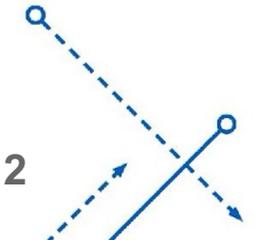


FREEDOM OF INFORMATION

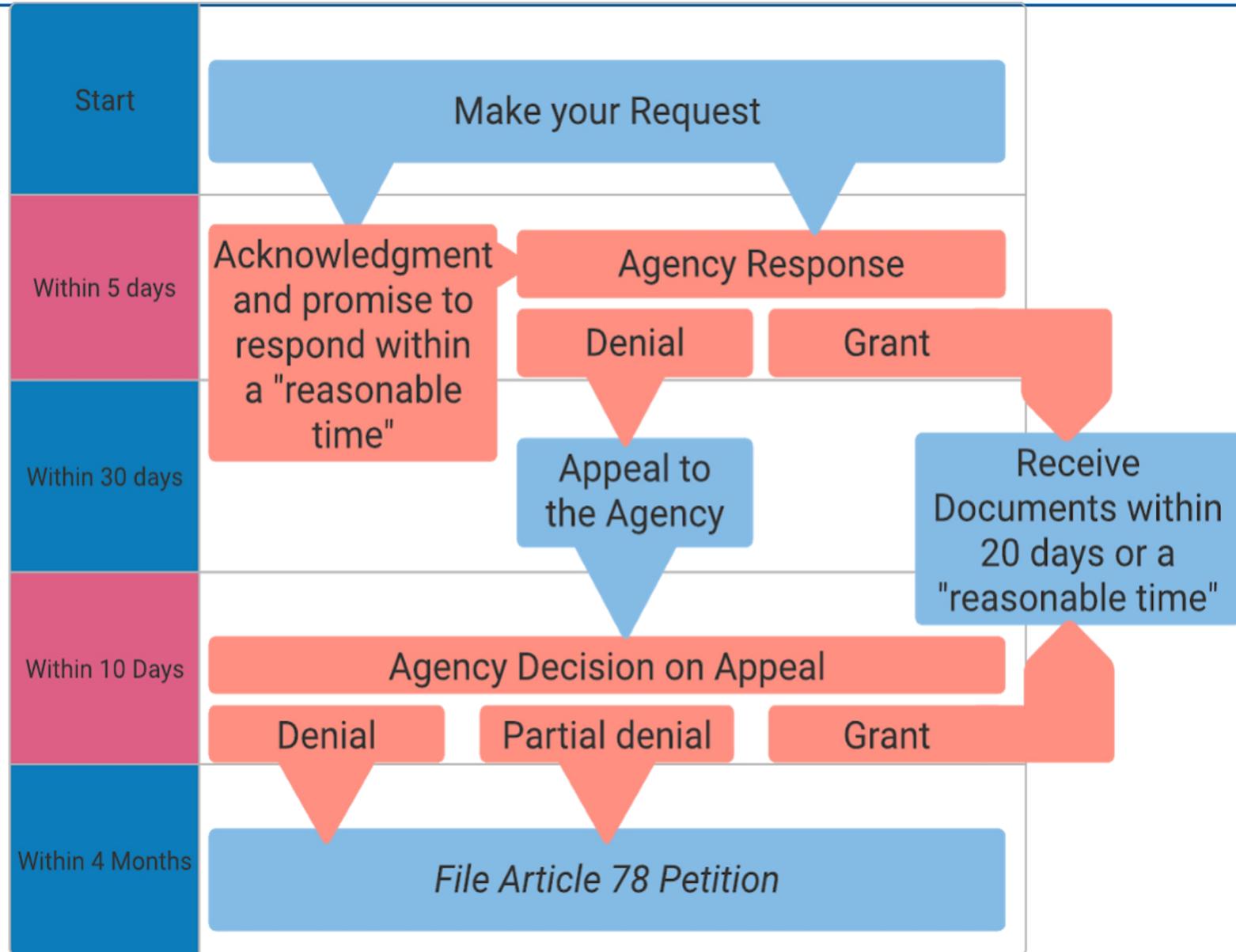
Helping yourself

Agenda

- You've Been Denied! Now What?
- Appeal
- Administrative Exhaustion
- Getting Ready to Sue
- Drafting
- Filing



Process: FOIL



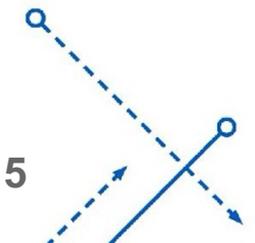
Stonewalling Tactics

tweet by Mellisa Lewis @iff_or



Dealing with a Substantive Denial: FOIL

1. Records Exempted by State or Federal Statute
2. Personal Privacy
3. Trade Secrets
4. Evidentiary Privileges
5. Law Enforcement Records
7. Life and Safety
8. Inter-agency and Intra-agency Records
9. Information Assets Security



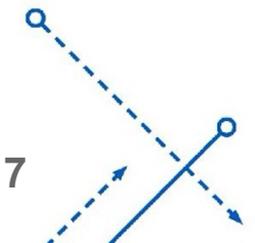
Dealing with Excessive Fees

FOIL Isn't Free But it Should Be

- Under FOIL, Agencies can only charge 25 cents/page for duplication.
 - No fee limitations or waivers, but:
 - ❓ Some agencies might not charge you, and
 - ❓ You can ask for a waiver or limitation, or
 - ❓ You can avoid fees by asking for records delivered by email.
 - Limit your Request
 - Appeal the Fee

Dealing with Interminable Delays

- 5 business days to Acknowledge
- 20 business days to Substantively Respond (deny or grant)
- Courts have accepted repeated 20 day renewals, but agency must show “inability” to respond within the time frame.
- Push for a firm deadline



Appeal

- On Time (30 calendar days)
- To the right person
 - Check your denial letter
 - Check the website
 - Ask
 - Check the law (head, chief executive or governing body of the entity)
 - Describing why the agency is wrong
- Ask for a response within 10 business days

Administrative Exhaustion

- Did you appeal?
 - Wait 10 business days, file on the 11th
 - Or appeal as soon as denied?
- You do not need a second appeal (but you might want to write anyway)

Getting Ready to Sue

- Gather your documents (the request, denial, appeals, and other correspondence)
- Set a deadline 4 months!
- Locate the proper court
- Find your money (or file a request to waive the fee)
- Create a NYSCEF Account

<https://iapps.courts.state.ny.us/nyscef/UnRepresentedHome>

Drafting

Required

- Petition
- Notice of Petition
- RJI

Strongly Recommended

- Memorandum of Law
- Reply

Petition

- Your opportunity to tell the story
- 4 exhibits you'll want to have
 - Request
 - Response
 - Appeal
 - Response to Appeal

Notice of Petition

When will the court will hear me?

How do I get my index number?

Can I do this by Order to Show Cause?

Who am I suing again?

RJI

NYSEF will make it for you!

Memorandum of Law

Your opportunity to argue why you're right

Where to get more information

[https://opengovernment.ny.gov/freedom-information-law-
case-summary](https://opengovernment.ny.gov/freedom-information-law-case-summary)

Westlaw/LexisNexis

Memorandum of Law Best Practices

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Argument

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Filing

The Place

[NYSCEF](#)

Or In person

\$350 Cashier's Check or \$365 Credit Card

[Or In Forma Pauperis](#)

Service

Make sure you serve the agency

Personal service is the safest and fastest option

What happens after you file

Voluntary disclosure

Litigation

Response to petition

Your reply

Oral Argument

Resources

Guidance and Law

- UB Civil Rights and Transparency Clinic: law-cltc@buffalo.edu or mh93@buffalo.edu
- New York State Committee on Open Government
https://www.dos.ny.gov/coog/foil_listing/findex.html

Database and Electronic Submissions

- Muckrock.com
- <https://www.ny.gov/openfoil/openfoil-resources>

Tips and Tricks

- Do your homework!
 - System of records
 - Pick up the phone
- Records Access Officers are people too
 - Sometimes suspicious
 - Sometimes persuadable
 - Make their job easy!
- Know your Rights & Assert your Rights
- Track the timelines
- Appeal!

Questions?