

Subject: Emailing: The Committee on Open Government.htm
Date: Thursday, March 5, 2015 at 9:50:53 AM Eastern Standard Time
From: Freeman, Robert J (DOS)
To: Gideon Orion Oliver (Gideon@GideonLaw.com)

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Committee on Open Government

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FOIL-AO-17965

January 21, 2010

E-Mail

TO:

FROM: Camille S. Jobin-Davis

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence.

Dear

We are in receipt of your request for an advisory opinion regarding application of the Freedom of Information Law to records requested from the City of New Rochelle. Specifically, you indicated that the City now requires you to submit written requests for records on a prescribed form and will not respond to requests for records submitted via email. Further, you wrote that the City charges a per page photocopy fee for electronic records transmitted via email. In this regard, we offer the following comments.

First, as you know, in August of 2006, the Legislature amended §89(3) of the Freedom of Information Law to require agencies to receive and respond to requests for records via email, as follows:

"b) 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..."

Accordingly, it is our opinion, that if an agency such as the City of New Rochelle has the ability to receive and respond to requests via email, it is required do so.

Second, although an agency may, pursuant to §89(3)(a) of the Freedom of Information Law,

require that a request be made in writing, we do not believe that an agency can require that a request be made on a prescribed form. As required by §89(3)(b) of the Freedom of Information Law, the Committee on Open Government has created model forms that may be used by the public when requesting records via email and by agencies for use in responding to those requests. Those forms, however, are merely recommended models or templates, and agencies may choose to adopt the form recommended by the Committee, alter it, or create its own form. Notwithstanding that guidance, there is nothing in the Freedom of Information Law that requires that a person seeking records must use an agency's prescribed form. That being so, although use of the City of New Rochelle's form may be of benefit to a person seeking City records, we do not believe that the City may require use of the City's form, either in paper or via email.

We have also advised that a failure to complete a form prescribed by an agency cannot serve to delay a response or deny a request for records. A delay due to a failure to use a prescribed form might result in an inconsistency with the time limitations imposed by the Freedom of Information Law. For example, assume that an individual requests a record in writing from an agency and that the agency responds by directing that a standard form must be submitted. By the time the individual submits the form, and the agency processes and responds to the request, it is probable that more than five business days would have elapsed, particularly if a form is sent by mail and returned to the agency by mail. Therefore, to the extent that an agency's response granting, denying or acknowledging the receipt of a request is given more than five business days following the initial receipt of the written request, the agency, in our opinion, would have failed to comply with the provisions of the Freedom of Information Law.

In sum, it is our opinion that the use of standard forms is inappropriate to the extent that it unnecessarily serves to delay a response to or deny a request for records.

With respect to the fees that an agency may charge for electronic records sent via email, we know of no basis in the law on which an agency could rely on to charge for such records. Section 87(1)(b)(iii) authorizes an agency to charge up to twenty-five cents for a photocopy as large as nine by fourteen inches, or in the case of other records, the actual cost of reproduction. When records are emailed, no photocopies are made, and therefore, in our opinion, the agency would have no basis to charge a photocopy fee.

On behalf of the Committee on Open Government, we hope that this is helpful.

CSJ:jm

cc: Rita Colangelo, Acting City Clerk
Charles Strome III, City Manager
Captain Kevin Kealy

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