New York State Committee on Open Government

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Freedom of Information Law

FOIL

“Records”

YELLOW SUBMARINE
(John Lennon-Paul McCartney)
Capitol
RECORDS
Maclen
Music, Inc.
BMI-2040
5715
(45-X45619)
Produced in
England by
George Martin
THE BEATLES

Reasonably Describe Records

- Locate with reasonable effort
- Electronic records

Not Required to Create Records

3 exceptions:

- Vote
- List: name, public office address, title, salary
- Subject matter list

Presumption of Access

THE VICE PRESIDENT HAS SEEN

[People have made too much of the difference in how I received Karl and Libby]

I've talked to Libby.

I said it was ridiculous about Karl and it is ridiculous about Libby

Libby was not the source of the Novak story.

And he did not leak classified information.

Have to happen today

Call out to hog press saying same thing about Scooter as Karl

Not going to protect our staffer + sacrifice the guy ~~[illegible]~~ that was asked to stick his neck in the meat grinder because of the incompetence of others.

GOVERNMENT EXHIBIT 532 05 Cr. 394(JD)

009502

Data Analysis

Database: SQLiteDB

General: Restore initial po... / Save as / Load cube / Refresh / Copy selected fie... / Print

Exporting: Export to Excel / Export to HTML / Export to text file / Export to XML

Data | Query

Drop Filter Fields Here

Date	Item	open	shipped	waiting	Grand Total
4/27/1993	other		20000.00		20000.00
8/1/1993	software		9000.00		9000.00
8/9/1993	hardware		959960.50		959960.50
8/16/1993	software		0.00		0.00
8/20/1993	software		18000.40		18000.40
8/27/1993	software		10000.00		10000.00
9/9/1993	software		12582.12		12582.12
9/20/1993	software		100.02		100.02
10/10/1993	software		490.69		490.69
10/27/1993	hardware	2693.00	120000.00		122693.00
10/30/1993	software		210.00		210.00
11/11/1993	software		27000.00		27000.00
12/12/1993		531980.49			531980.49
12/18/1993	software		1500.00	999.98	2499.98
12/27/1993	software			14850.00	14850.00
12/31/1993	software			0.00	0.00
1/4/1994	hardware	3999.99			3999.99
1/6/1994	software			1980.72	1980.72
1/17/1994	software	3399.15			3399.15
2/7/1994	hardware		422210.97		422210.97
2/13/1994	software	9000.00			9000.00
Grand Total		551072.63	1681687.70	17830.70	2250591.03

Exempt by law

- Are exempt by state or federal law
  - Attorney-client communications – CPLR
  - Student records – FERPA
  - Mental health records – Mental Hygiene Law

Unwarranted Invasion of Personal Privacy

Some Examples:

- Employment application for someone who is not hired
- Medical records
- Social Security Number*
- Lists of names and addresses if used for solicitation or fund-raising purposes

Emails, Memos, Communications with other Agencies

Required to disclose:

- Statistical or factual information
- Instructions to staff that affect the public
- Final agency policy or determinations
- External audits

Time Limits

- 2008 amendments
- With reasonable effort

Email Requests

- If able, must
- Suggested form language on our website

Fees

- $.25 per page for copies up to 9x14 inches
- Actual cost of reproduction
- Electronic records

Open Meetings Law

Public Bodies

- Two or more people
- Quorum
- Authority
- Membership

Are you having a Meeting?

- Quorum
- To discuss public business
- Regardless of intent or characterization

No Legal Distinction

- Workshop or work session
- Regular meeting
- Informal gathering
- Pre-board meeting

Other Gatherings

- Site visit
- “Retreat” or educational seminar
- Attendance at committee meeting
- Social

Intent

- “Be fully aware of and able to observe”
- “To attend and listen to the deliberations and decisions that go into the making of public policy”
- Make reasonable efforts to accommodate volume

Telephone Calls, Emails

- Definition of "meeting"
- Requires physical presence
- Videoconferencing permitted

Notice

- Time and place
- Prior to every meeting
- To the media
- Designated location
- ON THE WEBSITE*

Minutes

- Motions/Proposals/ Resolutions/Votes
- Regular meetings
- Executive sessions
- Unapproved or draft

HEAR ALL EVIL
SEE ALL EVIL
POST ALL EVIL
CHENEY

Recording

- Agency
- Public
- Reasonable rules
- Disruption/interference

Executive Session

- Part of an open meeting
- Upon majority vote
- Specificity of motion

Grounds for Executive Session

f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;

Public Participation

- Constitution, First Amendment
- Reasonable rules
- Hearings

OML Section 103(e)

- Records scheduled to be discussed at public meeting
  - Records that are public under FOIL
  - Proposed resolutions, laws, rules, regulations, policies or any amendment thereto
  - Public meeting

OML Section 103(e)

- Shall be made available upon request, prior to or at the meeting

- Fees: same as FOIL

OML Section 103(e)

- Shall be made available online prior to the meeting
  - If the agency maintains a regularly and routinely updated website and utilizes a high speed internet connection
  - Agency may, but not required to spend additional moneys to implement this section

Non-Compliance

- Article 78 proceeding

- Discretionary authority to
  - award costs and attorney's fees
  - invalidate action
  - require training