

THE CITY UNIVERSITY OF NEW YORK

*Office of the General Counsel and Vice Chancellor for Legal Affairs*

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**Administrative Advisory  
Memorandum #7**

March 19, 1991

Memorandum

To: College Presidents  
From: Vice Chancellor Robert E. Diaz   
Re: Access to College Budget  
Under the Freedom of Information Law

I have been asked whether a college must release budgetary data when such data is requested pursuant to the Freedom of Information Law.

The Freedom of Information Law (FOIL), Public Officers Law (P.O.L.) Secs. 84-90 states that the intent of the law is to make "government...the public's business" and to provide the public with "access to the records of government." P.O.L. Sec. 84. Generally, in the absence of specific statutory protection for requested records, the records of a public agency are discoverable. Westchester Rockland Newspapers, Inc. v. Kimball, 50 N.Y. 2d 575, 430 N.Y.S. 2d 574, 577, 408 N.E. 2d 904 (1980).

Pursuant to FOIL, an agency may not deny access to records that are statistical or factual tabulations or data [Sec. 87.2 (g)(i)] or final agency policy or determination [Sec. 87.2 (g)(iii)].

While budgetary data are essentially statistical and factual tabulations, not all budgetary documents are discoverable under FOIL. The courts have addressed the accessibility of budgetary data in two cases. A budget examiner's worksheet was considered "statistical and factual tabulations" and thus discoverable in Dunlea v. Goldmark, 85 Misc. 2d 198, 202-203 N.Y.S. 2d 496, modified, 54 A.D. 2d 446, 389 N.Y.S. 2d 423 (3d Dep't 1976), aff'd, 43 N.Y. 2d 754, 401 N.Y.S. 2d 1010, 372 N.E. 2d 798 (1977). Budget estimates, on the other hand, were not discoverable. While the worksheet in Dunlea was "within the context of a budget which had already been finally adopted," the data in Delaney v. Del Bello, 62 A.D. 2d 281, 405 N.Y.S. 2d 276, 280-81 (2d Dep't 1978) were "mere recommendation...there may be little or no correlation between the information sought and the final budget proposal."

Based on the foregoing, if a request is made for the final budget figures of a college, the college must comply with the request. If a request is received for preliminary budget figures, the college does not have to provide this information but may do so if it wishes.