



STATE OF NEW YORK  
DEPARTMENT OF STATE  
COMMITTEE ON OPEN GOVERNMENT

FOI/AO-11044

Committee Members

41 State Street, Albany, New York 12243

(518) 474-2518

Fax (518) 474-1927

Website Address: <http://www.dos.state.ny.us/cog/cogwww.html>

Alan Jay Olson  
Walter Grundfeld  
Robert L. Kang  
Guy Levin  
Elizabeth McCaughey Rose  
Warren Mitchell  
Wade S. Norwood  
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September 9, 1998

Executive Director

Robert J. Freeman

Hon. Joseph A. Provoncha  
Essex County Clerk  
Essex County Government Center  
Elizabethtown, NY 12932

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence, unless otherwise indicated.

Dear Mr. Provoncha:

I have received your letter of September 4 in which you raised questions concerning the right to copy records under the Freedom of Information Law.

The initial issue involves requests by individuals who are "searching out their 'roots'." You indicated that your office maintains what you characterized as "Naturalization Books" and that a representative from the federal government specified that the contents of those books can be inspected, but that they cannot be copied. The notice attached to your letter states in relevant part that:

"Clerks of the Court are prohibited by law from making and issuing certifications of a naturalization record or any part thereof, except upon order of the Court. There is no prohibition against furnishing information orally from naturalization records, without Court Order."

In order to obtain additional information regarding the federal law that would govern, I contacted the FOI/Privacy Unit of the Immigration and Naturalization Service on your behalf. I was informed that the prohibition against copying involves the preparation of "certifications" of naturalization records that can be used to prove citizenship. I was also informed that there is nothing in federal law that would prohibit a municipal clerk from providing a photocopy of the kind of records to which you referred. Consequently, I believe that, on request, you would have the authority to prepare a photocopy of the contents of Naturalization Books.

The second issue involves the recreation of the content of old deed books. Some of those books are fragile, and although you permit individuals to inspect their contents, you do not permit

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them to reproduce the contents by means of a copy machine. In short, you wrote that your policy is "due to the fragile nature of the books and the fact that with a spine broken we could lose old deeds." You asked whether the Freedom of Information Law requires that a deed must be copied, on request, on a copying machine, or whether an alternative method is acceptable.


From my perspective, while there is an obligation to comply with the Freedom of Information Law, there is also an obligation imposed upon local government officials to preserve and maintain the custody of their records. Specifically, subdivision (1) of §57.25 of the Arts and Cultural Affairs Law states in relevant part that:

"It shall be the responsibility of every local officer to maintain records to adequately document the transaction of public business and the services and programs for which such officer is responsible, to retain and have custody of such records for so long as the records are needed for the conduct of the business of the office; to adequately protect such records; to cooperate with the local government's records management officer on programs for the orderly and efficient management of records including identification and management of inactive records and identification and preservation of records of enduring value; to dispose of records in accordance with legal requirements; and to pass on to his successor records needed for the continuing conduct of business of the office..."

In my opinion, although an agency ordinarily would be required to photocopy a paper record on request, under the circumstances that you described in which photocopying could destroy the record, you would have the authority to limit the ability to copy to the alternatives that you described.

I hope that I have been of assistance. Should any further questions arise, please feel free to contact me.

Sincerely,



Robert J. Freeman  
Executive Director

RJF:jm