



LEILANI CRAFTS ULRICH
Chairwoman

TERRY MARTINO
Executive Director

MEMORANDUM

TO: James Townsend, Counsel
FROM: Paul Van Cott, Associate Attorney
DATE: February 3, 2016
RE: Draft FOIL rule

Please find attached a revised, proposed 9 NYCRR § 587.1 implementing the Freedom of Information Law (FOIL) based on input received through informal outreach over the past several months. Staff seek Agency direction to commence formal rulemaking to promulgate the attached as a *consensus rule* pursuant to Section 202 of the State Administrative Procedure Act. A proposed resolution is attached for Agency consideration.

Staff initiated outreach to key stakeholders on the draft rule after the October, 2015 Agency meeting. Local government officials were satisfied with the FOIL rule as drafted by staff. On December 18, 2015, staff received a joint letter from the Adirondack Council, Adirondack Mountain Club, Adirondack Wild and Protect the Adirondacks! providing proposed revisions to staff's October 2015 draft FOIL rule. Those revisions are shown in red in the attached. Staff found the revisions to be acceptable, with three additional minor modifications that are highlighted in the attached.

Staff have shared the revised draft rule with the environmental groups and with local government representatives, and have received no objections to the revised rule as of this date.

PVC:mp

Section 587.1 is repealed and a new section 587.1 is adopted to read as follows:

587.1 Access to agency Records:

(a) *Purpose.* The agency shall provide access to records as required by, and in conformance with ~~the requirements and procedures set forth in~~ article 6 of the Public Officers Law, entitled "Freedom of Information Law," and its implementing regulations in 21 NYCRR Part 1401. This section provides ~~the regulations specific to of the agency's responsibilities under the Freedom of Information Law~~ required by 21 NYCRR section 1401.1.

Comment [PVC1]: We are okay with the added language but suggest deleting this portion of the sentence as redundant and unnecessary given the additions.

(b) *Records access officer.* One or more designated project administrators shall be the agency's records access officer(s). The business address of the records access officer(s) is at the Adirondack Park Agency, PO Box 99, Ray Brook, NY 12977. The email address of the records access officer is FOIL@apa.ny.gov. The record access officer(s) shall ~~coordinate the agency's response to requests for access to records have the responsibilities set forth in 21 NYCRR section 1401.2.~~ If at any time no project administrator has been designated as the agency's records access officer, then the agency's counsel shall be the records access officer.

(c) ~~Requests for access to records~~ ~~Availability of records~~. Records may be requested ~~electronically at~~ by email or by a writing mailed or otherwise delivered to the business address of the records access officer. Oral requests may be accepted at the discretion of the records access officer. Records may be available to a requestor via the internet FOIL@apa.ny.gov or shall be available for public inspection and copying at the Adirondack Park Agency, 1133 NYS Route 86, Ray Brook, New York 12977.

Comment [PVC2]: Additional change for clarity.

(d) *Hours for public inspection.* Requests for public access to records shall be accepted

and records produced during all hours that the agency is regularly open for business.

Except on State holidays, or during weather or other emergencies, these hours are 8:30

a.m. to 5:00 p.m., Monday through Friday. Responses to requests shall be made in conformance with 21 NYCRR section 1401.5.

(e) Requests for exceptions from disclosure of records ~~Trade Secrets~~. A person submitting records to the agency may identify information therein for which an exception from disclosure is requested by specifying the specific provision of the Freedom of Information Law under which exception is authorized and the facts, in reasonable detail, supporting the request. The records access officer(s) shall identify the person(s) within the agency who shall have custody and/or access to such information and the manner of safeguarding against unauthorized access to such information until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction. The determination of any entitlement to any requested exception shall be made by the agency no later than the last date specified in 21 NYCRR Section 1401.5 for response to a request for the record.

(f) Appeal of denial of access to records. Any person denied access to records, or denied a requested exception from disclosure of records, in whole or in part, may appeal in writing to the agency's counsel unless the agency counsel was the records access officer making the denial in which case the appeal shall be made to the agency's executive director. The business address of the agency's counsel is P.O. Box 99, Ray Brook, New York 12977. The rules applicable to an appeal shall be those set forth in 21 NYCRR Section 1401.7.

Comment [PVC3]: Better transition from access requests to requests for exception.

WHEREAS, the Adirondack Park Agency (“Agency”) is authorized to adopt, amend and repeal rules and regulations pursuant to Executive Law § 804(9) and Environmental Conservation Law §§ 15-2709 and 24-0801; and

WHEREAS, pursuant to Public Officers Law § 87, the Agency is authorized to adopt rules for its implementation of the Freedom of Information Law (“FOIL”) that conform to statewide rules promulgated by the Committee on Open Government; and

WHEREAS, any rule making undertaken by the Agency must be done in accordance with the State Administrative Procedure Act (“SAPA”); and

WHEREAS, pursuant to SAPA § 202(a), prior to the adoption of a rule the Agency is required to submit a notice of proposed rule making to the Secretary of State for publication in the State Register and to afford the public an opportunity to comment on the proposed rule; and

WHEREAS, the Agency seeks to undertake a rule making for a *consensus rule*, as defined in SAPA § 102(11), that will repeal and replace 9 NYCRR § 587.1 of the Agency’s rules implementing FOIL; and

WHEREAS, pursuant to SAPA § 201-a(2)(a), the proposed *consensus rule* will not have any measureable impact on jobs and employment opportunities because it does not place any new or increased regulatory burden on any person; and

WHEREAS, SAPA § 202(1)(b)(i) authorizes the Agency to dispense with several of the procedural requirements for rule making imposed by SAPA for a *consensus rule* and to adopt it pursuant to SAPA § 202(5) after the expiration of the public comment period so long as there have been no objections to the proposed rule.

NOW, THEREFORE, BE IT RESOLVED that:

I. Pursuant to SAPA § 202(a), Agency staff shall submit a notice of proposed rule making for the *consensus rule* to the Secretary of State for publication in the State Register and afford the public a 45-day period to submit comments on the proposed rule.

II. If no objections to the adoption of the *consensus rule* are received during the public comment period, Agency staff shall file the *consensus rule* with the Secretary of State and submit a notice of adoption to the Secretary of State for publication in the State Register pursuant to SAPA § 202(5). In addition, Agency staff shall provide copies of the proposed *consensus rule* package to designated parties in accordance with SAPA §§ 201-a and 202(6-a).

Resolved and adopted by the Agency on this 12th day of February, 2016.