

ESSAA

Insights

Food for Thought from the ESSAA Legal Team

Empire State Supervisors and Administrators Association
Legal Update - November 2024



FOIL and Disciplinary Records of Public Employees

The Freedom of Information Law (FOIL) in New York State grants the public the right to access government records based upon the Legislature's determination that this promotes transparency and accountability in public agencies, including educational institutions. This update, which includes analysis of an October 2024 appellate court decision, provides an overview of how FOIL applies to disciplinary records of public employees, including school administrators and teachers.

FOIL Basics:

- FOIL allows any individual or group to request access to records maintained by state and local agencies, including public school districts.
- Records that are considered "public" under FOIL include minutes of meetings, budgets, and certain personnel records, with some limited specific exclusions.

Disciplinary Records:

- Disciplinary records of educators, such as suspension notices and investigation outcomes, can fall under FOIL. For example, Education Law 3020-a determinations of misconduct are subject to FOIL.
- Certain information may be redacted to protect personal identifying details or to maintain confidentiality around sensitive matters.

Recent Developments:

- In recent years, the courts have recognized an increased public interest in accessing disciplinary records to ensure the safety and integrity of governmental institutions, including public schools.
- A recent decision broadly interpreting FOIL is *Matter of Newsday, LLC v Suffolk County Police Dept.* (2024 NY Slip Op 04772). In this case, the Appellate Division found that unless certain narrow statutory exceptions applied, the disclosure of records of unsubstantiated, unfounded, or exonerated allegations of misconduct was required. This would apply to the numerous unfounded complaints filed against administrators by disgruntled staff which are ultimately dismissed as baseless.
- This decision will impact how school districts respond to FOIL requests for these documents moving forward.
- On September 4, Gov. Hochul signed [A6146B/S5500](#) amending FOIL to require that agencies subject to the law develop a policy regarding providing a notification to public employees in the event that the employee's disciplinary records are requested. The amendment went into effect immediately.

Recommendations for Associations and Members:

- Your Association should, as part of its regular labor-management meetings with the Superintendent, request that the Association and/or the individual member be apprised of FOIL requests which may lead to disclosure of records regarding members. Upon learning of such FOIL requests, the immediate first step must be to contact ESSAA counsel. The courts have broadly ruled in favor of disclosure of these records, but there may be individual distinguishing factors that counsel may find to exempt disclosure or require redaction of confidential information.
- If the District requests that you provide records in response to a FOIL request, we encourage you to consult with your ESSAA attorney. Although the final determination regarding the appropriateness of disclosure should be made by the District's counsel, your ESSAA attorney can help you frame the issues for your discussion.
- Remember, it is too late for your ESSAA attorney to intervene after the records have been disclosed by your District.
- Unionized workforces should consider whether there is an obligation to bargain on the development and impact of this new policy.