



**State of New York  
Department of State  
Committee on Open Government**

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**FOIL AO 19856**

January 18, 2024

*By Electronic Mail Only*

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

Dear Mr.:

The Committee on Open Government (Committee) received your request for an advisory opinion regarding the manner in which the New York State Commission on Ethics and Lobbying in Government (COELIG) has responded to your Freedom of Information Law (FOIL) request for unredacted copies of notices of appearances filed pursuant to Executive Law § 166.

By way of background, Executive Law § 166 states, in pertinent part:

Every regulatory agency of the state shall keep a record of appearances before it or its appropriate divisions or bureaus of attorneys, agents and representatives appearing on behalf of any person, firm, corporation or association subject to its regulatory jurisdiction, for which they receive a fee, which record shall be open to public inspection. Each regulatory agency shall file the record with the New York temporary state commission on lobbying on forms prescribed by the commission.

Executive Law is silent as to the required content of these notices; however, in a formal opinion issued in 1955, the New York State Office of the Attorney General provided the following guidance:

No special form is required by law. The record may be kept by means of a looseleaf docket or some other suitable arrangement which will provide information which is properly safeguarded and reasonably accessible to public inspection. The information so recorded should include at least the date, the name and address of the person appearing, for whom he appears, in connection with what matter and that a fee has been or will be received for the appearance.

1955 WL 72028, at \*1 (N.Y.A.G. Jan. 28, 1955).

On December 21, 2023, COELIG initiated a rolling production of the requested records and advised you that “[p]ortions of the documents are redacted as they contain information which if disclosed would constitute an unwarranted invasion of the individuals’ personal privacy and is therefore exempt from disclosure pursuant to Public Officers Law Sections 87(2)(b) and 89.” You appealed this denial of access and, on December 28, 2023, COELIG upheld its denial of access to signatures and telephone numbers contained in the records on the ground that disclosure “would constitute an unwarranted invasion of privacy in accordance with Public Officers Law § 87(2)(b).”

In our opinion, COELIG may not rely on the personal privacy exemption consistent with its obligation under the law. The language of Executive Law § 166 mandates that notices of appearance filed pursuant to its terms be open to public inspection. When a state or federal statute makes a record presumptively public, it is our view that an agency may not withhold that record, or any portion thereof, based on any of the permissive grounds for denial established in Public Officers Law § 87(2). *See Szikszay v. Buelow*, 436 N.Y.S.2d 558, 563 (Erie Co. 1981) (“considering the legislative purpose behind the Freedom of Information Law, it would be anomalous to permit the statute to be used as a shield by government to prevent disclosure”). Further, Public Officers Law § 89(6) provides that “[n]othing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.” Given the clear language of both Public Officers Law and Executive Law, it is our view that the notices of appearance filed with COELIG must be made available for inspection in their entirety without redactions.

Even absent the mandate for public disclosure established by Executive Law § 166, it is our opinion that COELIG would be unable to meet its burden of establishing that the redacted portions of the record (signatures and telephone numbers) fall within the “unwarranted invasion of personal privacy” provisions of Public Officers Law § 87(2). With regard to telephone numbers, when an individual appears, for a fee, before a regulatory agency on behalf of a person or organization subject to the regulatory jurisdiction of the agency, they may provide a telephone number for themselves and for their client. These telephone numbers are either business telephone numbers or personal telephone numbers for individuals acting in a business capacity. The Committee has long offered the opinion, based upon judicial precedent, that § 87(2)(b) of FOIL is intended to pertain to natural persons, not entities or persons acting in business capacities. *See* [FOIL AO 10958](#), [FOIL AO 18160](#), [FOIL AO 19699](#).

In its appeal determination, COELIG argues:

Since telephone numbers and personal signatures now play a crucial role in identity theft – serving as a gateway for criminals to access personal information and financial accounts such that phone numbers can be used to reset passwords and gain access to online accounts – the Commission’s Records Access Officer appropriately acted to avoid exploitation of vulnerabilities in account recovery processes by thieves using stolen phone numbers to bypass two-factor authentication and take control of victims’ accounts. Additionally, phone numbers are often used in conjunction with other stolen personal information to commit financial fraud by using a victim’s phone number to open fraudulent credit card accounts or make unauthorized online purchases.

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We believe that a court would find this argument unavailing. While it is true that additional avenues for identity theft and fraud continue to emerge, we believe that a court would find that a lobbyist providing information on a form that it knows is by statute a public document would understand and take precautions not to provide information that places them at risk. Indeed, an individual completing the notice of appearance is under no obligation to provide their personal mobile telephone number. While historical forms may have requested different information, the notice of appearance form currently available on the COELIG website specifically requests “business telephone” for both the individual appearing before the agency and their client.

With regard to the signatures of the individuals appearing before the agency, it is also our view that COELIG would not be able to justify to a court withholding this information on personal privacy grounds. Members of the public place their signatures on documents that are publicly available on a regular basis. For example, property records, including deeds and mortgage records, are required to be made publicly available and are frequently posted on the websites of County Clerks. These records contain the signatures of the County Clerk and the individuals who sold and purchased the property. Another example of a situation in which signatures are required to be made public involves voter registration records. Election Law § 3-220(1) provides, in relevant part, that “[a]ll registration records, certificates, lists and inventories referred to in, or required by, this chapter shall be public records and open to public inspection.” Pursuant to Election Law § 5-210, voter registration forms must include the registrant’s signature. See [FOIL AO 10352](#). Finally, we note that as a result of litigation involving a determination by the Nassau County Sheriff’s Department to redact signatures of captains who approved overtime requests on the ground that disclosure would constitute an unwarranted invasion of personal privacy, the Appellate Division, Second Department held that “the agency failed to meet its burden of demonstrating that the information requested fell within this statutory exemption.” *Jaronczyk v. Mangano*, 121 A.D.3d 995, 996 (2d Dep’t 2014).

Given the clear statutory intent that the notices of appearance are required to be made publicly available and the judicial precedent cited above, it is our view that COELIG would be unable to meet its burden of proof in a judicial proceeding in denying access to portions of the requested records containing telephone numbers and signatures.

Thank you for your inquiry.

Sincerely,

Kristin O’Neill  
Assistant Director