Respondent to comply with their duties under FOIL to provide the information sought by Petitioner in its [First FOIL Request Date] request;
- B. Directing Respondent to pay reasonable costs under Public Officers Law 89(4)(c); and
- C. Granting such other and further relief as the Court deems just and proper.

Note: If you are "Requesting" more than one form of "Relief" in the previous section, you will need a cause of action for each one. See Appendix C (Verified Petition), for fillable cause of actions.

Next, we will move on to the Verification section. This page says that you are verifying all the information that you have entered above to be true. Fill in your name in both name brackets, and the county name. The verification sheet should be attached to your petition and requires a notary. It is very important you **do not sign** this until you are in front of a notary.

Print or save this document. You are now done with the third and final form needed for filing your lawsuit.

SECTION V: FILING THE PAPERS



Now that you have your Request for Judicial Intervention, Notice of Petition, and Verified Petition, it is time to file.

Filing is when you take the documents to the Court and start the lawsuit. It also starts the clock running on time to serve the agency so keep that in mind.

You can almost always file in person but depending on what court you are in you may be able to file online. We will go through both processes.

Filing In Person

When you are ready to file you should make four copies (not including the original versions) of all your documents including exhibits. Take all the copies with you when you go to the County Clerk.

The first copies are filed with the County Clerk. The County Clerk will stamp everything, keep one copy of each document, and give everything else back to you. At the County Clerk you pay for an Index Number \$210 and \$45 to submit a motion.

The original Notice of Petition, Verified Petition, and RJI are then filed with the Supreme Court Clerk's Office when you pay a \$95 Request for Judicial Intervention fee.

The Supreme Court Clerk will randomly assign the matter to a Justice and will place it on the calendar for the return date you selected or, as you saw in the "Notice of Motion" drafting section, select a different day and notify you.

Filing Electronically

If you would like to file your documents electronically (e-file), you must create an account at [New York State Court Electronic Filing \(NYSCEF\)](#).¹² This can be a convenient option and if there is an issue with your documents, you will be notified after someone has reviewed them.

Save all your documents as separate files in PDF format after signing them. You can either scan paper copies and save them as PDFs or save your electronic files as PDFs. Then, follow the instructions to upload everything.

Normally within a few days, the Court will contact you via email or telephone, to tell you who is the Judge assigned to your case and what courtroom.

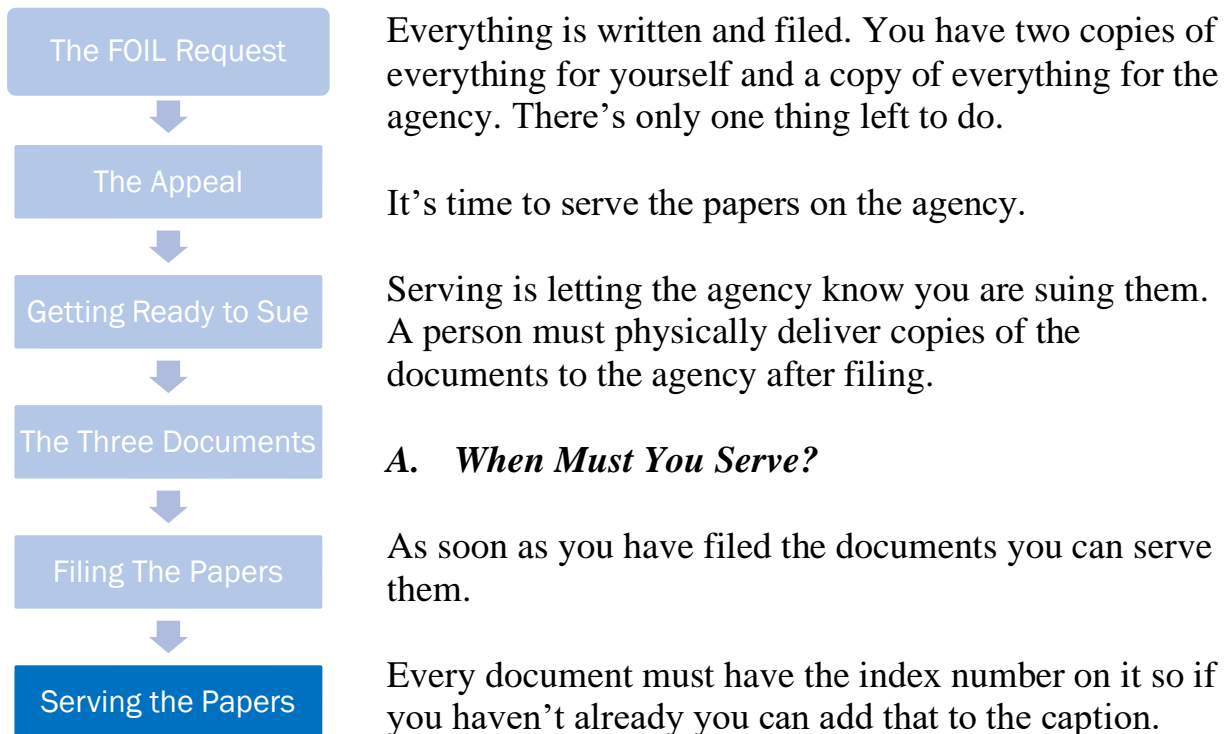
If you choose to e-file, you will also have to complete a “Notice Regarding Availability of Electronic Filing.” [Complete the form](#)¹³ (you will not yet know the index number) and print it out. You will serve a copy of this along with everything else to the agency.

Note: Don’t forget to send a letter to the agency letting them know if anything has changed, after the Court contacts you.

¹² <https://iapps.courts.state.ny.us/nyscef/CreateAccount>

¹³ www.nycourts.gov/legacyPDFs/COURTS/nyscourtofclaims/pdfs/court%20notice%20regarding%20availability%20of%20e-filing%20pdf%20form.pdf

SECTION VI: SERVING THE PAPERS



DON'T make any other changes to the documents you have already filed.

Its best to serve within in 15 days in most cases to make sure you have enough time. While the deadline is the earlier date between 120 days or fifteen days after the expiration of the statute of limitations, serving within 15 days ensures you don't miss any deadlines.

B. Who Can Serve the Papers?

Anyone who is not a party (you or anyone else listed in the caption) can serve the agency if they are at least 18 years old. You can also hire a professional service to do this for you.

C. What Must Be Served?

Service requires delivering to the agency a copy of the notice of petition with return date and court location (even if it may change later), the verified petition and exhibits (separated by tabs), and the request for judicial intervention.

If you filed electronically, you must also include the notice of availability of electronic filing.

D. Where To Serve?

The server delivers the documents personally to the agency's office and to an appropriate official.¹⁴ You can call the agency and ask who will accept the documents. Often the agency will direct you to the correct official. You may also ask the agency if they will accept email service. If they consent to having all of the documents sent to them through email you will not have to go in person. Just make sure they clearly consent to this in writing and that you get the correct email address to send the paperwork to.

To serve a county, deliver the copies to a clerk of the board of supervisors, clerk, attorney, or treasurer.

To serve a city your server may deliver the copies to the mayor, comptroller, treasurer, counsel, or clerk.

To serve a town your server may deliver copies to the supervisor or the clerk.

E. What's Next?

Almost finished. Whoever served the papers will need to complete two affidavits of service, stating they served the papers and describing the service, so the court has a record.

An affidavit of service form is included in Appendix D (Affidavit of Service). Simply have the person who served the papers sign in front of a notary public, and then file the completed affidavit with the court, whether in person or electronically.

¹⁴ You can search the New York business database to see whether the agency has a service location listed: <https://apps.dos.ny.gov/publicInquiry/>

THE LAWSUIT

Congratulations! You have successfully filed a lawsuit. This Section reviews the things you might anticipate going forward. Generally speaking, at this stage you are waiting for the court or the agency to contact you. There are an unlimited number of ways this process could proceed from here. This section is simply meant to offer some insight of some common events.

Negotiations

The agency may decide that it does not want to go forward with a lawsuit over these documents. It could decide to release all the documents you have requested once you file your lawsuit. It may also decide that it is willing to negotiate about some of the issues you raised in your paperwork. At this point you are free to negotiate with the agency about the fees or the viewing of documents if it reaches out to you with that discussion. If something changes, for example if you reach an agreement with the agency to lower the cost for you to receive the requested documents and you no longer need to have a hearing, then you must notify the court of this change.

Agency Reply

The agency should respond to your documents in the same form as your petition. It will need to file its response with the court, and you should be able to view them through [NYSCEF](#)¹⁵ once they have been filed there. Or alternatively, the documents will be sent to you by mail. The agency will either file a motion to dismiss or an answer in response to your petition. If the agency files a motion to dismiss, the agency is either trying to end the proceeding or it is trying to eliminate certain claims. If the court grants the motion to dismiss, this could end your proceeding. However, if the court denies the motion to dismiss, the agency will be required to submit an answer to your petition.

Your Reply to the Agency's Response

If the agency submits a motion to dismiss, answer, or an objection in point of law, you can submit opposition papers. The opposition papers explain why you should win and why the agency is incorrect. A reply should usually

¹⁵ On the NYSCEF home page, scroll to the bottom where it says "Search as Guest." You can either search by the case name or the index number.

include a memorandum of law addressing the agency’s legal arguments. If the agency supported the motion to dismiss with affirmations, affidavits, or exhibits, then you may counter those with your own facts. You should serve your opposition papers two days before the motion to dismiss is noticed to be heard.¹⁶

Generally, you are not required to respond agency’s answer. However, you must reply to counterclaims, new matter in the answer, and inaccuracies in the administrative record. The reply should be in a similar form to an answer, which means it should include: a caption; responses to the counterclaims, or inaccuracies; the relevant facts, affirmative defenses or objections in point of law to any counterclaims; a signature; and a verification. You must serve a reply at least one day before the return date.¹⁷ You may use any of the ordinary service methods. After service, you must file the reply papers. If you fail to respond to new matter in the answer, the court may deem it as an admission.

On and After the Return Date

The court may decide to hear oral arguments on or after the return date. Oral argument is when you talk to the judge and the government agency in court about why you should win your case. The procedure for oral arguments varies from county to county. It is best to look at the local and individual judge rules, which can be found on the court’s website. Generally, the court will notify the parties of the date, time, and location of the oral argument, if the judge wants to hear it. The court will usually render a judgment after the return date and after any oral argument. In exceptionally rare circumstances, the case could have a disputed hearing about the facts.

¹⁶ This is defined within New York’s civil procedure rules for motion practice. The specific section is CPLR 2214(b), which states “[a]nswering affidavits shall be served at least two days before the motion is noticed to be heard.” A copy of the CPLR can be found on this website: <https://codes.findlaw.com/ny/civil-practice-law-and-rules/>

¹⁷ This is defined within New York’s civil procedure rules for Article 78 proceedings. The specific section is CPLR 7804(c), which states “[a] reply, together with supporting affidavits, if any, shall be served at least one day before [the time at which the petition is noticed to be heard].” A copy of the CPLR can be found on this website: <https://codes.findlaw.com/ny/civil-practice-law-and-rules/>

RESOURCES

These may be helpful to you in your pursuit of transparency. The first resource is the Civil Rights & Transparency Clinic at the University at Buffalo School of Law. As described above in the Disclaimer, the Clinic does not represent clients in proceedings unless otherwise agreed in a written retainer. However, you may contact the Clinic for clarifying questions and general FOIL inquiries.

- Civil Rights & Transparency Clinic
 - Phone: 716-645-2073
 - Email: law-crtc@buffalo.edu
 - Client application form on our website:
www.law.buffalo.edu/beyond/clinics/civil-rights.html
- Know your Rights: A Training on New York's Freedom of Information Law: www.law.buffalo.edu/beyond/clinics/civil-rights.resources.html (with video)
- New York's Committee on Open Government:
<https://opengovernment.ny.gov/>
- Muckrock.com: <http://www.muckrock.com/>
- Reporters Committee for Freedom of the Press: www.rcfp.org/open-government-guide/new-york/
- The Cornell Law School First Amendment Clinic:
<https://cornell1a.law.cornell.edu/contact.php>
- Long Island Advocates for Police Accountability (LIAFPA, Inc.):
<http://liafpa.org/>
- Law Libraries: Each county must have a library with legal information that everyone can use. The New York State Courts website has information on law libraries:
<https://ww2.nycourts.gov/lawlibraries/publicaccess.shtml>

FOIL DICTIONARY

This section defines terms that may be unfamiliar. Some words are “terms of art” meaning that their use as it is applicable to FOIL is not the same as their meaning in everyday speech. We recommend at least skimming this section in order to ensure that you fully understand the language surrounding this process. The terms below are in the order in which they appear in substance of the Guide.

- **FOIL** – This stands for the “Freedom of Information Law” and gives the public a right to access records maintained by government agencies, with certain exceptions. FOIL falls under Article 6 (Sections 84-90) of the New York State Public Officers Law.¹⁸
- **Internal Appeal or Administrative Appeal** – This is the agency’s internal process. If your initial FOIL request was denied and you want the agency to review your FOIL request again, you can appeal the agency’s initial determination. The agency will then take a second look. This gives the agency the ability to correct any mistakes before you can pursue litigation.
- **Transparency** – This especially relates to government and business records and is about providing openness, clarity, and unobstructed access to information to prevent the government and businesses from hiding behind damaging information.¹⁹
- **Government Records** – This refers to records that are maintained by government agencies. The term “record” is defined further below.
- **Member of the Public** – A member of a community, state, or country.²⁰
- **Agency** – Any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office, or other governmental entity that performs a governmental or proprietary function for the state or a municipality. However, this term does not include the judiciary or state legislature.²¹
- **Record** – Information that is kept, held, filed, produced, or reproduced by, with, or for an agency or the state legislature. Information can be in any physical form including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, Guides, pamphlets, forms, papers, designs drawings, maps, photos, letters, microfilms, computer tapes, discs, rules, regulations, or codes.²²

¹⁸ <https://otda.ny.gov/legal/foil/>

¹⁹ *Transparency*, Black’s Law Dictionary (5th ed.).

²⁰ *Public*, Black’s Law Dictionary, (5th ed.).

²¹ N.Y. Pub. Off. Law § 86(3).

²² N.Y. Pub. Off. Law § 86(4).

- **Exempted or Excluded** – An agency can deny a FOIL request, if the documents requested fall within one of the enumerated exemptions under the New York Public Officers Law.²³ These specific exemptions clarify different categories of documents that an agency may withhold. If an exemption applies, the agency has the ability to “exclude” the document(s) from disclosure.
- **Disclosure** – If the agency discloses documents, in response to your FOIL request, that means you have been granted access to view the documents that were responsive to your FOIL request.
- **Appeal Officer** – If you receive a denial in response to your first FOIL request and want to appeal the determination, you will send your appeal to the agency’s Appeal Officer. The Appeal Officer will review the FOIL request again to determine whether the denial was made in error. Generally, if the agency denies your initial FOIL request, the agency will provide you with the Appeal Officer’s information. Some agencies also have the Appeal Officer’s information on their website.
- **Calendar Days** – This refers to the numbers of days specified within a certain period, including Saturdays, Sundays, and certain holidays. However, if the specified period is only for two days, then Saturdays, Sundays, and public holidays must be excluded. The day of the incident is considered “Day Zero,” so your count will begin on the following day.²⁴
- **Business Days** – This refers to the days that most institutions are open, which is Monday through Friday. It excludes Saturdays, Sundays, and certain major holidays.²⁵
- **New York State Supreme Court** – This is New York’s trial court. Despite the name “Supreme Court,” this is actually the lower court in New York, whereas the Court of Appeals is New York’s highest court. The New York Supreme Courts have general jurisdiction, which means they can hear a wide range of cases, including Article 78 proceedings related to FOIL.
- **Hearing** – In general, this is a judicial session that is held for the purpose of deciding issues of fact or law.²⁶
- **Notice** – This is also referred to as a “legal notification.” This may be required by law or agreement, or imparted by operation of the law as a result of some fact.²⁷

²³ N.Y. Pub. Off. Law § 87-2(a)-(i).

²⁴ General Construction Law § 20.

²⁵ *Business Day*, Black’s Law Dictionary (5th ed.).

²⁶ *Hearing*, Black’s Law Dictionary (5th ed.).

²⁷ *Notice*, Black’s Law Dictionary (5th ed.).

- **Service** – The process of officially giving all of your filed documents is called service. New York State has specific requirements for how service must be completed. We have outlined the requirements for you.
- **Process Server** – A person who completes the official service process is called a process server. There are people all over the state who you can pay to be an official process server for your paperwork.
- **Request for Judicial Intervention (RJI)** – This is the first document you will need to fill out for your lawsuit. This paper tells the court that you want them to look at your case. It contains your contact information and information about the type of lawsuit you are initiating.
- **Notice of Petition** – This is a document that tells the court and the other party that you are filing a petition. It tells the short version of the issue stating plainly what happened and how you want to see a resolution.
- **Verified Petition** – This document outlines the full story of your lawsuit and why you believe you are entitled to the records you are requesting. This document will contain all of the information you think a judge will need to decide your case. It will also reference any exhibits that you want to include.
- **Caption** – The caption is like the header for your legal documents. It will always include the same information and make it as easy as possible for a court to find and organize your documents. There is specific formatting required by the court which we have provided in all of the sample documents.
- **Respondent** – The respondent is the party who will need to respond to the lawsuit. In this case, you are filing the paperwork and you will need the agency to respond. This makes the agency the respondent for all of the documents in this FOIL lawsuit.
- **Petitioner** – The petitioner is the party who is making the petition. Since you are the one asking the court to do something, or petitioning the court to do something, you are the petitioner. You may also see “plaintiff” on some of the documents, this is just another term that refers to the party who is bringing the lawsuit.
- **Jurisdiction** – This is the idea that the physical place you are bringing your lawsuit is the correct one. As we discuss in the Guide, you will need to file your paperwork in the county where the agency’s headquarters are located. This is because that county is the correct jurisdiction for the lawsuit. New York State says that a court will have jurisdiction over an agency if it is located in the same county as the agency.
- **Venue** – This is the idea that the actual court where you are bringing your lawsuit is the correct one. While jurisdiction is about the location of the court, venue is the type of court. You wouldn’t want to bring your FOIL

lawsuit in a Family Court, for example, because a Family Court wouldn't be able to help you with your records request. As we noted, the Supreme Court of the county is the correct venue for a FOIL lawsuit.

- **Exhibit** – An exhibit is a document that you will offer as evidence for your lawsuit. In a FOIL claim you will need to include a copy of your initial request, the denial from the agency, and other communications between you and the agency. All of these documents are considered exhibits.
- **Notary** – A notary is a public officer who attests or certifies writings (such as your lawsuit documents) to make them authentic.²⁸
- **County Clerk** – This is an elected county official whose duties include keeping records. You can find information about any county clerk through a simple google search.
- **Pro Se** – This is the legal term for unrepresented. It just means that you do not have an attorney representing you for this specific case and that you will be acting in the role of an attorney when you sign any official documents or speak with the judge about your case.

²⁸ www.merriam-webster.com/dictionary/notary%20public