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PART 6. IMPLEMENTATION OF PROVISIONS OF THE PUBLIC OFFICERS LAW

SUBPART 6-1. PUBLIC ACCESS TO DEPARTMENT RECORDS

§ 6-1.1 Availability of records

(a) The public records of the Department of Public Service may be inspected, in accordance with the provisions of this Part, during regular business hours on Monday through Friday, exclusive of legal holidays, at the following offices of the Department of Public Service:

- (1) Three Empire State Plaza, Albany, NY;
- (2) 90 Church Street, New York, NY.

(b) When the requested records are to be transferred between offices or from the State record center, in use, or otherwise not available within five business days of receipt of a written request that reasonably describes the records, a written acknowledgment of the receipt of the request and a statement of the approximate date when the request will be granted or denied shall be furnished. When a request will be granted in whole or in part, if circumstances prevent disclosure to the person requesting the records within 20 business days after the date of the acknowledgement of the receipt of the request, a written explanation of the inability to grant the request within 20 business days shall be provided, together with a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. If access to the records is neither granted nor denied within a reasonable time after the date of acknowledgment of receipt of a request, or if the agency fails to conform to the provisions of §89 (3) of the *Public Officers Law*, such failure may be construed as a denial of access that may be appealed pursuant to the appeals procedure set forth in 21 NYCRR 1401.7.

(c) A request for public inspection or copying of a record may be made to the Records Access Officer, Department of Public Service, Three Empire State Plaza, Albany, NY 12223.

(d) Appeals pursuant to the procedure set forth in 21 NYCRR 1401.7 shall be heard by the secretary to the Public Service Commission, Three Empire State Plaza, Albany, NY 12223.

§ 6-1.2 Fees

Unless otherwise prescribed by statute, photocopies of official documents (public records) will be furnished in accordance with the following pricing schedule:

- (a) The fee for duplication of Commission records from originals 8 1/2" x 11" and 8 1/2" x 15" shall be 25 cents per page.
- (b) The fee for special reproductions such as photocopies of large items, copies of microfilmed records, etc., shall be based upon the average unit cost for copying a record, excluding fixed costs of the Department, such as operator salaries overhead.
- (c) The fee for original or reprinted publications, when available, shall be based on a schedule of fees to be maintained by the records access officers of the Department.

§ 6-1.3 Records containing trade secrets, confidential commercial information or critical infrastructure information

(a) Definition of a trade secret. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it.

(b) Manner of identifying trade secrets, confidential commercial information or critical infrastructure information.

(1) Any person submitting records, pursuant to law, regulation or directive, to the department and requesting trade secret status for information contained therein, and any person or entity submitting, or otherwise making available, records to the department and requesting critical infrastructure status for information contained therein, shall submit the records to the department records access officer and shall clearly identify the records or portions thereof considered to be confidential. This may be accomplished by separating and placing on or attaching to such information at the time of submission a cover sheet or other suitable form of notice, using such language as "critical infrastructure information," "confidential commercial information," "trade secret" or "proprietary". Where the request itself contains information which, if disclosed, would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

(2) A person submitting trade secret or confidential commercial information to the department shall clearly state the reason(s) why the information should be excepted from disclosure, as provided for in §87(2) (d) of the *Public Officers Law*. In all cases, the person must show the reasons why the information, if disclosed, would cause substantial injury to the competitive position of the subject commercial enterprise. Factors to be considered include, but are not necessarily limited to:

- (i) the extent to which the disclosure would cause unfair economic or competitive damage;
- (ii) the extent to which the information is known by others and can involve similar activities;
- (iii) the worth or value of the information to the person and the person's competitors;
- (iv) the degree of difficulty and cost of developing the information;
- (v) the ease or difficulty associated with obtaining or duplicating the information by others without the person's consent; and
- (vi) other statute(s) or regulations specifically excepting the information from disclosure.

(3) A person or entity submitting, or otherwise making available, critical infrastructure information to the department shall clearly state the reason(s) why the information should be excepted from disclosure, as provided in §87(2) of the *Public Officers Law*.

(4) A person desiring confidential status for a limited period of time shall indicate such time frame at the time the information is submitted to the department.

(5) Failure to identify trade secret information at the time of submission may make the information accessible to others without notice to the person who submitted such information unless a specific exemption from disclosure by other statutes or regulations pertain to the information.

(c) Responsibility for custody and maintenance of confidential records.

(1) The department records access officer shall insure compliance and coordinate public requests for access to records as set forth in section 6-1.1 of this Subpart.

(2) The records access officer shall be responsible for custody of such records but may delegate this responsibility to the office director most immediately and directly involved with the content of the record.

(3) The manner of designating the persons responsible for maintaining confidential information while in office custody shall be determined by each office director so as to adequately safeguard access to the information while at the same time providing the flexibility required for daily operations.

(4) All documents containing confidential information shall be returned by the office when its work is complete to the department records access officer for permanent custody. These documents will be maintained apart by the department from all other records and will not be divulged to unauthorized persons so long as they remain classified as confidential.

(5) Information submitted pursuant to subdivision (b) of this section shall be excepted from disclosure and maintained apart by the agency from all other records until 15 days after entitlement to confidential status has been finally denied or such further time as ordered by a court of competent jurisdiction.

(d) Safeguarding confidential records.

(1) Each office or employee having custody or possession of the confidential information shall take appropriate measures to safeguard such information and to protect against its disclosure.

(2) The use of simple and effective devices to identify and manage a confidential record repository shall be established so that security is maintained.

(e) Status of records prior to department determination.

(1) Until such time as the department makes a determination, confidential information submitted in accordance with subdivision (b) of this section shall be excepted from disclosure and be maintained apart and in a secure manner from other department records.

(2) Confidential status shall be granted to documents submitted in accordance with subdivision (b) of this section if a prima facie case for confidentiality is made and such status shall be continued until such time as the agency, on its own initiative, or at the request of any person for a record excepted from disclosure pursuant to *section 89 of the Public Officers Law*, finally determines the confidential status of the document.

(3) The initial determination with respect to the confidential status of a document shall be made by the records access officer and the office director charged with custody of the document on the basis of the written material submitted with the information, as well as any written statement of the necessity for an exception from disclosure submitted pursuant to *§89(5)(b)(2) of the Public Officers Law*.

(f) Requests for access to department records granted confidential status or where determination pending.

(1) A request for access to department records granted confidential status, or where such a determination is pending, may be made by any person and shall be in writing. The department may at any time on its own initiative redetermine the classification of records granted confidential status.

(2) The department shall give written notice to the person who originally submitted the confidential records that the record has been requested and that a determination will be made regarding access. The original requester of confidential status shall have 10 business days from receipt of the written notice to submit a statement to justify an exception from public disclosure.

(3) Within seven business days of the receipt of a statement of justification from the person who originally submitted the record, or within seven business days of the expiration of the period prescribed for submission of the statement, the department shall serve a written reply upon the person requesting access to the record, which either grants or denies access to the record. The department reply shall state the reasons for the determination. The reply shall also be served upon the person who originally submitted the information, and the Committee on Open Government. Information copies are to be filed with the department records access officer and the office director having custody of such records, if not in the custody of the records access officer.

(g) Appeal of negative determinations.

(1) A determination that the submitted material does not merit confidential status made under subdivision (e) or (f) of this section or the grant or denial of access to the records made under subdivision (f) of this section may be appealed in writing within seven business days of receipt or 12 days of mailing of such determination. The appeal is taken when it is received by the secretary of the commission who shall hear appeals from such negative determinations. The secretary may consult with the counsel to the commission and the chief administrative law judge or their designees in reaching a determination. In addition, a copy of the appeal shall be served upon the opposing party and filed with the department records access officer.

(2) The secretary shall review the appeal and a written final determination shall be sent to the person requesting the record, if any, and the person who requested the exception within 10 business days after receipt of the appeal which specifically states the reason or reasons for such final determination. A copy of the final determination shall also be sent to the Committee on Open Government and shall be filed with the department records access officer.

§ 6-1.4 Special rules applicable when a presiding officer is assigned

(a) Manner of identifying trade secrets, confidential commercial information or critical infrastructure information.

(1) Whenever a party seeks disclosure of information in an administrative proceeding, the party in possession of such information may request that it be granted confidential status. A party requesting confidential status shall submit the record containing such information to the presiding officer and shall clearly identify the portions of the record considered to be confidential.

(2) The party submitting confidential information to the presiding officer shall also submit a comprehensive brief specifying in detail the reasons why such information should be accorded confidential status as provided for in section 6-1.3 (b)(2) of this Subpart.

(3) Information submitted pursuant to this section shall be excepted from disclosure and maintained apart by the agency from all other records until 15 days after entitlement to confidential status has been finally denied or such further time as ordered by a court of competent jurisdiction.

(b) Initial determination of confidential status.

(1) After reviewing the information submitted under subdivision (a) of this section, the presiding officer shall make an initial determination of its relevance to issues in the proceeding. If such information is determined to be relevant, the presiding officer shall, within seven business days, issue a written determination granting or denying confidential status to the information or any portions thereof. The presiding officer may in any proceeding require that the information for which confidential status has been requested be submitted immediately under a protective order so that all parties may have access to the information without delay.

(2) After a determination that the information submitted is not relevant, the presiding officer shall return the information to the party who submitted it.

(3) In reaching a determination as to the status of the information, the presiding officer shall consider the information for which confidential status is sought, the material submitted by the party pursuant to paragraph (a)(3) of this section, and any other responsive documents, material or testimony deemed necessary or proper in keeping with the claims of confidentiality.

(c) Safeguarding confidential records in administrative hearings. The presiding officer shall take appropriate measures to preserve the confidentiality of trade secrets, confidential commercial information or critical infrastructure information. Measures to be considered include, but are not necessarily limited to:

- (1) limiting access to the material;
- (2) deleting sensitive material that is not relevant to issues in the hearing;
- (3) aggregating or summarizing data in a manner that preserves the confidentiality of confidential information; and
- (4) restricting attendance during portions of a hearing at which confidential proof is to be introduced.

(d) Appeal from a determination by the presiding officer.

(1) A determination that the submitted information does not merit confidential status under subdivision (a) of this section or a determination granting or denying access to the material, including determinations with respect to the measures that will be taken to preserve the confidentiality of the information, made under subdivisions (b) and (c) of this section, may be appealed in writing within seven business days of receipt of such determination. The secretary of the commission shall hear appeals from such negative determinations. The secretary may consult with the counsel to the commission and the chief administrative law judge or their designees in reaching a determination.

(2) The secretary shall review the appeal and a written final determination shall be sent to the person requesting the record, if any, and the person who requested the exception within 10 business days after receipt of the appeal which specifically states the reason or reasons for such final determination. A copy of the final determination shall also be sent to the Committee on Open Government and shall be filed with the department records access officer.

§ 6-2.1 Purpose and scope

(a) It is the responsibility and the intent of the Department to fully comply with the provisions of Article 6-A of the Public Officers Law, the "Personal Privacy Protection Law."

(b) The Department shall maintain in its records only such personal information that is relevant and necessary to accomplish a purpose of the agency that is required to be accomplished by statute or executive order, or to implement a program specifically authorized by law.

(c) Personal information will be collected, whenever practicable, directly from the person to whom the information pertains.

(d) The Department seeks to ensure that all records pertaining to or used with respect to individuals are accurate, relevant, timely, and complete.

(e) These regulations provide information regarding the procedures by which members of the public may assert rights granted by the Personal Privacy Protection Law.

§ 6-2.2 Definitions

(a) Data subject. The term data subject means any natural person about whom personal information has been collected by an agency.

(b) Personal information. The term personal information means any information concerning a data subject which, because of name, number, symbol, mark or other identifier, can be used to identify that data subject.

(c) Record. The term record means any item, collection, or grouping of personal information about a data subject which is maintained and is retrievable by use of the name or other identifier of the data subject. The term record shall not include personal information which is not used to make any determination about the data subject if it is:

(1) a telephone book or directory which is used exclusively for telephone and directory information;

(2) any card catalog, book, or other resource material in any library;

(3) any compilation of information containing names and addresses only which is used exclusively for the purpose of mailing agency information;

(4) personal information required by law to be maintained, and required by law to be used, only for statistical research or reporting purposes;

(5) information requested by the agency which is necessary for the agency to answer unsolicited requests by the data subject for information; or

(6) correspondence files.

(d) System of records. The term system of records means any group of records under the actual or constructive control of any agency pertaining to one or more data subjects from which personal information is retrievable by use of the name or other identifier of a data subject.

§ 6-2.3 Designation and duties of privacy compliance officer

(a) The Department's records access officer is hereby designated privacy compliance officer and is responsible for ensuring that the agency complies with the provisions of the Personal Privacy Protection Law and these regulations; and for coordinating and developing the Department's response to requests for records or amendment of records.

(b) The address of the privacy compliance officer is: NYS Department of Public Service Office of General Counsel Three Empire State Plaza Albany, NY 12223

(c) The privacy compliance officer is responsible for:

(1) assisting a data subject in identifying and requesting personal information, if necessary;

(2) describing the contents of systems of records orally or in writing in order to enable a data subject to learn if a system of records includes a record or personal information identifiable to a data subject requesting such record or personal information;

(3) taking one of the following actions upon locating the record sought:

(i) making the record available for inspection in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(ii) permitting the data subject to copy the record; or

(iii) denying access to the record in whole or in part and explaining in writing the reasons therefor;

(4) making a copy of any record to be made available to a data subject, upon request, upon payment of or offer to pay established fees (see section 6-1.2 of this Part), or permitting the data subject to copy the records;

(5) upon request, certifying that:

(i) a copy of a record is a true copy; or

(ii) the Department does not have possession of the record sought; or

(iii) the Department cannot locate the record sought; or after having made a diligent search; or

(iv) the information sought cannot be retrieved by use of the description thereof, or by use of the name of other identifier of the data subject without extraordinary search methods being employed by the Department.

§ 6-2.4 Proof of identity

(a) When a request is made pursuant to this Part in person, or when records are made available in person following a request made by mail, the Department may require appropriate identification, such as a driver's license, an identifier assigned to the data subject by the Department, a photograph or similar information that confirms that the records sought pertain to the data subject.

(b) When a request is made pursuant to this Part, by mail, the Department may require verification of a signature of inclusion of an identifier generally known only by a data subject, or similar appropriate identification.

§ 6-2.5 Fees

(a) Unless otherwise prescribed by statute, there shall be no fee charged for:

(1) inspection of records;

(2) search for records; or

(3) any certification pursuant to this part.

(b) Unless otherwise prescribed by statute, photocopies of records will be furnished in accordance with the pricing schedule set forth in section 6-1.2 of this Part.

§ 6-2.6 Public inspection of records

(a) Records shall be made available at the main office of the Department, which is located at: NYS Department of Public Service Three Empire State Plaza Albany, NY 12223

(b) whenever practicable, records shall be made available at the New York City Office of the Department located at: NYS Department of Public Service 90 Church Street New York, NY

(c) The Department shall accept requests for records and produce records during regular business hours, which are 8:30 a.m. to 4:45 p.m.

§ 6-2.7 Requests for records and information

All requests made pursuant to this Part shall be made in writing and must be accompanied by a reasonable proof of identity.

§ 6-2.8 Amendment of records

Within 30 days of a request from a data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, the Department shall:

(a) make the amendment or correction in whole or in part and inform the data subject that on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraphs (d), (i) or (1) of subdivision one of *section 96 of the Public Officers Law*;

(b) inform the data subject in writing of its refusal to correct or amend the record, including the reasons therefor.

§ 6-2.9 Denial of request for a record or amendment or correction of a record or personal information

(a) Denial of a request for records or amendment or correction of a record or personal information shall:

(1) be in writing, explaining the reasons therefor; and

(2) identify the person to whom an appeal may be directed.

(b) A failure to grant or deny access to records within five business days of the receipt of a request or within 30 days of an acknowledgment of the receipt of a request, or a failure to respond to a request for amendment or correction of a record within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.

§ 6-2.10 Appeal

(a) Any person denied access to a record or denied a request to amend or correct a record or personal information pursuant to section 6-2.9 of this Subpart may, within 30 days of such denial, appeal to the secretary of the Public Service Commission, whose address is: Department of Public Service Three Empire State Plaza Albany, NY 12223

(b) the time for deciding an appeal shall commence upon receipt of an appeal that identifies:

(1) the date and location of a request for a record or amendment or correction of a record or personal information;

(2) the record that is the subject of the appeal; and

(3) the name and return address of the appellant.

(c) Within seven business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction or amendment, the person determining such appeals shall:

(1) provide access to or correct or amend the record or personal information; or

(2) fully explain in writing the factual and statutory reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to Article 78 of the Civil Practice Law and Rules.

(d) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, the correction or amendment will be provided to any person or governmental unit to which the record or personal

information has been or is disclosed pursuant to paragraph (d), (i), or (1) of subdivision one of *section 96 of the Public Officers Law*.

(e) The Department shall immediately forward to the Committee on open government a copy of any appeal made pursuant to this section upon receipt, the determination thereof and the reasons therefor at the time of such determination.

§ 6-2.11 Statement of disagreement by data subject

(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:

(1) file with the Department a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination;

(2) request that such a statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (d), (i), or (1) of subdivision (1) of *section 96 of the Public Officers Law*.

(b) Upon receipt of a statement of disagreement by a data subject, the Department shall:

(1) clearly note any portions of the record that are disputed; and

(2) attach the data subject's statement as part of the record.

(c) When providing a data subject's statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i), or (1) of subdivision one of *section 96 of the Public Officers Law*, the Department may also include a concise statement of its reasons for not making the requested amendment or correction.