



Reinvent Albany.

Listening to FOIL

Using FOIL Logs to Guide the Publication of Open Data

An Analysis of the 2013 FOIL Logs of the NYS
Department of Environmental Conservation

July 23, 2014

Using FOIL Logs to Guide the Publication of Open Data

Executive Summary

It is now easy and inexpensive for government agencies to put public records and data online. New York State and New York City have recognized this, and via “open data” initiatives have published thousands of data sets. Oddly, agencies have often puzzled over what to publish first. They should be listening to FOIL. The public is telling government exactly what “high value” data we want online via Freedom of Information Law requests.

In June 2014, the State Department of Environmental Conservation provided Reinvent Albany with a spreadsheet listing the 3,977 FOIL requests it received in 2013. Included in this FOIL “log” is the identity of the requestor and a brief summary of the records requested.

Highlights of DEC's 2013 FOIL Logs

- Over 80% of all FOIL requests (3,456 out of 3,977) were from businesses.
- Just twelve real estate industry companies made 20% of all FOIL requests.
- About 55% of all requests (2,200) were about spills on specific properties.
- Other state and local government agencies FOILED DEC 69 times in 2013.
- Journalists were only 3% of FOIL requests. (73 requests.)

Findings

1. DEC could reduce FOIL requests by 50% by publishing frequently FOILED data.
2. Agency FOIL logs can be used to identify frequently FOILED data sets.
3. A disproportionately large share of FOIL responses draw on few data sets.
4. FOIL requests can be used to identify “frequent FOILers.”
5. Our analysis was only possible because DEC keeps careful, digitized, FOIL logs. Many agencies do not.
6. “Frequent FOILers” we contacted said they would be very happy to get the data they were looking for from the state Open Data Portal or agency website.

Recommendations

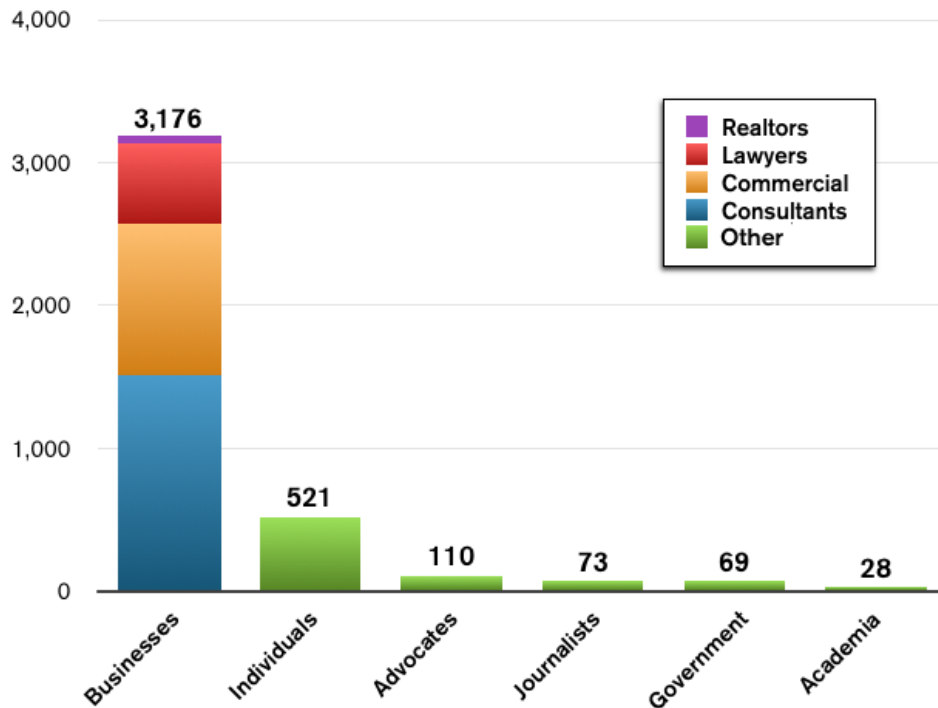
- NYS and NYC agencies and open data staff should analyze FOIL request logs.
- Frequently FOILED public data sets should be published online as open data.
- Agencies should use automated FOIL systems which track requests' topics.

Who is FOILING DEC

In 2013, DEC received 3,977 FOIL requests. Of those, 3,456 requests were received on behalf of organizations, such as consultants, engineering firms, lawyers, realtors, journalists, governments, etc. The remaining 521 requests did not list an organization, and were presumably made by individuals.¹

These organizations are overwhelmingly businesses: consultants, lawyers, realtors, and assorted engineering or architectural firms are far and away the single largest constituency of DEC's environmental data. A handful of large consulting and engineering firms were the most frequent FOILers for environmental data in 2013. Just a dozen of them were responsible for 20% of all FOIL requests to DEC.

FOIL Requests to NYS DEC in 2013



Businesses File 80% of all DEC FOIL requests

The DEC's FOIL requestors are overwhelmingly business interests, while journalists and advocates combined to file less than 5% of all FOIL requests to the DEC in 2013. Reporters accounted for just 73 requests out of nearly 4,000. Even if every single request which doesn't name an affiliated organization is actually a journalist pretending to be a private citizen, journalists would account for only a few dozen more requests than law firms alone: 594 to the attorneys' 556.

Real estate agents outsource the difficult task of finding records and information related to properties; consultants and engineering firms filed 50 times more requests than realtors: 2,563 compared to just 57 for realtors.

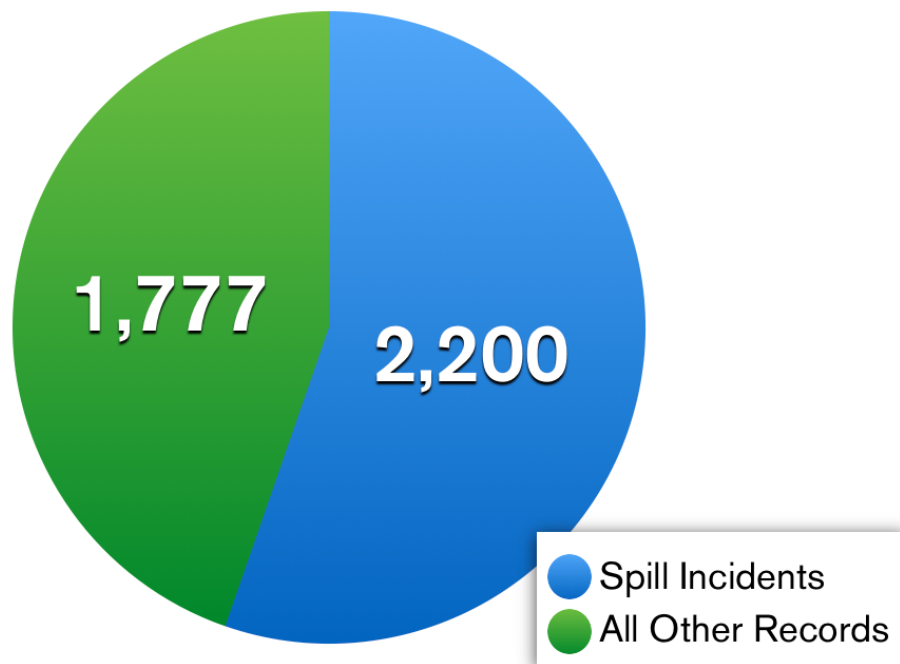
Other government agencies FOILED DEC almost as much (69) as journalists (73). Advocates and other non-profits filed 110 requests, less than 3% of all requests.

This tells us that the biggest consumers of DEC data are commercial interests which bombard the DEC with thousands of requests for the same dozen data sets information over and over again. Some environmental data is already available on the DEC website, but with so many FOILs for records from a handful of specific data sets, the commercial demand for DEC's public data is unmistakable.

DEC's Frequent FOILers Are Seeking A Handful of Datasets

Lawyers, consultants, and engineers looking for inspectors' and investigators' reports about particular addresses are the single largest group seeking DEC data. Most of their requests are for spill incident reports, petroleum storage reports, soil and water remediation and inspection records, air quality reports, and landfill reports. Putting these data sets online in an open data format would reduce the number of FOIL requests to DEC by 2,200, over 55% of requests filed in 2013.

Subject of FOIL Requests to NYS DEC in 2013



Reinvent Albany spoke to two real estate industry firms who between them filed over three hundred FOIL requests in 2013. Here's what we learned from them, and from an analysis of FOIL requests filed by other frequent FOILers:

1. There are roughly 2,200 requests for DEC records about specific properties.
2. Almost all of these requests are seeking records related to spills and storage of petroleum tanks. The firms FOIL these records because DEC's online spill incident database is extremely limited, and data is not open or downloadable.
3. Other frequently-requested records: contamination inspections for properties, documentation for removal of hazardous waste, variances by lot, etc.

The firms both described the current DEC open data offerings as not meeting the needs of the real estate industry. For instance, spill incidents can only be found on DEC's website via a search form that allows one location to be searched, one year at a time. DEC spill incident reports date back to 1978, so users would need to run 37 separate searches to find all spills for a specific address. Users who have an incident number can get look up rudimentary information about individual spills.

Not only are spill incident searches highly constrained and time consuming, DEC provides very limited information about each spill. (Date of incident, name of substance, date of cleanup.) The public must FOIL for further information such as environmental reports, DEC investigations, or further inspection records.

The consultants we interviewed determine whether a property is still contaminated from prior spills. In addition to FOILING DEC, they also FOIL the NYS Department of Health for water testing records, as well as tax maps from local municipalities, and building and demolition records from local Building Departments.

Hunting and Fishing Licenses and Other Frequently FOILED Records

In 2013, DEC received 200 requests for hunting licenses, whether in bulk or for a single person; 150 requests for fishing licenses; 174 requests for copies of permits issued for construction, drainage, waste transport, etc., and 150 requests for information about waste programs or landfills.

There were another 150 requests for various reports relating to storage of petroleum or other hazardous materials: inspection/closure/etc. There were over 70 requests for State Pollutant Discharge Elimination System (SPDES) information about groundwater and surface water contaminants.

Questions About the Availability of DEC Data

Our investigation focused on the type of DEC data being FOILED. However, we did not take a comprehensive look at what data is already on the DEC website, or how that data can be searched or retrieved. To get a more detailed understanding of what DEC needs to do to get its data to the interested public, and to reduce its FOIL costs, we would like to know the following:

1. Does the DEC have a complete inventory of the data sets on its web site?
2. Are data sets already on the DEC website being FOILED? If so, why? Are the data sets difficult to find? Are they not updated often enough? Do they lack historical data?
3. How do DEC FOIL staff retrieve data from DEC databases to respond to FOIL requests? What exactly would it take to convert this data into an open format?
4. Are some FOILED records kept in a paper archive? Why and which ones?
5. How did DEC determine which data sets to publish data.ny.gov?

Recommendations for Agencies and Open NY

This analysis of DEC FOIL logs demonstrates that FOIL logs are a valid way to identify which data sets are most interesting to the public, i.e. "High value data sets." Accordingly, we recommend that agencies, and the Governor's Open NY team, undertake the following steps to reap the most from this opportunity:

1. Work with DEC to publish its most FOILED data sets.
2. Identify which state agencies keep FOIL logs identifying requests by topic.
3. Select the agency with the most requests and analyze its FOIL log.
4. Publish that agency's public data based on the FOIL log analysis.
5. Draft guidance to agencies explaining how to analyze FOIL logs to determine what data to put on their websites, and in what form, and to guide the publication of their data sets on data.ny.gov.
6. Recommend that government agencies use automated FOIL systems which track the topic of requests, to create logs for analysis in recommendation #3.

Notes

The top 12 FOIL requestors to DEC in 2013 submitted 777 Requests:

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|---------------------------------------|------------------------------|
| 1. Partner Engineering & Science: 263 | 7. Arcadis: 43 |
| 2. EBI Consulting: 77 | 8. Whitestone Associates: 37 |
| 3. Vertex Engineering: 69 | 9. AEI Consultants: 35 |
| 4. HRP Associates: 61 | 10. PM Environmental: 33 |
| 5. Langan: 49 | 11. Nova Consulting: 33 |
| 6. Property Solutions Inc: 46 | 12. Cardno ATC: 31 |

Endnotes

¹ These 521 "individuals" almost certainly include businesses or journalists who did not provide their affiliations in their FOIL request. There were probably fewer than 521 FOILs from individuals.