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PIANY L.I. RAP:

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Pictured left to right:
Richard Zick, Christel Dyles
and Garrett Duffy

*and...The Standard
Fire Policy -
another look - PAGE 20*

Freedom of Information Requests

Did you know that the New York State Insurance Department's records, and records of all other New York State agencies, are available for public inspection and copying? The Freedom of Information Law, codified in Article 6 of the Public Officers Law ("FOIL") permits anyone to request records from the Insurance Department. For

means, or allow the requesting party to make an appointment to review the records at the Department, particularly where the file may be voluminous.

There are times, however, when the Department may invoke one of the limited statutory exemptions, and deny access to certain records. For instance, if the records contain personal information which if

the Insurance Department when a license is sought to engage in a captive insurance business are confidential and exempt from FOIL. Additionally, an insurance company's annual report may not be subject to FOIL while only portions of an applicant's 1033 waiver application to engage in the business of insurance following a criminal conviction may be subject to FOIL and the Department may withhold personal information to protect privacy.

If the Department denies a FOIL request, the party requesting the information has four months to challenge the decision by commencing a special proceeding in court, known as an Article 78 proceeding, pursuant to Article 78 of the Civil Practice Law and Rules. When a denial is based upon one of the statutory exceptions, the agency has the burden of proving that the record sought falls within one or more of the exceptions.

FOIL permits a court, in its discretion, to award reasonable attorneys' fees to the party who was denied access to records. To do so, a court must find that the party who was denied access "substantially prevailed", and either that the agency had no reasonable basis for denying access or that it failed to comply with the time limits for responding to a request or an appeal.^[A]

This article is for informational purposes only and is not intended to give legal advice. For more information on how to submit a FOIL request or commence an Article 78 proceeding, please contact the author at gabay@gabaybowler.com or (212) 941-5025.



Sari Gabay-Rafiy

The Office of General Counsel has offered some guidance on the applicability of certain FOIL exemptions. For instance, the Department has opined that the personal privacy exception of FOIL does not apply to the names and business addresses of newly licensed New York Insurance agents.

instance, a FOIL request may be made to the Department to obtain copies of an insurance company's filed policy forms or of an insured's complaint against a licensee and the information procured from any investigation. In response, the Department is required to make all records available to the public, including any information kept, filed, or reproduced in any physical form.

In enacting FOIL, the Legislature expressly recognized that "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."

In accordance with this principle and the requirements of FOIL, within five days of the Department's receipt of a written request for records, the Department typically sends an acknowledgement letter and a statement of the approximate date when the request will be granted or denied, and assigns a representative to handle the FOIL request. If the request is granted, the Department may, for a fee, copy the records, provide the records via electronic

released would constitute an unwarranted invasion of personal privacy or if the records contain trade secret information which if disclosed would cause substantial injury to the competitive position of a commercial enterprise, the Department may deny access to the records on such grounds. Although FOIL does not define "substantial competitive injury," Courts have interpreted the phrase in deciding challenges to FOIL requests. See, e.g., *Encore College Bookstores, Inc. v. Auxiliary Ser. Corp. of SUNY Farmingdale*, 87 N.Y.2d 410 (1995).

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