



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

*Operational Bulletin No. 93-1
(Replaces Operational Bulletin No. 84-3 and the 1986 revision thereto)*

February, 1993

***Procedures for the Implementation of the Freedom
of Information Law (FOIL)
and
Procedures for Responding to Subpoenas
Duces Tecum for Files and Records***

A. Foil

1. Location of Records

a) New York City proceedings

Persons seeking access to ORA records which are applicable to rent regulated housing accommodations located in New York City are directed to apply to the Records Access Officer, Division of Housing and Community Renewal, Gertz Plaza, 92-31 Union Hall Street, Jamaica, New York 11433.

b) Outside New York City proceedings

Persons seeking access to ORA records which are applicable to rent regulated housing accommodations located outside New York City are directed to apply to the Records Access Officer, Division of Housing and Community Renewal:

Westchester/Rockland proceedings

Westchester District Rent Office
75 South Broadway - Suite 200
White Plains, New York 10601

Nassau proceedings

Nassau District Rent Office
50 Clinton Street, 6th Floor
Hempstead, New York 11550

Buffalo/Albany proceedings

Buffalo Regional Office
Statler Towers
107 Delaware Avenue
Buffalo, New York 14202

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.

2. Applications for ORA Records:

Requesters are particularly encouraged to use ORA forms provided for this purpose, which are designed to facilitate retrieval of such records. However, a letter request, directed to the appropriate records access officer, reasonably describing the record or records sought, will be accepted.

A requester should supply information regarding dates, docket numbers or other information that may help to describe the records sought. Where the records requested contain personal information collected by ORA, appropriate identification and/or proof of authorization will be required. Where records are requested by a person not a party to the proceeding, the records will be provided after personal information has been redacted. Where the records do not contain personal information collected by ORA, proof of identity and/or authorization will not be required.

3. Acknowledgment:

The Records Access Officer will acknowledge the receipt of the request in writing to the requester within five (5) business days. After the request has been acknowledged, the Records Access Officer will, by subsequent written decision, either provide access to the records, or deny access (in whole or in part), explaining the reasons for such denial, and advising the requester of the right to appeal to the Appeals Officer. If the request has been granted, the Records Access Officer will provide access to the records within a reasonable time.

4. Appeals:

If the request has been denied, 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.

The Appeals Officer either will fully explain in writing to the requester the reasons for further denial, or grant access to the records sought.

5. Address for Appeals:

Appeals from denials of requests for access to ORA records should be directed to the FOIL Appeals Officer, Office of Rent Administration, DHCR, Gertz Plaza, 92-31 Union Hall Street, Jamaica, New York 11433.

6. Inspection of Records:

ORA records will be reviewed at the Office of Rent Administration, 92-31 Union Hall Street, Jamaica, New York 11433, unless another office of the DHCR is specified in the decision granting access.

7. Fees:

If copies of the records are requested, the fee therefor shall be \$0.25 per page for sizes up to 9 x 14 inches. The fee shall be payable prior to delivery by the Records Access Officer, who will complete a DHCR receipt form, and give the requester a copy of the receipt. Although cash will be accepted, payment of fees should be made by money order, certified bank check, or attorney's check, payable to the DHCR.

8. Designation of Records Access Officers:

The Records Access Officers have been designated for each office listed in paragraph one of this Bulletin. The names of persons designated as Records Access Officers are available from the offices. The functions of the Records Access Officers may be delegated to their designated subordinates.

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 Officers:

The Records Access Officer for the Office of Rent Administration, Division of Housing and Community Renewal (DHCR), Gertz Plaza, 92-31 Union Hall Street, Jamaica, New York 11433, is also designated as the Subpoena Officer for ORA records relating to housing accommodations which are located within New York City. For records relating to housing accommodations which are located outside of New York City, the Subpoena Officers are the same as the Records Access Officers of the District Rent Offices (addresses listed in paragraph one of this Bulletin).

The functions of the Subpoena Officers may be delegated to their 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 in cash, or by money order, certified bank check, or attorney’s check, payable to the DHCR, unless the judge has ordered that the fee be waived. 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 relating to housing accommodations which are located within New York City should be served at the Office of Rent Administration, Gertz Plaza, 92- 31 Union Hall Street, Jamaica, New York 11433.

All judicial subpoenas requiring production of ORA records relating to housing accommodations which are located outside of New York City should be served at the appropriate District Rent Office as listed in paragraph one of this Bulletin. In the alternative, such subpoenas may also be served at Gertz Plaza.

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. 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, the Subpoena Officers for ORA, or their designees, have been designated as "Certifying Officers," as have the other persons, successors, and designees described in paragraph eight of this Bulletin.

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 Counsel for Rent Administration and mailed to Gertz Plaza

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 Policy Statement 91-4, 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.

Paul Roldan
Deputy Commissioner
for Rent Administration