

June 24, 2020

NYS Committee on Open Government
NY Department of State
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

Via e-mail

To Members of the NYS Committee on Open Government,

I seek an opinion from the Committee on Open Government regarding the process and response I have received from the City of Kingston, NY, which denied my FOIL appeal and also split my FOIL request as part of the denial.

ATTACHED 4.15 FOIL REQUEST

On April 15, 2020, I submitted a FOIL request to the City of Kingston City Clerk (who serves at the pleasure of the Mayor). I requested copies of any and all texts and emails from both personal and professional accounts of Mayor Steve Noble, Dept of Public Works (DPW) Superintendent Ed Norman, DPW Deputy Superintendent Ryan Coon, Parks & Recreation Superintendent Kevin Gilfeather and/or Environmental Education and Sustainability Coordinator Julie Noble regarding the proposed changes/merger of the DPW and Parks & Rec Department, as well as the Environmental Education and Sustainability Coordinator's role and office location from March 1, 2020 and ending on April 14, 2020.

This request was made in order to find instructions to staff and to track the steps of the proposed merger's process. Julie Noble is also the Mayor's wife and the proposed changes/merger would have given her a job promotion and sizable pay increase.

ATTACHED 4.20 FOIL REVISION

On April 20, I was contacted via telephone by the City Clerk who requested, on behalf of the City's Corporation Counsel (who also serves at the pleasure of the Mayor), that the FOIL request be closed out since the proposed merger had died in Council Committee. The City Clerk said that it would be a tremendous amount of work to fulfill the FOIL request, so I initially orally agreed to retract it. In early afternoon of that same day, I decided not to retract it fully and narrowed the scope of my request to April 1, 2020 through April 14, 2020. An email to this effect was sent by myself to both the Clerk and the Corporation Counsel's Secretary. Additionally, a voicemail was left for the Clerk and I spoke directly with the Corporation Counsel's Secretary about it. At no point did the City of Kingston request a retraction in writing and, similarly, at no point did I retract my FOIL request in writing. I did not receive a response from the City Clerk and Corporation Counsel's Secretary did not inform me at that time that the request would still be considered retracted.

ATTACHED 4.21 FOIL DENIAL

On April 21, I received a FOIL denial from the City Clerk for my original request. The denial provided no information about why the request was denied other than a claim that the documents contained "interagency material" and that no exceptions apply. No indication was provided that the City actually searched for or reviewed the records requested. This denial also failed to include information on how to appeal or to whom an appeal should be directed. The Clerk was unable to provide this information and directed me to the City of Kingston Assistant Corporation Counsel (who also serves at the pleasure of the Mayor), who identified himself by email as the designated Appeals Officer.

ATTACHED 4.23 FOIL APPEAL

On April 23, I submitted a FOIL appeal to the Assistant Corporation Counsel. It briefly outlined the aforementioned process, along with reasons for the appeal. My concern with the mischaracterization of the records as containing interagency material not subject to FOIL was addressed in the appeal.

ATTACHED 5.5 FOIL APPEAL MOOT

On May 5, 2020, I received a denial of appeal which deemed my appeal moot because the request was "withdrawn" on April 20 when speaking to the City Clerk and the decision on it was rendered after this withdrawal. The denial then went on to say that the reduced scope would be treated as a separate FOIL request and that no determination had yet been rendered, since the arguments I made would be considered in this "new" request.

This is illogical as a decision had already been rendered for the original full request. There was no retraction of the original request, and the only change in scope was a reduction in time line, so I question the split of my request. Also, given the rationale provided by the City Clerk regarding the work load, as well as the speed of the denial response, I question the adequacy of the City's search for the requested records.

The Assistant Corporation Counsel also cited the Governor's Executive Order 202.8 (issued on March 20, 2020) as an excuse for delayed time limits. While I am understanding of good faith delays during this time of COVID-19, the language cited does not apply to FOIL as an internal executive branch deadline. The order refers to the initiation of process in the courts of New York State. I feel that the Executive Order has been misapplied by the Assistant Corporation Counsel in a misleading manner. To date, there has been no further response or communication regarding my FOIL request.

1. Did the City treat my appeal appropriately by splitting the request and then claiming that a determination has not yet been made, when a determination has indeed already been made regarding the original FOIL?
2. Was the City's simple statement that the records are interagency materials sufficient?
3. Does Executive Order 202.8 relieve the City from responding to my request in a reasonably timely manner?

4. Was it appropriate for the City to treat my FOIL request revision as a new request?

In conclusion, the City of Kingston's process is confusing and the approach used puts a layman in the position of having to think defensively like a legal professional. This tactic does not sit well with the intent of FOIL to provide transparency in local government. I expect to make future FOIL requests and, as a citizen of the City of Kingston, would like to be treated fairly by my local government when doing so.

I look forward to the Committee on Open Government's opinion on this matter.

Sincerely,

Tanya Garment
100 West Street
Kingston, NY 12401

Attached:

- 4.15 FOIL Request
- 4.20 FOIL Revision
- 4.21 FOIL Denial
- 4.23 FOIL Appeal
- 5.5 FOIL Appeal Moot