LISTENING TO FOIL 2024:
Lessons From Six NYS Agencies

INSIDE:

Metropolitan Transportation Authority
Empire State Development
New York Power Authority
Commission on Ethics and Lobbying in Government
New York State Board of Elections
Division of the Budget

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Listening to FOIL 2024: Lessons from Six NYS Agencies

March 2024

TABLE OF CONTENTS

Introduction and Summary of Findings/Recommendations

Reinvent Albany advocates for transparent and accountable New York government. We work to strengthen the Freedom of Information Law (FOIL) and put government information online. We advocate for government open data and the laws, practices, and funding to make it happen.

We believe all government agencies in New York should consider providing public records requested via the Freedom of Information Law as a core service, rather than an afterthought or arbitrary burden. We think agencies should have to publicly disclose basic details about how well they are providing FOIL records as a basic, mission-central customer service. Agencies have been subject to FOIL since the 1970s. By now, agencies should have well-managed, adequately staffed FOIL processes that are data-driven and continuously improving so the administrative burden is as low as possible while ensuring good customer service.

To evaluate how well FOIL is working and how to improve it, Reinvent Albany regularly looks at the FOIL logs of records requests received by state and local agencies. Our past reports on FOIL and NYS government transparency include:

- [“Opening New York 2022: Rating 70 State Agency Transparency Plans” (March 2022)](#)
- [NYS Legislature - “Tale of Two Houses” (December 2020)](#)
- [Metropolitan Transportation Authority - “FOIL that Works” (October 2018)](#)
- [NYC Department of Information Technology and Telecommunications - “Listening to FOIL” (November 2015)](#)
- [NYC Government - “Beyond Magic Markers” (June 2014)](#)

This report analyzes the FOIL logs of six units of New York State government:

- Metropolitan Transportation Authority (2022 log)
- Empire State Development (2022 and 2023 logs)
- New York Power Authority (2022 log)
- Commission on Ethics and Lobbying in Government (2022 and 2023 logs)
- New York State Board of Elections (2023 log)
- Division of the Budget (2023 log)

Summary of FOIL Caseloads and Response Times

Below is a summary of FOIL caseloads and response times for each of the six agencies covered in this report. Note that agencies sometimes classify a request as “closed” even if the member of the public making the request believes the agency did not provide all or most of the requested records. Additionally, some agency logs had missing data; the data table includes only requests with complete information. Lastly, the logs received by Reinvent Albany varied in terms of their completeness. ESD provided information about FOILs *closed* and *received* in the calendar years 2022 and 2023. Other agencies' average

days to close requests includes only those requests received in that year, as denoted by an asterisk below (*). It is unclear if DOB's 2023 FOIL log contained only requests *closed*, rather than all requests received that year.

Reinvent Albany Analysis: FOIL Logs of NYS Agencies, 2022 and 2023			
Agency and Calendar Year of Log	Total Requests Received in Calendar Year	Number and % of Requests Closed Within Same Calendar Year	Average Days to Close Requests
MTA – 2022	3,539	2,865 (81%)	37*
ESD – 2022	257	217 (84%)	52
ESD – 2023	**199**	**165 (83%)**	**62**
NYPA – 2022	229	204 (89%)	33*
COELIG – 2022	184	168 (91%)	18*
COELIG – 2023	**216**	**204 (94%)**	**23***
NYS BOE – 2023	**1,488**	**1,481 (99%)**	**4***
DOB – 2023	**81**	**81 (100%)**	**39***

Summary of Recommendations

FOIL REPORTING

The Governor's office should evaluate the State's FOIL requests and responses, treating FOIL as a public service that is monitored and can be improved. A recently missed opportunity to do so was through Governor Hochul's October 2021 agency transparency plans. Only 22 of the 70 agencies (31%) provided data about their FOIL caseloads in their transparency plans, according to our report reviewing the plans, *Opening NY 2022*.

The State Legislature should pass legislation sponsored by Senator Brad Hoylman-Sigal, S8671, that would require state and local bodies subject to FOIL to report how quickly and completely they are providing requested public records, including:

- Publishing annual FOIL logs that show the number of requests received, the status of requests, response times, and use of exemptions to deny records.
- Providing data on types of requesters and categories of requests.
- Having the Committee on Open Government publish FOIL logs in a central location on its website.

NEW YORK STATE OPEN FOIL

Via Executive Order, the Governor should require state agencies to use a web-based "Open FOIL" platform and follow a policy of "release to one, publish for all" in which public records provided in response to a FOIL request are published for all to see. This is already done by jurisdictions across the country, and more locally, the Port Authority of NY/NJ. (Note "publish to all" does not include private records an individual requests about themselves, including health, education, criminal record, etc.)

The State's current Open FOIL NY portal allows users to request records online, including for multiple agencies at a time. Despite its name, New York is not truly using an "Open FOIL" platform because it does not publish FOIL request data or publish records from fulfilled requests. The State's Open FOIL platform should use best practices from other jurisdictions, including the Port Authority's Fulfilled Requests and NYC Open Records portals, and be adopted widely and consistently by all state agencies and authorities.

A number of agencies have switched to GovQA, a third-party FOIL processing application. Given that the GovQA platform has the capability to publish records from fulfilled requests, as seen in Washington State's King and Spokane counties, the State merely needs to activate this feature, thus functionally creating an Open FOIL platform for participating agencies.

GOVQA IMPROVEMENTS

While efforts are made to implement OpenFOIL and FOIL reporting, the GovQA platform should be improved to:

- **No longer require creating an account to submit a request,** but rather use CAPTCHA to verify that the request is coming from an individual, not a bot, and instead identify requests by name or email. NYC's Open Records Portal does not require FOILers to log in. Portals for government services that require an account provide an unnecessary barrier to access. While logging in allows users to see all their requests in one spot, there should be no requirement to create an account.
- **Make it optional to create an account** so users may log in to see the status of requests registered to their email address.
- **Establish a single log-in credential** for all requests to NYS agencies and authorities, for those who want to create an account.
- **Allow attachments to be added** to requests submitted via the portal.
- **Increase the character limit** for requests to allow more descriptive requests.
- **Allow appeals to be made through the portal**, not just via a snail mail address.
- **Provide a FOIL contact person for each agency**, with an email and phone number, so FOILers know how to contact a human when necessary.
- **Allow replies to response emails generated from the GovQA portal.** For example,

even though an agency's response via the GovQA platform said "Please respond above this line," the email address did not accept replies, prompting a bounce back message of "You have sent an email to an unresponsive email account."

- **Publish all fulfilled public records requests**, implementing a true Open FOIL system.

MTA-SPECIFIC FOIL RECOMMENDATIONS

1. Boost staffing to eliminate the backlog of requests and stay caught up.

2. Offload and automate all incident report requests, particularly for bus-related crashes and incidents. MTA has already created a separate request process for MTA Police Department incident reports, and should do the same for all other MTA incident reports.

3. Continue implementation of the MTA Open Data Act and identify new data sets that are frequently requested via FOIL like contract data, more detailed capital project data, and operating budget data.

4. Post frequently-requested contracts on the MTA's website, and work toward publishing all MTA contracts.

5. Examine national best practices for how to respond to requests for video footage, such as a recent Federal Department of Justice guide for federal agencies grappling with requests for video.

ESD-SPECIFIC FOIL RECOMMENDATIONS

1. Make improvements to the Database of Economic Incentives, including:
   a. A longer look-back at incentives prior to 2018
   b. Publishing complete data, filling in blank cells
   c. Providing a list of all types and amounts of benefits received by a qualified participant
   d. Beta-testing to remove bugs, like the notorious "Drill" button

2. Examine proactive data release for applications, permits, and certifications, including for Minority and Women-Owned Business Enterprises (MWBEs).

NYPA-SPECIFIC FOIL RECOMMENDATIONS

1. Publish more data on data.ny.gov, substantially improving upon current release of only seven datasets, in particular about:
   a. Contracts
   b. Map/GEO data about NYS canals

2. Provide frequently-requested contracts on NYPA's website.

3. Add more NYPA incentive data to ESD's Database of Economic Incentives, and publish a NYPA-specific database of incentives and grants on data.ny.gov.

COELIG-SPECIFIC FOIL RECOMMENDATIONS

1. Proactively publish more financial disclosure forms, including for candidates for office, and high-ranking public officials. (Note that COELIG has supported publishing disclosure forms of candidates on its website, but believes a statutory change is necessary.)

2. Better educate the public about data available on COELIG's public search query or as open data on data.ny.gov.

3. Ensure that FOIL logs are complete and include consistent terminology that better illuminates how the FOIL process is working.

4. Expand access to filings by requiring electronic filing of notices of appearances under Section 166 of Executive Law, eliminating paper forms, and then proactively post the data on its website.

NYS BOE-SPECIFIC FOIL RECOMMENDATIONS

1. Improve the campaign finance public reporting system to make it easier for the public to pull campaign finance data on their own, using focus groups to inform upgrades. (The BOE is expected to soon announce the selection of a vendor to improve its data systems.)

2. Consider creating a portal for voters to log in to see their own voting records, with appropriate privacy protections.

3. Automate requests for voter files, understanding privacy/commercial purpose limitations.

DOB-SPECIFIC FOIL RECOMMENDATIONS

1. Publish detailed FOIL logs in an open data format, with complete information including dates and response times, rather than the limited PDFs that are currently provided.

2. Better publicize and expand the Open Budget website offerings.

3. Make clearer on DOB's FOIL website what contract data DOB holds, and what is available through other agencies or the State Comptroller's Office.

4. Publish more of DOB's own contract information as open data, and provide frequently-requested contracts on DOB's website.

5. Provide more timely updates of the Discretionary Lump Sums website, which as of the date of writing the report, was last updated on July 19, 2023.

6. Consolidate discretionary funding lists from SUNY, CUNY and DASNY and publish on the DOB Discretionary Lump Sum website, rather than link to their respective webpages.

Agency Analysis

Metropolitan Transportation Authority

Our prior report on the Metropolitan Transportation Authority's (MTA) FOIL process, *FOIL that Works* (October 2018), showed that the MTA received 8,900 requests in 2018, two-thirds of which were related to MTA police department incident requests. Subsequent to our 2018 report, the MTA centralized its FOIL request process to a single office at MTA headquarters, rather than having separate FOIL staff at its subsidiaries; New York City Transit, Long Island Railroad and Metro North Railroad, for example, all had separate staff and FOIL logs. The MTA also offloaded police incident reports to a separate portal.

The MTA's focus on better responding to requests for police incident reports through a separate portal has resulted in a substantial reduction of FOIL requests:

- The MTA received 3,539 FOIL requests in the calendar year 2022.
- This is a reduction of requests of nearly 5,500, or about 60% from past years.

We applaud the MTA's efforts to centralize and standardize its FOIL process, and offload police incident reports. Requests that are easy to handle – the 81% that are responded to in the same year they are received – are closed in a little over a month, or 37 days. However, the remaining 19% of requests often enter a backlog that can take multiple years to resolve.

The MTA's substantial backlog of requests must be tackled if the MTA is to restore public trust in its ability to respond to requests for public records. According to 2022 FOIL logs received by Reinvent Albany, at least 886 requests were still pending for an average of 982 days, or nearly 3 years as further detailed in this section.

We recognize that the MTA has a considerably larger and complex FOIL caseload compared to the other agencies we examined. At the same time, the MTA has a much bigger staff of FOIL professionals who, if provided proper resources, would be able to better serve the public.

TYPE OF FOIL REQUESTS

FOIL requests in 2022 were submitted via the MTA's customer service platform on its website. In 2023, the MTA switched over to GovQA, a platform broadly adopted by New York State. Unfortunately, Reinvent Albany was not able to attribute affiliations to requesters, as the MTA FOIL logs did not include this information as a separate field. We were, however, able to do meaningful analysis of the types of records that are requested.

When looking at the most common words in the "subject" field of the MTA's FOIL logs, bus-related requests dominate the MTA's FOIL logs, for a total of 394 requests. Of these, most

are asking for incident reports, records related to accidents or crashes, injuries or falls, or for camera or video footage; 233 total requests involved buses together with these other terms.

Requests for video footage are particularly cumbersome for agencies to respond to. This is an area of increasing growth throughout federal, state, and local governments as more surveillance cameras are installed, and new laws are passed requiring body-worn police cameras. Fortunately, this means that the MTA is not alone in handling this challenge. The Federal Department of Justice recently released a guide for federal agencies grappling with requests for video, for example.

Despite police incident reports being clearly displayed as a separate item to request on the MTA's FOIL webpage, a significant number of requests for incident reports are still being filed as FOIL requests: 199 requests asked for records related to incidents. When expanded to concern incidents, accidents, crashes, injuries or falls, there were 514 such requests. Because the MTA Police Department only has jurisdiction over Grand Central, Penn Station, the commuter railroads, the Staten Island railways and select subway stations,[1] incidents *not* involving the MTA Police are still a large amount of the MTA's requests, particularly for buses and subway stations, which are handled by the New York Police Department.

A word cloud is at right, showing the most common terms used by FOILers to describe the records that they were seeking. Beyond incident reports and records related to video footage noted above, the MTA also frequently received records requests for information about bidding and contracting. A table of the top twenty terms is also on the next page with their frequency.

Rank	Word	Frequency of Usage		Rank	Word	Frequency of Usage
Reinvent Albany Analysis:						
Common Words[2] From 2022 MTA FOIL Requests						
1	Bus	428		11	Subway	92
2	Accident	289		12	Contract	74
3	Video	252		13	Camera	72
4	Report	224		14	LIRR	62
5	Incident	171		15	Metrocard	60
6	Bid	147		16	Surveillance	58
7	Footage	143		17	Transit	54
8	Train	142		18	Case	52
9	Station	128		19	Vehicle	50
10	Police	108		20	Event	48

TIME TO CLOSE FOILS AND THE MTA'S BIG BACKLOG

Because FOIL logs are a snapshot in time, the average time it takes to close FOIL requests is difficult to determine. Of the 2,932 requests from 2022 that were completed by the time we received the FOIL log, the average time to close was 37 days.[3] It is not possible to determine from the FOIL logs whether records were sent in response to requests, or requests were denied, because this information was not provided. The percentage of 2022 FOIL requests that were still open as of the receipt of the FOIL logs was 17%, or 607 out of 3,539 requests.

Reinvent Albany also requested data on the FOIL requests received by the MTA in 2019-2021 that were still pending in 2022 or 2023, given our knowledge that the MTA has previously had a backlog of requests. Below is a table of this backlog, including those that remained open as of August 25, 2023 when the FOIL log was sent to Reinvent Albany. While the majority of requests are closed within a year of being submitted (81% in 2022 as noted previously), those that remain open can remain pending for years. See below for a table showing the number of backlog requests that were closed in 2022 or 2023, or remained open as of August 25, 2023.

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2 "Frequency" column also includes plural versions and conjunctions of the word listed.

3 Reinvent Albany received the MTA's 2022 FOIL logs on August 25, 2023. Therefore some 2022 requests may have since been closed as of the time of publishing this report.

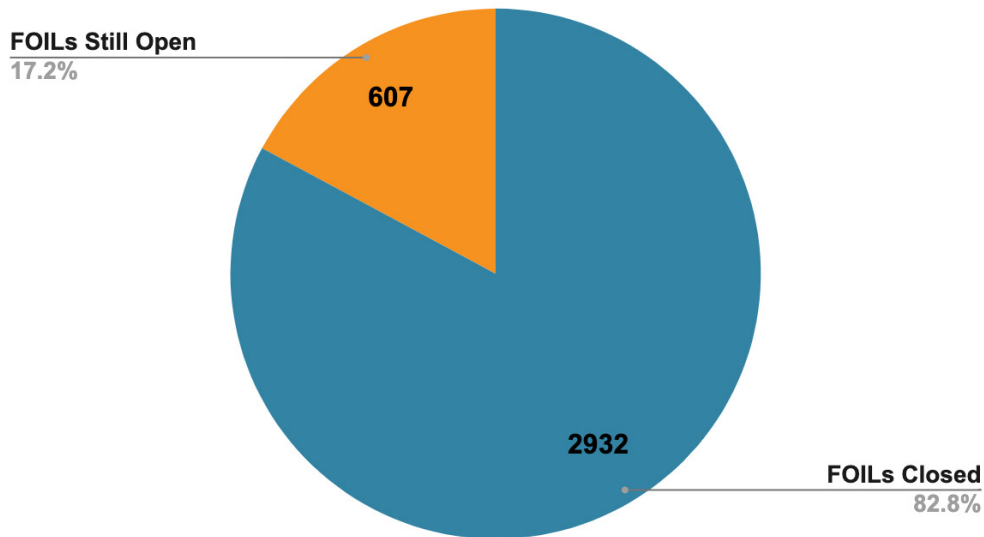| Reinvent Albany Analysis: Backlog of MTA FOIL Requests, still open as of August 25, 2022				
Year Requested	Closed in 2022	Closed in 2023	Open (as of 8/25/2023)	Grand Total
2019	8	0	52	60
2020	71	6	379	456
2021	477	22	455	954
Grand Total	**556**	**28**	**886**	**1,470**

Requests that were still pending in 2022 from 2019-2021 took a considerable amount of time to close, and many remained open:

- It took an average of 323 days to close backlog requests still pending in 2022.
- 886 requests were still pending for an average of 982 days, or nearly 3 years as of the date that the FOIL log was sent (August 25, 2023).

Reinvent Albany Analysis: Backlog of MTA FOIL Requests, Time to Close Requests and Days Still Open in 2022		
Year Requested	Closed Requests: AVERAGE Days to Close	Open Requests (as of 8/25/2022) AVERAGE Days Open
2019	924	1,365
2020	730	1,165
2021	251	786
Grand Total	**323**	**982**

Given the considerable backlog of requests pending before the MTA, it is clear that there is a misalignment of resources if FOIL is to be treated as a public service that the MTA is responsible for delivering. Additional ways to reduce the FOIL backlog may also be necessary, such as proactively publishing more commonly-requested records such as contracts, and automating more types of records requests, particularly for non-MTA police incident reports or bus department crash records.

Reinvent Albany Analysis: Status of 2022 MTA FOIL Requests, as of 8/25/23

FOILs Still Open
17.2%

607

2932

FOILs Closed
82.8%

RECOMMENDATIONS FOR THE MTA

1. Boost staffing to eliminate the backlog of requests and stay caught up.

2. Offload and automate *all* incident report requests, particularly for bus-related crashes and incidents. MTA has already created a separate request process for MTA Police Department incident reports, and should do the same for all other MTA incident reports.

3. Continue implementation of the MTA Open Data Act and identify new data sets that are frequently requested via FOIL like contract data, more detailed capital project data, and operating budget data.

4. Post frequently-requested contracts on the MTA's website, and work toward publishing all MTA contracts.

5. Examine national best practices for how to respond to requests for video footage, such as a recent Federal Department of Justice guide for federal agencies grappling with requests for video.

Empire State Development

Empire State Development (ESD) uses GovQA to process its FOIL requests, though it is unclear when they shifted to this system. ESD received 257 requests in 2022, and closed more than three-quarters of them in the same calendar year (217, or 84%). A total of 199 requests were received in 2023, and 165 were closed in the same year (83%).

Overall, ESD responds to most requests in about two months; while this is longer than the 20 days provided for as a base in the Freedom of Information Law, they do not have a substantial backlog of requests. ESD closed 202 requests in 2023, most of which were received that year; 37 or 18% were originally received in 2022. The average number of days for ESD to close requests in 2023 was 62 days.

We appreciate that ESD provided a log of 2022 records requests that allowed us to get a better understanding of their FOIL process and response times. Unfortunately, the 2023 log received by Reinvent Albany lacked details about how ESD responds to requests, though did include detailed information about what types of records were requested.

However, Reinvent Albany has submitted numerous record requests to ESD over the past decade and has been denied access to records we believe are required to be released under FOIL. Additionally, we have had to FOIL for basic records that should have been published in the first place, including for the Penn Station Redevelopment Project Community Advisory Committee. Our July 2023 *Open ESD* report highlighted ESD's failure to release important financial data produced by its consultant, Ernst & Young, which formed the basis for its projections for how Penn Station upgrades were to be paid for, including through tax breaks for developer Vornado.

ESD FOIL requests closed in 2022 (28 of which were first requested in 2021) took an average of 52 days to close.

- For requests that were fulfilled in 2022, records were sent in an average of 46 days.
- Denials of requests in 2022 took an average of 49 days to send.
- Requests where records were partially sent took longer to close in 2022, for an average of 115 days – this was often due to the use of exemptions, or when ESD did not have the requested records.

A breakdown of how requests were responded to in 2022, with the average days to close requests by response type, is below.

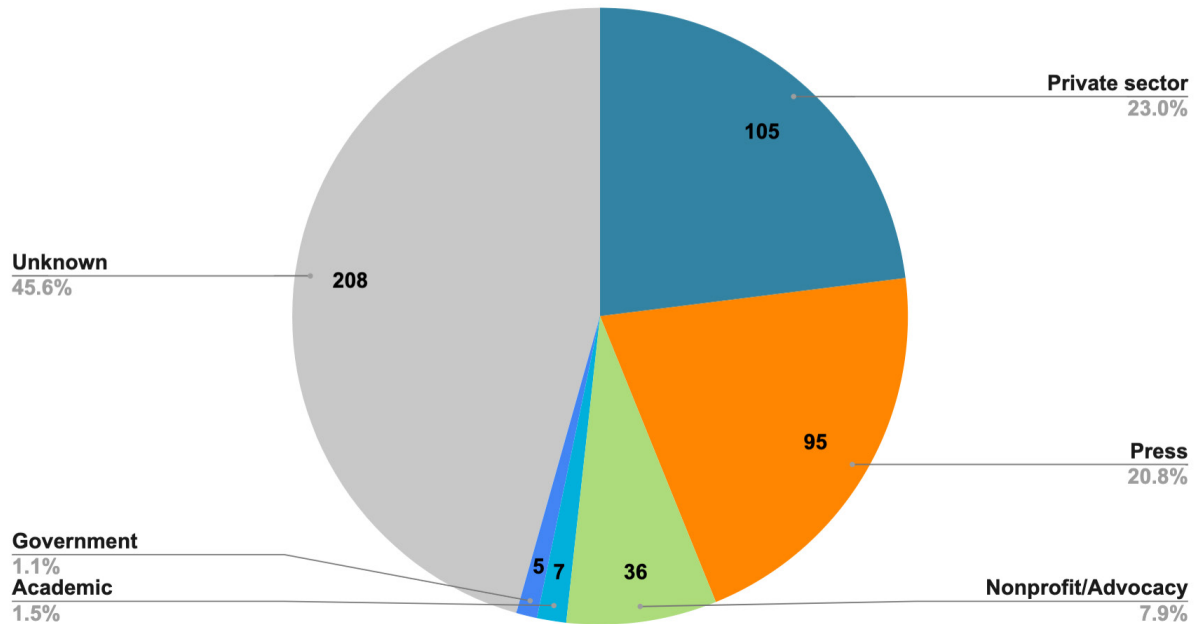| Reinvent Albany Analysis: Requests Closed in 2022 by ESD Type of Response and Average Days to Close		
Records sent?	**Number of Requests**	**Average Days to Close**
Denied	12	49
No responsive records	69	32
No, clarification requested	2	34
Partial response	16	115
Records sent	139	56
Request withdrawn	6	64
Unknown	1	6
Grand Total	**245**	**52**

TYPES OF FOIL REQUESTS

When looking at the most common words in the "information requested" field of ESD's FOIL logs from 2022, it appears that project-specific requests dominate the logs, in addition to information about applications, contracts, and grants. Information was also commonly requested about specific companies and LLCs doing business with ESD, and Minority and Women Owned Business Enterprises (MWBE) certifications. Additionally, communication/correspondence between ESD and companies is often requested. A word cloud is at right, showing the most common terms used by FOILers to describe the records that they were seeking. A table of these terms is on the next page with their frequency.

Rank	Word	Frequency of Usage		Rank	Word	Frequency of Usage
Reinvent Albany Analysis: Common Words From 2022 ESD FOIL Requests						
1	Project	114		11	Correspondence	46
2	Between	84		12	Tax	44
3	Application	80		13	Contract	42
4	LLC	63		14	Program	39
5	Grant	62		15	Building	37
6	Agreement	59		16	Company	36
7	Employee	57		17	Communication	34
8	Business	51		18	Corporation	34
9	Site	51		19	Certification	33
10	Submitted	47		20	Construction	33

Given the prevalence of requests for information about projects, the procurement process, grants, and tax credits, proactive disclosure in these areas would lessen ESD's FOIL requests. Improvements to the Database of Economic Incentives, such as timelier posting of information and a longer look-back at incentives prior to 2018, could also reduce ESD's FOIL caseload.

Reinvent Albany Analysis: ESD FOIL Requesters by Type, 2022-2023

Private sector
23.0%

105

Unknown
45.6%

208

Press
20.8%

95

Government
1.1%

Academic
1.5%

5 7   36

Nonprofit/Advocacy
7.9%

TYPES OF FOILERS

Empire State Development's FOIL logs provided some information regarding the affiliation of requesters, which allowed Reinvent Albany to analyze requesters by type. While nearly 46% of requesters' affiliations were not provided or unable to be determined (listed as "unknown" in the chart below), the largest known group of requesters making up 23% of requests were all from the private sector – companies seeking information about contract decisions, for example. About 21% of requests came from members of the press. The third most common type of requester was the nonprofit/advocacy sector, with nearly 8% of requests, as shown below.

RECOMMENDATIONS FOR ESD

1. Make improvements to the Database of Economic Incentives, including:
    a. A longer look-back at incentives prior to 2018
    b. Publishing complete data, filling in blank cells
    c. Providing a list of all types and amounts of benefits received by a qualified participant
    d. Beta-testing to remove bugs, like the notorious "Drill" button
2. Examine proactive data release for applications, permits, and certifications, including for Minority and Women-Owned Business Enterprises (MWBEs).

New York Power Authority

The New York Power Authority (NYPA) currently receives FOIL requests via email, or the State's Open FOIL NY platform. NYPA's FOIL log was fairly detailed, providing the affiliation of requesters, detailed information about the records requested, and dates of request acknowledgement, extensions, and closure, along with how the request was closed. The level of detail in the logs data fields indicates a professional FOIL operation. However, NYPA's 2021 Transparency Report submitted to Governor Hochul neglected to include any mention of NYPA's current FOIL process, or any efforts to improve its FOIL response rate.

Based on the FOIL log of requests received by NYPA in 2022, here is a summary of the requests and their status:

- NYPA received 229 FOIL requests in 2022.
- Most requests from 2022 were closed in 2022 (204 or 89%);
- 22 were closed in 2023, and 3 remained open by the time FOIL logs were received by Reinvent Albany on August 2, 2023.

A breakdown of how NYPA responded to requests, and how long it took to close requests is below:

- The average time to close FOIL requests was 33 days.
- When records were granted, it took an average of 44 days;
- Where requests were fulfilled in part, it took 46 days.
- Denials took 23 days, and when there were no responsive records, requests were responded to in 11 days.

Reinvent Albany Analysis: Status of FOILs Received by NYPA in 2022, as of August 2, 2023 Average Days to Close		
Type of Closure	**Number of Requests**	**Average Number of Days Until Closed**
Administratively closed	9	79
Denial	25	23
Diligent Search/No Records	70	11
Granted	109	44
Partial response	13	46
Still Open	3	N/A
Total FOIL requests	**229**	**33**

TYPES OF FOIL REQUESTS

The most common request was for records pertaining to canals, in particular for maps of their boundaries. The New York State Canal Corporation is a subsidiary of NYPA, and therefore as the parent authority, NYPA receives FOIL requests for the corporation. Forty-six requests were specifically attributed to the Canal Corporation in the logs, and thirteen additional requests attributed to NYPA related to information about canals.
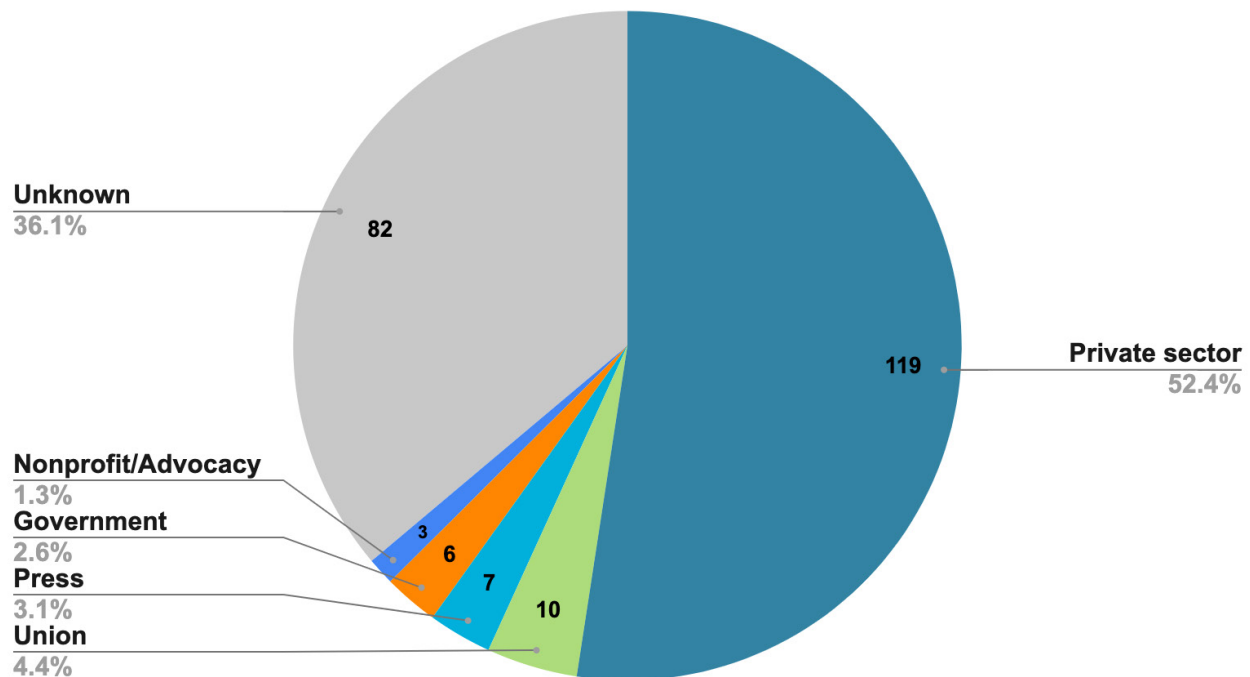
Additional information was sought regarding bids, contracts, proposals and RFPs, showing that information about those doing business with NYPA was commonly requested. Other requests pertained to hydropower or dams, hence the frequency of words such as water, flow, and volume. A word cloud is at right, showing the most common terms used by FOILers to describe the records that they were seeking. A table of these terms is below with their frequency.

Reinvent Albany Analysis: Common Words From 2022 NYPA FOIL Requests					
Rank	Word	Frequency of Usage	Rank	Word	Frequency of Usage
1	Canal	53	11	Between	19
2	Bid	41	12	Agreements	18
3	Contract	41	13	Map	18
4	Proposal	28	14	Flow	17
5	RFP	27	15	Site	16
6	Services	26	16	Water	13
7	Award	26	17	Volume	12
8	Project	24	18	Data	11
9	Permit	22	19	Technical	10
10	County	19	20	Sidewalk	10

TYPES OF FOIL REQUESTERS

The vast majority of FOIL requesters came from companies seeking to do business with NYPA or the state – 119 or 52%. A smaller number came from union representatives, the press, or other government agencies. For 82 or 36% of requests, no affiliation was provided.

Reinvent Albany Analysis: NYPA FOIL Requesters by Type, 2022

Unknown
36.1%
82

Private sector
52.4%
119

Nonprofit/Advocacy
1.3%
3

Government
2.6%
6

Press
3.1%
7

Union
4.4%
10

RECOMMENDATIONS FOR NYPA

1. Publish more data on data.ny.gov, substantially improving upon current release of only seven datasets, in particular about:
    a. Contracts
    b. Map/GEO data about NYS canals
2. Provide frequently-requested contracts on NYPA's website.
3. Add more NYPA incentive data to ESD's Database of Economic Incentives, and publish a NYPA-specific database of incentives and grants on data.ny.gov.

Commission on Ethics and Lobbying in Government

The Commission on Ethics and Lobbying in Government (COELIG) was created in 2022, replacing the Joint Commission on Public Ethics (JCOPE). While JCOPE was exempted from the Freedom of Information and Open Meetings Laws, the 2022 law creating COELIG explicitly requires that it now be covered by these important transparency laws. COELIG currently uses a FOIL request form on its website rather than GovQA. The COELIG FOIL website also provides the emails and phone numbers of their records officer and appeals officer.

Previously, under JCOPE, certain records were only available upon request, such as financial disclosure statements, and limited records were posted on its website, such as financial disclosure statements of elected officials and lobbying reports. All records requests were logged by JCOPE, however, pursuant to its regulations regarding public information requests.

We appreciate that in 2023, COELIG revised its regulations on FOIL and Records Access to reflect its new status under FOIL. In response to a letter from advocates including Reinvent Albany, COELIG amended its regulations to emphasize that the Commission may make more information available on its website proactively. Additionally, we appreciate that COELIG made millions of lobbying records available via the NYS Open Data portal in October 2023, which will help eliminate FOIL requests for this data.

We are also encouraged that in response to FOIL requests for record, COELIG staff digitized Section 166 Notice of Appearance forms from 2022 - 2023 which are currently submitted on paper. COELIG added notice via its website that access can be granted for these records by emailing the Commission. We encourage COELIG to further digitize these records by requiring electronic filing, eliminating paper forms, and then proactively posting the data on its website.

However, COELIG's FOIL logs as provided to us included a number of blank fields or inconsistent terms that make it difficult to determine how records requests were responded to. We urge COELIG staff to ensure that their FOIL logs – which may have appeared differently to Reinvent Albany than internally due to redactions – are complete and include consistent terminology that better illuminates how their FOIL process is working. A summary of COELIG's 2022 - 2023 logs is on the next page.

- COELIG's FOIL caseload increased from 184 to 216 from 2022 to 2023, with a slight increase in the days to close requests from 18 to 23 days, on average.

  › It should be noted that one requester made 66 total requests in 2023, up from 16 from the same individual in 2022. The majority of these requests were complex, such as for correspondence, and took as many as 100 or more days to complete.

- In 2023, COELIG's field for "Records Sent" field simply stated "No" for 17 requests without specifying if records were denied, or there were no responsive records.

Reinvent Albany Analysis: Status of All Requests Made to NYS Commission on Ethics and Lobbying in Government				
Records Sent?	Count of Response Type (2022)	Average Days to Close Requests (2022)	Count of Response Type (2023)	Average Days to Close Requests (2023)
Yes	136	11	142	25
No Responsive Records	34	7	23	15
"No"	N/A	N/A	17	16
Denial	10	136	20	24
Unknown	4	10	14	37
Grand Total	**184**	**18**	**216**	**23**

TYPES OF REQUESTS

Requests to COELIG and JCOPE were mainly for financial disclosure statements that are filed by public officials and candidates for state office. Currently, only disclosure forms for current statewide officials and state legislators are posted on COELIG's website. It is therefore not surprising that a significant amount of public information requests in 2022 were for disclosures for the categories of disclosures that are posted online: for candidates running for office who are not incumbents, or for legislative or executive staff. Information about lobbyists and clients is also frequently requested – though much of this information is available on COELIG's

public search query or as open data on data.ny.gov. A word cloud is above, showing the most common terms used by FOILers to describe the records that they were seeking. A table of these terms is on the next page with their frequency.
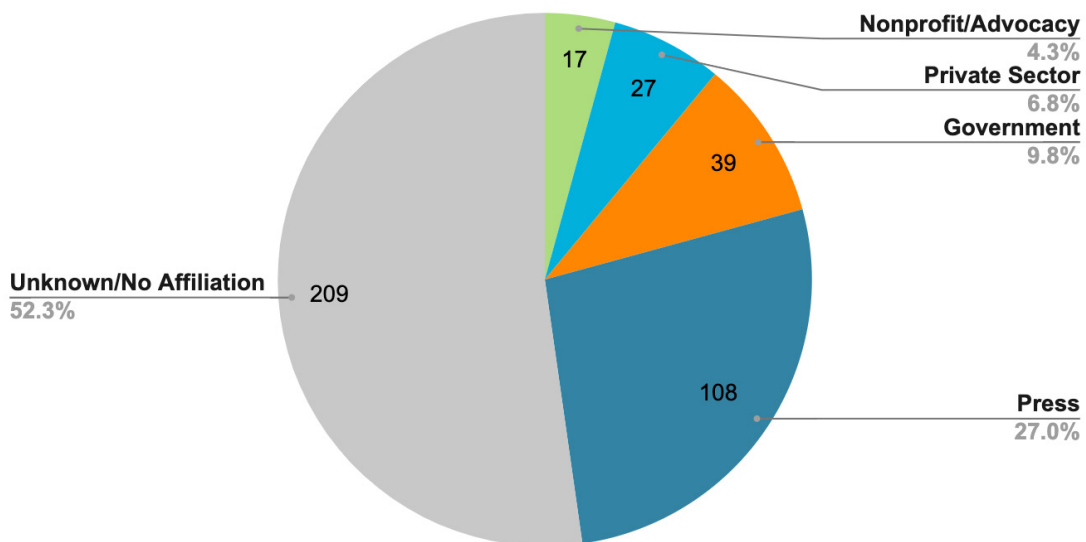
Reinvent Albany Analysis: Common Words From 2022 COELIG FOIL Requests						
Rank	Word	Frequency of Usage		Rank	Word	Frequency of Usage
1	Financial	38		11	JCOPE	14
2	Candidate	34		12	Form	14
3	Disclosure	33		13	Board	12
4	Filing	33		14	Assembly	12
5	Lobbying	26		15	Senate	11
6	Ethics	19		16	FDS	11
7	Members	18		17	Client	11
8	Government	15		18	Commissioner	11
9	Lobbyist	15		19	Employee	10
10	Statement	15		20	Executive	9

TYPES OF REQUESTERS

Due to COELIG's relatively small number of requests, and inclusion of data about the employer or affiliation of most requesters, Reinvent Albany was able to categorize nearly half of all requesters from 2022 to 2023. We separated requesters by type: government employees, press, nonprofit/advocacy, and private firms (most often lobbying or consulting/PR firms), as shown in the chart below. For most requests, only a name and no affiliation was provided, and most of these requests did not appear to be information about the requester themselves. The most common requester type was from the press, followed by different government representatives (such as the ethics officers of individual agencies).

Reinvent Albany Analysis: COELIG FOIL Requesters by Type, 2022-2023

Nonprofit/Advocacy 4.3% — 17
Private Sector 6.8% — 27
Government 9.8% — 39
Unknown/No Affiliation 52.3% — 209
Press 27.0% — 108

RECOMMENDATIONS FOR COELIG

1. Proactively publish more financial disclosure forms, including for candidates for office, and high-ranking public officials. (Note that COELIG has supported publishing disclosure forms of candidates on its website, but believes a statutory change is necessary.)

2. Better educate the public about data available on COELIG's public search query or as open data on data.ny.gov.

3. Ensure that FOIL logs are complete and include consistent terminology that better illuminates how the FOIL process is working.

4. Expand access to filings by requiring electronic filing of notices of appearances under Section 166 of Executive Law, eliminating paper forms, and then proactively posting the data on its website.

New York State Board of Elections

The State Board of Elections (SBOE) currently receives FOIL requests through the GovQA platform. Our FOIL request for the SBOE's FOIL log was responded to the next day – an extremely quick turnaround time from our experience. SBOE's overall response time for complex records was also fast; Reinvent Albany staff FOILed for two years of LLC statement of identity reports in November 2023, and SBOE staff sent us nearly 800 records within 10 days.

While we appreciate SBOE's fast turnaround times for FOIL requests,the SBOE could significantly reduce its FOIL caseload by improving its campaign finance public reporting system to make it easier for the public to pull campaign finance data on their own. In response to a letter from advocates and other criticism of the portal, the SBOE has been making updates to its reporting system to address some usability issues, but a larger overhaul is sorely needed.

A summary of SBOE FOIL requests from 2023 is below.

- The SBOE received a total of 1,488 requests in 2023. The vast majority of these requests were also closed in 2023.

- Only seven requests remained open as of the receipt of the FOIL logs by Reinvent Albany on January 5, 2024, most of which were received in the last quarter of 2023.

The SBOE's FOIL logs from January to August 2023 were provided as monthly spreadsheets, while the September to December 2023 logs were provided as a pull from GovQA. Unfortunately, the amount of data available to analyze from the SBOE was reduced after the agency switched to GovQA. The description of the record requested was simplified, and the date the request was closed is no longer provided – instead a column stating "required completion date" was included.
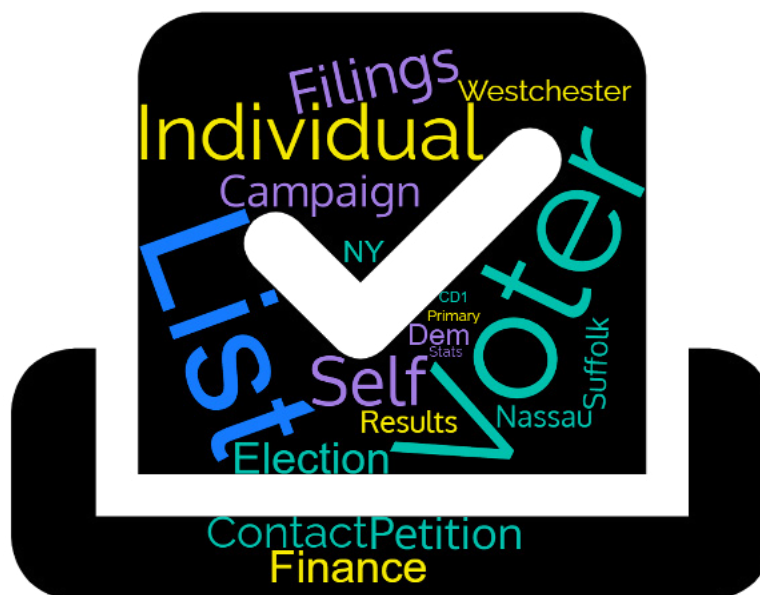
Of the requests we were able to analyze from January to August 2023, it appears that the SBOE closes requests very fast:

- The SBOE closed FOIL requests in an average of 4 days.

- The longest amount of time to close a request was 47 days.

- Only 4 requests took more than 30 days to close.

Reinvent Albany Analysis: Status of All Requests Made to NYS Board of Elections, January - August 2023			
Records Sent?	Average Days to Close Request	Count of Response Type	Percentage of Requests
Fulfilled	3	1,35	91%
Denied	14	12	1%
Unknown	6	24	2%
Grand Total	**4**	**1,395**	**100%**

TYPE OF FOIL REQUESTS

Common types of FOIL requests for the Board of Elections were for individuals' voting records, as well as voter lists for specific counties or jurisdictions. A word cloud is at right, showing the most common terms used by FOILers to describe the records that they were seeking. Beyond voter files, requests were made for petition records and campaign finance filings, which are made available online in a database that may be difficult for the average member of the public to use. Additionally, requests were made for contact information of candidates or election officials. A table of these terms is on the next page along with their frequency.
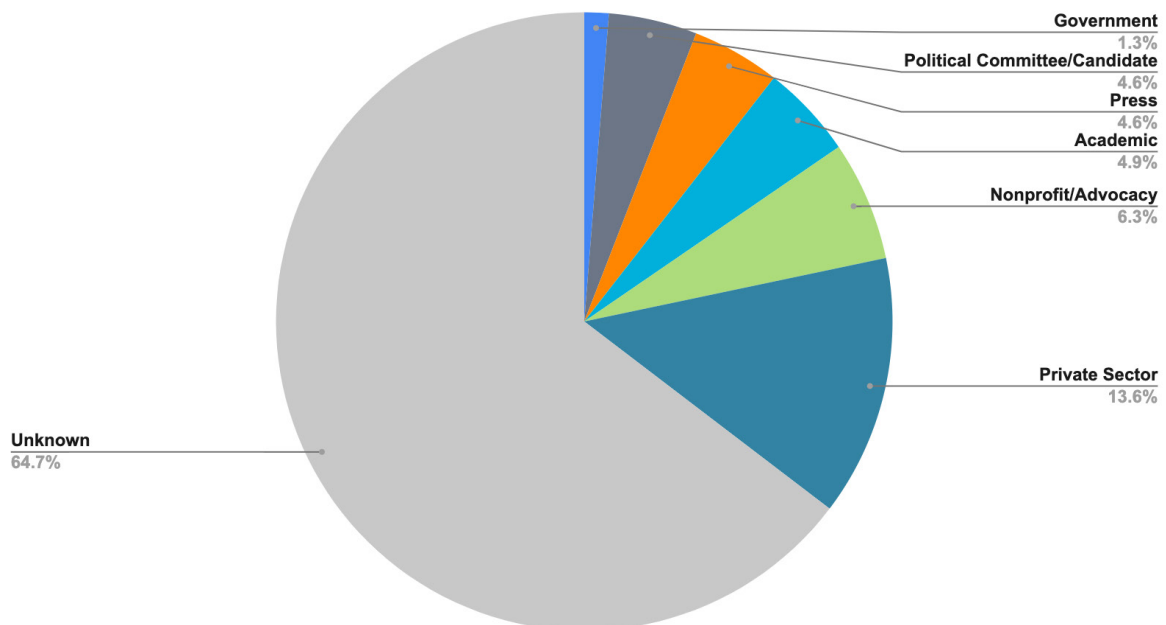
Reinvent Albany Analysis: Common Words From 2023 NYS Board of Elections FOIL Requests						
Rank	Word	Frequency of Usage		Rank	Word	Frequency of Usage
1	Voter(s)	878		11	Contact	25
2	List	150		12	Dem	23
3	County	170		13	Suffolk	19
4	Individual	110		14	Results	19
5	Self	89		15	NY	18
6	Filings	42		16	Westchester	17
7	Campaign	28		17	Nassau	17
8	Election	27		18	Primary	14
9	Finance	25		19	Stats	13
10	Petitions	25		20	CD1	13

TYPES OF REQUESTERS

As noted previously, it appears that a significant portion of requesters are seeking information about their own voting records – many of these are reflected in the "unknown" category shown in the chart on the next page, as they did not provide information about their affiliations. Another large segment of requesters represented the private sector, largely from companies seeking voter lists and campaign records – mostly political consultants. Nonprofits also sought voting lists, many of whom likely conduct voter education and requested voter files for counties or other local jurisdictions.

Reinvent Albany Analysis: NYS BOE FOIL Requesters by Type, 2023

Government 1.3%
Political Committee/Candidate 4.6%
Press 4.6%
Academic 4.9%
Nonprofit/Advocacy 6.3%
Private Sector 13.6%
Unknown 64.7%

SPECIAL FOCUS: FOIL REQUESTS FROM ELECTION DENIERS

Unfortunately, a significant number of requests – 11 in 2023 – appeared to be from individuals or organizations that state that they are concerned with "voter integrity," and have been linked with efforts to discredit the validity of election results around the country. These include requests from groups like True the Vote, the Voter Reference Foundation, and Public Interest Legal. According to the New York Times, "True the Vote and similar groups, taking a cue from former President Donald J. Trump, have often spread false theories about election fraud."

Additional requests were made from an anonymous source, "Totes Legit Votes." This individual made news making complaints related to the presidential election results from 2020 in Georgia, and has also been active in Florida making claims of voter fraud.

RECOMMENDATIONS FOR THE NYS BOE

1. Improve the campaign finance public reporting system to make it easier for the public to pull campaign finance data on their own, using focus groups to inform upgrades. (The BOE is expected to soon announce the selection of a vendor to improve its data systems.)

2. Consider creating a portal for voters to log in to see their own voting records, with appropriate privacy protections.

3. Automate requests for voter files, understanding privacy/commercial purpose limitations.

Division of the Budget

The Division of the Budget (DOB) currently receives FOIL requests through the GovQA platform. As promised in its 2021 Transparency Plan, DOB began posting a version of its FOIL logs on its website, showing the affiliation of requesters, subject of requests, and the status. Unfortunately, no dates are provided, and the logs are in PDF format, limiting their usefulness.

The FOIL logs sent by DOB in response to Reinvent Albany's request, however, contained detailed information about the name and organization of requesters, the records requested, and a comprehensive listing of the actions taken to close requests, including dates of acknowledgments, follow up responses, extensions, and whether the response was appealed or revised. The level of detail in the log's data field indicates a professional FOIL operation.

However, the DOB holds a wealth of information that could be proactively disclosed more frequently, or in greater detail that would lessen its FOIL caseload. For example, a key transparency initiative of DOB's as highlighted in its 2021 Transparency Plan to Governor Hochul was to publish Discretionary Lump Sums on its website. As of the writing of this report, DOB's lump sums website has not been updated since July 19, 2023.

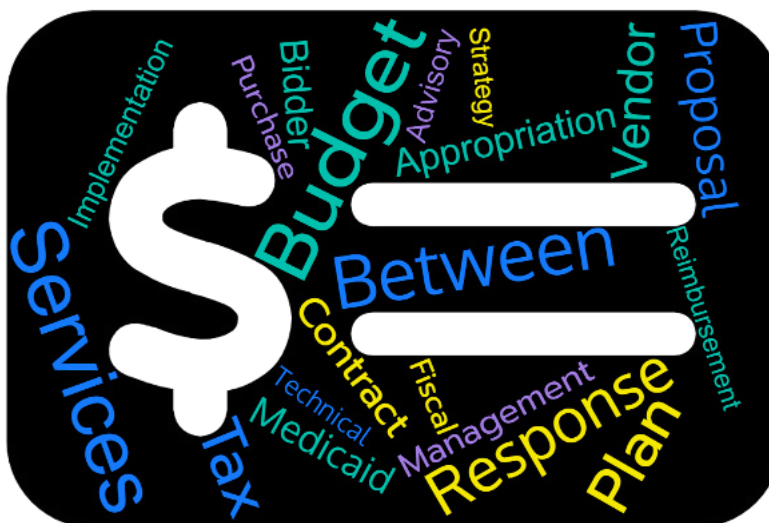A summary of DOB records requests and responses from 2023 is below.

- The DOB received a total of 81 requests in 2023, all of which were closed the same year according to the log submitted in response to Reinvent Albany's FOIL request.
  - › Surprisingly, the log included only two requests in the entire month of December 2023. It is unclear if the log only contained requests closed by DOB in 2023, not all those submitted to the agency that year. In November 2023, for example, 14 requests were filed with DOB, far more than the two in December.

- DOB initially only sent a PDF of FOIL requests, rather than the requested spreadsheet. However, DOB staff quickly sent a file in XLS format upon request.

- On average, DOB FOIL requests were closed in 39 days.

- The majority of responses stated that DOB did not have the requested records; these accounted for 41% of all responses, which were closed in 12 days.

- FOIL requests where records were sent took longer to close, at 85 days on average.

- The logs show that 11 FOIL requests, representing 13% of all requests, were closed by default, either by the requester not narrowing the request after DOB staff indicated that the records were "not reasonably described" (7 requests), or after requesters were informed that there would be fees for the records (4 requests).

Reinvent Albany Analysis: Division of the Budget FOIL Requests Closed in 2023			
Records Sent?	Average Days to Close Request	Count of Response Type	Percentage of Requests
No records	12	36	**41%**
Records sent	85	31	**35%**
Not reasonably described	10	7	**8%**
Referred to other agency	9	5	**6%**
Request withdrawn - deposit required	13	4	**5%**
Records withheld	52	4	**5%**
No certification received	15	1	**1%**
Grand Total	**39**	**88**	**100%**

TYPES OF FOIL REQUESTS

The vast majority of requests to DOB were for financial information, including purchase or budget appropriations data, or for contract information about vendors and bidders. Additionally, records related to implementation and plans for spending were requested,

including agreements between agencies or the Governor and Legislature. A word cloud is at right, showing the most common terms used by FOILers to describe the records that they were seeking, and a table of common words and their frequency is on the next page. Note that with only 88 requests, the frequency is much lower than for other agencies.
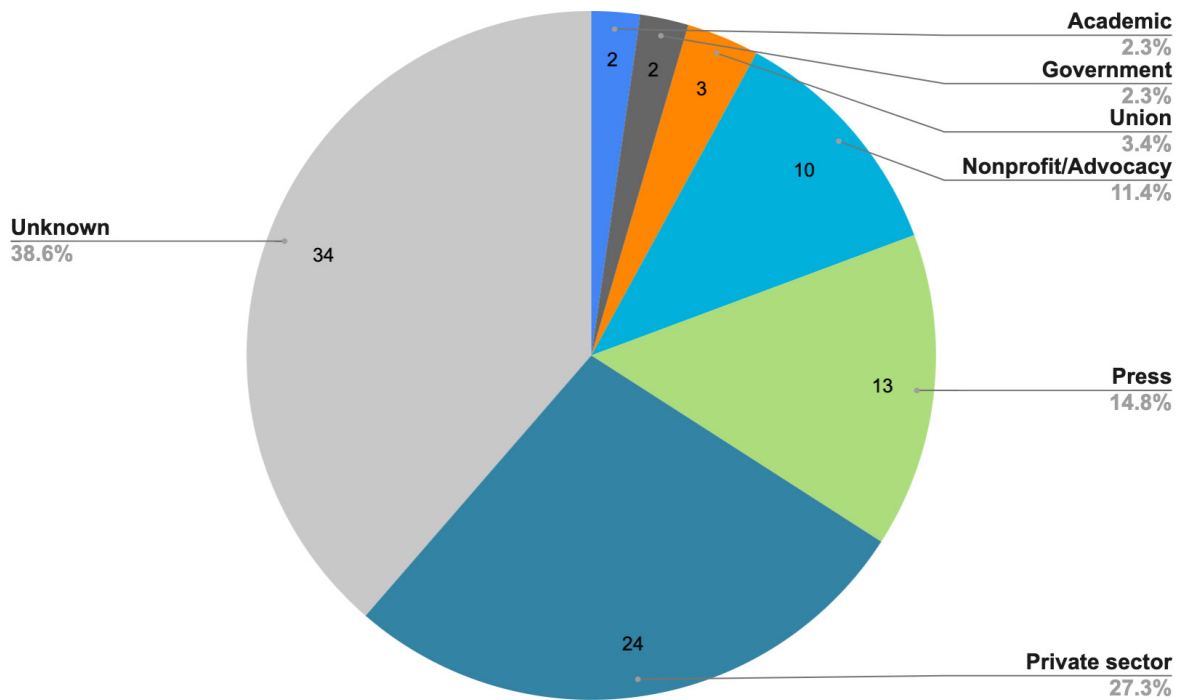

	Reinvent Albany Analysis: Common Words From 2023 Division of the Budget FOIL Requests				
Rank	Word	Frequency of Usage	Rank	Word	Frequency of Usage
1	Budget	31	11	Management	9
2	Services	27	12	Advisory	8
3	Contract	24	13	Fiscal	8
4	Between	19	14	Implementation	8
5	Response	16	15	Plan	8
6	Proposals	13	16	Purchase	8
7	Vendor	13	17	Tax	8
8	Appropriation	10	18	Reimbursement	7
9	Bidders	10	19	Strategy	7
10	Medicaid	10	20	Technical	7

TYPES OF REQUESTERS

As noted previously, DOB's FOIL logs contained the organization name of more than half of requesters. The largest category of requesters was the private sector (27%) – many of whom were seeking records about contracts, vendors, and bidding. The press accounted for the next most requests (15%), followed by nonprofits and advocacy organizations (11%), as shown in the chart below.

Reinvent Albany Analysis: DOB FOIL Requesters by Type, 2023

Academic
2.3%

Government
2.3%

Union
3.4%

Nonprofit/Advocacy
11.4%

Press
14.8%

Private sector
27.3%

Unknown
38.6%

RECOMMENDATIONS FOR THE DOB

1. Publish detailed FOIL logs in an open data format, with complete information including dates and response times, rather than the limited PDFs that are currently provided.

2. Better publicize and expand the Open Budget website offerings.

3. Make clearer on DOB's FOIL website what contract data DOB holds, and what is available through other agencies or the State Comptroller's Office.

4. Publish more of DOB's own contract information as open data, and provide frequently-requested contracts on DOB's website.

5. Provide more timely updates of the Discretionary Lump Sums website, which as of the date of writing the report, was last updated on July 19, 2023.

6. Consolidate discretionary funding lists from SUNY, CUNY and DASNY and publish on the DOB Discretionary Lump Sum website, rather than link to their respective webpages.

Legislative and Statewide Recommendations

FOIL REPORTING

The Governor's Office should evaluate the state's FOIL requests and responses, treating FOIL as a public service that is monitored and can be improved. A recently missed opportunity to do so was through Governor Hochul's October 2021 agency transparency plans. Only 22 of the 70 agencies (31%) provided data about their FOIL caseloads in their transparency plans, according to our report reviewing the plans, *Opening NY 2022*.

Without data about FOIL requests, basic questions can't be answered, such as:

- Who makes FOIL requests, and why?
- What information should be published online proactively, reducing FOIL requests?
- What staffing levels are appropriate to ensure requests are responded to promptly?

The U.S. Department of Justice receives quarterly and annual Freedom of Information Act (FOIA) data from federal agencies, and publishes this FOIA data on its website. This includes detailed information about requests received, processed, and in the agency's backlog. This important reporting allows for a more systematic review of how FOIA is being administered by federal agencies, and provides a window into performance that is currently missing in New York.

The State Legislature should pass legislation sponsored by Senator Brad Hoylman-Sigal, S8671, that would require state and local bodies subject to FOIL to report how quickly and completely they are providing the requested public records including:

- Publishing annual FOIL logs that show the number of requests received, the status of requests, response times, and use of exemptions to deny records.
- Providing data on types of requesters and categories of requests.
- Having the Committee on Open Government publish FOIL logs in a central location on its website.

NEW YORK STATE OPEN FOIL

Via Executive Order, the Governor should require state agencies to use a web-based "Open FOIL" platform and follow a policy of "release to one, publish for all" in which public records provided in response to a FOIL request are published for all to see. This is already done by jurisdictions across the country, and more locally, the Port Authority of NY/NJ. (Note "publish to all" does not include private records an individual requests about themselves, including health, education, criminal record, etc.) The State's current Open FOIL NY portal allows users to request records online, including for multiple agencies at a time. Despite its name, New York is not truly using an "Open FOIL" platform because it does not publish FOIL request data or publish records from fulfilled requests.

A number of agencies have switched to GovQA, a third-party FOIL processing application. Given that the GovQA platform has the capability to publish records from fulfilled requests, as seen in Washington State's King and Spokane counties, the State merely needs to activate this feature, thus functionally creating an Open FOIL platform for participating agencies.

The State's Open FOIL platform should use best practices from other jurisdictions, including the Port Authority's Fulfilled Requests and NYC Open Records portals, and be adopted widely and consistently by all state agencies and authorities.

We recommend that an Open FOIL portal have the following additional features:

1. A central location for the public to submit information requests and view all public requests, with posting of fulfilled records requests, i.e., "release to one, release to all"

2. A public directory of FOIL Officers, including email and phone

3. No requirement to create an account, but use of CAPTCHA to verify that the request is coming from an individual, not a bot

4. A single log-in for all requests of NYS agencies and authorities, for those who want to create an account to see the status of requests registered to their email address.

5. Multiple options for bulk download of responsive records, including zip/archive

6. Access via API to all FOIL portal data

7. Creation of a "Reading Room" of Frequently FOILed records

8. FOIL Performance Metrics, per FOIA.gov

9. An annual report on FOIL operations, performance, and plans for improvement

10. Relevant datasets should be posted to the NYS Open Data Portal including: FOIL requests, performance metrics, and any tabular data released via FOIL responses

GOVQA IMPROVEMENTS

While efforts are made to implement OpenFOIL and FOIL reporting, the GovQA platform should be improved to:

- **No longer require creating an account to submit a request,** but rather use CAPTCHA to verify that the request is coming from an individual, not a bot, and instead identify requests by name or email. NYC's Open Records Portal does not require FOILers to log in. Portals for government services that require an account provide an unnecessary barrier to access. While logging in allows users to see all their requests in one spot, there should be no requirement to create an account.

- **Make it optional to create an account** so users may log in to see the status of requests registered to their email address.

- **Establish a single log-in credential** for all requests to NYS agencies and authorities, for those who want to create an account.

- **Allow attachments to be added** to requests submitted via the portal.

- **Increase the character limit** for requests to allow more descriptive requests.

- **Allow appeals to be made through the portal**, not just via a snail mail address.

- **Allow replies to response emails generated from the GovQA portal.** For example, even though an agency's response via the GovQA platform said "Please respond above this line," the email address did not accept replies, prompting a bounce back message of "You have sent an email to an unresponsive email account."

- **Provide a FOIL contact person for each agency**, with an email and phone number, so FOILers know how to contact a human when necessary.

- **Publish all fulfilled public records requests**, implementing a true Open FOIL system.