

May 28, 2019

Freedom of Information Law Policy

Executive Summary of Feedback Received from the Portal

On April 26, the draft Freedom of Information Law Policy was opened for comment on the College's Portal. One comment with multiple themes has been submitted by a student.

1. Burden of fees; undue influence; transparency

A student commenter expressed concern that the duplication fees associated with a records request would hinder communication and questions if the fee applies to student governments. Further, he/she suggested that the appeals officer should not be someone directly reporting to the President of the College; that the Records Access Officer and appeals officer should not both be direct reports to the President; that appeals be heard by a group of multiple individuals (e.g. a committee), rather than one individual; and that the College create records in response to requests for information. Lastly, the commenter indicated that neither the proposed FOIL policy nor the procedure were brought to student governments for review.

Administrative Response:

The New York State Freedom of Information Law (NYSFOIL) is one tool by which an individual can request information and documents from MCC. Individuals may request information and documents outside of NYSFOIL. The College may fulfill such requests or require the requestor to follow the NYSFOIL and this college policy. On page 2 of the draft policy, it is stated that college officials who are authorized to make records and information available may continue to do so, outside of the parameters of NYSFOIL. Clarifying language has been added to the draft policy (page 2).

Duplication fees are assessed for copies of records, unless the copies can be provided electronically and do not require redaction. Individuals can inspect records at no charge (unless redaction is required to prepare the record for inspection). Under this policy and upon the advice of legal counsel, fees will be assessed uniformly, without regard to the requestor's position or status. Doing so eliminates any real or perceived unfair or unequal access.

For more than 20 years, MCC's records access officer and appeals officer positions have been held by direct reports to the President. During that time, there have been no appeals that advanced beyond the College's appeals officer. Appeals occur infrequently and are subject to timelines set by law; for a committee to hear appeals, members would need the flexibility to come together on short notice and knowledge of the law. Alternatively, under NYSFOIL, anyone can request documents related to appeals received (e.g., the original request, the denial, the appeal and the decision of the appeals officer) and/or seek a third-party opinion from the New York State Committee on Open Government.

According to the College's policy review process, shared governance groups are engaged in the policy making process via the Shared Leadership Coordinating Council (SLCC). This FOIL policy and procedure were brought to the SLCC on April 23, 2019. On May 1, the policy originator learned that student government representatives are not present at SLCC meetings this semester and subsequently reached out to student government advisors to share the draft policy and procedure, and indicate her willingness to answer any and all student questions in person or in writing. To date, student governments have not requested additional information or raised additional questions.

Summary:

In response to these concerns, clarifying language was added to page 2 of the policy.