

The City University of New York

Office of the General Counsel and Vice Chancellor for Legal Affairs

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Advisory Memorandum No. 17

January 19, 1993

To: Acting President Stephen M. Curtis
Borough of Manhattan Community College

From: Vice Chancellor Robert E. Diaz 

Re: Recent Freedom of Information Law Appeals

The Office of General Counsel, acting in its statutory capacity as Freedom of Information Law ("FOIL") Appeals Officer for the University, has recently denied two appeals. I enclose copies of these letters as they are of general interest. In the first, access to a "copy of the current semester's book list, as compiled by each of the college's professors" was denied on various grounds, including the fact that such lists are publicly available to anyone in the bookstore and are not agency records within the meaning of the statute. In the second, a request was made to "inspect and copy all first year student answers to the ... midterm." This was denied on privacy grounds under both the Family Educational and Privacy Rights Act, ("FERPA" or the "Buckley Amendment") and FOIL, as well as on the grounds that FOIL exempts release of examination questions prior to final administration of such questions, with the determination of when that final administration has occurred likely left to the discretion of the agency.

On November 12, 1992, per attached memorandum, I requested that you advise this office of the designated Records Access Officer for your campus. I have not yet received the name of the designee. Please forward the enclosed materials to your Records Access Officer and forward the name and telephone number of that individual to this office at your earliest convenience.

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