

Warren County Board of Supervisors

RESOLUTION NO. 411 OF 2024

RESOLUTION INTRODUCED BY SUPERVISORS STROUGH, CONOVER, WILD, DRISCOLL, MADAY, GERACI AND THOMAS

**APPROVING REVISIONS TO THE WARREN COUNTY
FREEDOM OF INFORMATION LAW (FOIL) POLICY**

WHEREAS, the County Attorney presented to the Legislative, Rules & Governmental Operations Committee revisions to the FOIL Policy, annexed hereto as Schedule “A,” and the Legislative, Rules & Governmental Operations Committee has recommended that the same be advanced to the full Board of Supervisors, now, therefore, be it

RESOLVED, that the proposed revisions to the FOIL Policy for Warren County, annexed hereto as Schedule “A,” be and the same is hereby adopted as the official policy for Warren County, and be it further

RESOLVED, that any and all prior FOIL Policies, Resolutions or parts thereof inconsistent with the new FOIL Policy are hereby repealed.

SCHEDULE "A"
WARREN COUNTY POLICY GOVERNING
FREEDOM OF INFORMATION LAW
REQUESTS AND APPEALS

SECTION 1: PURPOSE AND SCOPE.

1. The Freedom of Information Law (hereinafter, "FOIL") was enacted in 1977 as Article 6 of the Public Officers Law and was patterned from the federal Freedom of Information Act (hereinafter, "FOIA"), to provide the public with means to access governmental records.
2. The legislative intent for FOIL's enactment was to ensure a free press and to allow members of the general public to seek accountability for governmental actions and to thwart governmental secrecy. By enacting this policy, the County of Warren reaffirms the legislative intent of FOIL for all County operations.
3. The Warren County Policy Governing Freedom of Information Law Requests and Appeals (hereafter, "Policy") shall be effective upon enactment for all FOIL requests and FOIL appeals filed after the effective date and shall govern, replace and supersede all prior FOIL policies for the County of Warren. FOIL requests and FOIL appeals filed prior to the effective date of this Policy shall be governed by the County's prior FOIL policy.
4. The County of Warren presumes that all County records are open for public inspection, subject only to the extent that records or portions of records fall within the ambit of at least one statutorily authorized reason for denial contained in section 87(2)(a) of the Public Officers Law.

SECTION 2: DEFINITIONS.

1. "Appeal Officer" is the Warren County Officer designated by this Policy as responsible for coordinating responses to all FOIL Appeals filed with the County of Warren, as provided by section 89(4) of the Public Officers Law.
2. "Designated Department Head" is the appointed head of a County department or office who is designated and delegated authority, in writing, by the Records Access Officer to receive FOIL requests and provide FOIL responses.
3. "Disciplinary Records" shall mean any record created in furtherance of a disciplinary proceeding, including but not limited to: (a) complaints, allegations, and charges against an employee; (b) the name of the employee complained of or charged; (c) the transcript of any disciplinary trial or hearing, including exhibits; (d) the disposition of the disciplinary proceeding; and (e) the final written opinion or decision of the disciplinary proceeding. Disciplinary records shall not include: warnings or counseling memoranda.
4. "Record" shall mean, any information kept, held, filed, produced or reproduced by, with or for Warren County, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

- 5 "Records Access Officer" is the Warren County Officer responsible for supervising, overseeing and coordinating the County's compliance with initial response to a FOIL request, pursuant to section 89(3) of the New York State Public Officers Law, 22 NYCRR 1401.2, and Section 3 of this Policy.
6. "Subject Matter List" shall mean, a reasonably detailed current list, by subject matter, of all records in Warren County's possession, which shall be sufficiently detailed to permit identification of the category of record sought.

SECTION 3: DESIGNATION AND DUTIES OF THE RECORDS ACCESS OFFICER AND CERTAIN DESIGNATED DEPARTMENT HEADS.

1. The Warren County Administrator is designated as the Records Access Officer, (hereafter, "RAO") and shall be responsible for ensuring Warren County maintains compliance with its responsibilities to produce requested documents under Public Officers Law § 89(3) and 21 NYCRR 1401.2 (collectively, "FOIL Law and Regulations").
2. The Records Access Officer shall:
 - a. Serve as the County's primary point of contact for FOIL requests, to include requests received electronically through the County's website;
 - b. Provide administrative oversight for the implementation and operation of the FOIL Policy, to include the County's timely response to all FOIL requests received from any source and maintaining and publishing a subject matter list on the Warren County website which is also available upon request, without charge;
 - c. Designate and delegate authority to specific County Department Heads, in writing, to serve as "Designated Department Heads" authorized to receive and respond to FOIL requests on behalf of the Record Access Officer and the County;
 - d. Maintain and publish a current list of County Department Head Offices that are authorized to serve as "Designated Department Heads;"
 - e. Assist individuals seeking County records in reasonably describing the records sought, by referring individuals to the subject matter list and when appropriate advising how County records are indexed and/or filed; and
 - f. Contact individuals requesting records when a request is deemed voluminous or when the production of records involves substantial effort by County employees, so that the individual may review and restrict the FOIL request to reduce the volume of records sought and/or the time to complete the FOIL request.
3. Upon the Records Access Officer receiving a FOIL request that reasonably describes records maintained by the County, the Records Access Officer shall:
 - a. Forward the FOIL request to the appropriate Designated Department Head for review and response; or

- b. Contact the appropriate County officers or employees and request that they search for records that are responsive to the FOIL request.

SECTION 4: DUTIES OF DESIGNATED DEPARTMENT HEADS.

1. Each Designated Department Head shall respond to a FOIL request for records maintained by their department and shall not provide County records maintained by any other County department or employee. If a FOIL request seeks records the Designated Department Head believes are maintained elsewhere in the County or the request encompasses records from multiple county offices, then the Designated Department Head shall refer the FOIL request back to the Records Access Officer to ensure only one response is provided by the County.
2. If a Designated Department Head receives a FOIL request from any person, then a copy of the FOIL request shall be forwarded to the Records Access Officer for administrative tracking.
3. If a Designated Department Head receives or responds to a FOIL request, then the Designated Department Head shall complete all responsibilities required by the Records Access Officer in responding to the FOIL request.
4. The Designated Department Head shall provide to the Records Access Officer the following for each FOIL response issued:
 - a. The date the FOIL request was received;
 - b. A complete copy of the original FOIL request received, if not received from the Records Access Officer;
 - c. The date the FOIL response was released to the requester;
 - d. A complete copy of the FOIL response, to include the name and contact information to whom the FOIL response was provided;
 - e. Any exemptions to disclosure claimed by the Designated Department Head in the FOIL response; and
 - f. If the FOIL response contains redactions, then a complete *unredacted* copy of the FOIL response shall be provided.

SECTION 5: FOIL REQUESTS FOR PUBLIC ACCESS TO RECORDS.

1. All requests for records must be made in writing. No oral requests or request for information will be accepted or responded to in any manner by any County officers or employees. It is strongly recommended and encouraged that all requests for records be submitted through the Warren County website or by submission of a paper copy of the County's FOIL request form enclosed at Attachment "A" or other similar forms approved by the RAO.
2. The requesting party shall specify in the request the type of medium in which they prefer records to be provided. Absent a stated preference, the presumption shall be that the requesting party prefers a physical copy of the papers and shall pay any fees incurred. If records are being produced in paper copies, then Record Access Officer shall receive payment prior to release of the records.
3. If Warren County records are maintained on the Warren County website or otherwise readily accessibly to the general public online, then the requesting party shall be informed of the location

for the records on the County's website and no further record production shall be required.

4. Requests for records may be submitted to the Records Access Officer on any business day between the hours of 9:00 o'clock in the forenoon and 4:30 o'clock in the afternoon, in person, by mail, or electronically, to be considered received on that day. Any requests received outside of the designated hours will be considered received on the following business day.
5. The Records Access Officer or Designated Department Head shall provide the requesting party one of the following responses, in writing, within five (5) business days after receipt of a FOIL request:
 - a. Informing the requesting party that the request does not reasonably describe a record maintained by Warren County and including directions, when practicable, which may aid the requesting party to reasonably describe the records sought. The writing shall also state that this determination does not constitute a denial by the County to provide the records requested, and therefore, may not be appealed;
 - b. Granting or denying access to records sought in whole or in part; or
 - c. Acknowledging receipt of a request in writing and including an approximate date when a response to the request will be provided. If the approximate date exceeds twenty (20) business days, the acknowledgment will also include the reason for the delay in response.
6. The Records Access Officer or Designated Department Head shall not deny a request for records without first locating all records which are responsive to the FOIL request.
7. The blanket denial of a FOIL request is strictly prohibited. No denial of a FOIL request may occur without the requested records first being identified and inspected for potential release.
8. For twelve (12) months after a FOIL response is released, the Records Access Officer and the Designated Department Head shall retain all communications to and from a requesting party, as well as a complete copy of redacted and unredacted records provided by the FOIL response.
9. A FOIL request and FOIL response for records which appears to involve property damage, personal injuries to any person, or other potential, future legal claims against the County, shall be provided by blind copy at the time of release to the County Attorney, in electronic format.
10. Certifications requested in accordance with FOIL Law shall be provided by the Records Access Officer or the applicable Designated Department Head responsible for responding to the request, in the form provided at Attachment "B" or similar form approved by RAO.
11. When a requesting party seeks documents relating to a county employee's disciplinary records, the Records Access Officer shall provide written notice of the request to the county employee whose records are being sought. If a Designated Department Head receives a request for an employee's disciplinary records, the Designated Department Head must provide a copy of the request and anticipated response to the Records Access Officer. Notice to employees shall be completed by utilizing a form similar to the notice enclosed at Attachment "C."

SECTION 6: DENIAL OF ACCESS AND APPEALS.

1. Denial of access to a County record, in whole or in part, shall be provided in writing to the requesting party. Failure of the Records Access Officer or the Designated Department Head to acknowledge a FOIL request within five (5) business days of receipt or to provide the records on or before the date provided in the acknowledgment, shall be deemed a constructive denial of the FOIL request.
2. If the Records Access Officer or the Designated Department Head denies a FOIL request in whole or in part, the denial response shall advise the requesting party of their right to appeal and shall provide the FOIL Appeal Officer's name and contact information to where appeals may be received.
3. Any person denied access, as defined in section 6(1) of this Policy or pursuant to Article 6 of the New York State Public Officers Law, may appeal the decision within thirty (30) days of the denial date.
4. The Warren County Attorney is the designated FOIL Appeals Officer, with a principal office located at the Warren County Municipal Center, 1340 State Route 9, Lake George, New York 12845, and a contact phone number of (518) 761-6463.
5. All appeals shall be submitted to the FOIL Appeals Officer in writing by completing the electronic form on the County Attorney website or by mailing in a printed copy of the appeal letter. The appeal must specify the following to be considered:
 - a. The date and location of the requested records;
 - b. A description of the records that were denied; and
 - c. The name and return address of the person who requested the records and now seeks to appeal the denial of records.
6. The FOIL Appeal Officer shall determine the FOIL appeal, in writing, within ten (10) business days of receipt, with the day of receipt being on any business day between the hours of 8:30 o'clock in the forenoon and 4:00 o'clock in the afternoon, in person, by mail, or electronically, to be considered received on that day. Any appeal received outside of the designated hours will be considered received on the following business day.
7. The FOIL Appeal Officer's written determination shall be provided to:
 - a. The requesting party whose FOIL request was denied;
 - b. The Records Access Officer;
 - c. The Designated Department Head, if any;
 - d. The Clerk of the Board of Supervisors in care of the members of the Board; and
 - e. The New York State Committee on Open Government.
8. The FOIL Appeal Officer may treat any FOIL Appeal letter which includes a request for one or more records not requested by the original FOIL request as a newly-submitted FOIL request, instead of

a FOIL appeal. By doing so, the FOIL Appeal Officer shall respond to any requests appropriate for appeal and refer any new requested items to the Records Access Officer for further action under this Policy.

9. If a FOIL Appeal attempts to appeal a letter that does not constitute a denial, such as a letter which informed the requesting party that the FOIL request did not reasonably describe records sought or that the County does not maintain the records sought, then the FOIL Appeal Officer shall inform the requesting party that the FOIL Appeal is not deemed an appeal and that the matter was returned to the Records Access Officer for further assistance with the request.

SECTION 7: FEES.

1. The Records Access Officer, a Designated Department Head, or the FOIL Appeal Officer, is required to charge for the following:
 - a. Twenty-Five cents (\$.25) per page for photocopies that do not exceed 9 by 14 inches; and
 - b. For the actual cost to produce the document for disclosure.
2. In calculating the actual cost of production, the following must be considered when determining the fee for a FOIL request:
 - a. The hourly salary of the lowest paid employee who has the skill required to prepare a copy of the requested records, when producing the records will take more than two (2) hours of the employee's time;
 - b. The actual cost of the storage device or media provided to the requesting party; and
 - c. The actual cost to Warren County when an outside professional service must be hired or retained to prepare a copy of a record.
3. The Records Access Officer, a Designated Department Head, or FOIL Appeal Officer must notify the requesting party of the estimated cost of preparing a copy of the records and receive full payment prior to preparing a copy of the requested records. Such notification must include:
 - a. The reason for the imposed fee;
 - b. The title and salary of the employee performing the work if the work is anticipated to exceed two hours;
 - c. The total number of pages being printed to respond to the FOIL request;
 - d. The estimated total amount and date payment is due in order for work to proceed on the FOIL request;
 - e. The types of payment accepted by the County and the location where the payment must be delivered by the due date;
 - f. That failure to pay the total amount due within thirty (30) days of written notification will result in the County finding the FOIL request abandoned and closing the matter without further action. The requesting party is permitted to resubmit their FOIL request upon tendering payment and the resubmission shall be treated as a new FOIL request.

4. If while preparing the response to a FOIL request, the Records Access Officer, a Designated Department Head, or the FOIL Appeal Officer, determines the cost exceeds the initial estimate, written notification must be made to the requesting party that additional payment is required in order to continue with the preparation and release of the FOIL response and the requested records. The County shall make reimbursement when overpayment is made.
5. Other fees may be imposed upon a requesting party contrary to the above-referenced fees if authorized by state, federal, or local law.
6. The Records Access Officer, a Designated Department Head, or the FOIL Appeal Officer shall not waive a fee for photocopies or the actual cost of production.
7. All fees or charges imposed on the requesting party shall be paid directly with the Warren County Treasurer. The Records Access Officer, Designated Department Head, or FOIL Appeal Officer shall not receive or accept cash payment directly from a requesting party. Any county employee who receives or accepts a personal or cashier's check shall promptly deliver the check to the Warren County Treasurer and provide notice of payment to the Records Access Officer.
8. When payment is requested, the Records Access Officer, Designated Department Head, or FOIL Appeal Officer shall provide a copy of the FOIL request and amount due to the Warren County Treasurer upon notification to the requesting party.
9. The Records Access Officer, Designated Department Head, or FOIL Appeal Officer shall not produce responsive records until the required payment was received. If payment is tendered in a form other than cash, money order or a certified bank check, then payment shall not be deemed received until the payment the Warren County Treasurer receives confirmation that the tendered payment has cleared. For example, payment by personal check may require up to ten (10) business days before cleared by the County's financial institution.
10. The withholding of records until receipt of payment shall not be considered a denial of records.
11. The failure to pay all fees imposed under this policy within thirty (30) days of issuing written notice shall require the requesting party to submit a new FOIL request.

SECTION 8: REQUESTS FOR RECORDS FROM THE COUNTY COMPUTER NETWORK AND SERVER.

1. Records maintained on the Warren County computer network and server (hereafter, "server"), including but not limited to requests for electronic mail ("email") communications stored in the County's email archives, must be retrieved in accordance with the Warren County Computer Use Policy, resolution 144 of 2023, effective March 17, 2023, and any future amendments to the Computer Usage Policy.
2. Warren County maintains voluminous emails that are archived on the County server. The archived emails are indexed in such a manner that requires the Director, Information Technology to formulate and run Boolean searches for responsive records, followed by a separate manual review of potentially responsive emails to identify emails responsive to the FOIL request.

3. Persons requesting emails from the County's email archives shall provide the following information as part of the FOIL request in order for the request to reasonably describe the records sought and in order for the County to undertake reasonable efforts to identify the archived emails requested. The failure to provide the following information requested may result in the FOIL request being determined to not reasonable describe the records sought, or the assessment of fees to a FOIL request.
4. A FOIL request seeking email records shall, at a minimum, include in the FOIL request the following:
 - a. The name of the individual or email address which sent the email requested;
 - b. The name of the individual or email address which received the email requested;
 - c. The date and time the email was sent, or in the alternative, the narrow date range (i.e. less than seven (7) days) during which the email was sent. FOIL requests providing no date and time, or a date range greater than seven days may result in the FOIL request being determined to not reasonably describe the records sought, or the assessment of fees to the FOIL request; and
 - d. Specific keywords which clearly identify the subject matter requested and limit the retrieval of records unrelated to the FOIL request. The County Director of Information Technologies shall run a Boolean search using only the specific keywords provided by the FOIL request and shall not be required to interpret any FOIL request to create any other or additional Boolean search terms for use in searching for responsive records to any FOIL request.
5. The failure of a requesting party to provide each required item of information stated above may prohibit Warren County from being able to complete the FOIL request and constitute a failure by the requesting party to reasonably describe a record.
6. Requesting individuals should avoid using the following words or phrases as keyword search terms in FOIL requests for archived emails from the County's server. Each of the words and phrases below is ambiguous and prevents County personnel from conducting an electronic search for specific records which may be available and responsive to a FOIL request:
 - " "relating to;"
 - " "concerning"
 - " "approximately"
 - " "associated with;"
 - " "about"

FOIL requests using such terms may be deemed to constitute a failure by the requesting party to reasonably describe a record maintained by the County.

7. It is strongly encouraged that persons requesting County email records utilize the Email Request Form enclosed on the bottom of Attachment "A."

SECTION 9: MISCELLANEOUS.

1. All requests for records under this Policy by Warren County officials or employees which do not pertain to their scope of work with the County shall be treated as a FOIL request. The Records Access Officer, a Designated Department Head, or the FOIL Appeal Officer may not waive applicable fees for requests from Warren County officials or employees.
2. The Chair of the Warren County Board of Supervisors shall be deemed the Conflict Record Officer and Conflict Appeal Officer and shall decide any FOIL requests or FOIL appeals to which the Records Access Officer or FOIL Appeal Officer has a conflict.
3. Records shall be available for public inspection upon appointment only at the Office of the Warren County Administrator or Designated Department Head. Please contact the appropriate office to schedule an appointment date and time during business hours.
4. A copy of this policy shall be published on the Warren County website and shall be physically posted in the Warren County Municipal Center and the Human Services Building. Copies may be obtained, in person, from the Warren County Administrator's office during business hours.
5. With the exception of redactions specifically required by state or federal statute, it is in the discretion of the Records Access Officer to post, publish, or publicly make available any FOIL request and FOIL response submitted by any person which the Record Access Officer deems to be of public interest.

SECTION 10: SEVERABILITY.

1. If any provision of this Policy or the application thereof to any person is found to be invalid by a court of competent jurisdiction, such judgment shall not affect the validity of the other provisions of these regulations or the application thereof.

SECTION 11: EFFECTIVE DATE.

1. This policy shall take effect immediately upon adoption by the Warren County Board of Supervisors for all FOIL requests filed thereafter.

ATTACHMENT A
FREEDOM OF INFORMATION LAW ("FOIL") REQUEST FORM

Instructions:

1. Only existing County records and documents will be produced. The County does not create records or documents to respond to a FOIL request.
2. You must reasonably describe the record(s) you seek to inspect. Please refer to the County's subject matter index for assistance in writing your request. [Find the new FOIL link here;](#)
3. Failure to provide ALL information requested below may delay the County's response to your request, may hinder the County's ability to identify responsive records, and result in the County's response failing to produce all records you seek to obtain through this request.

REQUESTOR'S CONTACT INFORMATION:

Your Name (Print: First and Last): _____

Phone Number (Include area code): _____

Email Address: _____

Mailing Address: _____

DESCRIPTION OF REQUESTED RECORD(S):

Type of Record(s): _____

Date of Record: _____ (if not know, provide shortest time range possible)

Location of Record or Department Which Created Record: _____

Specific Description of Record Requested: _____

REQUESTED RESPONSE FORMAT (check all requested):

_____ Photocopies (8 x 11 paper) _____ Inspection only
_____ Other (Describe): _____

REQUEST FOR COUNTY ELECTRONIC MAIL ("EMAIL") RECORDS:

County email records are saved in an archive storage system which are searchable by keywords. The County does not generate or provide keywords for a FOIL request. If you are seeking archived emails, then you must provide the keywords which would be in the records you seek and the search results must provide a reasonable number of emails relevant to your request.

Requested email was sent to (name of recipient or email address): _____

Requested email was sent from (name of sender or email address): _____

Date of email, or Date Range: _____
(if date not known, please provide shortest time range possible)

Subject or Keywords for data search: (List key words that would be in the emails you seek)

ATTACHMENT B

CERTIFICATION

PUBLIC OFFICERS LAW § 89(3)(a)

I, _____, do hereby certify the following in accordance with Section 89(3)(a) of the Public Officers Law:

1. On _____, 20____, the undersigned received your Freedom of Information Law (“FOIL”) request, filed on _____, 20____.
2. On _____, 20____, a FOIL response was sent to you which stated that following a diligent search of records based upon your FOIL request, the County of Warren (could/could not) locate responsive records.
3. [if records provided, then add this paragraph] Therefore, the FOIL Response provided to you represents true and accurate copies of original records responsive to your request which are maintained by the County of Warren.

Dated: _____, 20____
Lake George, New York

By: _____
Name:
Title: RAO/Designated Department Head
Department:

ATTACHMENT C

NOTICE OF FOIL REQUEST: DISCIPLINARY RECORDS

Date: _____

To: _____

From: Warren County Administrator, *Records Access Officer*

RE: FOIL Request for Disciplinary Records

PLEASE TAKE NOTICE that a Freedom of Information Law (hereafter, "FOIL") request has been received by Warren County seeking copies of your disciplinary records. You are receiving this notice as a courtesy and in accordance with section 87(6) of the Public Officers Law, which requires the County to provide notification of a request for your disciplinary records.

The FOIL request received from _____, dated _____, and the County's response is enclosed for your information. Questions may be directed to the Records Access Officer (Warren County Administrator).

Encl. a/s