



WHAT?

What is Open Government?

What do the words “open government” mean to you? As a student, you may think this concept doesn’t affect your life, but open government is as fundamental to our democracy as free speech.

If government records were not open to all, there would be no accountability and there would be no journalism (or at least, it would look quite different from what it does today). In essence, there would be no democracy, as democracy was founded on the principles of openness and freedom of information.

Imagine what it would be like if reporters were unable to report on the actions of government officials or could not access records about government meetings. A lack of accountability might mean that those who hold positions of power would be more likely to abuse it. When government is open every person has the power to hold those in power accountable for following through on their promises and serving the people.

Newspaper Activity:

Select an article about local government in your newspaper (print or electronic) and cross out any information you think would not be printed without openness and freedom of information. How could this lack of information or not having this information affect you, your family and your community?

Student Assessment:

Write what the words “open government” mean to you.



WHY?

Why is Open Government Important?

Did you ever wonder what goes on at your school board meetings? Want to know whether a shopping mall could be built on the vacant lot next door to your house? Wonder if your local water is safe to drink? You can find out.

New York's Freedom of Information Law and Open Meetings Law ensure that government decisions and records are available to you.

You have a right to know what your government is doing in your neighborhood, school, city, town, county and state.

With recent developments in communication technologies some of the information you'd like to know may be easy to find on government agency websites. If not, a request for the information, in almost all cases, can now be made via email.

A free and democratic society can work only if government works in the open. Access is what ensures that government officials will remain honest. It keeps us aware of how our taxes are spent and helps citizens decide whom to vote into office and whom to replace. It provides a check on government officials by providing voters with the information they need to evaluate public policies.

Newspaper Activity:

Look through the newspaper for news about a local problem involving your government. Is there more information you would like to know about this topic? Which public office or agency could you go to find this information? Is there a meeting scheduled to address this issue? Check the agency's website. If you still cannot find out what you want to know, consider filing a FOIL request.

Student Assessment:

Complete this statement:
I was surprised to learn...



KNOW

Getting to Know the Terms

Match these words and phrases with the appropriate definitions below:

1. Freedom of Information Act
2. Freedom of the Press
3. Inalienable Right
4. Democracy
5. Committee on Open Government
6. Transparency
7. Exemption
8. Record
9. Executive Session
10. Open Meeting

A. A right according to natural law, a right that cannot be taken away, denied or transferred

B. A form of government in which the supreme power is vested in the people and either exercised directly by them or through freely elected representatives

C. The right to publish newspapers, magazines and other printed matter without prior governmental restriction

D. Not subject to or release from an obligation or duty

E. The full, accurate and timely disclosure of information

F. Responsible for overseeing and advising with regard to the Freedom of Information Law, the Open Meetings Law and the Personal Privacy Protection Law in New York state.

G. A federal law enacted in 1966 requiring that government records, except those relating to national security, confidential financial data and law enforcement, be made available to the public on request

H. Any information kept, held, filed, produced or reproduced by, with or for an agency in any form whatsoever.

I. The official convening of a public body for the purpose of conducting public business

J. A portion of an open meeting during which the public may be excluded

Newspaper Activity:

Look through the newspaper for current examples of these terms. Which did you find? Which proved difficult to find?

Student Assessment:

What one new thing did you learn from this activity?

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This is one of a series of eight Newspaper In Education features created to educate and celebrate Sunshine Week 2012.



FOIL

New York's Freedom of Information Law

The Freedom of Information Law (FOIL) relates to the public's right to gain access to government records. Every New York state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function is subject to FOIL. Each of those governmental entities is an "agency." The courts are outside its coverage but often must disclose records under other provisions of law. The State Legislature is covered by the Freedom of Information Law, but is treated differently from agencies. Private corporations or companies are not subject to the Freedom of Information Law.

All records are available, unless an exception permits an agency to deny access. Most exceptions are based on common sense. For example, if making the records public would be an unwarranted invasion of personal privacy or prevent a government agency from carrying out its duties, it is likely that some aspects of the records may be withheld.

When an agency receives a request, the law states that the agency has five business days to grant or deny access in whole or in part, or if more time is needed, to acknowledge the receipt of the request in writing and indicate an approximate date by which the agency will respond to the request, usually not more than 20 additional business days. Nominal fees related to supplying the requested documents may apply. A denial of a request may be appealed. Copies of appeals and the determinations must be sent by the agency to the Committee on Open Government.

Student Assessment: Do you feel differently about freedom of information now that you've learned more about it? Explain why.

Newspaper Activity:

Look through the newspaper for news and information about New York state or municipal (city, village, town or county) "agencies" as described by FOIL. Do any of these articles make reference to government records? Select one example and explain how this news and information affect you.



OML

New York's Open Meetings Law

The Open Meetings Law (OML) gives the public the right to attend meetings of public bodies, listen to the debates and watch the decision-making process in action. It requires public bodies to provide notice of the times and places of meetings, and to keep minutes of all action taken. Part of a meeting may exclude the public; these are known as executive sessions. An executive session may be called during an open meeting and after a majority votes to hold such a closed meeting, the public body can only discuss certain issues as dictated by law. These matters generally involve personal privacy or public safety issues. A public body cannot vote to appropriate public monies during a closed session.

While there is no law requiring that a public body let you speak, you are allowed to watch, provided you are not making a public disturbance. But many meetings include a process for allowing people to speak, so attend, as you can often make your voice heard. On February 2, 2012, the Open Meetings Law was amended to require public access to documents that will be discussed at an open meeting, to the extent practicable, either prior to or at the meeting. If possible the records should be posted on the agency's website.

Through the disclosure of records scheduled to be discussed during open meetings, the public can better understand and appreciate the issues faced by government. Interested citizens can offer information and points of view, thus

assisting in the improvement of government and benefiting our communities.

Student Assessment: What is the most interesting thing you learned about open meetings? Explain.

Newspaper Activity:

Look through the newspaper (print or online) for notices or announcements of public meetings. (Example: school board meetings) Select one and check online to see if documents that will be discussed at this meeting are posted on the agency's website. If so, what did you learn about the meeting? Consider attending one to experience it firsthand.



WHO?

Who has Access?

In a word – everyone

The New York state Legislature clarified the principles of open government by including the following statement in the Legislative declaration of the Freedom of Information Law (FOIL):

“...The people’s right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. The legislature therefore declares that government is the public’s business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.” Public Officers Law, Article 6, Section 84

These ideals were reinforced with similar wording in the Legislative declaration of the Open Meetings Law (OML):

“It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.” Public Officers Law, Article 7, Section 100

Newspaper Activity:

Look through the newspaper (print or online) for news and information about local government agencies that you think would be interesting to other students. Briefly write why you think young people should be allowed to attend public meetings and obtain public documents.

Student Assessment:

Complete this statement – I still have a question about...

There are no age limitations on FOIL or OML. Under these laws anyone can ask for public documents or attend an open meeting for any reason.



THE COURTS

Access to the Courts

Although the courts are not subject to New York’s Freedom of Information Law, Section 255 of the Judiciary Law has long required the court clerk to “diligently search the files, papers, records and dockets in the office” and make copies of such items for anyone who requests them. Requests involving extensive searches or involving multiple defendants may require advanced notice or prearrangements with court personnel to avoid disruption of the court’s workflow.

With few exceptions, every court within this state is open to the public. These exceptions include all proceedings and trials in cases for divorce, seduction, abortion, and rape, among others. The court, at its own discretion, may exclude any spectator who is not directly affected. Attendees not directly involved in the proceedings are expected to sit quietly and observe. Anyone who causes disruption could be barred from the courtroom.

Newspaper Activity:

Look through the newspaper (print or electronic) for news items about current or recent court cases. Select one and discuss why this case is important for the public to know about.



Student Assessment:

What have you learned about the courts in New York state?



HOW?

How do I obtain public records?

So now that you understand the importance of public records, here are some tips and tools to help you get what you need from the government:

- Be specific about what you want. You are not required to say why you want the record, but you should make your request as clear as possible to the public office you are contacting.
- Simply write your request and mail or email it to the “records access officer” at the agency where the records are maintained. Sample requests and appeal examples are available online at <http://tinyurl.com/requestsample>.
- Be persistent if you have to. If the record should legally be public, then you have a right to it. Don’t give up the first time you are told “no.”
- Wait for a response. The agency must respond within five business days. Agency officials can either, give you the record, deny the request, or say they need more time to gather the information and tell you how long the delay will be.
- Be courteous to your public officers. A little politeness goes a long way. Asking for, rather than demanding, the information you seek may actually get you closer to your goal more quickly.

Another helpful resource can be found at the Student Press Law Center website. It is a fully automated, fill-in-the-blanks state open records law request letter generator. Find it online at www.splc.org/legalassistance/foiletter.asp

This is the final feature in our Sunshine Week series. For more information about New York’s open government laws visit the Committee on Open Government’s website at <http://www.dos.ny.gov/coog/index.html>