



POLICE DEPARTMENT
Office of Deputy Commissioner,
Legal Matters
One Police Plaza, Room 1406A
New York, New York 10038
FOILAppeals@NYPD.org

January 18, 2024

Ty Clevenger
tyclevenger@yahoo.com

RE: FREEDOM OF INFORMATION LAW
REQUEST: FOIL-2023-056-30716

Dear Mr. Clevenger:

This letter is in response to your email dated January 17, 2024, appealing the determination of the Records Access Officer (RAO) made on January 17, 2024 regarding records requested from the New York City Police Department. Your request, pursuant to the Freedom of Information Law, was originally received by the FOIL unit on December 26, 2023 and subsequently denied by the RAO.

Your appeal of that determination is denied because your request does not reasonably describe a specific record in a manner that could lead to its retrieval. Public Officers Law Section 89(3) requires that a FOIL request describe the records it seeks in a manner that can reasonably lead to the retrieval of records maintained by the entity to which the request was directed.

An agency may deny a FOIL request on the ground “that the records sought were not ‘reasonably described,’ as required by Public Officers Law § 89(3)(a)” (Aron Law, PLLC v New York City Dept. of Educ., 192 AD3d 552, 552, 146 NYS3d 7 [1st Dept 2021], lv to appeal denied, 37 NY3d 907 [2021] [citation omitted]). “[T]he requirement of Public Officers Law § 89(3) that documents be “reasonably described” was to enable the agency to locate the records in question” (Konigsberg v Coughlin, 68 NY2d 245, 249, 508 NYS2d 393 [1986] [citation omitted]). In considering the requirement that records be “reasonably described”, the Court of Appeals has held that whether or the extent to which a request meets the standard *may be dependent on the nature of an agency’s filing, indexing or records retrieval mechanisms* (see Konigsburg v. Coughlin, 68 NY2d 245 [1986]) (emphasis added).

When an agency has the ability to locate and identify records sought in conjunction with its filing, indexing and retrieval mechanisms, it was found that a request meets the requirement of reasonably describing the records, irrespective of the volume of the request. By stating, however, that an agency is not required to follow “a path not already trodden” (*id.*, 250) in its attempts to locate records, we believe that the Court determined, in essence, that agency officials are not required to search through the haystack for a needle, even if they know or surmise that the needle may be there. In short, agency staff are not required to engage in herculean or unreasonable efforts

in locating records to accommodate a person seeking records. See, Committee on Open Government Advisory Opinion, FOI-AO-18949 (August 20, 2012).

Furthermore, FOIL does not require “that an agency go through the haystack in an effort to locate needles” See, Committee on Open Government Advisory Opinion, FOI-AO-18863 (April 5, 2012) and because your FOIL request does not enable retrieval of responsive records, it does not meet the threshold requirement set forth in Public Officers Law 89(3)(a). Thus, an agency is not required to provide records in response to a FOIL request if the effort required to do so is unreasonable. For example, in *New York Comm. For Occupational Safety and Health v. Bloomberg*, 72 A.D.3d 153 (1st Dep’t 2010), the City argued, in part, that responding to petitioner’s extensive FOIL request would be burdensome and would unreasonably tax limited City resources. The First Department noted that the FOIL request “presents a situation where the volume of records is undisputedly large, and those records not only need to be retrieved and reproduced from a wide variety of sources, but redacted as well.” *Id.* at 162.

Finally, in *Fisher & Fisher v. Davison* (Supreme Court, New York County, September 27, 1988), involving a request for “all records contained in several file cabinets”, the court referred to and rejected the voluminous request, finding that: “Petitioner’s actual demand transcends a normal or routine request by a taxpayer. It...bring[s] in its wake an enormous administrative burden that would interfere with the day-to-day operations of an already heavily burdened bureaucracy.” Your request is akin to searching the contents of a “virtual” file cabinet and subsequently identifying those portions of such records that are required to be made available; a task which would place an unreasonable burden on this agency.

You may seek judicial review of this determination by commencing an Article 78 proceeding within four months of the date of this decision.

Respectfully,



Jordan S. Mazur

Sergeant

Records Access Appeals Officer

c: Committee on Open Government