



New York State
Division of Housing and Community Renewal
Office of Rent Administration

Operational Bulletin 2023-1 (April 3, 2023)
(Replaces Operational Bulletin 2016-2)

**Procedures for Requests for Records Access,
Freedom of Information Law (FOIL) Requests and Subpoenas**

This Operational Bulletin has been modified and contains updated information pertaining to electronic portals and addresses to be used for the submission and delivery of records.

A. Requests For Records Access and Freedom of Information Law Requests (FOIL)

1. Requests for Records Access:

The Office of Rent Administration (ORA) is the custodian of records for apartments subject to rent control and rent stabilization. These records include copies of orders, case files, rent control records and rent stabilized rent registration filings. In general, these records can be accessed by the subject tenant or owner of record, or their authorized representative, as of right. Therefore, it is not necessary for the requester to cite the FOIL statute when requesting records access and the requester may file a Request for Records Access by email to: ORAreords@hcr.ny.gov. The requester may also download a copy of form REC-1 and/or submit a letter that sufficiently details the records sought and submit either, by postal mail with proof of identity and/or authorization attached to:

NYS Division of Housing and Community Renewal
Office of Rent Administration
Records Access Officer
Gertz Plaza
92-31 Union Hall Street, 6th Floor
Jamaica, New York 11433

2. Freedom of Information Law Requests (FOIL):

When the requester is not the subject tenant or owner, or their authorized representative the request is required to be submitted to the Division of Housing and Community Renewal ORA FOIL Officer. The requester may submit a letter that describes in sufficient detail the records sought. The request is required to be submitted via email to ORAreords@hcr.ny.gov, or by the HCR Portal at hcr.ny.gov/foil, or by U.S. Mail to Division of Housing and Community Renewal, Office of Rent Administration, FOIL Officer, Gertz Plaza, 92-31 Union Hall Street, 6th Floor, Jamaica, New York 11433. The HCR FOIL Officer reserves the right to review and assign the request to the appropriate department within HCR for processing.

This document is being reissued for informational purposes only.

The original document which contains signatures of authorization is on file at DHCR's Office of Rent Administration.

3. Acknowledgment:

Requests for Records and Freedom of Information requests will be acknowledged in writing by email or postal mail within five (5) business days. After the acknowledgment has been sent, a written decision will be issued within twenty (20) business days that will grant access in whole or in part or deny access to the records. If additional time is required, the requester will be notified. The decision will also advise the requester of the right to appeal to the Appeals Officer.

4. Appeals:

If the request has been denied in whole or in part, the requester may appeal such denial to the designated Appeals Officer in writing within thirty (30) days of issuance of the written denial. The Appeals Officer will determine an appeal of a denial of access within ten (10) business days of the receipt of the appeal. However, notwithstanding that the 10 day period may have elapsed, the Appeals Officer will determine the appeal.

5. Address for Appeals:

Appeals from denials of requests for access to ORA records and/or FOIL requests should be submitted via email to ORAreCORDS@hcr.ny.gov, or by the HCR Portal at hcr.ny.gov/foil, or by U.S. Mail to Division of Housing and Community Renewal, Office of Rent Administration, FOIL/Records Access Appeals Officer, Gertz Plaza, 92-31 Union Hall Street, 6th Floor, Jamaica, New York 11433.

6. Inspection of Records:

ORA records will be delivered electronically or by U.S. mail. They may also be reviewed/delivered at the Queens office located at Gertz Plaza, 92-31 Union Hall Street, 6th Floor, Jamaica, New York 11433 or another ORA office only if special circumstances require it and it is approved by the Records Access Officer.

7. Fees:

When records cannot be transmitted electronically, fees for reproduction of standard size paper are 25 cents a page. The fees must be paid by check or money order, payable to DHCR. Cash will not be accepted.

8. Designation of Records Access Officers:

One Records Access Officer has been designated for ORA, as mentioned in section A1 of this bulletin. The functions of the Records Access Officer may be delegated to designated subordinates, who can also be designated "Certifying Officers" and can certify copies of original documents.

B. Subpoenas for Records

The following procedures relate to subpoenas for records ("subpoenas duces tecum") For a discussion of procedures regarding subpoenas to testify ("subpoenas ad testificandum"), see Part C of this Bulletin.

1. Subpoena Officer:

The Records Access Officer for the Office of Rent Administration, Division of Housing and Community Renewal (DHCR), Gertz Plaza, 92-31 Union Hall Street, 6th Floor, Jamaica, New York 11433, is also designated as the Subpoena Officer for ORA records.

The functions of the Subpoena Officer may be delegated to designated subordinates.

2. Necessary Information Needed:

ORA will not respond to a subpoena unless it is a "judicial subpoena." It must be marked "So Ordered," and signed by a judge of the court issuing the subpoena. Subpoenas directed to ORA should contain the docket numbers of case files requested, the address of any premises involved, and the index number of the court case. This information will facilitate compliance with the subpoena.

The subpoena must be accompanied by a fee in the amount of \$15.00, payable by money order, certified bank check, or attorney's check, payable to the DHCR, unless the judge has ordered that the fee be waived. Cash will not be accepted. ORA will automatically waive the fee for all clients of affiliated offices of Legal Services of New York, the Civil Division of The Legal Aid Society of New York City, and for all clients of any other Legal Aid or Legal Services offices upon written request.

3. Service:

All judicial subpoenas requiring production of ORA records should be served at the DHCR Office of Rent Administration, Gertz Plaza, 92-31 Union Hall Street, 6th Floor, Jamaica, New York 11433 and may be served electronically, if so ordered in the subpoena, to ORAreCORDS@hcr.ny.gov.

4. Time of Service:

Pursuant to Section 2307 of the Civil Practice Law and Rules, all judicial subpoenas must be served at least 24 hours before the return date thereof. Those which are not served within such time are invalid, and will be returned to the issuer. However, to assure that ORA is afforded sufficient opportunity to comply, it is recommended that subpoenas be served on more than 24 hours' notice before the return date thereof.

5. Notification of Need for Additional Time:

If the Subpoena Officer does not have sufficient opportunity to comply with the subpoena, ORA will advise the court and the subpoenaing party of that fact, and request additional time to comply.

6. Delivery of Records:

The records will be delivered to the record room of the appropriate courthouse or the location designated in the subpoena, including electronic delivery, if so ordered in the subpoena, to the designated location(s). Certified copies of the records will be delivered, if the subpoena so requests.

7. Certifying Officer:

For the purposes of certifying copies of original documents this task can be executed by the Subpoena Officer for ORA, or the designees that have been designated as "Certifying Officers."

8. Certification of Questions:

Information may also be obtained from DHCR through the use of certified questions.

A judge in a pending case may (on his or her own motion or at the request of a party) certify a question, in writing. This inquiry should be directed to the Deputy Commissioner and mailed to DHCR Office of Rent Administration, Gertz Plaza, 92-31 Union Hall Street, 6th Floor, Jamaica, New York 11433.

Where the question relates to a pending DHCR proceeding, ORA will not be able to provide an answer, as this could prejudice the processing of the case and result in a premature ruling on the issues. Thus, the request would, more appropriately, be to expedite that proceeding in accordance with Fact Sheet # 34, which specifies that, at the discretion of the Deputy Commissioner, proceedings may be expedited on a case-by-case basis for good cause shown, and with full consideration of the equities. Also, if the matter has been the subject of DHCR proceedings and is now on review by the Supreme Court under Article 78 of the Civil Practice Law and Rules, ORA does not have jurisdiction to entertain the question and will decline to do so.

C. Subpoenas to Testify

ORA will comply with properly served subpoenas *to produce documents* (assuming that the production of such documents would not be inappropriate). However, ORA cannot comply with subpoenas which require agency officials to interpret agency orders or policies, or to testify as to the lawful rent for a housing accommodation. Such orders, as well as expressions of general policy set forth in official documents such as Advisory Opinions, Operational Bulletins, or Policy Statements are self-explanatory. Expert testimony may not be compelled by subpoena, and compliance with such subpoenas would be disruptive to ORA's daily functions.

Woody Pascal

Deputy Commissioner for Rent Administration

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