

Daniel Gartenstein
Appeals Officer
City of Kingston
City Hall, 420 Broadway
Kingston, NY 12401

April 23, 2020

Re: Freedom of Information Law Appeal
Ref #140

Dear Mr. Gartenstein,

I hereby appeal the April 21, 2020 denial of access regarding my Freedom of Information Law (FOIL) request made on April 15, 2020 and submitted to Elisa Tinti, City Clerk, City of Kingston, City Hall, 420 Broadway, Kingston, NY 12401.

The records that were denied include any and all texts and emails from both personal and professional accounts of the Mayor of Kingston Steve Noble, Department of Public Works (DPW) Superintendent Ed Norman, Deputy Department of Public Works Ryan Coon, Parks & Recreation Superintendent Kevin Gilfeather and/or the Environmental Education and Sustainability Coordinator Julie Noble regarding the DPW proposed changes/merger of the DPW and Parks & Recreation Department and the Environmental Education and Sustainability Coordinator's role and office location from March 1, 2020 and ending on April 14, 2020.

On April 20, 2020, I was contacted by telephone by Ms. Tinti who advised that City of Kingston Corporation Counsel had requested closing out this FOIL request because the formal merger proposal no longer exists and it would be a tremendous amount of work to fulfill the request. I subsequently revised the dates from April 1, 2020 and ending on April 14, 2020, in an effort to narrow the scope of my request. On April 21, 2020, my original request was denied anyway.

According to the City's denial, it appears that the decision was based on an overly broad interpretation of Public Officers Law, Section 87(2)(g). Specifically, as stated in the denial letter dated April 21, 2020, that the materials sought are interagency material which are not subject to FOIL and the exceptions do not apply.

However, Section 87(2)(g)ii would apply in this case and the material is subject to FOIL, as it may “provide instructions to staff that affect the public” and how staff has been directed to proceed accordingly.

I have reviewed advisory opinions on the topic by the staff of the New York State Committee on Open Government to substantiate this and found the following advisory language used consistently: “An instruction to staff, a policy or a determination, each would represent a matter that is mandatory or directory in nature that would in our view be accessible pursuant to §87(2)(g)(ii).”

I also include a link to the Committee on Open Government that describes “Reasonableness” with regards to accessing private email and text messages.

<https://www.dos.ny.gov/coog/reasonableness.html>

Per FOIL, a response is required within 10 business days of receipt of an appeal. If the records are denied on appeal, a full explanation in writing is required by law and the burden rests on the City to demonstrate that the material indeed qualifies for exemption.

In addition, please be advised that FOIL directs agencies to send all appeals and the determinations that follow to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.

Sincerely,



Tanya Garment

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Kingston, NY 12401