

V. PROPOSED COMMISSION FREEDOM OF INFORMATION LAW REGULATIONS

SUMMARY OF PROPOSED RULE

The proposed rulemaking satisfies the Commission's statutory obligation, pursuant to Public Officers Law section 87(1)(b), to promulgate regulations pertaining to the availability of records and procedures to be followed, including, but not limited to how the public can request records and the location and hours in which records can be reviewed. Additionally, the proposed rulemaking explains that the Commission will designate a records access officer, the process for such to respond to requests for records, as well as the process for appealing the denial of access to records, and any applicable fee associated with producing records requested.

Additionally, in response to public comment received three additional non-substantive amendments are included in this Notice of Adoption. These additions include:

- A clause regarding the Commission adding additional documents to its website;
- The NYC office as a place of records inspection; and
- A clause that FOIL requests will be fulfilled in the medium requested and if records cannot be released in the medium requested, the Records Access Officer will assist the requestor with identifying a reasonable alternative for access to such records.

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TIMELINE

Current Part 937 was repealed and replaced with new part 937 titled Publicly Available Information and Documents and Records Access Requests. This proposed rulemaking sets forth the Commission's procedures for requesting records and the availability of other information which became effective on an emergency basis on March 28, 2023 and was published as a Notice of Emergency Adoption and Proposed Rulemaking in the State Register on April 12, 2023 with the public comment period ending June, 11, 2023. A subsequent Notice of Emergency Adoption was submitted to the State Register on June 22, 2023 to become effective immediately and until August 20, 2023. This Notice of Adoption will be submitted to the Department of State by July 25, 2023 to be published in the State Register and permanently adopted on August 9, 2023.

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PROPOSED RULE FOR NOTICE OF ADOPTION

Pursuant to the authority vested in the Commission on Ethics and Lobbying in Government by Executive Law § 94 and article six of the Public Officers Law, Part 937 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and replaced, to be effective upon filing as an Emergency Adoption and upon publication of a Notice of Adoption in the New York State Register to read as follows:

Part 937 is repealed and replaced to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF
NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT

PART 937.

PUBLICLY AVAILABLE INFORMATION AND DOCUMENTS AND RECORDS ACCESS
REQUESTS.

Section 937.1 Purpose and Scope

Section 937.2 Information and Documents Publicly Available

Section 947.3 Records Access

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Section 937.4 Designation of Records Access Officer

Section 937.5 Location and Hours for Public Inspection of Records

Section 937.6 Requests for Public Access to Records

Section 937.7 Subject Matter List

Section 937.8 Denial of Access to Records

Section 937.9 Fees

Section 937.10 Public Notice

Section 937.11 Severability

Section 937.1 Purpose and Scope

This Part contains information concerning the information, documents and records that are made publicly available by the Commission on Ethics and Lobbying in Government (the “Commission”) and sets forth the procedures by which such records and information may be obtained from the Commission pursuant to Executive Law §94 and article six of Public Officers Law, known as the Freedom of Information Law.

937.2 Information and Documents Publicly Available

(a) Pursuant to Executive Law section 94(13)(b), the following documents of the Commission are available on the Commission’s website:

- (1) The information set forth in annual statements of financial disclosure filed by

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statewide elected officials and members of the State legislature pursuant to Public Officers Law §73-a, except information that has been deleted pursuant to Executive Law § 94(9)(h);

(2) Notices of Delinquency issued pursuant to Executive Law § 94(9);

(3) Notices of Civil Assessments imposed pursuant to Executive Law § 94, which include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the Commission, and any sanction imposed;

(4) The terms of any Settlement Agreement or compromise of a complaint or referral that includes a fine, penalty, or other remedy;

(5) Those documents required to be held or maintained publicly available pursuant to article one-A of the Legislative Law; and

(6) Non-confidential reports issued by the Commission pursuant to Executive Law § 94.

(b) In addition to the documents enumerated in subdivision (a) of this section, the Commission, at its discretion, may make additional documents available on the Commission's website.

(bc) In addition to the documents available pursuant to subdivision (a) of this section, the following additional information related to annual statements of financial disclosure is available upon request:

(1) With respect to a particular annual statement of financial disclosure:

(i) The date of submission;

(ii) Whether deletions have been made to the filing pursuant to Executive Law § 94(9)(h);

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(a) This will not include information that is routinely redacted from all annual statements of financial disclosure by the Commission as a matter of course such as addresses of primary residence, names of minor children, email addresses, and account numbers.

(iii) If a particular filing is unavailable, the status of that filing, *i.e.*, whether it is pending, overdue, or unavailable for some other reason such as an extension of time to file, an exemption from filing, or a pending application for deletion or exemption pursuant to Executive Law § 94(9).

(2) With respect to a particular individual, whether such individual is required to file an annual statement of financial disclosure, including:

(i) Whether the individual has been designated a Policy Maker or meets the filing rate pursuant to Public Officers Law § 73-a.

(a) This shall include the date that the reporting individual's appointing authority amended the written instrument required under Public Officers Law § 73-a(1)(c)(ii) to include the individual as a required filer.

(ii) Whether such individual has sought or received an exemption from filing pursuant to Executive Law § 94(9)(k).

NB: responses to subparagraphs (i) and (ii) of paragraph (2) may vary depending on the filing year in question.

(3) For a specific state agency (as defined by subsection 1(b) of Public Officers Law § 73-a), a list of individuals who are required to submit an annual statement of financial disclosure and whether each individual has been designated as a Policy Maker by their appointing authority.

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(4) A list of job titles and employment classifications that have been exempted from the requirement to file an annual statement of financial disclosure pursuant to Executive Law § 94(9)(k).

(~~ed~~) In addition to the documents enumerated in subdivision (a) of this section, the Commission shall make available, pursuant to a request for information and/or request for records in accordance with this Part, the name, public office address, title and salary of all Commission staff.

(~~de~~) Requests for information, documents and/or records pursuant to this section shall be recorded in a Record Access Request Log, which shall include the date of the request, the identity of the individual or entity that made such request, the identity of the Commission staff recording the request, and identify the record or records requested and provided. The Record Access Request Log shall be made available upon a request for information and/or access to records in accordance with this Part.

Section 937.3 Records Access

(a) In addition to documents and information referenced in section 937.2 of this Part, other records, as defined in Public Officers Law § 86(4), may be made available for public inspection pursuant to article six of the Public Officers Law, subject to the exemptions and exceptions therein.

(b) Pursuant to Public Officers Law § 87(2), records and/or information made confidential or otherwise exempted or excepted from disclosure pursuant to Executive Law §§ 94(6)(d), (7)(b), 94(9)(f), 94(9)(g), 94(9)(j), 94(10)(m) and 94(11)(b) shall not be available for public inspection.

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Section 937.4 Designation of Records Access Officer

- (a) The Commission shall designate an individual to be the Commission's records access officer.
- (b) The records access officer shall within five business days of receipt of a request:
- (1) approve the request and authorize inspection and copying of the record and certification of correctness of such copy; or
 - (2) deny the request and state the reason therefor; or
 - (3) if requested records are maintained on the internet, inform the requester that the records are accessible via the internet and in printed form either on paper or other information storage medium; or
 - (4) if the request does not clearly identify the records sought, seek additional information from the requester; or
 - (5) acknowledge receipt of the request and provide a statement of the approximate date when the request will be granted or denied in whole or in part.
- (c) If receipt of the request was acknowledged by the records access officer in writing with a stated date by which the request would be granted or denied in whole or in part, but circumstances prevent the records access officer from doing so on or before the stated date, the records access officer shall, on or before such stated date, provide a written statement specifying the reason for the delay and provide a further date, within a reasonable period under the circumstances of the request, by which the request will be granted or denied in whole or in part.
- (d) The records access officer shall, in authorizing issuance of copies of records, direct such omissions or redactions as may be required to protect the personal privacy of individuals in

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accordance with the requirements of the Freedom of Information Law, or any other applicable law, or regulation, including the provisions of section 94 of the Executive Law and of this Part.

Section 937.5 Location and Hours for Public Inspection of Records

(a) Records shall be available for public inspection and copying on days that the Commission is regularly open for business between the hours of 9:00 am and 4:00 pm at at:

The Commission on Ethics and Lobbying in Government
540 Broadway
Albany, NY 12207

~~(b) Requests for public access to records shall be accepted and records produced at the location specified in this section on days that the Commission is regularly open for business between the hours of 9:00 am and 4:00 pm.~~

(b) Records shall be available for public inspection and copying by appointment at:

The Commission on Ethics and Lobbying in Government
25 Beaver Street, 5th Floor
New York, NY 10004

(c) Requesters reviewing records onsite shall create a list, for the Commission to retain, of any records the requester copies, including photographs taken on a personal device.

Section 937.6 Requests for Public Access to Records

(a) A requester shall submit a request for records by completing the Records Request Form on the Commission's website or by other writing. A request shall reasonably describe the

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information or record sought and the medium in which the requestor would like to receive such records. Oral requests for records will not be accepted.

(b) If records cannot be released in the medium requested, the Records Access Officer will assist the requestor with identifying a reasonable alternative for access to such records.

Section 937.7 Subject Matter List

The Commission shall develop a record finding list in conformity with the requirements of the Freedom of Information Law.

Section 937.8 Denial of Access to Records

(a) A denial of access to records shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the Executive Director of the Commission or their designee.

(1) The Executive Director or their designee shall determine appeals regarding denial of access to records under the Freedom of Information Law. The request for an appeal shall be sent to:

The Commission on Ethics in Lobbying in Government

540 Broadway

Albany, NY 12207

(2) Any person denied access to records may appeal, in writing, within thirty days of a denial.

(3) The written appeal shall include:

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- (i) the date of request for records;
 - (ii) a description, to the extent possible, of the records that were denied; and
 - (iii) the name and return address of the person denied access.
- (4) The time for deciding an appeal shall commence upon receipt of a written appeal.
- (5) Copies of all appeals shall be transmitted to the Committee on Open Government upon receipt.
- (6) The appellant and the Committee on Open Government shall be informed in writing of the determination of the appeal within ten business days of receipt of such appeal.

Section 937.9 Fees

- (a) No photocopy charge will be made for the first five pages not larger than 9 inches by 14 inches. No charge will be made to certify a record or to certify a denial of a request for a record and the reason therefor.
- (b) A charge will be made of 25 cents per page of photocopy of pages not larger than 9 inches by 14 inches apart from the aforementioned five pages furnished without charge.
- (c) Charges for materials or services not specified by statute or regulation shall be based on the actual cost thereof to the department.
- (d) Payment for information services should be made by check or money order payable to “New York State Commission on Ethics and Lobbying in Government.”
- (e) Where it is anticipated that the fees chargeable for records on a single request will amount to more than \$25 and the requester has not indicated in advance their willingness to pay fees in such amount, the requester shall be notified of the amount of the anticipated fee or such portion

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thereof as can readily be estimated. Such notice shall offer to the requester an opportunity to confer with Commission personnel in order to revise the request if they so desire.

(f) The Commission may require that the fee for copying or reproducing a record be paid in advance of the preparation of such copy.

(g) Upon affirmation of financial hardship, the Commission may waive an otherwise imposed fee in whole or in part when making copies of records available.

Section 937.10 Public Notice

The Commission's website shall contain the contact information for the records access officer, the procedure for appeal of a records request, and the location where records can be viewed.

Section 937.11 Severability

If any provision of these regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.