

FOIL Toolkit

A guide on how to submit a Freedom of Information Law (FOIL) request for New York state and local government records.

ABOUT THIS TOOLKIT

New York State's Freedom of Information Law (generally referred to as "FOIL") entitles the public to access state and local government records. **Any member of the public** can request a government agency's records. You do not need a lawyer to file a FOIL request or to receive records from a government agency.

This FOIL toolkit is for anyone who wishes to submit a FOIL request for New York state and local government records.

In this guide, you will learn tips to navigate the FOIL process, including:

- How to draft, file, and follow up with your FOIL request;
- How to draft an administrative appeal if the government agency ignores or denies your FOIL request;
- What to consider before filing a FOIL lawsuit; and
- Examples of FOIL requests, agency correspondence, and administrative appeal letters.

WHAT INFORMATION CAN YOU FOIL?

The short answer is that you can FOIL anything—all government records are presumptively available to the public, unless one of FOIL’s “exemptions” (see below) applies. “Records” is defined broadly to include documents in hard copy, electronic files, data, audio, and video. While the agency is not required to create any new records in response to a FOIL request, it is required to locate, review, and produce existing records in its possession. Some examples of records that you may wish to FOIL include:

- Law enforcement disciplinary files (police misconduct complaints, disciplinary findings, etc.) in the possession of a police department, corrections agency, or fire department;
- State or municipal agency policy documents;
- Contracts or other records of expenditures involving a government agency;
- The underlying documents an agency relied on or consulted when it released a particular statement, policy, or report.

— Exemptions

Under New York law, there are certain exemptions for government information that is not subject to FOIL. So sometimes your request, or a portion of it, may fall under these FOIL exemptions, which means the agency can deny your request in full or in part. Here are some common exemptions that may be relevant to your FOIL request:

1. Records that are exempted from disclosure by another state or federal law (e.g., many healthcare records are rendered confidential by specific state and federal statutes);

2. Records that, if disclosed, would be an unwarranted invasion of personal privacy.

This can be tricky, since it is judged on a case-by-case basis balancing the public’s interest against any possible privacy invasion. But know that you are generally not entitled to things like credit histories, medical records, or confidential information not relevant to an agency’s work. At the same time, note that the privacy exemption does not apply if:

- Identifying details are deleted;
- The person implicated in the record gives permission for disclosure; or
- You are seeking access to records pertaining to yourself.

3. Certain law enforcement records that would interfere with an active investigation, disclose a confidential source, or reveal non-routine investigative techniques.

4. Certain inter-agency or intra-agency materials (e.g., internal agency memos or communications), although this exemption often involves redaction because the agency still needs to turn over portions of such records that show factual information, data, instructions to staff that affect the public, and final policy decisions.

A full list of exemptions can be found in [Public Officers Law Section 87\(2\)](#).

The following are not valid reasons to deny a FOIL request:

1. If the request is voluminous or the process of locating/reviewing/providing the records is burdensome; and/or
2. If disclosure would cause embarrassment to an agency employee.

WHAT TO DO BEFORE YOU FILE

— Determine what information you’re looking for.

This may seem like an obvious step, but it’s important to be clear about what you’re looking for so the agency cannot deny or delay your request. Think about whether you are seeking specific records that you know to exist or believe might exist, or if you’re seeking anything relevant to a particular topic, communications between particular individuals or agencies, or specific to a particular time period.

See if the information that you intend to request has already been released to the public in full or in part. This could help give you information to make your request more specific (e.g., “I request County Form G5 for the following years”), or it could give you the answer you’re looking for without having to file a FOIL request. We provide a list of some [databases that](#) maintain a lot of public records people frequently ask about in the Appendix for reference. An online search can also reveal if other organizations or stakeholders have requested the information you are seeking and could give it to you.

— Find out who to submit the request to and how.

Check the agency’s website to confirm the requirements for filing a FOIL request. The most common methods of submitting a FOIL request are via email, an online portal, or regular mail.¹ Make sure you locate the email address to send the request to, if applicable, and the name and address of the Records Access Officer. If you can’t find this information on a website, call the government agency and ask.

HOW TO WRITE AND SUBMIT A FOIL REQUEST

Here’s the basic information you need to include in a FOIL request. We’ve included sample FOIL requests in the appendix of this toolkit for reference.

1. Provide basic information about your request.

- Date
- Name and Address of the Records Access Officer for the agency you’re requesting information from. If no one is named, address it to “Records Access Officer”.

1. Most New York City agencies require you to submit your FOIL request using their online portal, NYC OpenRecords. However, if they provide a name and address for their Records Access Officer, it’s safe to assume that you can email or mail your request to them as an alternative to the online portal. If you choose to do so, we recommend that you mail your request with tracking information as proof of delivery and save that for your records.

- Subject Line: “Re: FOIL Request - [Type of Record] from [Name of Agency]”.
- In the first sentence of the body of your request, specify: who you are, that you request this information pursuant to the New York State Freedom of Information Law; and a brief description of the records you are seeking.

2. Next, provide more specifics about the records you are seeking. This is the most important part of the request. Think about the records you want to obtain and reasonably describe them with sufficient specificity so that the agency understands what you are seeking. The more specific you can be, the better.

While it’s ok to use broad language when you’re not sure of all the specifics (e.g., “I request a copy of the Department’s use-of-force policy, along with any other policies or other records that are cross-referenced in the text of that policy”), try not to make requests that are too vague. If you don’t “reasonably describe” your request in a way that would allow them to know what you’re asking for, the agency could deny it.

We recommend that you number each of your individual requests so that you can reference a particular one whether in communications with the agency or a court.

Include any known information, such as: the type of report, identifying number of report, date or title of document, key words contained in the records, precinct/specific agency department producing the rerecord, location of occurrence described in the record, etc. The description can be formatted as a paragraph or be in outline form.

3. Specify how you would like to receive the records: “Consistent with section 85(5)(a) of FOIL, please provide these records via email.” In some instances, the agency may not be able to email you the records. In that case, include the following: “If all of the requested records cannot be emailed to me, please inform me by email of the portions that can be emailed and let me know the cost for reproducing the remainder of the records requested.”

4. Ask the agency to contact you for clarification if your request is too broad or unclear: “If my request is too broad or does not reasonably describe the relevant records, please let me know via email and I will clarify my request.”

5. State the 5-day time frame that FOIL requires the agency to acknowledge receipt of the FOIL and to produce the records.

6. Request the agency include the following information in response: “If any records are unavailable within the five business days of receipt of the request, and responsive documents exist, please provide a description of such records and a timeline of when access to the records will be provided. If you determine that certain parts of this request may be more easily produced than others, I am amenable to discussing a production schedule for records that will take longer to produce.”

7. Request that the agency explain any denial in writing. Here’s some useful language you might use: “If you deny any or all of this request, please inform me of the reasons for the denial in writing and provide the appeal procedures as well as the name and address of the person or body to whom an appeal should be directed. If you determine that any

portion of the requested records are exempt from disclosure pursuant to FOIL, please delete only the material claimed as exempt, inform me of the basis for the exemption claim, and furnish copies of those portions of the records that you determine are not exempt.”

8. At the end of the letter, include a contact person’s email and phone number.

9. If sent online or via email, we recommend formatting your FOIL request letter as PDF document and saving a copy for your records. When submitting a FOIL request via email or an online portal, ideally you’ll want to type up your FOIL request in a separate document that you’ll attach to the email or upload to your portal submission.² For emails, you can type the body of the email: “Please see attached FOIL request for [summarize in a few words].” For portal submissions, we generally recommend uploading the request as an attachment and typing “Please see the attached request” in the provided space on the form. This is to prevent the form, which may have limited word space, from automatically cutting off any words in your request. If you can’t do that, however, it’s ok to just fit your request into their standard format.

WHAT’S NEXT AFTER FILING YOUR REQUEST?

An agency has **5 business days** to respond to a FOIL request from the time it receives the request. If you submit your request electronically, via email or an online portal, you should assume that you can count from the date of your electronic submission.

The agency’s response will generally take the form of:

- Acknowledging the request and providing a “reasonable” future date by which they will get back to you with a decision;
- Supplying the requested record(s); or
- Denying the request.

— Outcome: The agency responds to your request and begins to produce relevant documents.

If you are satisfied with what the agency provided, you are done!

If you believe the records were not properly redacted or the agency did not do a full or thorough search and did not provide all of the responsive records to you request, you may file an “administrative appeal”—a request that a different officer in the same agency reconsiders the agency’s decision—within 30 days of the completion of their production. Administrative appeals are discussed in more detail below, but it’s important to know that you have to have filed an administrative appeal if you want to sue the agency for records.

2. Some portals may not allow you to attach documents. For example, Nassau County Police Department’s online FOIL request submission portal does not allow any attachments. In that case, you’ll simply have to fill out the form; make sure you adhere to any character or word limits.

– Outcome: The agency fails to acknowledge your request or fails to respond after the initial acknowledgement.

If an agency fails to respond to your request according to the time frame mandated in the FOIL, such failure to respond constitutes a “constructive denial.” You may file an administrative appeal of an agency’s constructive denial of your request.

At any point you may decide to reach out to the agency to gather more information on the lack of response or the reasoning behind their anticipated timeline to respond. It is best to follow up on all communications with the agency in writing, even if you also communicate with them by phone, to make a clear record your request.

Reaching out to the agency may prompt it to respond, take your request more seriously, or work with you on a more reasonable timeline to produce documents that are responsive to your request.

– Outcome: The agency denies your request in full or in part.

Review the agency’s reason for denying your request. They must state the reason for the denial and advise you of your right to appeal the denial with the appropriate administrative agency. **You have 30 calendar days to file your administrative appeal** from the date you received the denial.

Rather than appeal, you may determine that it is best to revise and refile your request, at which point the FOIL process begins again. However, you are not allowed to file a “duplicative” request asking for the same thing and seeking a different outcome; rather, refiling would be appropriate if you need to clarify or change the wording of your request, or seek something different.

– Redactions

Even if an agency begins to produce records, the production may come with redactions – portions of records that omit or black out information. The agency is required to explain why it claims such information is exempt from disclosure pursuant to FOIL. If you believe that the redacted information is not exempt from disclosure, you may file an administrative appeal for the agency to release an unredacted version of the record.

For certain types of records, such as law enforcement disciplinary records, certain information about the law enforcement agent must be redacted from the records under current FOIL law, including things like their medical history, home address, social security number, personal telephone number, and email address.

STRATEGIES TO GET AN AGENCY TO RESPOND

Once you submit a FOIL request, you can use non-litigation advocacy to try to access the records you seek before filing an administrative appeal or lawsuit.

Self-Advocacy. We have found that following up with government agencies once they have acknowledged receipt of your request and working together to find a path forward to get responsive records can go a long way.

Reach Out to Your Elected Officials. Elected officials (including state legislators or local officials like city council members) can help advocate for an agency to produce responsive records. Such officials can write letters, make calls, or garner support from other like-minded elected officials to increase pressure on the agency to respond. You should be prepared to provide dates, copies of your correspondence, and other relevant information to the elected official you wish to help you advocate for access to FOIL records.

Reach Out to the Media. You may wish to seek media coverage of your FOIL attempt by reaching out to media outlets or holding a press conference near the agency. While it may be difficult to get the media to take interest in your advocacy or request, if successful, media attention can also help build pressure on the agency and get it to respond to your request adequately or more favorably.

Seek Out Support from Community Groups Working on Related Issues. Consider reaching out to local groups or other advocacy groups who may take interest in your request or issue. They may have access to additional resources, experience in launching public pressure campaigns, experience filing FOILs or volunteer attorneys who can assist with a lawsuit. Remember to consider groups that might not be your natural ally. There are groups who may have a different mission but are also committed government transparency.

ADMINISTRATIVE APPEALS

In addition to using the above means to advocate for the release of your requested records, in order to preserve your right to the records, it is important to get an administrative appeal on file **within 30 days of an agency's initial denial (or the completion of what they are willing to give you)**. You may choose to file an administrative appeal if you disagree with an agency's decision to:

- Deny your request (in part or in full);
- Redact portions of responsive records;
- Not produce all of the records responsive to your request or not conduct a proper search; or
- Fail to respond to your request in a timely manner.³

3. While these are the most common types of appeals we have encountered, there may be other reasons why someone would appeal an agency decision regarding their FOIL request.

If you want to fight any of the above problems, or if you are considering pursuing legal action in court around your FOIL request, you are required to file an administrative appeal. We have included sample letters of some of the most common types of administrative appeals in the Appendix. Administrative appeals are sent to a Records Access Appeal Officer who is at the same agency, but different than your original contact. Please know that administrative appeals are often denied, but they are important because they preserve your right to keep fighting for the records.

To appeal, you must submit a written administrative appeal letter. You should also double check the agency's website or instructions, which may be contained in a letter from an agency responding to your requests, for any agency-specific requirements for filing an administrative appeal.

Your administrative appeal should include the following:

1. Date

2. Name and Address of the Records Access Appeals Officer; if no one is named you can address it to "Records Access Appeals Officer". Make sure that you send it to the right person and/or office, as the person reviewing your administrative appeal will most likely differ from original recipient of your FOIL request.

3. Subject line: "Re: FOIL Request - #XXXX-XXX-XXXXX". Note that the agency should have assigned a unique number to your specific request, and you should identify it in all correspondence you have with the agency. If the agency failed to acknowledge your request and/or assign your request a specific number, you can refer to the date your request was submitted or delivered and a very brief summary of what you requested. For example, "Re: FOIL Request Dated XX-XX-XXXX for Records Related to [Subject/Summary]".

4. A short paragraph explaining that you are appealing the agency decision and what that decision is. For example: "I write to appeal under the Freedom of Information law (Article 6 of the Public Officers' Law) the [Department's] denial of my request dated [Date] for documents related to [brief summary of your request]. The [Department] [brief summary of the agency action that you are appealing, e.g., "denied my request in full"]".

You should also be sure to attach all the relevant correspondence sent and received between you and the agency.⁴ This includes your initial request, the agency's response, if any, and any relevant written records, like emails, of any correspondence you had with the agency. Also be sure to label and refer to each document you're including in your appeals letter. As you will see in some of our sample appeals letters in the appendix, you can label your initial request as "Exhibit A", the acknowledgment email or letter from the agency as "Exhibit B", and so forth.

4. If you engaged in verbal communications with the agency about your request and did not follow up by email, you can briefly outline a timeline and brief description of what occurred during those calls. However, we strongly recommend you keep written records, even if you are merely following up by email with a summary of what was discussed on the call, of any communications you have with the agency.

5. In the next section of your appeals letter, which can be as short as one paragraph, explain why the agency’s action or decision is wrong and provide support for your position. The samples in the appendix, which cover some of the most common types of denials, provide arguments and cases that explain why the agency is wrong. As explained in more detail below, you can also refer to resources from the New York State Committee on Open Government for additional support.

6. At the end of the letter, you can reiterate that you are appealing the agency’s response to your request and provide your contact information. You can also add a line reiterating your request for responsive documents. For example: “I therefore appeal the [Agency’s] response and request that the department produce any responsive documents promptly. If you have any questions about this, you may contact me at [contact information].”

You may want to refer to the [New York State Committee on Open Government’s website](#) for more information on FOIL when you draft your administrative appeal.

After you submit your administrative appeal, the appeals officer must then respond within **10 business days** and either fully explain in writing the reasons for further denial or provide access to the record.

FOIL LAWSUITS

If your administrative appeal is denied, you may bring a FOIL lawsuit, also known as an **“Article 78 petition.”** A state court judge will then rule whether you are entitled to access any or all the records you requested and direct the agency to produce the responsive records. You generally have 120 days from the date you receive the denial of the administrative appeal to file your petition in court.

While this toolkit is not intended to guide you through litigating a FOIL lawsuit, we hope to provide you with enough information to help you decide whether FOIL litigation is the right path for you.

Keep in mind that this process can be time- and resource-intensive, meaning you can experience additional long delays or may have to pay out-of-pocket expenses when filing and moving forward with a lawsuit. While it is possible to pursue a lawsuit on your own (referred to as a pro se lawsuit), you may have more success in a lawsuit with the help of an attorney. As part of the lawsuit, you or your attorney will have to present written legal arguments as to why an agency should produce responsive records and why the agency’s decision was wrong. You may also have to present those arguments orally in court. You may also be expected to attend various court proceedings or engage in settlement discussions with the agency to which you submitted your request.

APPENDIX

– Police Personnel Databases

New York State

A. New York State Police Disciplinary Records: USA Today Network news organizations in New York State have created this searchable database of police disciplinary records for police departments around the state. You can search discipline records by county: <https://data.democratandchronicle.com/new-york-police-disciplinary-records/>

New York City

A. NYPD Member of Service Histories: This database allows users to view the records of NYPD misconduct allegations. Click a row to see the officer's allegation history, including the Civilian Complaint Review Board's disposition, the NYPD's disposition, and the penalty ultimately imposed: <https://www.nyc.gov/site/ccrb/policy/MOS-records.page>

B. NYCLU's NYPD Police Misconduct Database: The NYPD Misconduct Complaint Database is a repository of complaints made by the public on record at the Civilian Complaint Review Board (CCRB). These complaints span two distinct periods: the time since the CCRB started operating as an independent city agency outside the NYPD in 1994 and the prior period when the CCRB operated within the NYPD. The database includes 323,911 unique complaint records involving 81,550 active or former NYPD officers. The database does not include pending complaints for which the CCRB has not completed an investigation as of July 2020: <https://www.nyclu.org/en/campaigns/nypd-misconduct-database>

C. Legal Aid Society's Law Enforcement Lookup: Law Enforcement Lookup (LELU) provides one-stop access to law enforcement misconduct data in New York City. LELU is an extension of the Legal Aid Society's Cop Accountability Project (CAP), which empowers organizations and communities across New York City to hold police officers accountable for civil rights violations: <https://legalaidnyc.org/law-enforcement-look-up/>

D. Brooklyn District Attorney's Office Documents on Police Misconduct: These documents were provided in response to a WNYC/Gothamist FOIL request. <https://www.documentcloud.org/app?q=%2Buser%3Ageorge-joseph-102442%20>

Gothamist developed a searchable database of the records: <https://gothamist.com/news/brooklyn-da-releases-massive-trove-internal-documents-nypd-misconduct>

Outside New York City

A. City of Rochester Police Department Discipline Database: <https://www.cityofrochester.gov/policediscipline/>

B. Fairport Police Department Personnel Records: https://www.village.fairport.ny.us/departments/police_department/index.php

C. Utica Police Department: <https://www.cityofutica.com/departments/police-department/department-personnel-records/index>

D. City of Beacon: https://ecode360.com/documents/pub/BE0803/Misc._Documents?

— Sample Administrative Appeal Letters

Below are sample administrative appeal letters addressing some of the most common types of denials you might face. Specifically, they include appeals challenging an agency’s missed deadline to respond to FOIL request; an agency’s ignoring of the FOIL request; an agency’s unreasonable deadline to respond to the FOIL request; and an agency’s withholding of documents based on a FOIL exemption that that we did not agree would apply.

These sample letters should be used only as guide as they cannot address the particular nuances of your FOIL request and the agency’s response. Given that, these sample letters do not give legal advice, and you should not rely on them as legal advice.

— Additional Resources

Guide to Public Records Requests for Advocates Seeking Reform of the Criminal Legal System: The Prison Policy Initiative developed this guide for individuals seeking public records from state and federal government agencies through laws like the NYS Freedom of Information Law and the Federal Statute — The Freedom of Information Act (“FOIA”): <https://www.prisonpolicy.org/trainings/records.html>

Questions? Email us at FOILquestions@nyclu.org.



New York Civil Liberties Union
125 Broad Street, 19th Fl.
New York, NY 10004
(212) 607-3300
www.nyclu.org

April 30, 2021

Via Electronic Mail

New York City Fire Department
FDNY Bureau of Legal Affairs – FOIL Unit
9 MetroTech Center
Brooklyn, NY 11201
Tel: (718) 999-0293

Re: Freedom of Information Law Request

Dear Records Access Officer:

The New York Civil Liberties Union (“NYCLU”) submits this request for records pursuant to the New York Freedom of Information Law, N.Y. Pub. Off. Law § 85, et seq., for access to and copies of the records collected by the New York City Fire Department (“the Department”) regarding the requests as described below.

1. Documents sufficient to identify all databases maintained by or on behalf of the Department that include information about (a) complaints or reports of misconduct against Department employees, or (b) discipline of Department employees in response to a complaint or set of complaints.
2. For each database identified in request 1 (above), please provide any documents that include the following:
 - a. A description of the database’s structure or format;
 - b. A description of the each field or column in the database;
 - c. An explanation of all abbreviations or acronyms in the database.
3. Any databases maintained by or on behalf of the Department that include information about complaints or reports of misconduct against Department employees, including the following data regarding each complaint or report of misconduct:
 - a. The name, position, and duty station of the Department employee;
 - b. The type of complaint (e.g. use of force, discourtesy, racial profiling or bias, etc.);
 - c. The date and location of the alleged incident that is the subject of the complaint or report;
 - d. Whether the complaint or report of misconduct was investigated;
 - e. The division of the Department or the name of the entity that investigated the complaint or report;
 - f. What the outcome of the investigation was (e.g. substantiated/found to be true and not compliant with policy; exonerated/found to be true and compliant with policy;

- unfounded/found to be untrue; unsubstantiated/insufficient evidence to determine truth or falsity or compliance with policy); and
- g. For each substantiated complaint, whether the investigation resulted in the initiation of a disciplinary process, any disciplinary settlement, or the imposition of discipline.
4. Any databases maintained by or on behalf of the Department that include information about discipline of Department employees in response to a complaint or set of complaints, including the following data regarding each instance in which a disciplinary process was initiated other than for a technical infraction that did not involve a member of the public:
- a. The name, position, and duty station of the Department employee;
 - b. The type of disciplinary charges (e.g. use of force, discourtesy, racial profiling or bias, etc.);
 - c. The date and location of the alleged incident that is the subject of the disciplinary charges;
 - d. The outcome of the disciplinary charges (e.g. sustained, not sustained, settled); and
 - e. The discipline, if any, imposed (e.g. termination, suspension, loss of pay or vacation days, admonition).

For purposes of clarification, a “database” refers to any tabulated, electronic records.

To the extent that records are available in electronic format (ideally in an electronic spreadsheet or comma-separated format (Excel or CSV)), we request that they be provided in that format.

If any records are unavailable within five business days of receipt of the request, and responsive records exist, we seek a description of such records and a timeline of when access to the records will be provided. If you determine that certain parts of this request may be more easily produced than others, we are amenable to discussing a production schedule for records that will take longer to produce.

Please furnish records to:

Jesse Barber
New York Civil Liberties Union
125 Broad Street, 19th Fl.
New York, NY 10004
(510) 520-1695
jbarber@nyclu.org

Please do not hesitate to contact me at jbarber@nyclu.org if you have any questions about this request. Thank you for your prompt attention to this matter.

Respectfully,
Jesse Barber



New York Civil Liberties Union
125 Broad Street, 19th Fl.
New York, NY 10004
(212) 607-3300
www.nyclu.org

October 20, 2021

Via Electronic Mail

Records Appeals Officer
New York City Fire Department
FDNY Bureau of Legal Affairs – FOIL Unit
9 MetroTech Center
Brooklyn, NY 11201

Re: FOIL Request #2021-057-07744

Dear Records Appeals Officer:

On behalf of the New York Civil Liberties Union, we write to appeal under the Freedom of Information Law (Article 6 of the Public Officers Law) the FDNY's constructive denial of an NYCLU request dated April 30, 2021, for databases containing information about personnel misconduct and discipline.

In an email sent on May 5, 2021, we were notified that “[y]ou can expect a response on or about Wednesday, September 15, 2021.” *See* Exhibit A and B for copies of our request and the email notification, respectively. We initially challenged your response in a letter dated June 3, 2021 indicating that the September 15, 2021 response date proposed by your agency was unreasonable. *See* Exhibit C. Subsequently, on June 7, 2021, your agency provided an additional response informing the NYCLU that our request had been denied and referring to an “attached determination letter.” *See* Exhibit D. However, no such letter was included as an attachment.¹ We then made several attempts from June 8, 2021 to June 22, 2021 to seek clarification about this response and the status of our request. *See* Exhibit E. On July 12, 2021 your agency finally responded clarifying that our request was still in progress, with a response due date of September 15, 2021, and stating that we were “not able to submit an Appeal regarding this FOIL request at this time as it is still active/ open [sic].” *See* Exhibit F.

The FDNY failed to respond to the request on September 15, 2021.

The failure of an agency to comply with their own self-imposed deadlines constitutes a denial of the request. *See* 21 N.Y.C.R.R. 1401.5 [e]; *Kohler-Hausmann v. New York City Police Dept*, 133 AD3d 437, 437 [Sup Ct, New York County 2015]. The FDNY has failed to comply with its own deadline, constituting a denial of the NYCLU's request, and which we now appeal.

¹ Please also note that two of your agency's responses refer to two different FOIL request numbers, FOIL-2021-057-0979 and FOIL 2021-057-07744 (the NYCLU's originally assigned request number). *See* Exhibits D & F.

As required by FOIL, please respond within ten (10) business days of receipt of this appeal and provide access to the records sought or a full explanation of the reasons for further denial. N.Y. PUB. OFF. LAW § 89(4)(a); 10 N.Y.C.R.R. Section 50-1.9(c). As you are aware, FOIL provides that failure to determine an appeal within ten business days of the receipt of such appeal constitutes a denial of that appeal, which may be immediately challenged pursuant to Article 78 of the Civil Practice Law and Rules. N.Y. PUB. OFF. LAW § 89(4).

If you have any questions about this, you may contact us at jbarber@nyclu.org.

Sincerely,



Guadalupe V. Aguirre
Staff Attorney



Jesse Barber
Research Analyst



New York Civil Liberties Union
125 Broad Street, 19th Fl.
New York, NY 10004
(212) 607-3300
www.nyclu.org

June 9, 2023

Via Electronic Mail

Sgt. Jordan Mazur
Records Access Appeals Officer
New York City Police Department
One Police Plaza, Room 1406
New York, NY 10038

Re: FOIL Request # 2023-056-13047

Dear Sergeant Mazur:

On behalf of the New York Civil Liberties Union, I write to appeal under the Freedom of Information Law (Article 6 of the Public Officers Law) the NYPD's constructive denial of the NYCLU's request dated June 6, 2023, for records related to police officer vehicle encounter data maintained by or on behalf of the NYPD. In an email sent on June 8, 2023, I was notified that I could "expect a response on or about Monday, October 23, 2023." *See* Exhibits 1 and 2 for copies of the NYCLU's request and the email notification, respectively.

As you are aware, FOIL requires an agency to grant or deny a request within five business days of receiving a written request for a record or to acknowledge receipt of the request in writing and to state the approximate date when the request will be granted or denied. When an agency gives an approximate date that a decision will be made, the date must be "reasonable under the circumstances of the request." N.Y. PUB. OFF. LAW § 89(3)(a). Failure of an agency to comply with these provisions constitutes a constructive denial of the request.

The NYPD's approximate date of October 23, 2023, more than four (4) months after date of acknowledgement, is not "reasonable under the circumstances of the request" for two principal reasons. First, the NYCLU's request is sufficiently narrowed to a single electronic dataset that the NYPD maintains—a dataset the NYPD *has already compiled and produced* for a separate time period in response to a previous FOIL request and litigation. Because of that recent, identical-but-for-the-dates production, the NYPD cannot claim any ambiguity or difficulty associated with locating or exporting the requested data. Second, the dataset and the quarterly summaries that the NYPD publishes on its website are mandated by statute (the 2021 Amendment to New York City Local Law 45).

Given that the NYCLU's request for electronic records is specific and targeted, the NYPD's approximate date is not reasonable under the circumstances. Thus, the NYCLU reiterates its

request for the records outlined in its June 6, 2023, Freedom of Information Law request, and requests a date of production within one (1) month of this appeal.

As required by FOIL, please respond within ten (10) business days of receipt of this appeal and provide access to the records sought or a full explanation of the reasons for further denial. N.Y. PUB. OFF. LAW § 89(4)(a); 10 N.Y.C.R.R. Section 50-1.9(c). As you are aware, FOIL provides that failure to determine an appeal within ten business days of the receipt of such appeal constitutes a denial of that appeal, which may be immediately challenged pursuant to Article 78 of the Civil Practice Law and Rules. N.Y. PUB. OFF. LAW § 89(4).

If you have any questions about this, you may contact me at jbarber@nycu.org.

Sincerely,

/s/ Ifeyinwa Chikezie

Ifeyinwa Chikezie
Legal Fellow

A handwritten signature in cursive script that reads "Jesse Barber".

Jesse Barber
Senior Research Analyst



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Lisa Laplace
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October 8, 2019

VIA ELECTRONIC MAIL amcdaniel@hempsteadschools.org

Hempstead Union Free School District
Mr. Alvin McDaniel, Records Access Officer/FOIL Officer
185 Peninsula Boulevard
Hempstead, New York 11550
Tel. 516.434.4069

Re: Metropolitan Center for Research on Equity and the Transformation of Schools' Freedom of Information Law Request

Dear Mr. McDaniel:

The New York Civil Liberties Union (“NYCLU”) writes on behalf of the Metropolitan Center for Research on Equity and the Transformation of Schools (the “Metropolitan Center”) to appeal the partial denial by the Hempstead Union Free School District (the “Hempstead School District”) on October 7, 2010 of a request made by the Metropolitan Center pursuant to the New York Freedom of Information Law, Article 6 of the Public Officers Law (“FOIL”). A copy of the original FOIL request, which was sent via electronic mail to you on September 5, 2019, is included in this correspondence. Although we appreciate the Hempstead School District’s response to the FOIL request, the records production was incomplete because the Hempstead School District denied responding to Request numbered 3, which seeks:

“Records sufficient to show the names and contemporaneous residential addresses of all board of education members who have held office since January 1, 1999. For purposes of clarification, “contemporaneous residential address” means the address of the board member at the time they were serving as a board member.

The Hempstead School District rests its denial on the basis that the request is deemed “an unwarranted invasion of personal privacy” without further explanation.

In enacting the FOIL, the New York State Legislature created a broad right of public access to agency records to foster transparency and accountability in government.¹ And, it is because of the FOIL's overarching purpose of making agency records available to the public that courts narrowly construe exemptions in favor of disclosure.²

As a general matter, when records are accessible under the FOIL, it has been held that they should be made equally available to any person, regardless of one's status, interest or the intended use of the records.³ The only exception to this principle involves a provision pertaining to the protection of personal privacy. By way of background, Section 87(2) (b) of the FOIL permits an agency to withhold records to the extent that disclosure would constitute "an unwarranted invasion of personal privacy." Further, as amended, Section 89(2) (b) provides a series of examples of unwarranted invasions of personal privacy. The only example that may be of possible concern to the Hempstead School District pertains to the: "sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes..."⁴

Ordinarily, the status of a FOIL requester and the purposes for which a request is made are irrelevant to the rights of access, and an agency cannot inquire as to the intended use of records. Due to the language of Section 89(2) (b) (iii), however, rights of access to a list of names and addresses, or equivalent records, may be contingent upon the purpose for which a request is made. In light of this exception, it is important to note that the Metropolitan Center is seeking to access to the names and addresses of all board of education members who have held office since January 1, 1999 for research purposes only – not to solicit business or fund-raise. And, the Metropolitan Center will not sell, give, or otherwise make available the list of names and contact information to any other person outside the staff and research scholars working on its FOIL request. Given that a request for records for research purposes may not be characterized as having been made for "solicitation" or "fund-raising" -- as it was intended by the New York State Legislature, the Hempstead School District's reliance on the privacy exemption is unwarranted.

For the reasons discussed above, the NYCLU respectfully appeals the Hempstead School District's denial to its Request numbered 3. Please respond to NYCLU within ten business days of receiving this appeal in writing, stating whether the request is granted or denied (in full or in part).⁵ Please notify the NYCLU of any additional costs that may be associated with fulfilling this records request on appeal. If the appeal is granted, please state a date certain by which the records requested will be produced. If it is denied, please name the records being withheld and state with particularity the reasons for each record being withheld.

¹ See *Newsday, Inc. v. Empire State Development Corp.*, 98 N.Y.2d 359, 362 (2002).

² *Id.* (holding that any exemption must be interpreted narrowly, "imposing the burden upon the public agency to demonstrate that the material requested falls squarely within the ambit of one of these statutory exemptions").

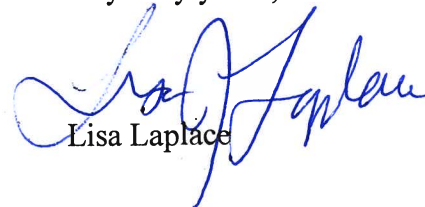
³ See *Farbman v. New York City Health and Hospitals Corp.*, 62 NY2d 75, 80 (1984) (holding that full disclosure by public agencies is, under FOIL, a public right and in the public interest, irrespective of the status or need of the person making the request).

⁴ See Pub. Off. L. § 89(2) (b) (iii).

⁵ See Pub. Off. L. §89(4) (a).

I appreciate your prompt attention to this matter. Thank you.

Very truly yours,



Lisa Laplace



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(212) 607-3300
www.nyclu.org

Lisa Laplace
Senior Staff Attorney
llaplace@nyclu.org

November 17, 2021

VIA FIRST CLASS MAIL

Office of Counsel
New York State Department of Corrections and Community Supervision
The Harriman State Campus
1220 Washington Avenue, Building 9
Albany, New York 12226-2050

Re: The NYCLU's Administrative Appeal Regarding Its Voice Recognition
Technology Public Records Request (FOIL Log No. DOCCS-21-04-309)

Dear Office of Counsel:

I write to appeal the constructive denial by the New York State Department of Corrections and Community Supervision ("DOCCS") of the New York Civil Liberties Union's ("NYCLU") Freedom of Information Law Request dated April 27, 2021 (FOIL Number DOCCS-21-04-309) ("FOIL Request"). DOCCS has not produced documents responsive to the FOIL Request and has failed to certify that it could not locate responsive, non-exempt records after a diligent search, as it is required to do pursuant to Public Officers Law § 89(3)(a).¹ We have accommodated DOCCS' requests for extensions to produce either the documents or certification, but each extended deadline has passed without a substantive response to the FOIL Request from DOCCS.

The NYCLU's FOIL Request

The FOIL Request seeks records regarding DOCCS' acquisition and/or use of voice recognition technology ("VRT") in connection with telephone calls placed or received at one or more correctional facilities. The FOIL Request seeks records regarding, among other things, (a) the purpose for using the VRT; (b) whether any information or data collected through DOCCS' use of VRT ("Data") is gathered or used to identify or locate participants in a call other than the person incarcerated; (c) the collection, analysis, storage or sharing of Data; (d) agreement(s) between DOCCS and Securus Technologies LLC or other entities in connection with the provision of VRT to DOCCS; (e) whether telephone call participants are notified that VRT is being used to identify them and/or locate them; (f) the use of VRT in connection with telephone communications between people who are incarcerated and lawyers or legal advisers; and (g) any relevant policies or protocols.²

¹ A copy of the original FOIL Request is attached as Exhibit A.

² On April 27, 2021, DOCCS acknowledged receipt of the FOIL Request and informed the NYCLU that DOCCS would

DOCCS' Blanket Response And Redacted Production

In its FOIL response letter dated June 4, 2021 (the “June 4th Response Letter”),³ DOCCS informed us that it would produce responsive records upon payment of photocopying fees.⁴ In that same letter, DOCCS informed the NYCLU that it had redacted portions of responsive records pursuant to:

- (1) Public Officers Law § 87(2) (d) where responsive materials that contain trade secrets or information that if released could cause substantial injury to the competitive position of a commercial enterprise; and
- (2) Public Officers Law § 87(2) (c) where release of information would impair present or imminent contracts.

DOCCS failed to articulate specific and particular reasons why the redacted information could cause substantial injury to the competitive position of a commercial enterprise or how the release of such information would impair present or imminent contracts.

On July 6, 2021, we received DOCCS's production of responsive records – including thirty-nine fully redacted pages – without a transmittal letter and without any identification by DOCCS as to the categories of the FOIL Request to which the DOCCS believed the documents it produced were responsive.

The NYCLU's July 27, 2021 Administrative Appeal

The NYCLU filed an administrative appeal on July 27, 2021 (the “Administrative Appeal”) because DOCCS failed to meet its statutory obligation to provide particularized and specific justification for withholding information beyond its blanket statement that redactions were made pursuant to Section 87(2)(c) and (d) of the FOIL.⁵

In our Administrative Appeal, we requested that DOCCS either disclose the record sought, or claim particularized and specific justification(s) for the nondisclosure of the records, or provide a certification pursuant to the Public Officers Law § 89(3)(a). Section 89(3)(a) of the Public Officers Law states in relevant part: “Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, *shall certify that it does not have possession of such record or that such record cannot be found after diligent search.*”⁶ We sought this certification given that it is unclear whether DOCCS withheld any records in their entirety from the production to the NYCLU or whether the asserted exemptions in DOCCS' June 4th Response Letter are limited to the redactions in the records

grant or deny our FOIL Request in twenty business days (the “April 27th Acknowledgement Letter”). By letter dated May 24, 2021, DOCCS extended its response time to July 8, 2021 (the “May 24th Extension Letter”). A copy of the original April 27th Acknowledgement Letter and the May 24th Extension Letter are attached as Exhibits B and C, respectively.

³ An original copy of the June 4th Response Letter is attached as Exhibit D.

⁴ On June 17, 2021, the NYCLU paid the photocopying fees of \$253.50 to DOCCS.

⁵ An original copy of the Administrative Appeal is attached as Exhibit E.

⁶ N.Y. Pub. Officers L. § 89(3)(a) (McKinney 2020) (emphasis supplied).

produced.

DOCCS' Delays and Failure to Certify That It Could Not Locate Responsive, Non-Exempt Documents After A Diligent Search As Mandated By FOIL

On August 17, 2021, DOCCS indicated that it was denying our administrative appeal (“DOCCS August 17 Response”)⁷ and advised us that “responsive records were not withheld in DOCCS’ response” but failed to provide the Public Officers Law § 89(3)(a) certification.

Over the course of five weeks from October 8, 2021 through November 15, 2021, I called and emailed DOCCS’ FOIL Appeals Officer, Michael Ranieri, on three occasions – each time requesting DOCCS to provide the Public Officers Law § 89(3)(a) certification. On each occasion, Mr. Ranieri indicated that he would respond to our certification request within the week.⁸ Mr. Ranieri last indicated that he would respond to the NYCLU’s certification request by November 15, 2021. Mr. Ranieri has still not yet provided his promised response. The details of these exchanges are set forth below.

- On October 8, 2021, I spoke by telephone with Mr. Ranieri and requested the written certification as to DOCCS’ production mandated by Public Officers Law § 89(3)(a). During our conversation, Mr. Ranieri asked me to identify records the NYCLU was seeking that DOCCS had not produced. I responded that there were several documents missing from DOCCS’ production, including, but not limited to, written policies or protocols relevant to several categories of our requests as well as records that relate to the notification by DOCCS to a call participant that it is capturing information that could be used to identify them by voice and/or locate them. Mr. Ranieri followed up with my request that same day by electronic mail, stating: “We stand by our FOIL appeal response of August 17, 2021.” He did not provide a certification as required by Public Officers Law § 89(3)(a).
- On October 28, 2021, I reiterated my request to Mr. Ranieri for the certification required by Public Officers Law § 89(3)(a).
- On October 29, 2021, Brianna White, DOCCS’ Administrative Specialist and Assistant Records Access Officer, emailed me a document titled “Certification” in which she provided evidentiary certifications concerning the authenticity of business records, citing New York CPLR §§ 2307, 4518(c), and 4540”).⁹ Ms. White’s ”certification” is not the certification mandated by Public Officers Law § 89(3).

⁷ In its August 17 Response, DOCCS relied on Public Officers Law Sections 87(2) (c), (d), (f) and (i) to justify withholding certain responsive information. An original copy of DOCCS’ August 17th Response is attached as Exhibit F.

⁸ An original copy of the email exchanges between Michael Ranieri and the NYCLU from October 8, 2021 through November 12, 2021 is attached as Exhibit G.

⁹ In the Ms. White’s Certification that was sent to the NYCLU by email, she certifies that the “attached records,” which were not attached to the email: (1) “are complete, true, and accurate copies of Contract #C161416 ‘Securus Technologies, Inc’”; (2) “were made in the regular course of business of DOCCS” and, “made in the regular course of business of DOCCS...”; and (3) to the extent that the records were not created by employees of DOCCS, “[are] true and accurate cop[ies] of the record[s] contained or maintained in Contract #C161416 by the other than the portion of the records, which have been redacted.” Ms. White’s Certification also includes a statement that: “Portions of the records have been redacted.” An original copy of Ms. White’s is attached as Exhibit H.

- On November 1, 2021, I asked Mr. Ranieri to provide DOCCS’s certification of diligent search, as required by Public Officers Law § 89(3).
- On November 2, 2021, Michael Ranieri emailed me, stating: “I hope to respond to your request [for the Section 89(3) certification] by the end of the week.”
- On November 5, 2021, Mr. Ranieri emailed me with a further delay, stating that DOCCS will respond “next week.”

On November 12, 2021, I left a telephone message for Mr. Ranieri with a DOCCS representative asking that he call me about the written certification and emailed him that same day, requesting DOCCS’ certification of diligent search as required by Public Officers Law § 89(3). Mr. Ranieri then emailed me, stating that he would respond to my request on Monday, November 15, 2021. However, the NYCLU has not receive a response from DOCCS to date.

DOCCS Has Failed To Certify That It Could Not Locate Responsive, Non-Exempt Records After A Diligent Search As Required By FOIL

A basic requirement of FOIL is that “[w]hen faced with a FOIL request, an agency must either disclose the record sought, deny the request and claim a specific exemption to disclosure, or *certify that it does not possess the requested document and that it could not be located after a diligent search.*” *Matter of Beechwood Restorative Care Ctr. v. Signor*, 5 N.Y.3d 435, 440-41, 808 N.Y.S.2d 568, 571 (2005) (emphasis added); *see also* N.Y. Pub. Officers L. § 89(3)(a) (McKinney 2020).

DOCCS has not complied with FOIL. The bare and conclusory statements that the “responsive records were not withheld in DOCCS’ response” or “[w]e stand by our FOIL appeal response of August 17, 2021” are insufficient to satisfy the statutory certification requirement. Because DOCCS has not met its burden under the statute to justify failure to disclose the requested records, “full disclosure is compelled.” *Scott, Sardano & Pomerantz v. Records Access Officer of City of Syracuse*, 65 N.Y.2d 294, 297, 491 N.Y.S.2d 289, 291 (1985); *see also Beechwood Restorative Care Ctr. V. Signor*, 5 N.Y.3d 435, 440-41, 808 N.Y.S.2d 568, 571 (2005); *Konigsberg v. Coughlin*, 68 N.Y.2d 245, 249 and 251, 508 N.Y.S.2d 393, 395 and 396 (1986); N.Y. Dep’t of State, Comm. Open Gov’t, Advisory Opinion FOIL-AO16340 (Dec. 14, 2006), available at <http://docs.dos.ny.gov/coog/ftext/f16340.htm>.

In light of the above reasons, the NYCLU administratively appeals the constructive denial of its FOIL requests by DOCCS. As you are aware, DOCCS has ten business days to decide this appeal.¹⁰ In addition, please be advised that the Freedom of Information Law directs agencies to send all administrative appeals and the determinations that follow to the New York State Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231.

To the extent that DOCCS intends to produce additional responsive documents, the NYCLU reserves the right to file any additional administrative appeals that might become necessary in the event that DOCCS claims more FOIL exemptions or otherwise withholds information without a

¹⁰ *See* Pub. Officers L. § 89(4) (a) (McKinney 2020).

proper basis. We look forward to DOCCS's timely and favorable response.

Sincerely,

A handwritten signature in black ink that reads "Lisa Laplace". The signature is written in a cursive style with a large initial "L" and a long, sweeping tail on the "e".

Lisa Laplace
Senior Staff Attorney

Copy (via electronic mail Michael.Ranieri@doccs.ny.gov):
Michael Ranieri, FOIL Appeals Officers (via electronic mail)