

TOWN OF BERNE

TOWN BOARD RESOLUTION

Resolution No. _____ of 2026

A RESOLUTION ADOPTING THE TOWN OF BERNE FREEDOM OF INFORMATION LAW (FOIL) POLICY (13-2026)

WHEREAS, the Town Board of the Town of Berne is committed to open government and transparency while protecting personal privacy, public safety, and confidential information; and

WHEREAS, New York State Freedom of Information Law (FOIL), Public Officers Law Article 6, requires municipalities to adopt procedures for the receipt, processing, and determination of public records requests; and

WHEREAS, the Town Board has reviewed the proposed **Town of Berne Freedom of Information Law (FOIL) Policy (13-2026)**, which establishes procedures for submitting and responding to FOIL requests, designates Records Access Officers, provides timelines for acknowledgment and response, and includes enhanced protections for personal privacy and safety as permitted under Public Officers Law §§87 and 89; and

WHEREAS, adoption of this policy will promote compliance with state law, ensure consistency in FOIL administration, and protect individuals from unwarranted invasion of privacy or risk of personal harm;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Berne hereby **adopts the Town of Berne Freedom of Information Law (FOIL) Policy (13-2026)**, attached hereto and made a part of this resolution; and

BE IT FURTHER RESOLVED, that the Town Clerk, or their designee, is hereby designated as the Records Access Officer for the Town of Berne, and the Town Supervisor is designated as the FOIL Appeals Officer, as set forth in the policy; and

BE IT FURTHER RESOLVED, that this policy shall take effect immediately upon adoption and shall apply to all Town departments, officers, employees, and officials; and

BE IT FURTHER RESOLVED, that the Town Clerk is directed to maintain the adopted policy as an official Town record, post it on the Town's website, and make it available for public inspection; and

BE IT FURTHER RESOLVED, that the Town Board shall review this policy annually and amend it as necessary to remain in compliance with New York State law and guidance from the Committee on Open Government.

Adopted this _____ day of _____, 2026

AYES NOES ABSENT

TOWN OF BERNE TOWN BOARD

Town Supervisor

Councilmember

Councilmember

Councilmember

Councilmember

ATTEST:

Town Clerk

TO: Town Board, Town of Berne
FROM: J Giebelhaus, Town Supervisor
DATE: 1/1/2026
RE: Freedom of Information Law (FOIL) Policy 13-2026

Dear Town Board Members:

The purpose of this memorandum is to advise the Town Board regarding the handling and validity of Freedom of Information Law (FOIL) requests that are received by Town officials or employees other than the designated Records Access Officer (RAO), and to explain the rationale for the related language included in the Town's FOIL Policy.

Background

New York State's Freedom of Information Law (Public Officers Law Article 6) requires municipalities to provide public access to records in accordance with statutory timelines and exemptions. While the law permits a municipality to designate a Records Access Officer to coordinate responses, **FOIL does not require a requester to submit a request directly to that individual.**

The New York State Committee on Open Government (COOG) has consistently advised that a FOIL request is considered **received by the agency** when it is received by **any officer, employee, or department of the municipality**.

Key Policy Clarification

Under FOIL:

- A request is **valid even if it is not submitted to the Records Access Officer.**
- The five (5) business day response timeline begins when the request is **first received by the Town**, regardless of who receives it.
- The Town **may not deny or delay a FOIL request** solely because it was sent to the “wrong” official, department, or email address.

The responsibility rests with the **Town**, not the requester, to ensure that FOIL requests are promptly forwarded to the Records Access Officer for processing.

Reason for Policy Language

The FOIL Policy includes language requiring that:

- Any Town official or employee who receives a FOIL request must promptly forward it to the Records Access Officer; and
- Requests shall not be rejected solely because they were not submitted directly to the RAO.

This language is intended to:

- Ensure legal compliance with FOIL;
- Prevent inadvertent violations caused by routing delays;
- Protect the Town from appeals, adverse determinations, or litigation;
- Promote consistent and centralized handling of FOIL requests.

Operational Implications

The policy **does not expand access** beyond what FOIL already allows and **does not reduce privacy or safety protections**. All exceptions, redactions, and denial standards remain fully applicable.

The policy clarifies internal responsibility and reinforces best practices for Town officials and employees and outlines circumstances whereby redactions and denials may occur.

I recommend that the Town Board adopt and enforce the FOIL Policy language requiring prompt forwarding of such requests to the Records Access Officer.

This approach aligns with state guidance, protects the Town, and ensures fair and lawful treatment of public records requests.

Thank you

Town of Berne, New York

Freedom of Information Law (FOIL) Policy 13-2026

Adopted by the Town Board of the Town of Berne on _____

I. Purpose

This policy establishes the procedures by which the Town of Berne administers and complies with the New York State Freedom of Information Law (FOIL), Public Officers Law Article 6. The Town is committed to transparency while ensuring the protection of personal privacy, safety, and confidential information.

II. Designation of Records Access Officers

Records Access Officer (RAO)

The Town Board designates the following position as Records Access Officer:

Records Access Officer

Town of Berne Office of the Town Clerk
1656 Helderberg Trail or PO Box 57
Berne, NY 12023
clerk@berneny.org

Duties include:

- Receiving and responding to FOIL requests;
- Overseeing searches for responsive records;
- Coordinating redaction of sensitive information;
- Maintaining a FOIL request log;
- Certifying copies of records.

Alternate RAO

An alternative may be appointed by the Town Supervisor to ensure continuity of service.

III. Submission of FOIL Requests

Requests may be submitted in writing via email, mail, or in person. Verbal requests may be accepted for records immediately available, however they shall be documented.

Email: clerk@berneny.org

Mail / In-Person:

Records Access Officer
1656 Helderberg Trail or PO Box 57
Berne, NY 12023

Requests should:

- Be in writing;
- Reasonably describe the records sought;
- Include a return address or email.

Requests received by any Town official or employee shall be forwarded to the Records Access Officer promptly. A request shall not be rejected solely because it was not submitted directly to the Records Access Officer. For FOIL timeframes, a request is deemed received when first received by any Town officer or employee.

IV. Acknowledgment and Response Timeline

The Town will respond within **five (5) business days** by:

- Acknowledging the request and providing a reasonable completion date;
- Providing the requested records; or
- Denying the request with written explanation and appeal instructions.

V. Inspection of Records

Records may be inspected at Town Hall during regular business hours. Appointments may be required.

VI. Fees

The Town may charge:

- **\$0.25 per page** for photocopies up to 9"x14";
- **Actual cost of reproduction** for larger documents, digital media, or staff time in excess of two hours.

An estimate will be provided upon request.

VII. Privacy and Safety Protections

The Town of Berne is committed to preventing disclosure that could result in personal harm or infringement of privacy. In accordance with Public Officers Law §§ 87(2) and 89(2), access may be denied to records or portions thereof when disclosure:

a) Unwarranted Invasion of Personal Privacy

Records may be withheld if they contain:

- Personal contact information.
- Medical, employment, or financial history.
- Personal data irrelevant to government operations.
- Information that could reasonably be used to harass, intimidate, or target an individual.

b) 7.2 Endangerment of Life or Safety

Access may be denied when disclosure could reasonably be expected to:

- Endanger the life or safety of any person;
- Expose individuals to threats, harassment, stalking, or violence;
- Reveal locations of vulnerable individuals;
- Compromise security or emergency operations.

c) 7.3 Sensitive Information Not Explicitly Listed

The Town may withhold information that, while not specifically enumerated in statute, presents a credible risk of personal harm or undue distress, provided such withholding is consistent with FOIL and case law.

d) 7.4 Duty to Redact

When possible, sensitive portions will be redacted rather than withholding the entire record.

VIII. 8. Enhanced Privacy and Safety Review

Before releasing any record, the RAO shall conduct a privacy and safety assessment. If risks such as harassment, intimidation, or personal harm are identified, the Town may:

- Redact the sensitive portions; or
- Deny the request in full if redaction is insufficient.

IX. 9. Redaction Procedures and Guidelines

Town personnel shall use the following guidelines:

- Redact only information necessary to prevent harm or protect privacy;
- Clearly label redactions with applicable statutory exemptions;
- Maintain an internal, unredacted version for legal and archival use;
- Consult legal counsel when safety risks are uncertain or significant.

X. 10. Grounds for Denial

The Town may deny access for reasons permitted under FOIL, including but not limited to:

- Unwarranted invasion of privacy;
- Interference with law enforcement investigations;
- Records exempted by state or federal law;
- Trade secrets or proprietary information;
- Drafts or inter-agency communications not constituting final policy.

Protection of Personal Privacy and Safety

The Town of Berne is committed to protecting the personal privacy and safety of individuals. In accordance with Public Officers Law §§ 87(2) and 89(2), the Town may deny access to records or portions thereof when disclosure:

1. **Would constitute an unwarranted invasion of personal privacy**, including but not limited to:
 - o Personal contact information,
 - o Medical or employment history,
 - o Information of a personal nature that is not relevant to the work of the Town,
 - o Information that could be used to harass, intimidate, or target an individual.
2. **Could endanger the life or safety of any person**, including situations where the release of records may:
 - o Expose individuals to threats, harassment, or violence,
 - o Reveal sensitive locations such as residence addresses of vulnerable persons,
 - o Identify individuals in matters involving domestic violence, stalking, or other safety risks,
 - o Disclose information that could compromise security or emergency operations.
3. **Contains sensitive personal information** that, if disclosed, may subject an individual to personal harm, danger, or undue stress, even when not explicitly listed in statute, provided such withholding is consistent with FOIL and applicable case law.

Whenever possible, the Town will consider **redacting sensitive information** rather than withholding an entire record, consistent with FOIL requirements.

All denials shall be in writing.

XI. 11. FOIL Appeal Process

Appeals must be filed **within 30 days** of denial.

FOIL Appeals Officer

Town Supervisor
1656 Helderberg Trail or PO Box 57
Berne, NY 12023

The Appeals Officer will:

- Acknowledge appeals within **10 business days**;
- Issue a written determination within **10 business days** of acknowledgment;
- Forward copies of appeals and determinations to the Committee on Open Government.

XII. 12. Records Retention

The Town follows the **New York State Archives Records Retention and Disposition Schedule** for local governments.

XIII. 13. Posting and Updating

This policy shall be posted on the Town's website and updated as needed.

XIV. 14. Effective Date

This policy shall be reviewed annually by the Town Board and may be amended as necessary to remain in compliance with New York State law. This policy shall take effect immediately upon adoption by the Town Board.

Adopted by the Town Board of the Town of Berne on **XXXXXX**

Appendix A: Sample FOIL Request Form

Freedom of Information Law (FOIL) Request

Requester Name: _____

Address: _____

Email/Phone: _____

Description of Records Requested:

Preferred Format (paper/email): _____

Signature: _____ Date: _____

Appendix B: Sample Redaction Justification Codes

- 87(2)(b) – Unwarranted invasion of personal privacy
- 87(2)(f) – Endangerment of life or safety
- 87(2)(g) – Inter-agency materials
- 87(2)(d) – Trade secrets/proprietary
