

THE CITY UNIVERSITY OF NEW YORK

Office of the General Counsel and Vice Chancellor for Legal Affairs

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**Administrative Advisory
Memorandum #6**

March 19, 1991

Memorandum

To: College Presidents

From: Vice Chancellor Robert E. Diaz 

Re: Accessibility of P&B Committee Minutes under
Freedom of Information Law
Ronald Rothenberg v. CUNY (Queens College)
Supreme Court, New York County

Petitioner, a faculty member at Queens College commenced this Article 78 proceeding to contest the determination of The City University of New York to deny him access to certain documents pursuant to the Freedom of Information Law (FOIL) (See Public Officers Law Sec. 87 et seq.).

Petitioner requested from CUNY numerous documents relating to the granting and denying of promotions. The City University of New York supplied petitioner with a substantial number of the requested documents but declined to provide petitioner with the minutes of the Queens College Committee on Personnel and Budget containing the "ratings" and "votes" for full professor.

In dismissing the petition, the court accepted our assertion that the recommendations and votes of the College P&B are expressions of opinion, not factual data, and thus excludable under subdivision i of Sec. 87 (2)(g) of the Public Officers Law.* Although the court's decision appears to be based on an opinion versus factual data distinction, it is significant that the court expressly noted that Sec. 9.8 of CUNY's By-Laws, which relates to promotions, provides in relevant part that the president has the authority to make an independent recommendation for promotion and no final action of departmental committees may be taken without consultation with the president. Thus, it appears, the court was persuaded that the committee votes did not represent final agency action which would have to be disclosed pursuant to FOIL.

A copy of this decision is available upon request.

c: Legal Affairs Designees

* P.O.L. Sec. 87 (2)(g) provides in relevant part:

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that...

(g) are inter-agency or intra-agency materials which are not:

(i) statistical or factual tabulations or data;

(iii) final agency policy or determinations.