



CITE AS
25 Energy & Min. L. Inst. ch. 2 (2005)

Chapter 2
The Federal Freedom of Information Act, the New York State Freedom of Information Law, and the Energy and Mineral Industries: The Proprietary Paper Chase

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§ 2.01. Introduction.

The federal Freedom of Information Act (FOIA) and the New York State Freedom of Information Law (FOIL) provide the public with a check on government through open access to government agency records, including records submitted to these agencies by the energy and mineral industries.¹ Only narrow exemptions apply to these public disclosure statutes. Energy and mineral companies, to avail themselves of these applicable narrow

¹ “‘Record’ means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files,

FOIL exemptions (and their related FOIA counterparts), must thus supplement any submission to a New York agency with a thorough explanation of how, from legal and factual perspectives, these exemptions apply to their submitted data.

Accordingly, Section 2.02 of this chapter summarizes FOIA and FOIA's trade secrets, confidential business information and geological exemptions; Section 2.03 explores how the federal courts have interpreted these FOIA exemptions; Section 2.04 summarizes FOIL, its nexus with FOIA and FOIL's related exemptions to the energy and/or mineral industries; Section 2.05 explores how the New York courts have interpreted these FOIL exemptions as applied to the energy and mineral industries; and Section 2.06 recommends practical applications of the above to the energy and mineral industries submitting data to New York agencies.

§ 2.02. The Federal Freedom of Information Act.

FOIA is a federal public information disclosure statute found at 5 U.S.C. Section 552. Records submitted to a federal agency are upon submission subject to potential public disclosure under FOIA, which provides for an "informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."² Congress has well established that the basic policy of FOIA *is in favor of disclosure*.³ The agency bears the burden of proof to demonstrate that disclosure of agency records is not proper.⁴

This presumption in favor of disclosure, however, is not absolute. Under FOIA, "public disclosure is not always in the public interest and

books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes." N.Y. Pub. Off. Law § 86(4)(2004).

² NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978).

³ See Federal Bureau of Investigation v. Abramson, 456 U.S. 615, 630 (1982).

⁴ See Niagara Mohawk Power Corp. v. Dep't of Energy, 169 F.3d 16, 18 (D.C. Cir. 1999).