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BREAKING THROUGH BUREAUCRACY:

Evaluating Government Responsiveness
to Information Requests in New York City

A Report by:



Office of
Bill de Blasio
PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

EXECUTIVE SUMMARY

New York's Freedom of Information Law (FOIL) enables effective oversight of government, prevents waste and corruption, and bolsters public confidence in institutions. This report represents New York City's first-ever comprehensive look at government responsiveness to public information requests. It evaluates the speed of response, whether responses were delivered at all, and the ease with which FOIL requests can be filed at 38 City agencies. The result is a FOIL Report Card that grades agencies and provides a benchmark for improvement.

The Report Card demonstrates deep inconsistency across City agencies—with some meeting most of their legal obligations, while other agencies neglect them completely. The 18 agencies that received more than 100 FOIL requests were awarded the following grades for their performance:

Grade **A**



Grade **B**



Grade **C**



Grade **D**



Grade **F**



In analyzing the 10,000 FOIL requests used as a basis for the Report Card, the Public Advocate identified several key areas where agencies were neglecting their responsibilities under the law:

- The process for submitting FOIL requests to City agencies and tracking their status is inconsistent and can be extremely challenging for the public to navigate. **40% of City agencies lack information on their website about where to direct FOIL requests.** Neither 311 nor the City's Green Book provide this information.
- For the three months of FOIL data analyzed, more than 1,000 individuals or groups had not received an approval or denial determination after more than six months of waiting – that represents **one-in-ten requests that were either ignored or fell through the cracks.** While these non-responses represent de facto denials, the lack of firm response impedes the appeal process and legal action.
- When City agencies responded to FOIL requests, **response times varied dramatically by agency.**

To help improve the City's responsiveness to information requests, Public Advocate de Blasio has put forward the following recommendations:

1. **Strengthen the City's oversight of FOIL responsiveness** by adopting legislation to require monthly reporting to the City Council and Public Advocate on the status of all FOIL requests, as well as annual reporting to the public in the Mayor's Management Report.
2. **Speed requests for the most commonly-sought information** and reduce FOIL officer workload by posting minutes, public schedules and license data online for easy access. Record Access Officers at City agencies should also receive annual training on FOIL compliance, which is available at no cost through the New York State Committee on Open Government.

3. **Ensure greater accountability** through semi-annual reviews of each agency's FOIL compliance by the Commission on Public Information & Communication (COPIC).
4. **Streamline the process of filing FOIL requests and getting updates on their status.** 311 and the City's Green Book should maintain contact information for all record access officers at City agencies. New York City should follow the federal government's lead and transition to a single online portal for processing FOIL requests to City agencies.
5. **Assess fines for non-compliance.** In instances where a court finds that an agency exhibited a 'pattern and practice' of violating FOIL or de facto denials resulting from excessive delays, a fee should be assessed to the agency for each day of non-compliance.
6. **Pass legislation mandating that all City agencies must proactively publish commonly-requested records online.** This would modernize FOIL disclosure practices and encourage agencies to adapt to changes in technology.

INTRODUCTION

Transparency and responsiveness in government decisions and policies engenders trust in our democratic process. Clear guidelines and required disclosure practices not only ensure accountability of government entities, it also supports the engagement of the public and promotes the voice of the citizenry. These principals are supported and protected by the Freedom of Information Law (FOIL).

FOIL, enacted in 1974, affirms every citizen's right to access a wide variety of information from state and city agencies. It was passed with the understanding that a free society is maintained when government is responsive and responsible to the public.¹ Specifically, it provides rights of access to all records that document the process and policies of government agencies.² This includes any record of "any information kept, held, filed, produced or reproduced by, with or for any agency or the State Legislature, in any physical form whatsoever."³ While there are some exceptions to the information that can be provided, every government agency in New York State must comply with specific legal requirements relating to response time and extent of disclosure as stipulated under FOIL.



It is important to note that FOIL was written in a different era – one with significant limitations in the role of technology to gather, condense, and disperse vast data and resources. With the evolution in information technology and the digitization of many government agency records, the public should expect fewer obstacles to requests for information. While some City agencies are making significant strides in proactive disclosure by providing information online before it is requested, many others violate the spirit—and letter—of the law by failing to provide basic information within a timely period. In an era when the public should be expecting greater and easier disclosure, we are instead seeing persistent impediments to a more transparent government.

The Office of the Public Advocate is tasked according to the City Charter with ensuring the responsiveness of City agencies to requests for information and data. Complementing these efforts, Public Advocate Bill de Blasio is also the Chair of the Commission on Public Information and Communication (COPIC), whose mission is to ensure greater accountability and transparency in City government. Since the creation of COPIC in 1989, there has been considerable progress in terms of opening information up to the public, but major impediments remain. This report addresses two major challenges: speed of response time and ease of filing a Freedom of Information request.

¹ Public Officers Law Article 6 § 84

² "Agencies" is defined as all units of state and local government in New York State, but does not include the State legislature or the courts.

³ Public Officers Law Article 6 § 86 (4)

THE LEGAL FRAMEWORK FOR CITY INFORMATION REQUESTS

The Freedom of Information Law, officially known as “Public Officers Law Article 6, Section 84-90,” stipulates the responsibilities of the State legislature and any government agency within New York State. Under the Public Officers Law, New York City agencies must adhere to a common set of guiding principles and responsibilities.

What is available for public access under FOIL:

- ✓ Under State and municipal law, each agency is required to make available for inspection and copying all “records” except those that are specifically exempt from disclosure by State or Federal statute.⁴ A “record” includes: “any information kept, held, filed, produced or reproduced by, with or for an agency.”⁵
- ✓ Government agencies must provide the name, public office address, title and salary of every officer and employee of that agency.
- ✓ Government agencies must also maintain a reasonably current list by subject matter of all records in the possession of the agency.⁶ This list must be updated annually and must be posted to the agency’s website.
- ✓ FOIL information on the websites of State agencies must list the name and contact information of the Public Access Officer from whom records shall be available.

What agencies must do to ensure they are equipped to respond to FOIL requests:

- ✓ Every City agency must designate a Public Access Officer, whose responsibilities include ensuring appropriate agency responses to requests for records, maintaining an up to date subject matter list, making records available upon request or denying requests for records in writing.
- ✓ Each government agency must also permit and facilitate the copying of records.⁷

Timeframe for responding to requests:

- ✓ Government agencies must provide access to records, denial of access, or an acknowledgment of receipt within five business days of receiving a FOIL request. If an acknowledgement of receipt is given, then the agency must include an approximate date at which the record will be made available within twenty business days.
- ✓ If the agency has a reasonable circumstances which would bar it from making a determination within twenty days, the must provide a written explanation of the factors and a specific date by which it will respond.
- ✓ A person who is denied access to a record may within 30 days appeal in writing to the head of the agency from which they requested the information.⁸

⁴ For a list of exempt records, see New York Public Officer’s Law Article 6 §87(2)

⁵ New York Public Officer’s Law, Article 6, §86(4).

⁶ New York Public Officer’s Law, Article 6, §87(3).

⁷ New York Public Officer’s Law, Article 6, §87.

AN ANALYSIS OF NEW YORK CITY INFORMATION REQUESTS

In October 2011, the Public Advocate sent requests to 35 mayoral agencies, as well as the New York City Department of Education and New York City Housing Authority (NYCHA), asking for a list of all FOIL requests that the agencies received during the first quarter of 2011 (January 1 - March 31) and the status or outcome of each request. Data from the Public Advocate's office was also submitted as part of this citywide review. Thirty of the 38 agencies provided the requested FOIL data within 20 days. Others required more time.

In most cases, City agencies were able to provide a spreadsheet detailing FOIL requests that were received and the status or outcome of these requests. The New York Police Department (NYPD) and Department of Environmental Protection (DEP) – the two agencies with the highest number of reported FOIL requests – were notable exceptions; both failed to provide the requested information in full. NYPD indicated that the department did not have all the requested information for January-March 2011 and therefore instead provided data on FOIL requests received May 1-July 31, 2011. DEP provided a full list of FOIL requests received during the first quarter of 2011

but indicated that the agency does not track whether or not a request was denied, only if the request is open or closed. In order to conduct a comprehensive, citywide review, all submitted FOIL data – including the incomplete data from NYPD and DEP – was used in this report.

This report provides a *snapshot* of FOIL requests to City agencies over a three-month period. Requests to agencies fluctuate over time, and this study does not attempt to extrapolate long-term conclusions regarding an agency's FOIL responsiveness. However, the data from this three-month period makes clear that a huge variation in both volume and response time exists across agencies.

City Agencies Included in the Public Advocate's Review of FOIL Responsiveness

Administration for Children's Services	Department of Parks & Recreation
Commission on Human Rights	Department of Probation
Department for the Aging	Department of Records & Information Services
Department of Buildings	Department of Sanitation
Department of City Planning	Department of Small Business Services
Department of Citywide Administrative Services	Department of Transportation
Department of Consumer Affairs	Department of Youth & Community Development
Department of Correction	Fire Department
Department of Cultural Affairs	Housing Authority
Department of Design & Construction	Human Resources Administration
Department of Education	Landmarks Preservation Commission
Department of Environmental Protection	Law Department
Department of Finance	Office of Administrative Trials & Hearings
Department of Health & Mental Hygiene	Office of Chief Medical Examiner
Department of Homeless Services	Office of Emergency Management
Department of Housing Preservation & Development	Office of Labor Relations
Department of Information Technology & Telecommunications	Office of Management & Budget
Department of Investigation	Office of the Public Advocate
	Police Department
	Taxi and Limousine Commission

⁸ New York Public Officer's Law, Article 6 §89.

KEY FINDINGS

- **The process for submitting FOIL requests to City agencies and tracking their status is inconsistent and can be extremely challenging for the public to navigate.**
 - 311 is not equipped to provide information on agencies' Record Access Officers even though many agencies route all their call traffic from the general public through 311.
 - 40% of City agencies (15 of 38) lack a page or contact info on their website about where to direct FOIL requests. The City's Green Book also omits this important information.

- **For the three months of FOIL data analyzed, roughly 1,000 requests had not received a "yes or no" determination – that's one-in-ten requests where a City agency either ignores or loses the request.**
 - NYPD had the largest number of unanswered FOIL requests from the provided 3-month period – 577 unanswered requests as of November 14, 2011.
 - The Department of Design and Construction had the highest ratio of unanswered FOIL requests in the three month period – 40% of their 82 requests had not received a determination. The Department of Corrections and NYPD also reported more than 30% of their FOIL requests unanswered.

- **When Agencies responded to FOIL requests, response times varied dramatically by agency.**
 - The majority of FOIL requests to City agencies (60%) receive a response within 30 days. 11% received an answer in 30-59 days and 17% took more than 60 days.

RATINGS BY CITY AGENCY:

The 18 City agencies that received more than 100 FOIL requests were awarded letter grades for their FOIL performance. Letter grades are derived from three important indicators of FOIL performance: (1) Response Time (the percent of FOIL requests taking 60+ days for determination); (2) Unanswered Requests (the percent of FOIL requests that received no response); and (3) Ease of Filing (an assessment of the public information available to assist individuals when filing FOIL requests). The overall letter grade awarded to agencies is a weighted average of the three indicators. "Response Time" and "Unanswered" are each worth 40% of the total grade. "Ease in Filing" accounts for 20%. All letter grades are based on the standard A-F grading system. Specific breakdowns by City agency are included in the appendixes at the end of the report.⁹

⁹ Letter grades were assigned for each indicator in relation to the average score across all 18 agencies. For "Response Time", the C average was pegged to 13% of responses taking 60+ days for determination. For "Unanswered Requests", the C average was pegged to 10% of FOIL requests going unanswered. Agencies that scored at or above this marker earned A, B, or C grades; those that scored below earned D or F grades. The third indicator, "Ease in Filing", scored agencies based on the amount of information provided to assist individuals when filing FOIL requests: (1) readily accessible contact information; (2) detailed instructions on how to submit a FOIL request; (3) a sample FOIL request or form; (4) the option to submit a request online or via email; and (5) details about the notification and appeals process. If an agency has any of these measures in place, they scored one point. The overall score was then translated into a grade from A-F.

Agencies with 100-199 Total Requests:

 <p>Taxi & Limousine Commission</p> <p>Quantity of Requests: Low <i>The Taxi & Limousine Commission received 175 FOIL requests during the first quarter of 2011.</i></p>	<p>Response Time: A+ <i>100% of responses were provided in less than 60 days.</i></p> <p>Unanswered Requests: A+ <i>All requests received a response.</i></p> <p>Ease of Filing: B <i>TLC's website provides details on how to file by email, fax or mail.</i></p>	<p>Overall grade:</p> <p>A</p>
 <p>Information Technology & Telecommunications</p> <p>Quantity of Requests: Low <i>The Department of Information Technology & Telecommunications received 113 FOIL requests during the first quarter of 2011.</i></p>	<p>Response Time: A+ <i>100% of responses were provided in less than 60 days.</i></p> <p>Unanswered Requests: A+ <i>99% of requests received a response.</i></p> <p>Ease of Filing: C <i>DoITT offers an online form for filing requests but no contact info for follow-up or appeals.</i></p>	<p>Overall grade:</p> <p>A</p>
 <p>PLANNING</p> <p>Quantity of Requests: Low <i>The Department of City Planning received 102 FOIL requests during the first quarter of 2011.</i></p>	<p>Response Time: A <i>97% of responses were provided in less than 60 days.</i></p> <p>Unanswered Requests: B- <i>8% of requests never received a response.</i></p> <p>Ease of Filing: B <i>The Department of City Planning offers an online form and detailed instructions to help file requests.</i></p>	<p>Overall grade:</p> <p>B</p>



Office of Administrative Trials and Hearings

Quantity of Requests: Low

The Office of Administrative Trials & Hearings received 134 FOIL requests during the first quarter of 2011.

Response Time: A+

100% of responses were provided in less than 60 days.

Unanswered Requests: A+

99% of requests received a response.

Ease of Filing: F

Apart from an address, OATH provides no details on its website about filing FOIL requests.

Overall grade:

B



Quantity of Requests: Low

The Department of Corrections received 118 FOIL requests during the first quarter of 2011.

Response Time: C+

12% of answered requests took more than 60 days to process.

Unanswered Requests: F

33% of all requests never received a response.

Ease of Filing: C

The Department of Corrections accepts requests by mail only but provides clear instructions.

Overall grade:

D



Quantity of Requests: Low

The Department of Parks & Recreation received 104 FOIL requests during the first quarter of 2011.

Response Time: C

14% of answered requests took more than 60 days to process.

Unanswered Requests: F

22% of all requests never received a response.

Ease of Filing: F

The Parks Department website has a lot of information – just not details about filing a FOIL request.

Overall grade:

D



Quantity of Requests: Low

The Department of Education received 194 FOIL requests during the first quarter of 2011.

Response Time: F

38% of answered requests took more than 60 days to process.

Unanswered Requests: C

9% of all requests never received a response.

Ease of Filing: C

DoE accepts FOIL requests by mail or email but doesn't offer instructions.

Overall grade:

D

Agencies with 200-999 Total Requests:



Quantity of Requests: Medium

The Department of Consumer Affairs received 292 FOIL requests during the first quarter of 2011.

Response Time: A+

100% of responses were provided in less than 60 days.

Unanswered Requests: A+

All requests received a response.

Ease of Filing: B

DCA provides a request form and accepts FOIL requests by email, mail or fax.

Overall grade:

A



Quantity of Requests: Medium

The Department of Health and Mental Hygiene received 672 FOIL requests during the first quarter of 2011.

Response Time: B

94% of responses were provided in less than 60 days.

Unanswered Requests: A+

All requests received a response.

Ease of Filing: A

DoHMH's website provides details on how to file by email, fax or mail.

Overall grade:

A



Citywide Administrative Services

Quantity of Requests: Medium

The Department of Citywide Administrative Services received 222 FOIL requests during the first quarter of 2011.

Response Time: A+

100% of responses were provided in less than 60 days.

Unanswered Requests: A+

All requests received a response.

Ease of Filing: D

DCAS provides an email address for filing FOIL requests but very little other information.

Overall grade:

B



Buildings

Quantity of Requests: Medium

The Department of Buildings received 289 FOIL requests during the first quarter of 2011.

Response Time: A+

99% of requests were answered in less than 60 days.

Unanswered Requests: C+

9% of all requests never received a response.

Ease of Filing: C

The Department of Buildings' website offers basic guidance on filing a FOIL request.

Overall grade:

B



Department of Housing Preservation & Development

Quantity of Requests: Medium

The Department of Housing Preservation & Development received 459 FOIL requests during the first quarter of 2011.

Response Time: D

20% of answered requests took more than 60 days to process.

Unanswered Requests: B+

5% of all requests never received a response.

Ease of Filing: B

HPD's website provides a helpful online form for filing FOIL requests.

Overall grade:

C



Quantity of Requests: Medium

The Department of Finance received 210 FOIL requests during the first quarter of 2011.

Response Time: C-

15% of answered requests took more than 60 days to process.

Unanswered Requests: D

14% of all requests never received a response.

Ease of Filing: A

The Department of Finance's website provides detailed instructions to file requests by email or mail.

Overall grade:

C



Quantity of Requests: Medium

The Fire Department received 224 FOIL requests during the first quarter of 2011.

Response Time: D+

17% of answered requests took more than 60 days to process.

Unanswered Requests: D

13% of all requests never received a response.

Ease of Filing: B

FDNY's website provides helpful information for filing requests.

Overall grade:

D



Quantity of Requests: Medium

The Housing Authority received 504 FOIL requests during the first quarter of 2011.

Response Time: F

51% of answered requests took more than 60 days to process.

Unanswered Requests: F

29% of all requests never received a response.

Ease of Filing: C

NYCHA's website benefits from a series of useful FAQs on FOIL requests.

Overall grade:

F

Agencies with more than 1,000 Total Requests:



Quantity of Requests: High

The Department of Transportation received 1,655 FOIL requests during the first quarter of 2011.

Response Time: **A-**

95% of responses were provided in less than 60 days.

Unanswered Requests: **A+**

99% of all requests received a response.

Ease of Filing: **C**

DoT offers a FOIL request form in seven languages.

Overall grade:

A



Quantity of Requests: High

The Department of Environmental Protection received 2,142 FOIL requests during the first quarter of 2011.

Response Time: **F**

22% of answered requests took more than 60 days to process.

Unanswered Requests: **B-**

7% of all requests never received a response.

Ease of Filing: **B**

DEP offers a convenient online form for filing FOIL requests.

Overall grade:

C



Quantity of Requests: High

The Police Department received 1,883 FOIL requests during the second quarter of 2011.

Response Time: **F**

28% of answered requests took more than 60 days to process.

Unanswered Requests: **F**

31% of all requests never received a response.

Ease of Filing: **C**

NYPD provides a mailing address for FOIL requests but no clear way to follow-up or appeal after a request.

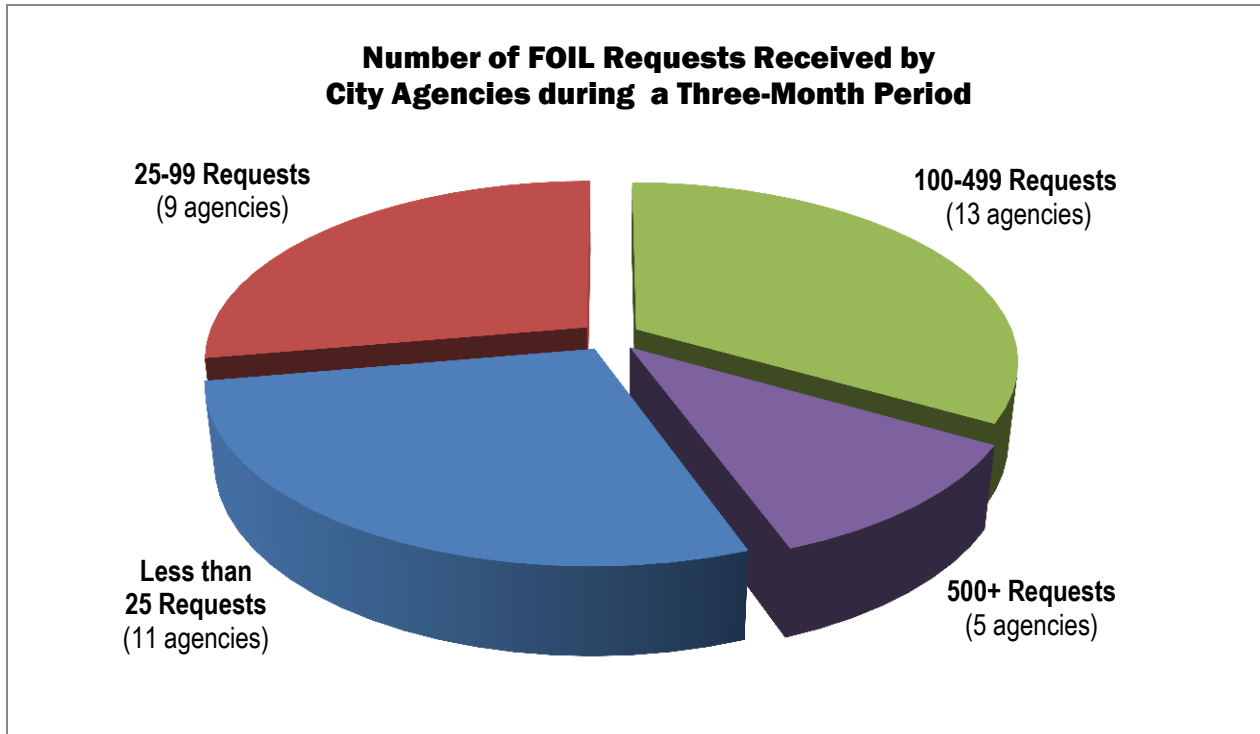
Overall grade:

F

AGGREGATE ANALYSIS

Quantity of FOIL Requests:

During the three months analyzed, City agencies received a total of 9,970 FOIL requests. More than half – 5,680 – of these requests were made to only three agencies: the Department of Transportation (1,655 requests) the New York Police Department (1,883 requests), and the Department of Environmental Protection (2,142 requests). On the other end of the spectrum, twenty agencies received fewer than 100 FOIL requests over the same three-month period. Eight agencies received fewer than ten FOIL requests.



Outcomes of FOIL Requests Received:

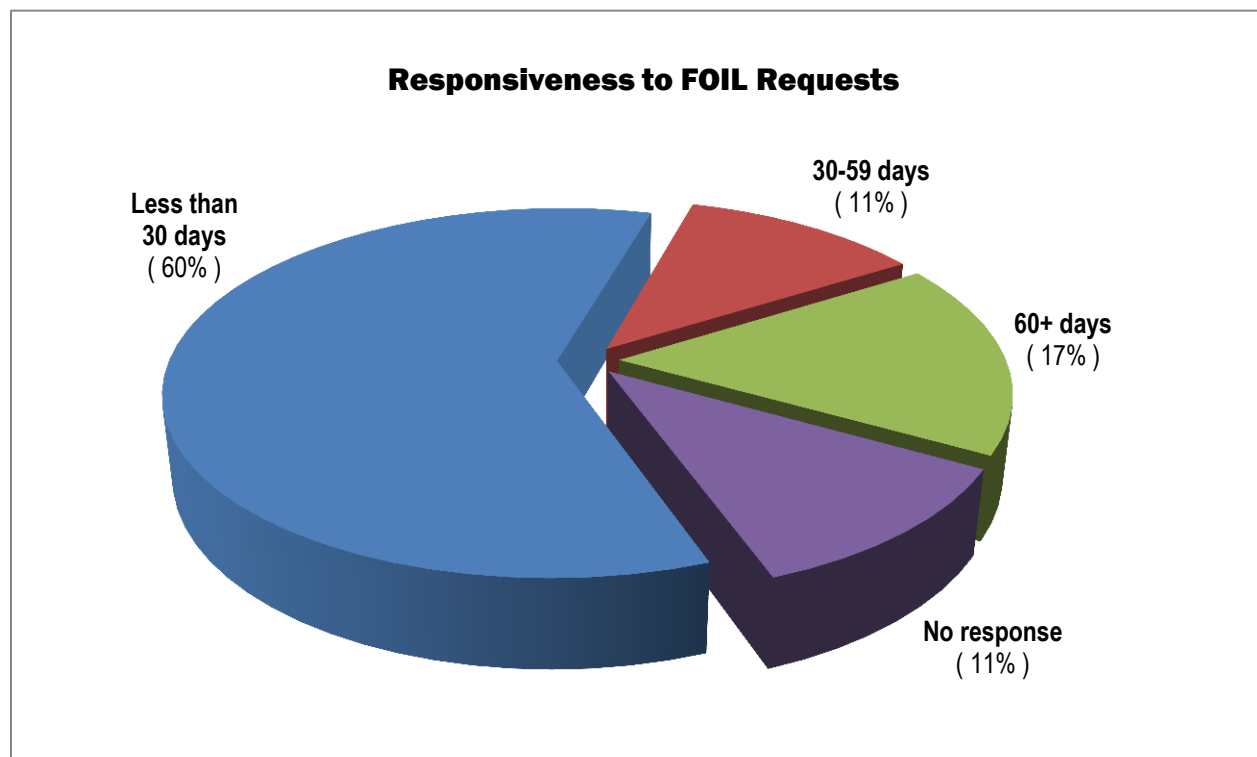
Of the total FOIL requests reported to the Public Advocate's office, only 22% included information on the outcome of cases. Of the 2,119 requests where the outcome was indicated, 88% were granted in full or in part, and 12% were denied.

Agency	Number of FOIL Requests during 3 month period
Less than 100 Requests	
Department for the Aging	3
Department of Youth and Community Development	3
Department of Cultural Affairs	5
Department of Records & Information Services	5
Office of Management & Budget	5
Office of Labor Relations	5
Department of Probation	9
Office of the Public Advocate	9
Landmarks Preservation Commission	12
Office of Emergency Management	15
Administration for Children's Services	15
Commission on Human Rights	25
Department of Small Business Services	25
Law Department	26
Office of Chief Medical Examiner	33
Department of Homeless Services	38
Department of Investigation	42
Human Resources Administration	48
Department of Sanitation	73
Department of Design & Construction	82
More than 100 Requests	
Department of City Planning	102
Department of Parks & Recreation	104
Department of Information Technology & Telecommunications	113
Department of Correction	118
Office of Administrative Trials & Hearings	134
Taxi and Limousine Commission	175
Department of Education	194
Department of Finance	210
Department of Citywide Administrative Services	222
Fire Department	224
Department of Buildings	289
Department of Consumer Affairs	292
Department of Housing Preservation & Development	459
Housing Authority	504
Department of Health and Mental Hygiene	672
Department of Transportation	1,655
Police Department	1,883
Department of Environmental Protection	2,142

Turn-around Time on FOIL Requests:

Approximately 60% of all FOIL requests received a determination in less than 30 days. Of the remaining requests, approximately 12% took 30-59 days for determination and 17% took 60 days or more. A full 11% were outstanding – with no determination rendered – after more than six months, when the data was requested by the Public Advocate’s office in Fall 2011.

There is considerable range across agencies in the amount of elapsed time between when a request is submitted and a determination is made. The majority of agencies with the best turnaround time are those with the fewest number of requests. However, the Department of Transportation – with the third highest number of requests (1,655) – provided a response within 30 days in 86% of all FOIL requests. The Department of Education, on the other hand, received 194 FOIL requests, yet was only able to provide determination within 30 days to 7% of requests.

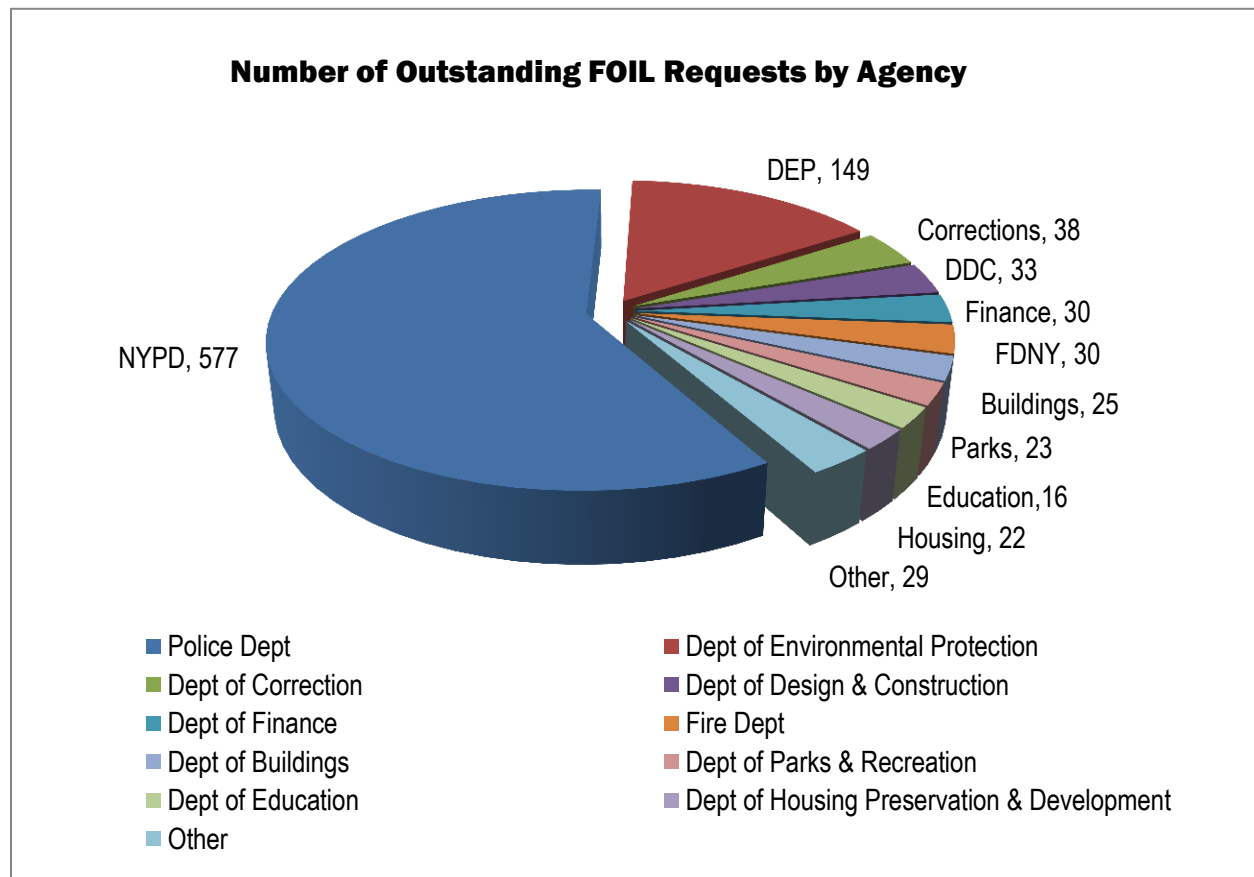


Non-determination:

Perhaps the most concerning indicator of agency non-compliance is the rate of “non-determination.” One out of every ten FOIL requests had not received even a “yes” or “no” response from agencies six months after the initial request. Such delays are unacceptable and represent de-facto denials.

By far, the agencies with the highest rates of non-determination are the NYPD, the Department of Corrections, and the Department of Design and Construction. These agencies have non-determination rates of over 30%, though there is a wide variation in the total number of requests per agency complicating cross-agency comparisons.¹⁰

While the reasons for non-determination are myriad, failure to provide an indication of “yes” or “no” six months after receiving a request undermines the spirit of the Freedom of Information Law. Further, if a case is classified as “pending,” it becomes difficult for a requestor to challenge an agency’s delay as they must wait for determination in order to make an appeal.



¹⁰ The NYPD had 1,883 requests and non-determination in 577; the Department of Correction had 118 requests and non-determination in 38; and the Department of Design and Construction had 82 requests and non-determination in 33.

CURRENT OVERSIGHT OF INFORMATION REQUESTS

Although some government agencies such as the NYPD have been described as fostering a “pattern and practice” of violating the time requirements of FOIL requests,¹¹ this report represents New York City’s first comprehensive look at government responsiveness to public information requests. FOIL clearly stipulates the responsibilities of agencies to respond to requests in a timely manner; however, there are currently few mechanisms aside from appeals and judicial remedy to force compliance when an agency violates this responsibility.¹² When an agency fails to respond within the stipulated timeframe, such failure constitutes a denial. In these circumstances, an agency can be forced to comply through legal action¹³ – an option beyond the capacity of many petitioners.



To help provide oversight and guidance on these matters, the New York State Committee on Open Government was created. The Committee, which is housed in the Department of State, oversees and advises state government, the public, and news media on Freedom of Information, Open Meetings, and Personal Privacy Protection Laws.¹⁴ While the Committee has no direct enforcement power, it does seek to resolve controversies in which rights may be unclear and keeps an online archive of its Advisory opinions.¹⁵ The Committee also provides resources and training to government and other interested groups. The Committee on Open Government is a strong advocate for improving access to public information through proactive disclosure – encouraging government agencies to “push” information out to the public, therefore minimizing the need for formal FOIL requests. At the City level, the Commission on Public Information and Communication (COPIC) could feasibly provide a similar oversight function, but it has been underutilized and understaffed for much of the last decade due to budgetary constraints.¹⁶

City and State law does not require regular reporting on the status of FOIL requests to the general public. This lack of reporting limits effective oversight and makes it difficult to ascertain whether delayed responses are indicative of more systemic problems. In an effort to push for greater compliance and reduce the backlog of requests, the federal government passed the Electronic Freedom of Information Act Amendments of 1996 that requires each agency to report to the Attorney General of the United States on

¹¹ See *The New York Times v. City of New York Police Department*: <http://statecasefiles.justia.com/documents/new-york/other-courts/2011-ny-slip-op-32857-u-0.pdf?ts=1323904956>

¹² <http://www.amny.com/urbanite-1.812039/many-city-agencies-flout-law-by-withholding-public-info-from-press-1.3031728>

¹³ Specifically, a petitioner can challenge the denial of access under Article 78 of the Civil Practice Law and Rules.

¹⁴ Committee on Open Government Website. Online at <http://www.dos.ny.gov/coog/index.html>

¹⁵ “Freedom of Information Law Advisory Opinions. Online at http://www.dos.ny.gov/coog/foil_listing/index.html.

¹⁶ Public Advocate Bill de Blasio recently reconvened the Commission on Public Information and Communication; however, the Commission does not currently receive any funding from the City Budget. See: <http://pubadvocate.nyc.gov/transparency/copic>

the status of their FOIA requests, the number of outstanding requests, median response times, and the number of staff assigned to process FOIA requests.¹⁷ In a similar vein, Public Advocate Bill de Blasio introduced legislation in 2010 (Intro 0227-2010) that would require New York City agencies to regularly report how many FOIL requests they have received, as well as the status of these requests.¹⁸

CHALLENGES & ADVANCES IN INFORMATION REQUESTS

Persistent Obstacles:

The process of correctly filing a FOIL request at New York City government agencies can be extremely challenging for the public. Whereas the New York State Comptroller's Office provides an online list of the contact information for the Public Access Officer for every state agency, no such resource currently exists for New York City agencies.¹⁹ Neither 311 nor the City's Green Book, for example, currently have this information. In order to file a request with a City agency, a requestor must identify where to send the FOIL request and understand the correct format for submission. While some agencies make this information fairly accessible on their website, it is virtually impossible to locate on the lion's share of New York City agency websites.²⁰ A requestor must scroll through a seemingly endless series of links before locating information on submitting FOIL requests.

With the rise of information technology, many agencies have witnessed an increase in the number of FOIL requests they receive, creating new staffing demands. The responsibilities of FOIL officers at government agencies are complex, sometimes demanding considerable personnel time in order to appropriately respond to a request.²¹ FOIL officers must make determinations of whether information requested constitutes a "record" under the meaning of the Public Officers Law, as well as whether the requested information is exempt from disclosure. They must also exhaustively search the agency's files for records, sometimes navigating complex search criteria.²² In short, the responsibilities of a FOIL officer are extensive, and voluminous or complex searches can be burdensome for City agencies if they are not sufficiently staffed.

The disjointed, complex, and sluggish character of FOIL requests is not limited to City agencies. State and Federal Freedom of Information Act (FOIA) requests face similar impediments to prompt and transparent information requests. Despite court rulings that require government agencies to respond to FOIA requests within 20 days, many requests go unanswered for years and – in some cases – decades. In a recent

¹⁷ The Freedom of Information Act, 5 U.S.C. § 552, As Amended By Public Law No. 104-231, 110 Stat. 3048. Online at http://www.justice.gov/oip/foia_updates/Vol_XVII_4/page2.htm

¹⁸ <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=662405&GUID=9FEC9C33-5127-48EE-BC96-7D86C660DB0C&Options=ID%7cText%7c&Search=227>

¹⁹ "Freedom of Information (FOIL) Officers." Retrieved from: <http://www.osc.state.ny.us/foilofficers.htm> and "FOIL Policies."

²⁰ See: FOIL Request Forms. Retrieved from:

<http://www.nyc.gov/portal/site/nycgov/menuitem.d09b345b0b361439455b831066a09da0/> (DOT),

http://www.nyc.gov/html/nypd/html/legal_matters/dclm_doc_production_foil.shtml (NYPD),

http://www.nyc.gov/html/dep/html/contact_us/index.shtml (DEP), and <http://comptroller.nyc.gov/foil/index.asp> (Comptroller).

²¹ These responsibilities are set forth in the Public Officer's Law 6, §89(3).

²² Steven Goulden and Paul Herzfeld, "The Freedom of Information Law and Its Impact on Government Agencies." New York State Bar Association, *Government, Law and Policy Journal* (Vol. 11 No. 1) Spring 2009.

exposé of Federal FOIA requests, it was disclosed that some Federal agencies had not yet fulfilled requests dating as far back as 1992.²³

Recent Progress:

Since the adoption of FOIL more than 35 years ago, the law has been amended and strengthened to ensure its continued relevancy. With the advances in information technology, new efforts are underway to amend the language of the law in order to mandate more proactive disclosure of frequently requested information by publishing data and records on the internet.

In 2012, New York City approved a landmark piece of legislation to require City agencies to publish their quantitative data sets through an online portal, enabling the public and private sector to access large quantities of data which were previously available only through FOIL requests.²⁴ Although this process will take several years to complete, a handful of City agencies demonstrated early leadership by providing datasets through the City's Open Data website.²⁵

New York State has also made improvements in the use of technology to ensure state agencies and offices are more open and responsive to public inquiries. The state has proactively disclosed more routinely requested data and information ²⁶ in March 2013, Governor Cuomo launched Open.NY.Gov, a comprehensive state data transparency website that "provides - for the first time - user-friendly, one-stop access to data from New York State agencies, localities, and the federal government."²⁷ State legislation introduced in 2011 aims to further advance these positive trends by compelling government agencies to provide all information of substantial public interest on their website, ensuring easier access to information.²⁸

CASE STUDY: CHICAGO

The City of Chicago is one of several cities that have made great strides to improve the accessibility and use of the Freedom of Information Act in recent years. Chicago maintains an easily accessible online hub for commonly requested information, including requests on licensing, vehicles, business-related issues, and meeting minutes. The city also maintains a FOIA Request Log for each city agency. The Request Log includes a summary of every FOIA request made since 2010, including the date information was requested and the due date for an anticipated response. This ensures that requestors have clear, direct communication with city agencies and better understand the process for filling FOIA requests, and can hold agencies accountable should responses be delayed. For more details, visit <http://www.cityofchicago.org/city/en/progs/foia.htm>.

²³ Matthew Wald, "Slow Responses Cloud a Window into Washington," *The New York Times* (January 28, 2012)

²⁴ http://www.nyc.gov/html/doitt/html/open/local_law_11_2012.shtml

²⁵ <https://nycopendata.socrata.com/>

²⁶ <http://reinvertalbany.org/wp-content/uploads/2012/03/New-Transparency1.pdf> See also: <http://nyopengovernment.com/NYOG/>

²⁷ <http://www.governor.ny.gov/press/03112013open-data>

²⁸ See Intro A5867 A-2011, Sponsored by New York State Member of Assembly Kavanagh: <http://open.nysenate.gov/legislation/bill/A5867a-2011>

The Federal Government has also taken active steps to improve government transparency, in part by utilizing new technologies to disclose information to the public. Recently, a joint effort by the Environmental Protection Agency, Department Of Commerce, National Archives and Records Administration, Merit Systems Protection Board, Federal Labor Relations Authority, and Department of the Treasury led to the creation of FOIAonline.²⁹ This online tool enables the public to query and track the status of their requests. Users may search for previously released records, communicate directly with agencies, and receive electronic records. The tool is in its initial phases and currently only applies to five agencies and offices,³⁰ but it has the potential to dramatically reduce the confusion, elapsed time, and improve transparency of FOIA requests. Beyond simply streamlining the FOIA process, the initiative also has the potential to reduce processing costs when it is adopted by all federal agencies. One estimate anticipates a cost-savings of approximately \$40 million per year.³¹ In 2012, the Public Advocate's office partnered with a team of developers from Code for America, Reboot, GovHub and Reinvent Albany to create a comparable prototype for New York City.³² The website called OpenUpNYC was unveiled at the 2012 Personal Democracy Forum.



²⁹ FOIAonline Hub: <https://foiaonline.regulations.gov/foia/action/public/home>

³⁰ Participating agencies include: the Department of Commerce (except the US Patent and Trademark Office), the Environmental Protection Agency, The Federal Labor Relations Authority, the Merit Systems Protection Board, and the National Archives and Records Administration. As of December 10, the Department of the Treasury has implemented FOIAonline in limited capacity, serving the Departmental Offices, The Alcohol and Tobacco Tax and Trade Bureau, Bureau of Engraving and Printing, Bureau of Fiscal Services, Financial Crimes Enforcement Network, and the U.S. Mint. See the Office of the General Counsel: <https://foiaonline.regulations.gov/foia/action/public/home/about>

³¹ <http://reinventalbany.org/2012/10/feds-launch-open-freedom-of-information-site-wheres-new-york/>

³² <http://pdfapplied.challengepost.com/submissions/8236-openup-nyc>

RECOMMENDATIONS

To help improve the City's responsiveness to information requests, Public Advocate de Blasio has put forward the following recommendations:

- 1. Strengthen the City's oversight of FOIL responsiveness.** New York City should adopt legislation based on Intro 227 requiring City agencies to provide monthly reports to the City Council and Public Advocate on the status of FOIL requests.³³ This reporting is necessary to ensure that no FOIL requests are ignored – either accidentally or purposefully – and to shine a light on City agencies that repeatedly violate FOIL. This information should also be annually reported to the public in the Mayor's Management Report.
- 2. Speed requests for the most commonly-sought information** and reduce FOIL officer workload by posting minutes, public schedules and license data online for easy access. All Record Access Officers at City agencies should receive annual training on FOIL compliance, which is available at no cost through the New York State Committee on Open Government.
- 3. Ensure greater accountability.** The Commission on Public Information and Communication (COPIC) should conduct semi-annual reviews of Agency FOIL compliance based on monthly reports submitted to the City Council and Public Advocate. If any agency accrues more than 25 FOIL requests that have remained unanswered for six months or more, this should automatically trigger a resolution in front of COPIC and the Commissioner of said agency shall submit testimony explaining its lapse in FOIL compliance.
 - ✓ Non-compliant City agencies should be required to submit an improvement plan to COPIC on how it will improve its performance.
 - ✓ Non-compliant City agencies should be required to provide updates and frequent reports to COPIC about its FOIL process and requests.
 - ✓ In the event that the agency fails to remedy its non-compliance after such informal efforts, COPIC should submit such findings in writing to the Mayor and the Speaker of the City Council, and the Mayor should take appropriate measures to ensure compliance.
- 4. Streamline the process of filing FOIL requests and getting updates on their status.** To ease the process of filing FOIL requests and getting updates on their status, the City should provide a centralized list of all Agency record access officers with their contact information. This information should also be available through the City's Green Book and 311. As an interim measure, the Public Advocate will maintain a list of FOIL officers online. New York City should also follow the federal government's lead and transition to a single online portal for processing FOIL requests to City agencies, building on efforts underway at the Public Advocate's office.
- 5. Assess fines for non-compliance.** Agencies must be encouraged to comply with both spirit and the letter of the law. Agencies that do not should be sanctioned with a fine for each day of non-compliance. Similar sanctions have been instituted in Washington State and Illinois, and have

³³ <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=662405&GUID=9FEC9C33-5127-48EE-BC96-7D86C660DB0C&Options=ID%7cText%7c&Search=227>

encouraged greater agency compliance. In New York City, these fines would be assessed after a court finds an agency to be at fault – including in cases of excessive delays or a ‘pattern and practice’ of FOIL violations.

- 6. Pass legislation mandating that all City agencies must proactively publish commonly-requested records online.** The FOIL law was written in a different era – one with significant technological limitations that made proactive disclosure costly and difficult. With the development of network technology and accessible platforms for communication, City agencies have a new opportunity to proactively ‘push’ commonly requested information to the public by publishing information on their websites. Public Advocate Bill de Blasio has proposed legislation that would require City agencies to proactively publish commonly requested material online. This law would augment the success of Local Law 11 and encourage agencies to modernize their disclosure practices.

APPENDIXES

FOIL Submission & Response Data by Agency:

City agencies were asked to provide information on all FOIL requests submitted between January 1, 2011 and March 31, 2011. The Public Advocate's requests were sent to agencies on October 19, 2011.

Agency	# of requests received during three month period	# of requests with no determination as of Nov. 2011	# of requests taking <30 days for determination	# of requests taking 30-59 days for determination	# of requests taking 60+ days for determination
Administration for Children's Services	15	1	13	1	0
Commission on Human Rights	25	0	24	1	0
Department for the Aging	3	0	3	0	0
Department of Buildings	289	25	248	13	3
Department of City Planning	102	8	71	20	3
Department of Citywide Administrative Services	222	0	220	2	0
Department of Consumer Affairs	292	0	291	1	0
Department of Correction	118	38	52	14	14
Department of Cultural Affairs	5	0	4	0	1
Department of Design & Construction	82	33	38	6	5
Department of Education	194*	16	71	27	69
Department of Environmental Protection	2142	149	1179	336	478
Department of Finance	210	30	115	33	32
Department of Health and Mental Hygiene	672	0	583	50	39
Department of Homeless Services	38	2	12	18	6
Department of Housing Preservation & Development	459	22	154	192	91

Agency	# of requests received during three month period	# of requests with no determination as of Nov. 2011	# of requests taking <30 days for determination	# of requests taking 30-59 days for determination	# of requests taking 60+ days for determination
Department of Information Technology & Telecommunications	113	1	111	1	0
Department of Investigation	42	0	33	2	7
Department of Parks & Recreation	104	23	48	19	14
Department of Probation	9	0	5	2	2
Department of Records & Information Services	5	0	3	2	0
Department of Sanitation	73	1	41	22	9
Department of Small Business Services	25	0	23	1	1
Department of Transportation	1655	12	1429	136	78
Department of Youth and Community Development	3	0	0	2	1
Fire Department	224	30	99	56	39
Housing Authority	504	147	42	43	256
Human Resources Administration	48	2	28	8	10
Landmarks Preservation Commission	12	0	9	1	2
Law Department	26	0	16	6	4
Office of Administrative Trials & Hearings	134	1	129	4	0
Office of Chief Medical Examiner	33	0	33	0	0
Office of Emergency Management	15	0	11	4	0
Office of Labor Relations	5	1	1	3	0
Office of Management & Budget	5	0	2	2	1

Agency	# of requests received during three month period	# of requests with no determination as of Nov. 2011	# of requests taking <30 days for determination	# of requests taking 30-59 days for determination	# of requests taking 60+ days for determination
Office of the Public Advocate	9	0	7	1	1
Police Department ³⁴	1883	577	699	78	529
Taxi and Limousine Commission	175	0	174	1	0

* 11 requests were reported as “withdrawn” and as such were not included in percent calculations.

Ease of Filing Data by Agency:

Data as of 1/1/2013

Agency	Contact info for Record Access Officer	Instructions on how to File FOIL Request	FOIL request form or sample letter	Online or email submission option ³⁵	Info on process for appeals
Administration for Children’s Services	N	Y	N	N	N
Commission on Human Rights	N	N	N	N	N
Department for the Aging	N	N	N	N	N
Department of Buildings	Y	Y	Y	N	N
Department of City Planning	Y	Y	Y	Y	N
Department of Citywide Administrative Services	Y	N	N	Y	N
Department of Consumer Affairs	Y	Y	Y	Y	N
Department of Correction	Y	Y	N	N	Y
Department of Cultural Affairs	N	N	N	N	N
Department of Design & Construction	Y	Y	N	Y	N

³⁴ According to the NYPD, FOIL data was not available for the first quarter of 2011. In its place, the NYPD chose to provide data for the second quarter of 2011.

³⁵ §89 3(b) of the Public Officers Law specifies that “All entities shall, provided such entity has reasonable means available, accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail”.

Agency	Contact info for Record Access Officer	Instructions on how to File FOIL Request	FOIL request form or sample letter	Online or email submission option	Info on process for appeals
Department of Education	Y	Y	N	Y	N
Department of Environmental Protection	N	Y	Y	Y	Y
Department of Finance	Y	Y	Y	Y	Y
Department of Health and Mental Hygiene	Y	Y	Y	Y	Y
Department of Homeless Services	Y	N	N	Y	N
Department of Housing Preservation & Development	Y	Y	Y	Y	N
Department of Information Technology & Telecommunications	N	Y	Y	Y	N
Department of Investigation	N	N	N	N	N
Department of Parks & Recreation	Y	N	N	N	N
Department of Probation	N	N	N	N	N
Department of Records & Information Services	N	N	N	N	N
Department of Sanitation	Y	Y	N	N	N
Department of Small Business Services	N	Y	Y	Y	Y
Department of Transportation	Y	Y	Y	N	N
Department of Youth and Community Development	N	N	N	N	N
Fire Department	Y	Y	Y	Y	N
Housing Authority	Y	Y	N	Y	N
Human Resources Administration	Y	Y	N	N	N

Agency	Contact info for Record Access Officer	Instructions on how to File FOIL Request	FOIL request form or sample letter	Online or email submission option	Info on process for appeals
Landmarks Preservation Commission	Y	Y	N	Y	Y
Law Department	Y	N	N	N	N
Office of Administrative Trials & Hearings	N	N	N	N	N
Office of Chief Medical Examiner	Y	Y	N	Y	Y
Office of Emergency Management	N	N	N	N	N
Office of Labor Relations	N	N	N	N	N
Office of Management & Budget	N	N	N	N	N
Police Department	Y	Y	Y	N	N
Public Advocate	Y	Y	Y	Y	Y
Taxi and Limousine Commission	Y	Y	Y	Y	N