

The logo for 'Reinvent Albany' features the text in a bold, blue, sans-serif font. The word 'Reinvent' is on the top line and 'Albany.' is on the bottom line. A small orange circle is positioned at the end of the word 'Albany'. The text is overlaid on a light green, hatched map of the state of New York.

**Reinvent
Albany.**

Beyond Magic Markers

Faster, Less Expensive Freedom of
Information Law in New York City

June 6, 2014

Responding to FOIL Requests Costs New York City At Least \$20 Million per Year

The Online “Open FOIL” System Can Save
\$13 Million a Year and Reduce Response Times

Introduction

New York City open government advocates strongly support the creation of an “Open FOIL,” centralized, online FOIL processing system. It will increase transparency, reduce delays, and create a fairer FOIL system for all. But Open FOIL has a big additional public benefit: It will save New York City government upwards of \$13 million a year.

New York State’s Freedom of Information Law (FOIL) has guaranteed public access to many types of government records since 1974. This venerable law – which applies to New York City – is the single most important transparency tool New Yorkers have, and is relied upon by journalists, advocates, and the public to keep track of what the state and New York City governments are doing. Unfortunately, the paper based process used by city agencies to respond to FOIL requests is slow, unreliable, expensive and opaque.

Unlike federal agencies, New York City agencies do not use digital tools to redact privileged information. Instead, they use magic markers to blot out private information. Additionally they , do not collect or report basic data about how many requests they receive, the nature of those requests, or how much it costs for them to respond.

Despite the lack of NYC agencies’ analysis, we can estimate the volume and cost of New York City’s Freedom of Information Law regime. This is thanks to the 2013 *Breaking*

Through *Breaking Through Bureaucracy* report by NYC Public Advocate Bill de Blasio, as well as extensive data on the costs of public records requests collected by the United States federal government and United Kingdom's central government.

We estimate that, at minimum, New York City government spends \$20 million annually processing FOIL requests; this is based on a conservative estimate of 50,000 annual FOIL requests, and a low average cost of \$400 per FOIL request.

50,000 FOIL Requests Received in NYC Each Year

In 2011 and 2012, Public Advocate de Blasio's staff gathered information on three months of FOIL activity at 38 major city agencies and found that the agencies collectively received 40,000 FOIL requests annually.¹

There are approximately 130 NYC agencies subject to FOIL.² For the purpose of our own estimate, we assume that the 100 city agencies not surveyed by the Public Advocate receive at least 10,000 FOIL requests a year. This adds up to a grand total of 50,000 annual FOIL requests received by all agencies. (Note that our estimate of only 100 FOIL requests received by each of the 100 not-surveyed NYC agencies is conservative; the surveyed agencies received more than 1,000 requests each.)

“New York City agencies ... use a hodgepodge of paper-based methods that are expensive, slow and unreliable.”

The Cost of Each NYC FOIL Request: \$400

Based on the detailed cost tracking done by the U.S. and U.K. governments, as well as a handful of U.S. cities, we estimate that New York City spends at least \$400 per FOIL request. Again, this is only an estimate, because New York City does not track FOIL costs.

Unlike Federal government or the United Kingdom's government, few, if any, New York City agencies use even basic FOIL processing software that would make it easier to de-

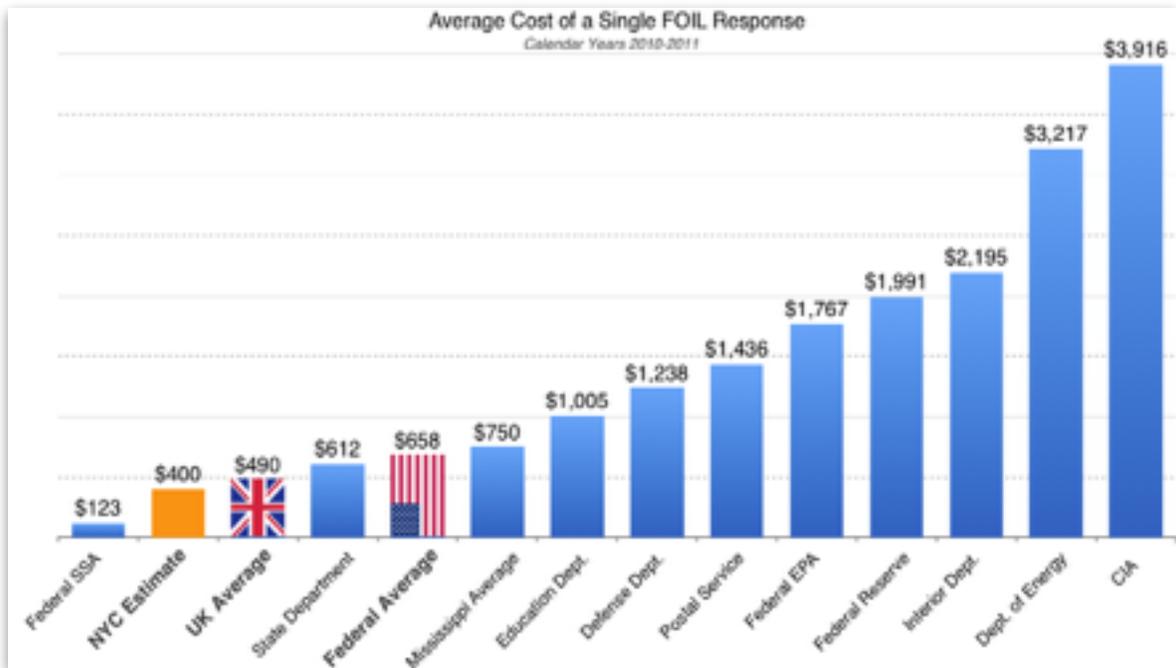
¹ NYC Public Advocate, *Breaking Through Bureaucracy*: April 22, 2013: <http://archive.advocate.nyc.gov/foil/report>

² NYC.gov, *List of NYC Agencies*: <http://www1.nyc.gov/nyc-resources/agencies.page>

termine FOIL costs. Based on the range of costs on the chart below, we believe our estimate is conservative, and the real cost per FOIL is likely much higher.

Both the U.S. and U.K. governments use advanced FOIL processing software which has been shown to significantly reduce the time and cost it takes agencies to record, track, and respond to FOIL requests.

New York City agencies do not use automated FOIL processing. On the contrary, they use a hodgepodge of paper-based methods that are expensive, slow and unreliable. Instead of online redaction tools, city workers use magic markers as they work through thousands of lines of records, striking out protected information as required by law.



FOIL Cost Data

The average FOIL request in Yakima, Washington costs over \$1,200.³ The US Department of Defense reports an average of \$1,230 per request,⁴ and dozens of federal agen-

³ Yakima Herald-Republic, "A Matter of Records," 2010: [http://www.localopengovernment.com/uploads\[file/Westlaw_Document_10_32_45.pdf](http://www.localopengovernment.com/uploads[file/Westlaw_Document_10_32_45.pdf)

⁴ Department of Defense Freedom of Information Act Report for Fiscal Year 2010: http://www.dod.mil/pubs/foi/docs/DoDFY2010AnnualFOIA_Report.pdf

cies spend thousands of dollars per request.⁵ Across all federal agencies, the average cost of a request is \$658. In the United Kingdom, it's roughly \$490 per request.⁶

Therefore, we conservatively estimate the 50,000 annual FOIL requests in NYC cost the city \$20 million per year, at an average of \$400 for each request.

Calculating FOIL Costs

To calculate the cost of the process of releasing these documents under FOIL, we look to federal agencies which measure the cost of the entire FOIL request.

The United States Environmental Protection Agency, during its feasibility analysis of its online FOIL system, stated that there are 94 departments and agencies which process over 600,000 requests each year.⁷

“For agencies which process more than 100 requests a year, the average cost per FOIA request is over \$5,400.”

The total spending at all federal agencies in Fiscal Year 2013, including the actual processing, information gathering, and response development to FOIL requests, was approximately \$447 million for the 678,391 requests processed.⁸ Thus, we calculate that the federal government spends an average of \$658 per FOIL request.

In comparison, the City of Yakima in Washington State reports that it spends \$500,000 per year on FOIL requests, including staff, materials, and outside attorney time.⁹ Yakima received 400 FOIL requests in 2010, which means each FOIL request costs, on aver-

⁵ US Department of Justice, Summary of Annual FOIA Reports for Fiscal Year 2012: <http://www.justice.gov/oip/docs/fy2012-annual-report-summary.pdf>

⁶ The Cost of Freedom of Information, Anna Colquhoun, University College London, December 2010: <http://www.ucl.ac.uk/constitution-unit/research/foi/countries/cost-of-foi.pdf>

⁷ Environmental Protection Agency, FOIA Module Feasibility Study, February 9, 2011: <http://www.scribd.com/doc/66404265/Responsive-Documents-CREW-EPA-Regarding-Proposed-FOIA-Tracking-System-9-26-2011-EPA-Documents>

⁸ US Department of Justice, FOIA.gov, retrieved March 1, 2014: <http://www.foia.gov/data.html>

⁹ Yakima Herald-Republic, “A Matter of Records,” 2010: http://www.localopengovernment.com/uploads/file/Westlaw_Document_10_32_45.pdf

age, \$1,250. There are a significant number of abusive requests filed in Yakima; one person has requested 65,000 pages of records,¹⁰ but this figure is not wildly out of proportion.

As another example, the US Department of Defense reports an average of \$1,230 per request. Among all federal agencies, the DoD's average cost per request is only the 38th-most expensive: the EPA (\$1,700 per request) and the CIA (\$3,916 per request) are significantly higher. Notably, for agencies which process more than 100 requests a year, the average cost per FOIL request is over \$5,400.¹¹

These examples significantly exceed our federal average of \$658 per request, which is itself relatively high. The United Kingdom, which has made significant investments in automated FOIL systems and open data initiatives to reduce FOIL costs,¹² spends an average of \$490 per FOIL request.¹³

We expect that governments which still use an entirely analog FOIL response process have much higher costs. For example, the State of Mississippi estimates that every FOIL request answered by its transparency website, rather than by a FOIL request (i.e. a request which is avoided entirely), saves the state approximately \$750 in staff time.¹⁴

Steps in the FOIL Process

While the Federal Government has reported statistics for each agency's total FOIL cost for the last 16 years, agencies are only required to break down FOIL costs into two categories: "processing" and "litigation-related." This leaves us with no real way of estimating the cost of each step in the FOIL response process, which are as follows:

- I. **Correspondence:** receiving and recording each request, as well as drafting and sending response letters.

¹⁰ *ibid.*

¹¹ Data provided by FOIA.gov

¹² Open Data White Paper, Unleashing the Potential, The Right Honorable Francis Maude, Minister for the Cabinet Office and Paymaster General: http://www.cabinetoffice.gov.uk/sites/default/files/resources/CM8353_acc.pdf

¹³ The Cost of Freedom of Information, Anna Colquhoun, University College London, December 2010: <http://www.ucl.ac.uk/constitution-unit/research/foi/countries/cost-of-foi.pdf>

¹⁴ United States Public Interest Research Group, Following the Money 2013: <http://www.uspirg.org/reports/usp/following-money-2013>

2. **Tracking:** generating unique tracking numbers for each request and recording them, as well as staying constantly apprised of approaching deadlines.
3. **Document retrieval:** locating and accessing the original record, which may involve shipping reams of paper through intra- or inter-office mail. A 2011 report¹⁵ in Broome County, New York, found that this step costs an average of \$65 per request. Prorated for New York City, this works out to about an average of \$100 per request.
4. **Document Production (Copying/Scanning):** we have interviewed several people with experience in NYC agencies who indicate the act of copying and scanning documents, along with manual redaction, are the most time- and labor-intensive steps of the FOIL retrieval process. Most agencies lack access to high-speed or sophisticated copying facilities – this is extremely time-consuming.
5. **Legal Review:** while FOIL officers must have a working knowledge of local, state, and federal privacy rules and regulations (like FERPA and HIPAA), there are always edge cases or appeals which require legal oversight.
6. **Redaction:** after copies of the original record are created, FOIL officers must often redact and re-photocopy the copied records to ensure the illegibility of the portions of records which cannot be released.
7. **Document Retention:** after the records are redacted, yet another copy is created for the FOIL officer's logs. Again, for voluminous requests, this is extremely time-consuming.
8. **Archiving:** a file folder is compiled and stored with all correspondence between agency and requestor, as well as the records released, if any.
9. **Appeals:** if the initial request is denied, FOIL allows requesters to have their requests reviewed by a second FOIL officer.
10. **Litigation:** if the appeal is denied, the requester can challenge the denial in court. At the federal level, the cost of litigation represents just over 5% of the total cost of FOIL. We have no reason to believe local FOILers are any more litigious than federal ones.

¹⁵ Jennifer Royer, *Implementing Broome County's Freedom of Information Law*, April 25, 2011: <http://www2.binghamton.edu/ccpa/public-administration/pdfs/Jennifer%20Royer.pdf>

Online FOIL Processing Reduces FOIL Costs By 66%

We estimate that an online Open FOIL system like Oakland's¹⁶ or the federal government's will save New York City roughly \$13 million per year.

Online FOIL processing systems reduce the costs of processing FOIL requests in two ways. First, they reduce the time it takes agency personnel to track and respond to each request. Second, they reduce the number of requests agencies receive. Online systems reduce requests by helping agencies easily identify and upload frequently requested information to online "reading rooms" or open data portals where it's easy for the public to find.

Reductions in Cost Per FOIL

The New York State Department of Health's newest version of its Smart FOIL Processing System reduced their average FOIL response time from up to 60 days to less than 20 days and reduced their backlog by 90%.¹⁷ Less time spent processing FOIL requests means less money spent processing the same number of FOIL requests.

"New York City agencies... use a hodgepodge of paper based methods that are expensive, slow and unreliable."

The Congressional Research Service's 2014 report on FOIA administration estimated that the FOIA Online portal would save the six agencies currently participating in the FOIA Online pilot program \$200 million in FOIL costs over five years.¹⁸ These agencies only spent about \$45 million processing FOIL requests last year;¹⁹ when FOIA Online saves these agencies \$40 million per year, it will reduce FOIL expenses by nearly 90%.

¹⁶ An open source web site that publicly tracks the progress of all FOIL requests in the city of Oakland. Launched in October 2013: available at <http://records.oaklandnet.com>

¹⁷ New York State Department of Health, Technical Implementation of the Smart Processing FOIL System, published September 13, 2010: http://www.nysforum.org/events/annualmeeting-9-13-10/Smart_Processing_-_FOIL_System.pdf

¹⁸ Congressional Research Service, The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues, January 23, 2014: <http://www.fas.org/sgp/crs/secretcy/R41933.pdf>

¹⁹ According to the CRS report, the six agencies testing the FOIA Online portal are the National Archives and Records Administration, Environmental Protection Agency, Department of Commerce, Department of the Treasury, Federal Labor Relations Authority, and the Merit Systems Protection Board.

This 90% in cost savings also appears in earlier estimates from the Federal Environmental Protection Agency. The EPA's preliminary feasibility report for FOIA Online states their online FOIA system will cut the FOIA costs at an average federal agency from about \$18 million to \$2 million.²⁰

Likewise, the US Secretary of Defense's office believes that advanced FOIL processing software, which includes digital redaction capabilities, will reduce their annual FOIL costs by between 50% to 90%.²¹ The Department of Defense has already reduced FOIL processing costs by 1/3rd using processing software without such capabilities.²²

Reducing the Number of FOIL Requests

Based on federal studies and our own assessment of automated FOIL processing systems, Reinvent Albany estimates that Open FOIL can reduce the number of FOIL requests by at least 20%, just by identifying and uploading frequently FOILED documents to "Reading Rooms" and the city's open data portal.²³ A reduction in FOIL volume of that magnitude in NYC would amount to at least 10,000 "avoided" requests, and would save almost \$3.5 million across all agencies.

Posting sought-after information online saves money. The EPA reduced the number of FOIL requests it receives by nearly 2,000, and saved \$3.6 million²⁴ in yearly FOIL costs, by putting their most frequently requested documents online. The EPA was able to pinpoint which records were most frequently requested, thanks to their automated FOIL system. For example, they learned

"...a Frequently Requested Documents site reduced redundant FOIL requests by as much as 60%."

²⁰ U.S. Environmental Protection Agency, FOIA.gov Feasibility Analysis Report, February 9, 2011: at <http://www.scribd.com/doc/66404265/Responsive-Documents-CREW-EPA-Regarding-Proposed-FOIA-Tracking-System-9-26-2011-EPA-Documents>

²¹ Reinvent Albany interview with Aaron Graves, Senior FOIA Advisor in the Office of the Secretary of Defense, December 20, 2011.

²² Ibid.

²³ "Reading Room" is the name that federal agencies give to web pages which feature frequently-requested documents. For example, the US Department of Defense's reading room: <http://dod.mil/pubs/foi/foiaLibrary.html>

²⁴ Calculated using the average cost for a single FOIA request at the EPA: \$1,814 over the last 5 years. Source: FOIA.gov

that roughly 800 documents related to pesticides made up 20% of all FOIL requests, so they put those records online.²⁵

Today, pesticide-related documents make up just 3% of all requests to EPA, a reduction of nearly 2,000 FOIL requests.²⁶ If NYC used the same approach to achieve similar savings, it would reduce the number of FOIL requests it receives by 17% – roughly 8,500 FOIL requests – from uploading just a single dataset. This one step would save NYC almost \$3.5 million a year, at our estimated average cost of \$400 per request.

Similarly, in an interview, the US Secretary of Defense’s office said that the creation of a “Frequently Requested Documents” section of their website reduced redundant or non-applicable FOIL requests by as much as 60%.²⁷

By studying which sets of data are responsive to FOIL requests, city agencies may be able to identify databases which can be exposed to the public (or are already exposed but are not easily located). This saves processing time, not just on responding to a handful of popular requests, but on entire categories of requests.

Automated software can do that work, instead of asking FOIL officers or open data coordinators to tabulate the most-requested individual documents by hand.

Public Benefits Beyond Cost Savings

An online Open FOIL system in New York City would have many benefits beyond saving millions of dollars of public funds:

1. All records released under FOIL are, by definition, public information. OpenFOIL will improve New Yorkers’ access to public information by reducing FOIL response times.
2. A unified, transparent FOIL regime will make sure each FOIL request is treated equally. Agency staff have told Reinvent Albany that, historically, city commissioners have played favorites with FOIL requests and ordered

²⁵ Testimony of Larry F. Gottesman, National Freedom of Information Officer, U.S. Environmental Protection Agency, to the House Committee on Oversight and Government Reform on March 18, 2010: http://epa.gov/ocir/hearings/testimony/111_2009_2010/2010_0318_lfg.pdf

²⁶ Ibid.

²⁷ Reinvent Albany interview with Office of the Secretary of Defense, December 2011.

that requests from interests they disliked be delayed or given non-responsive answers.

3. Automated systems allow agencies to identify what data is commonly requested and to then publish that data online in a prominent location where the public can easily find and download it – saving agencies an enormous amount of time. For example, the Environmental Protection Agency reduced its FOIL backlog by 96% by embracing information technology in its FOIL process, and by creating online “reading rooms” where previously requested documents were uploaded to the public.²⁸
4. Potential efficiency gains can’t be identified without statistics about the FOIL process. Automated FOIL systems can create and track dozens of key metrics while still saving money. With automated FOIL systems, data can be easily collected on the volume of requests, the amount of a request backlog, and how long requests take to process or the rate at which requests require legal action. These statistics allow FOIL managers to determine more accurately where resources should be devoted to handling each stage of the FOIL response process.

²⁸ Government Executive, “Posting Information Online Could Preempt FOIA Requests,” March 18, 2010: <http://www.govexec.com/oversight/2010/03/posting-information-online-could-preempt-foia-requests/31089/>