

CITY OF KINGSTON
Office of Corporation Counsel
kbryant@kingston-ny.gov

Steven T. Noble, Mayor



Kevin R. Bryant, Corporation Counsel
Daniel Gartenstein, Asst. Corporation Counsel

May 5, 2020

Tanya Garment
[REDACTED]
Kingston, New York 12401
[REDACTED]

Dear Ms. Garment:

I am writing in response to your Freedom of Information Law appeal dated April 23, 2020.

For the reasons outlined below, your appeal is denied as moot.

On or about April 15, you filed a FOIL request for “any and all texts and emails from both personal and professional accounts” of five named employees of the city of Kingston “regarding the proposed changes/merger of the DPW and Parks and Recreation Department and the Environmental and Sustainability Coordinator’s role and office location from March 1, 20230 and ending on April 14, 2020”.

According to your appeal, on or about April 20, 2020, you were contacted by the City Clerk and, based upon information provided to you, you indicated that you wished to withdraw your request. The request was therefore deemed closed.

Later the same day, by email communication, you advised the City Clerk that you have “given the question of closing [the request] more thought . . . so have decided not to retract the request”. You continued that you wished to revise the request to records “just from April 1st through April 14th”.

On April 21, a decision was rendered wherein your request for records from March 1 through April 14 was denied on the grounds that the records that were requested constituted intra-agency communications which are exempt from disclosure. It is from this April 21 decision that you currently appeal and argue that the decision was based on an overly broad interpretation of the Public Officers Law.

The following constitutes my decision on your appeal.

As you withdrew the initial FOIL request which requested records from March 1 through April 20, and the decision on your initial request was rendered after the withdrawal, it is the decision of the undersigned that the decision is a nullity and not subject to review on appeal. Moreover, it is well accepted that no appeal lies from a disposition of an application that was entered on consent. As such, it is my determination that this appeal is denied as moot.

With regard to your subsequent communication requesting records from April 1 through April 14, it is the determination of the undersigned that this communication will be treated as a separate FOIL request and that, as of this writing, no determination has been rendered regarding this request. The arguments that you make in your appeal, and the Committee on Open Government decisions that you cite, will be considered by the City when determining this second, and still open, request.

Please be advised that pursuant to Executive Order 202.8, issued on March 20, 2020, "any specific time limit for the commencement, filing, or service of any legal action, notice, motion or other process or proceeding, or service of any legal action, notice, motion or other process or proceeding . . . is hereby tolled from the date of this Executive Order".

While your FOIL request will be forwarded to the appropriate department in due course, the processing of the request and the production of the documents will be delayed by the current emergency circumstances.

While efforts will be made to identify and produce documents within a reasonable time period, be advised that the provisions of the Executive Order apply to all deadlines set forth in the Freedom of Information Law and time limits set forth pursuant to FOIL will be deemed tolled until the Executive Order is either lifted or modified by the Governor.

Pursuant to the provisions of the Public Officers Law, a copy of this decision is herewith forwarded to the Committee on Open Government.

Sincerely,

Daniel Gartenstein, Esq.
FOIL Appeals Officer

cc: Committee on Open Government
Elisa Tinti, City Clerk