

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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In the matter of	:
JESSICA HUSEMAN,	:
	:
Petitioner,	:
	:
For a Judgment Pursuant to Article 78	:
of the Civil Practice Law and Rules	:
	:
-v-	:
	:
NEW YORK CITY	:
DEPARTMENT OF EDUCATION,	:
	:
Respondent.	:
-----	X

**MEMORANDUM IN SUPPORT
OF VERIFIED PETITION**

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PRELIMINARY STATEMENT

Petitioner Jessica Huseman brings this action because Respondent, the New York City Department of Education (“Respondent” or “DOE”), has improperly withheld public records pertaining to the New York City public schools in violation of the duties imposed on it by the Freedom of Information Law, N.Y. Pub. Off. Law § 84 *et seq.* (“FOIL”).

Over seven months ago, Ms. Huseman, a widely published education reporter, submitted three FOIL requests to the DOE seeking information about complaints received by the DOE, equipment purchase records, and salary information about DOE employees—all records that courts have ordered the DOE itself and other agencies to produce under FOIL. The DOE, however, has simply declined to respond to two of those, as well as to a fourth request filed nearly five months ago seeking information about the lengthy delays. Though the DOE did produce a single document in response to Ms. Huseman’s first request, seeking information about complaints made on a special education call center hotline, it improperly withheld the most meaningful information – such as the nature of the complaints – by improperly invoking a federal student privacy law and in violation of its obligation to redact, rather than withhold completely, public records.

Ms. Huseman is constrained to file this lawsuit because her efforts to obtain relief through the administrative review process provided by FOIL have proven fruitless. She has submitted timely administrative appeals from the DOE’s denials of all four FOIL requests. Yet the DOE not only continues to withhold records, it has taken the incorrect position, in contravention both of the plain language of FOIL itself and direct guidance to it from the New York Committee on Open Government, the body authorized by statute to issue advisory opinions on FOIL compliance, that (1) the DOE may extend its time to respond to FOIL requests *ad infinitum* by issuing monthly form letters, and (2) by doing so, the DOE relieves itself of its

statutory obligation to meaningfully respond to her administrative appeals. The DOE's position is incorrect as a matter of law, would render the guarantees of FOIL effectively meaningless to all requestors who lack the resources to challenge agency denials of public records in court, and has required the considerable and unnecessary expenditure of resources to bring to this Court what should have been resolved by the agency.

At bottom, this is a dispute about improperly withheld records that shed light on important public issues at the very heart of FOIL's guarantees: the manner in which New York City educates its children, spends taxpayer money, and responds to complaints about the provision of services to particularly vulnerable students. Despite Ms. Huseman's applications for administrative review, the DOE has still failed to articulate proper basis for its partial denial of Ms. Huseman's first request, and has made no response whatsoever justifying its wholesale denial of access to the records sought by her other three requests. Accordingly, she commences this proceeding to request that this Court (1) order the DOE to promptly produce improperly withheld records; (2) declare that the DOE's determinations in its administrative appeal responses that it may continue to deny access to public records because it has re-issued serial unilateral extensions violates its obligations under FOIL; and (3) award her the costs and fees incurred in obtaining the DOE's belated compliance with her request for public records.

BACKGROUND AND PROCEDURAL HISTORY

A. The Requests

Jessica Huseman is an investigative reporter at The Teacher Project based at the Columbia Journalism School. Her reporting focuses on education, particularly child welfare and education spending in New York City, and she has reported on the use of technology in

classrooms, teacher pay, and misconduct in education.¹ Accordingly, on June 11, 2015, Ms. Huseman submitted two FOIL requests to the DOE. The first FOIL request sought “data from the Special Education Call Center between 2012 and 2015,” specifically: (1) “The names of schools about which parents complained”; (2) “The names of school administrators or teachers named in the complaints”; (3) “The nature of the complaints”; and (4) “The action taken by the district to address the complaints.” Pet. ¶ 8, Ex. 1 (the “First Request”). The second FOIL request sought “purchase records for schools purchasing instructional technology (including laptops, tablets and Smart Boards),” including “the name of the school, the product purchased and the itemized cost of each product.” Pet. ¶ 15, Ex. 6 (the “Second Request”). The DOE sent Ms. Huseman acknowledgment letters of these requests, assigning them FOIL reference numbers F11,422 and F11,402, respectively, and stated that it anticipated providing a response by July 17, 2015.² Pet. ¶¶ 9 & 16, Exs. 2 & 7.

On July 1, 2015, Ms. Huseman submitted a third FOIL request to the DOE seeking:

1. The DOE database of employees currently on paid and unpaid leave[.]
2. The database of DOE investigations, opened and closed, from the 2014-2015 school year to present.
3. Copies of all employee settlement agreements from January 2014 to present.
4. List of all employees in the 2014-2015 school year who received bonuses, and the amount they received.

¹ See Jessica Huseman, *New York City schools ask students to ‘Bring Your Own Devices’*, The Hechinger Report, July 15, 2015, <https://perma.cc/A8L4-5NCA>; Jessica Huseman, *Las Vegas Can’t Afford to Give Teachers More Money. It’s Giving Them Superhero Capes Instead*, Slate, Sept. 22, 2015, <https://perma.cc/K7UT-7GBS>; Jessica Huseman, *Small Group Goes to Great Lengths to Block Homeschooling Regulation*, ProPublica, Aug. 27, 2015 <https://perma.cc/A37V-D6GM>.

² The DOE initially combined several of Ms. Huseman’s FOIL requests, assigned the combined requests reference number F11,422, and sent another acknowledgment letter assigning the First Request FOIL reference number F11,400. See Pet. ¶¶ 9 & 10, Ex. 2 & 3. However, the DOE later clarified that FOIL reference number F11,422 applies only to the First Request, see Pet. ¶ 28, Ex. 13 at n.1. The DOE has not used FOIL reference number F11,400 to refer to the First Request in any correspondence subsequent to its acknowledgement letter.

Pet. ¶ 19, Ex. 9 (the “Third Request”). The DOE sent Ms. Huseman an acknowledgment letter of this request, and stated that it anticipated providing a response by August 6, 2015. Pet. ¶ 20, Ex. 10.

On September 18, 2015, still having received no response to her FOIL requests, nor any explanation why the extensive delay was “reasonable,” Ms. Huseman submitted a FOIL request seeking communications relating to the DOE’s processing of her previous FOIL requests (the “Fourth Request”). Pet. ¶ 34, Ex. 17. The DOE acknowledged receipt of the Fourth Request and stated that it anticipated providing a response by October 26, 2015. Pet. ¶ 35, Ex. 18.

B. The Repeated Delays

As set forth in detail in the Petition, following the filing of her FOIL requests, Ms. Huseman received several letters from the DOE purporting to extend its time to provide a response to her requests. Each extension letter stated that the time period for response was being extended “due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2).” None indicated why the DOE had been unable to comply with the “date certain” it provided in the initial (or previous) letter(s).

Ms. Huseman received one extension letter each for the First and Second Requests, extending the time for response to August 14, 2015. *See* Pet. ¶¶ 12 & 17, Exs. 4 & 8. Ms. Huseman did not receive a response to either request on August 14, 2015, and did not receive any further communications from Respondent purporting to extend its time to respond to either request. It has been seven months since she submitted them, yet Ms. Huseman has yet to receive any response to the Second Request and, as discussed below, received an incomplete response to the First Request.

Ms. Huseman received six extension letters for the Third Request between August 2015 and February 2016. *See* Pet. ¶¶ 21-26, Ex. 11. Through these letters, the DOE purported to extend its time to respond to the Third Request, first from August 6, 2015 to September 3, 2015, then to October 2, 2015, then to November 2, 2015, then to January 6, 2016, then to February 4, 2016, and finally to March 4, 2016. None indicated why the initial (or succeeding) estimates, which FOIL requires to be “reasonable under the circumstances of the request,” were not complied with. Ms. Huseman still has not received a response to the Third Request.

Ms. Huseman received an extension letter for the Fourth Request on October 26, indicating a response date of November 24, 2015. Pet. ¶ 36, Ex. 19. She did not receive a response on that date, and heard nothing from the DOE until she received another extension letter dated January 28, 2016, stating that the DOE anticipated providing a response by February 5, 2016. Pet ¶ 39, Ex. 21. On February 5, 2016, DOE sent another extension letter, stating that it anticipated providing a response by March 7, 2016. Pet ¶ 41, Ex. 23.

C. The Partial Denial

The only substantive response the DOE has provided to Ms. Huseman’s FOIL requests was its partial denial of her First Request, dated September 14, 2015. Attached to that response was a spreadsheet with data from 311 calls regarding special education complaints. Pet. ¶ 14, Ex. 5. The spreadsheet contained the following fields: school District Bureau Numbers (DBN), opened date, status, “SR resolution,” “SE source,” topic, and sub-topic. *Id.* The attached spreadsheet did *not* contain the names of administrators or teachers named in complaints, the nature of the complaints, or the action taken by the district to address the complaints, as Ms. Huseman requested. *Id.* The DOE’s response stated only that access to more detailed information was denied “pursuant to FERPA and to Public Officers Law §87(2)(a), which

permits an agency to deny access to portions of records that are specifically exempted from disclosure by state or federal statute.” *Id.* The DOE did not say how or why those exemptions applied to particular complaints or responses it withheld, how every withheld entry could trigger the protections of the federal statute, or why entries could not have been redacted.

D. The Administrative Appeals

Four days later, on September 18, 2015, Ms. Huseman submitted an administrative appeal of the denials of the First, Second, and Third Requests. Pet. ¶ 27, Ex. 12. Regarding the First Request, Ms. Huseman noted that the names of administrators or teachers named in complaints, the nature of the complaints, or the action taken by the district to address the complaints should not have been withheld because that information would not endanger students’ privacy. Ex. 12. Regarding the Second and Third Requests, Ms. Huseman argued that the DOE had failed to respond to the requests as required by FOIL, and that she was entitled to treat that failure as a constructive denial and ask that the DOE be ordered to produce the requested records. *Id.*

On October 7, 2015, Courtenaye Jackson-Chase, General Counsel to the DOE, issued the DOE’s final response to Ms. Huseman’s administrative appeal. Ms. Jackson-Chase sent one letter denying Ms. Huseman’s administrative appeal from the First Request on the grounds that no “staff member” data field existed for the DOE to extract, and that information about the nature of the specific complaints and the DOE’s resolution action was properly withheld under FERPA because “the data fields containing this information are replete with student-specific information” and “[d]e-identification is not possible given FERPA’s stringent definition of personally identifiable information.” Pet. ¶ 28, Ex. 13 at 3.

Ms. Jackson-Chase sent a second letter rejecting Ms. Huseman's administrative appeals of the denial of the Second and Third Requests. Pet. ¶ 29, Ex. 14. Ms. Jackson-Chase claimed that the DOE had not constructively denied the Second and Third Requests, and despite the fact that the statutory deadline and the DOE's own "dates certain" for completion had both long since expired, that the administrative appeal of these requests was "premature because the [Central Records Access Officer ("CRAO")] efforts to respond to the request within the applicable time limitations were ongoing." Pet., Ex. 14 at 2.

On January 22, 2016, Petitioner submitted an appeal of the constructive denial of the Fourth Request, noting that, as the Committee on Open Government has repeatedly ruled, the serial "extension" letters were not authorized by FOIL, stating that the delay in response had been unreasonable, and requesting production of responsive records by February 12, 2016. Pet., Ex. 20. Indeed, the Committee on Open Government issued an advisory opinion to Ms. Huseman on October 22, 2015, stating that the DOE had failed to respond to the First through Third Requests in a timely fashion, rejecting the DOE's contention that it had not constructively denied her Requests because it had issued repeated unilateral extension letters, and noting that under FOIL, "[a]n agency may not in continual or repeated delays." Pet., Ex. 15. Nonetheless, by letter dated February 5, 2016, the DOE rejected her administrative appeal on that very basis, again claiming that the Fourth Request had not been constructively denied, and declining to issue a determination on the merits of the withholding because the DOE CRAO had provided Petitioner "with a reasonable approximate date by which [her] request would be determined, most recently to today, February 5." Pet., Ex. 22. The request was not "determined" on February 5; DOE simply awarded itself another extension, now to March 7, 2016. Pet., Ex. 23.

Accordingly, Ms. Huseman commences this Article 78 proceeding to challenge the DOE's improper delays and constructive denials of the Second, Third, and Fourth Requests, and the DOE's improper determination to withhold records responsive to the First Request.

ARGUMENT

“The Legislature enacted FOIL to provide the public with a means of access to government records in order to encourage public awareness . . . and to discourage official secrecy,” and its disclosure provisions must be “liberally construed” to ensure that the statutory objective of public access is fulfilled. *Newsday, Inc. v. Sise*, 71 N.Y.2d 146, 150 (1987). Those mandatory provisions are not complicated: “When 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.” *Beechwood Restorative Care Ctr. v. Signor*, 5 N.Y.3d 435, 440–41 (2005) (emphasis added); N.Y. Pub. Off. L. § 89(3)(a). It must do so within five days, unless *after* determining that it *will* produce records, it provides “a date certain” by which it will produce those records, and that date must be “reasonable under the circumstances of the request.” N.Y. Pub. Off. Law § 89(3)(a). If the agency fails to comply with any of the timeliness provisions of FOIL, a requestor is entitled to treat that failure as a denial and seek administrative review, and the agency incurs another clear obligation to resolve the issue or clear the way for court review: the head of the agency “*shall* within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought.” N.Y. Pub. Off. Law § 89(4)(a).

The DOE's continuing refusal to provide documents or explain its failure to produce them, and its remarkable assertion that it may render its withholdings effectively unreviewable by awarding itself unilateral, *pro forma* “extensions” that relieve it of its statutory obligation to

“explain . . . the reasons for further denial” in response to an administrative appeal, violate the letter and spirit of FOIL. Worse, these violations have compromised Ms. Huseman’s ability to report on a matter of substantial importance to the people of New York City—the education of its children.

As several courts have reminded the DOE, the public has a strong interest in access to records about public education, and a right to the very information requested by Ms. Huseman. *See, e.g., Thomas v. N.Y.C. Dep’t of Educ.*, 103 A.D.3d 495,497 (1st Dep’t 2013) (reversing denial of FOIL request for investigative report relating to complaint against school; recognizing that “[i]ssues involving the expenditure of education funds and the quality of education . . . are of significant public interest.”); *Sell v. N.Y.C. Dep’t of Educ.*, ---N.Y.S.3d---, 2016 WL 237602, at *1 (1st Dep’t Jan. 21, 2016) (“there is significant public interest in the proper academic assessment of public school students”); *Mulgrew v. Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, 87 A.D.3d 506, 508 (1st Dep’t 2011) (reports that disclose teacher’s names and proficiency in performance of job duties must be released under FOIL; noting that “the reports concern information of a type that is of compelling interest to the public, namely, the proficiency of public employees in the performance of their job duties.”).

Nonetheless, the DOE has improperly withheld this information from Ms. Huseman and refused to justify its withholding, despite her timely and extensive efforts through the administrative review process to obtain the requisite explanation and demonstrate that the DOE violated its obligations under FOIL because its delays were unreasonable and the withholdings unlawful. The DOE’s unlawful practices should be rebuked, and it should be directed to promptly produce the unlawfully withheld public records.

I.

THE DOE HAS IMPROPERLY WITHHELD ALL RECORDS RESPONSIVE TO THE SECOND, THIRD, AND FOURTH REQUESTS

The DOE has neither produced a single responsive record nor claimed any exemption to disclosure with respect to the Second, Third, and Fourth Requests. Those requests have been constructively denied. N.Y. Pub. Off. Law § 89(4)(a). Ms. Huseman has submitted timely administrative appeals from those constructive denials, Pet. ¶¶ 27 & 38, Exs. 12 & 20, but the DOE has refused to “explain in writing . . . the reasons for further denial, or provide access to the record[s] sought,” Pub. Off. L. § 89(4)(a), and the merits of the DOE’s wholesale withholding of responsive records is appropriately before this Court. *Newton v. Police Dep’t of City N.Y.*, 183 A.D.2d 621, 624 (1st Dep’t 1992); *Floyd v. McGuire*, 87 A.D.2d 388, 390 (1st Dep’t 1982).

The DOE “carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.” *Capital Newspapers v. Burns*, 67 N.Y.2d 562, 566 (1986). Any claimed exemption must be “narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption.” *Hanig v. State of N.Y. Dep’t of Motor Vehicles.*, 79 N.Y.2d 106, 109 (1992).

The DOE cannot bear this burden. The Second Request seeks purchase records for instructional technology that may not be lawfully withheld under FOIL. *E.g. Weston v. Sloan*, 84 N.Y.2d 462, 467 (1994) (FOIL requires disclosure of “the facts and figures memorializing the expenditure of public funds”). Likewise, FOIL requires disclosure of each aspect of the Third Request, which sought: (1) employee leave records that may not be lawfully withheld, *Capital Newspapers*, 67 N.Y.2d at 570 (records of police officer’s leave must be disclosed under FOIL); (2) records of DOE investigations that may not be lawfully withheld, *Thomas v. Condon*, 128

A.D.3d 528, 530 (1st Dep't 2015) (DOE must disclose records related to the investigation of two complaints filed with the Office of Special Commissioner of Investigation for the New York City School District); *Sell*, 2016 WL 237602, at *1-2 (DOE must disclose investigative file even where complaint proved unsubstantiated); (3) employee settlement agreements that may not be lawfully withheld, *LaRocca v. Bd. of Educ. of the Jericho Union Free Sch. Dist.*, 220 A.D.2d 424, 427 (2d Dep't 1995) (settlement agreement between school board and school employee must be disclosed); and (4) employee salary information regarding bonuses that may not be lawfully withheld, *Miller v. Inc. Vill. of Freeport*, 51 A.D.2d 765 (2d Dep't 1976) (payroll records of public employees must be disclosed). The DOE is required to maintain all of these records, *see* NYCRR tit. 8, Appendix I (requiring retention of records relating to purchasing, employees' time records covering leave, personnel investigative records and disciplinary proceedings, legal agreements, and payroll records); *see also* Pet. ¶ 31, Ex. 15 (Comm. on Open Gov't Advisory Opinion to Jessica Huseman (Oct. 22, 2015)), but continues to withhold them wholesale and without explanation.

With respect to the Fourth Request, which seeks communications relating to the other Requests, there may be certain material that is properly redacted, but the current wholesale withholding is demonstrably improper. *Wash. Post Co. v. N.Y. State Ins. Dep't*, 61 N.Y.2d 557, 567 (1984) (“That some portions of the records may be entitled to exemption does not warrant withholding [the records] completely.”); *Schenectady Cnty. Soc’y for Prevention of Cruelty to Animals, Inc. v. Mills*, 18 N.Y.3d 42, 46 (2011) (an agency “cannot refuse to produce the whole record simply because some of it may be exempt from disclosure”). In particular, factual information like the dates and times of relevant communications must be disclosed, *Xerox Corp. v. Town of Webster*, 65 N.Y.2d 131, 133 (1985) (ordering that requested records be subjected to

in camera inspection and redacted and made available to the appellant “[t]o the extent the reports contain ‘statistical or factual tabulations or data,’ or other material subject to production” (internal citation omitted)), as well as any instructions issued with respect to the processing of the FOIL requests. *N.Y. Times Co. v. City of N.Y. Fire Dep’t*, 4 N.Y.3d 477, 487 (2005) (ordering that requested records “be disclosed to the extent they consist of factual statements or instructions affecting the public, but that they be redacted to eliminate nonfactual material—i.e., opinions and recommendations”). To the extent there may be privileged information included in responsive records, it can be examined *in camera*, *Gould v. NYPD*, 89 N.Y.2d 267, 275 (1996), and the DOE “‘may be required to prepare a redacted version with the exempt material removed.’” *Whitfield v. Bailey*, 80 A.D.3d 417, 418-19 (1st Dep’t 2011) (quoting *Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 464 (2007)). But the DOE can no longer avoid its burden to justify withholding, and must disclose all records for which it does not demonstrate “‘a particularized and specific justification for denying access.’” *Johnson v. NYPD*, 257 A.D.2d 343, 349 (quoting *Capital Newspapers*, 67 N.Y.2d at 566).

II.

THE DOE HAS IMPROPERLY WITHHELD PORTIONS OF RECORDS RESPONSIVE TO THE FIRST REQUEST

In response to the only request to which Ms. Huseman has received a determination, the DOE produced a single record, but improperly withheld data fields providing the nature of complaints made to the Special Education Call Center between 2012 and 2015, as well as the DOE’s resolution actions, and denied Ms. Huseman’s administrative appeal therefrom. The DOE states only in conclusory fashion that these data fields are “replete with student-specific information,” without indicating where or in what fashion the records are so “replete” with student names or other student-specific information (if any) that they could not be meaningfully

redacted, and affirmed its decision to withhold those records pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 11232g and its implementing regulations, 34 C.F.R. § 99 (“FERPA”). Pet. ¶ 28, Ex. 13 at 3. According to the DOE, such information may be withheld under FOIL because these data fields purportedly contain students’ “personally identifiable information,” as provided for by FERPA. *See* Petition, Ex. 5; 34 C.F.R. § 99.3 (defining “personally identifiable information,” in part, as “information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty”).

As an initial matter, the mere assertion that the withheld data fields contain “student-specific information” is conclusory and does not satisfy the DOE’s burden of articulating a particularized and specific justification for its denial of access to public records. *N.Y. Times Co. v. N.Y. State Dep’t of Health*, 243 A.D.2d 157, 160 (3d Dep’t 1998) (agency’s claim that disclosure of a patient’s physician could readily permit a third party to deduce the identity of a given patient “falls far short of articulating a particularized and specific justification for denying access”). The DOE does not explain the nature of the “student-specific information” in the withheld data fields, and the DOE does not—and indeed cannot—explain how this information will allow a “reasonable person in the school community” to identify students “with reasonable certainty.” 34 C.F.R. § 99.3; *see* Comm. on Open Gov’t FOIL-AO-16124 (2006) (finding that release of similar data maintained by the State Education Department in its Impartial Hearing Reporting System, including “school district names, dates, *case types*, *issues the hearing dealt with*, *recusal information*, etc.” are unlikely to identify students) (emphasis added).

Moreover, to any extent that certain personally identifying information could be shown to exist in some of the data fields, the DOE was required to redact that information, not withhold the entire data field. *Wash. Post Co.*, 61 N.Y.2d at 567 (“That some portions of the records may be entitled to exemption does not warrant withholding [the records] completely.”); *Schenectady Cnty. Soc’y*, 18 N.Y.3d at 46 (an agency “cannot refuse to produce the whole record simply because some of it may be exempt from disclosure”); *Whitfield*, 80 A.D.3d at 418-19 (“When a document subject to FOIL falls within an exemption, the agency ‘may be required to prepare a redacted version with the exempt material removed.’” (quoting *Data Tree*, 9 N.Y.3d at 464)).

The DOE should be directed to promptly produce all requested data fields. If the DOE can sufficiently establish that protected information is present within certain data sets, the Court may “conduct an in camera inspection of representative documents and order disclosure of all nonexempt, appropriately redacted material.” *Gould*, 89 N.Y.2d at 275.

III.

THE DOE HAS VIOLATED ITS DUTY TO RESPOND TO THE REQUESTS

The DOE has repeatedly issued letters that purport to extend its statutory response deadlines, and three of its four denials of Ms. Huseman’s administrative appeals do not assert any statutory exemption as a basis for withholding, but rather asserts that the “reason[] for further denial,” N.Y. Pub. Off. Law § 89(4)(a), is the agency’s failure to complete processing the request. In doing so, the DOE refused to articulate a statutory justification for continued withholding, and neither responded to Ms. Huseman’s arguments in her administrative appeals that the delays were not “reasonable under the circumstances of the request[s],” as required by FOIL, or that, as the Committee on Open Government advised it, there is no basis in FOIL for repeated unilateral extensions. Rather, the DOE simply claimed that the requests had not been constructively denied on the basis of those letters and an internal regulation.

This is error and warrants the Court's correction, for it robbed Ms. Huseman of the administrative review to which she was entitled by statute. The DOE refused to review both the merits of the withholding, and of its compliance with FOIL's requirement that requests be processed in a "reasonable" period of time. An agency may issue "a date certain," by which it will complete processing a request it has determined to grant if it cannot provide the records within the statutorily allotted twenty days, N.Y. Pub. Off. Law § 89(3)(a), but it may not *fail to determine* a request, unilaterally and repeatedly extend the time within which it may respond, claim in its determination of the administrative appeal that the request was not constructively denied (but nonetheless "den[y] access" in an "appeal determination," N.Y. Pub. Off. Law § 89(4)(b)), thereby purporting to excuse itself from considering the merits appeal in violation of FOIL and requiring the claimant to seek judicial review. N.Y. Pub. Off. Law § 89(4)(a) (agency must "fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought").

As a threshold matter, the DOE's failure to determine whether to grant or deny the request within a reasonable time period constitutes a "constructive denial." *Legal Aid Soc'y v. N.Y. State Dep't of Corr. and Comm. Supervision*, 105 A.D.3d 1120, 1121 (3d Dep't 2013); N.Y. Pub. Off. Law § 89(4)(a) ("Failure by an agency to conform to the provisions of [§ 89(3)] shall constitute a denial."); *see also Rhino Assets v. N.Y.C. Dep't for Aging*, 60 A.D.3d 538, 538-39 (1st Dep't 2009) (agency's failure to respond to FOIL request is "direct violation" of statute; agency's failure to respond to administrative appeal with particularized bases for withholding is also a violation of FOIL). It has failed to determine whether to grant or deny the Requests within the period it identified in its "date[s] certain," which, assuming the DOE complied with FOIL in issuing those, were "reasonable under the circumstances of the request." N.Y. Pub. Off. Law §

89(3)(a). It has then issued repeated *pro forma* “extension” letters as a matter of course, notwithstanding that FOIL permits only “a” date certain that accounts for the agency’s delay, *id.*, and that “there is no provision in the statute for repeated extensions,” Comm. on Open Gov’t FOIL-AO-19224 (2014). To the contrary, the plain language of the statute uses the singular: an agency must provide “*the* approximate date,” and “*a* date certain,” and does not provide “for an extension beyond *the* date certain” provided. N.Y. Public. Off. Law. § 89(3)(a); Comm. on Open Gov’t. Advisory Opinion to Nairobi Vives, Esq. (Jan. 13, 2016) (emphasis added).³

“[P]ursuant to § 89(3)(a), an agency cannot engage in one delay after another.” Comm. on Open Gov’t. FOIL-AO-18008 (2010),⁴ and FOIL’s statutory provisions governing the time for response “clearly are intended to prohibit agencies from unnecessarily delaying disclosure.” Comm. on Open Gov’t FOIL-AO-19034 (2013). Yet that is precisely what the DOE has done. It appears to have patterned its form letter on language from *Advocates for Children of N.Y., Inc. v. N.Y.C. Dep’t of Educ.*, 101 A.D.3d 445 (1st Dep’t 2012), where the agency’s attempts to respond to the request “*within the applicable time limitations* were ongoing.” *Id.* at 446 (emphasis added). Here, by contrast the DOE has violated nearly every applicable time limitation: the “date certain” it supplied for each of the Second, Third, and Fourth requests, every one of the improper, serial “extension” letters it has issued since, and, most importantly, the overriding constraint that FOIL imposes that the (single) extension period be reasonable under the circumstances of the request.

In this case, delays of five and seven months are simply not reasonable. Indeed, the DOE’s delays in responding to the Second and Third Requests were unreasonable in September

³ For the Court’s convenience, a copy of this opinion is appended hereto.

⁴ While “advisory opinions from the Committee on Open Government are not binding authority,” they “may be considered to be persuasive based on the strength of their reasoning and analysis.” *TJS of N.Y., Inc. v. N.Y. State Dep’t of Taxation & Fin.*, 89 A.D.239, 242 n.1 (3d Dep’t 2011).

of last year, as the Committee on Open Government observed in its advisory ruling. *Pet.*, Ex. 15. The reasonableness of an agency's response is determined with reference to the "attendant facts and circumstances" of the request, *Comm. on Open Govt. FOIL-AO-19241 (2015)*, and the attendant facts and circumstances of the Second, Third, and Fourth Requests show that the DOE's delays have been unreasonable. The DOE is required to maintain the records requested in the Second and Third requests. *See NYCRR tit. 8, Appendix I (requiring retention of records relating to purchasing, employees' time records covering leave, personnel investigative records and disciplinary proceedings, legal agreements, and payroll records); see also Pet. ¶ 31, Ex. 15 (Comm. on Open Govt. Advisory Opinion to Jessica Huseman (Oct. 22, 2015))*, so it should not have difficulty locating them. The specific purchase records the Second Request seeks could be easily located using a keyword search of its records for "laptops," "tablets," and "Smart Boards." Likewise, the emails requested by Ms. Huseman in the Fourth Request could be easily located using a keyword search by FOIL reference numbers specified in the request and are almost certainly in the possession of a small number of DOE employees and retained in designated correspondence files and indexed by reference number. In addition, three of the four categories of records sought by the Third Request are limited in time to a single school or calendar year.

The DOE's positions are contrary to the letter and spirit of FOIL, under which an agency's disclosure obligations must be "liberally construed," *Newsday, Inc.*, 71 N.Y.2d at 150, not construed against their plain language to prevent the reasonableness of an agency's delay from being challenged in an administrative proceeding, or to permit an agency, by issuing repeated inappropriate delays, to deprive a requestor of a determination on the merits of her request and force her to seek relief from the courts. The DOE's incorrect position that it may

ignore its responsibilities in responding to administrative appeals should be repudiated, and this Court should clarify that any contrary interpretation of its internal regulations violates FOIL.

IV.

THE COURT SHOULD REQUIRE THE DOE TO PROMPTLY DISCLOSE THE IMPROPERLY WITHHELD RECORDS OR PORTIONS THEREOF

As a result of the DOE's improper delays and improper withholdings in response to Ms. Huseman's FOIL requests, Ms. Huseman's ability to report on issues concerning New York City schools continues to be gravely impacted. Accordingly, Petitioner requests a declaration that her rights under FOIL have been violated by the DOE's unreasonable delays and unjustified withholding of requested material, and an order directing the DOE to produce all responsive records by March 5, 2016, or, in the alternative, to produce on that date for the Court's *in camera* review any portions of records the DOE can satisfactorily demonstrate an entitlement to withholding, and produce the remaining records to Ms. Huseman.

V.

MS. HUSEMAN IS ENTITLED TO AN AWARD OF LEGAL COSTS AND FEES ASSOCIATED WITH COMPELLING COMPLIANCE WITH FOIL

A court, in its discretion, may award a FOIL petitioner her legal fees and costs under FOIL, when she prevails on her claim(s) and either: (1) "the agency had no reasonable basis for denying access," *or* (2) "the agency failed to respond to a request or appeal within the statutory time." N.Y. Pub. Off. Law § 89(4)(c)(i) & (ii). The DOE's delays, and its outright refusal to provide explanations or satisfy its obligations to afford meaningful appellate review of its continuing constructive denial of Ms. Huseman's requests, have no reasonable basis in law, and there was never any reasonable basis in law for withholding the records in their entirety. The DOE adopted a policy that left Ms. Huseman without any recourse but this Court, despite FOIL's

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January 13, 2016

Nairobi Vives, Esq.
Couch White, LLP
P.O. Box 22222
540 Broadway
Albany, NY 12201-2222

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence, except as otherwise indicated.

Dear Ms. Vives:

We are in receipt of your request for an advisory opinion regarding the manner in which Empire State Development responded to your Freedom Information Law (FOIL) request.

By way of background, FOIL provides direction concerning the time and manner in which agencies must respond to requests. Specifically, §89(3)(a) of the Freedom of Information Law states in part that:

“Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied.... If an agency determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.”

Accordingly, it has long been advised that when an agency is unable to deny or provide access to records within five business days, it must provide an acknowledgement within that time indicating an approximate date, not to exceed twenty additional business days, on which it will grant access in whole or in part. If it is determined, either within five business days of the receipt of the request, or at or near the expiration of twenty business days of its acknowledgement, that it is unable to respond within twenty additional business days, it must indicate a “date certain” that includes both the date and the reasons for requiring additional time. Although we recognize that there are occasions when an agency will require an extension of time beyond that which it initially predicted, there is no provision in the statute for an extension beyond the date certain or repeated extensions. The date certain must be reasonable based on attendant facts and circumstances.

When an agency fails to comply with the time limits for response as described in §89(3)(a), or denies access to records in writing, FOIL permits the applicant to file an administrative appeal, and, if the agency denies the appeal, that person may seek judicial review pursuant to Article 78 of the Civil Practice Law and Rules. We note that the Legislature chose to distinguish the two types of denials in §89(4)(a), as follows:



Department
of State

"...any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought"

and further,

"Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial."

Because it distinguishes between the two types of denials, one in writing and the other due to a failure to respond in a timely manner, it is our opinion that the Legislature intended that there may be two types of appeals: one, from a denial of access in writing based on an exception to rights of access, and the other, from a constructive denial of access as a result of the agency's failure to comply with the time limits for response required by §89(3)(a).

As stated earlier, there is no provision in the statute for repeated extensions. Because the agency notified you on three separate occasions prior to your December 14, 2015 appeal (and one additional time after your appeal) that it would need additional time to grant or deny access based on §87(2) of FOIL, we believe that it was reasonable, upon receipt of the third extension notice, to construe this failure to determine rights of access as a constructive denial on the part of the agency. I point out that §89(3)(a) of FOIL requires an agency to state "the reason for the inability to grant the request within twenty business days" when advising a requestor that it requires additional time to respond. The September, October, December, and January extension letters from the agency records access officer do not include a reason for the delay in response.

The agency's FOIL appeals officer responded to your December 14, 2015 appeal of its constructive denial by stating, in part, that "ESD is diligently working on preparing its responses to all FOIL requests, and to the extent that is reasonable give the nature of the request and the materials, responding to requests in the order that they were received. Given this context, the time to process your request is not unreasonable." We point out that the decision cited by Mr. Pidedjian to justify the delays, Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, was decided in 2007, before the enactment of amendments to §89(3)(a) concerning the time in which agencies must respond to requests.

In our opinion, it is unreasonable for an agency to delay its response when requested records can be located with facility and are clearly public. That other earlier requests involved records that may be voluminous, difficult to locate, and/or time consuming to review would not, in our view, authorize an agency, as a matter of practice of policy, to deal with requests solely on the basis of the dates of their receipt.

We are unaware of the volume or complexity of the records that the agency has determined to be responsive to your request. I would suggest that the agency carefully review your request, as well as the attendant circumstances regarding its ability to respond, and that it provide you, in writing, with a reason for the delay, and a date certain when the request will be granted in whole or in part.

I hope that I have been of assistance.

Sincerely,


Kristin O'Neill
Assistant Director

cc: ESD Records Access Officer
Antovk Pidedjian, FOIL Appeals Officer

Watson, Candace (DOS)

From: Freeman, Robert J (DOS)
Sent: Friday, January 08, 2016 12:16 PM
To: Watson, Candace (DOS)
Subject: FW: Opinion on FOIL Request Appeal Denial
Attachments: ESD Appeal Letter (Email).pdf; Vives-Appeal Message-Constructive Denial - 12-29-15 (3) (003).pdf; FW: (Vives) FOIL Request - Status Update

Please copy her letter and the attachments.

From: Nairobi Vives [mailto:nvives@couchwhite.com]
Sent: Thursday, January 07, 2016 11:33 AM
To: Freeman, Robert J (DOS)
Subject: Opinion on FOIL Request Appeal Denial

Dear Mr. Freeman,

I am writing to get your opinion on whether we should seek a formal opinion from your office on the matter explained below.

On September 24, 2015, I requested records from ESD. ESD acknowledged my request in a timely fashion but has yet to send any records. Instead, it has sent periodic emails in which it states that it is still processing my request and gives a date by which it "hopes to have a response." Having received three such emails, I considered the pattern of extension, without a date certain or a reason, a denial.

I submitted an appeal letter dated December 14, 2015. A copy of which is attached for your convenience. My appeal was denied by letter dated December 29, 2015. The reasons cited were: (1) the manner in which it gathers records and (2) ESD is experiencing a backlog for FOIL requests. A copy of the denial letter is also attached for your convenience.

Following the denial, I received yet another email from ESD extending the response date from January 6, 2016 to hopefully January 21, 2016. There seems to be no end to this pattern. In your opinion is this type of response appropriate under the law?

Thank you,

Nairobi Vives, Esq.
Couch White, LLP
P.O. Box 22222
540 Broadway
Albany, New York 12201-2222
nvives@couchwhite.com
www.couchwhite.com
O: 518-426-4600

COUCH WHITE, LLP
COUNSELORS AND ATTORNEYS AT LAW

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December 14, 2015

VIA EMAIL to FOIL@esd.ny.gov AND US MAIL

Antovk Pidedjian
Records Appeals Officer
633 3rd Ave.
37th Floor
New York, NY 10017

Re: Appeal of Withholding of September 20, 2015 Freedom of Information Law
("FOIL") Request

Dear Mr. Pidedjian:

We submitted the above-referenced FOIL request via email on September 20, 2015 (a copy of which is enclosed for your reference). Since the acknowledgement of the receipt of my request, a pattern has developed wherein Empire State Development ("ESD") sends an email stating that my request is being processed and that it "hopes to have a response" by a given date. When that date arrives, I receive another email with the same message and an extended date. I have received three such emails to date (copies of which are enclosed for your reference). I have twice requested, in writing, a date certain for such response but to no avail (copies of such requests are enclosed for your reference). Finally, I telephoned ESD and had a conversation with Records Access Officer, Leslie Hall, who was unable and/or unwilling to provide me with a date on which my records would be available. Given that there is no foreseeable end to ESD's pattern, and that I have not received a reason for the delay or a date certain by which I will receive the records, I consider my request denied according to 21 NYCRR § 1401.5 (e) (6). Thus, pursuant to Public Officers Law § 89 (4) (a), I am appealing the withholding of the requested records.

On December 7, 2015, I received an email from ESD stating, "Please be advised that we are still processing the attached FOIL request. We hope to have a response to you on or before January 6, 2016." Prior to that, I received an email on November 5, 2015 which stated, "Please be advised that we are still processing the attached FOIL request. We hope to have a response to you on or before December 7, 2015." A similar email, that I received on September 24, 2015, was sent prior to that which stated, "Please be advised that we are still processing the attached FOIL request. We hope to have a response to you on or before November 5, 2015."

After receiving the September 24, 2015 email, I wrote a letter dated October 5, 2015 in which I requested a reason for the delayed response and "[a] date certain, within a reasonable period, when the request will be granted." I did not receive a response from ESD. Following the

December 14, 2015

Page 2

receipt of the December 7, 2015 email, I wrote a letter requesting the aforementioned information. I followed the letter with a phone call to ESD on December 9, 2015.

During the above-referenced phone call, I spoke with Leslie Hall via telephone. I requested an explanation for the latest denial and a date certain by which I could expect the requested records. I was told, that ESD is experiencing a “backlog” and that many requests other than mine await responses. He stated that the backlog was due to the nature of the ESD’s process of collecting records from various sources within ESD. When I asked Mr. Hall if he could provide me with even part of the records he had been able to collect to date, he said he could not. He also said that he did know when the records would be ready and could not provide me with a date certain.

Mr. Hall’s response offered no certainty as to when I could expect to receive a response. Coupled with ESD’s pattern, I am led to believe that I will receive another email on January 6, 2016, the latest date that I am told that I may receive a response, which states that my request is still being processed and that ESD “hopes to have a response” on a future date. Moreover, even if the records arrive by January 6, 2015, over three months will have passed – 104 days to be exact – since my request was received on September 24, 2015.

Pursuant to 21 NYCRR § 1401.5 (e) (6), failure to comply with the statutory time limits is considered a denial which includes situations where an agency “does not grant a request in whole or in part within twenty business days of its acknowledgment of the receipt of a request and fails to provide the reason in writing explaining its inability to do so and a date certain by which the request will be granted in whole or in part” Based on the foregoing, ESD has failed to comply with the statutory time limits and has failed to provide the reason and a date certain in writing.

As required by FOIL, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within ten business days of the receipt of an appeal. If the records are denied on appeal, please explain the reasons for the denial fully and in writing as required by law.

Finally, please be advised that the Freedom of Information Law directs that all appeals and the determinations be sent to the Committee on Open Government, Department of State, 41 State Street, Albany, New York 12231.

December 14, 2015

Page 3

Very truly yours,

COUCH WHITE, LLP

Nairobi N. Vives

Nairobi N. Vives

NNV/gs

Enclosures (4)

cc: Committee on Open Government

S:\DATA\Client19 17201-17600\17240\FOIL Requests\ESD Appeal Letter (Email).docx

Watson, Candace (DOS)

From: esd.sm.foil
Sent: Wednesday, January 06, 2016 5:15 PM
To: Nairobi Vives
Cc: esd.sm.foil
Subject: FW: (Vives) FOIL Request - Status Update
Attachments: Vives FOIL Request (ESD Revised FOIL Request for Teagan).pdf

Dear Ms. Vives,

Please be advised that we are still processing the attached FOIL request. We hope to have a response to you on or before January 21, 2016.

Thank you.

From: esd.sm.foil
Sent: Monday, December 07, 2015 5:29 PM
To: 'nvives@couchwhite.com'
Cc: esd.sm.foil
Subject: FW: (Vives) FOIL Request - Status Update

Dear Ms. Vives,

Please be advised that we are still processing the attached FOIL request. We hope to have a response to you on or before January 6, 2016.

Thank you.

From: esd.sm.foil
Sent: Thursday, November 05, 2015 3:46 PM
To: 'nvives@couchwhite.com'
Cc: esd.sm.foil
Subject: FW: (Vives) FOIL Request - Status Update

Dear Ms. Vives,

Please be advised that we are still processing the attached FOIL request. We hope to have a response to you on or before December 7, 2015.

Thank you.

From: esd.sm.foil
Sent: Thursday, September 24, 2015 5:16 PM
To: 'nvives@couchwhite.com'
Cc: esd.sm.foil
Subject: FW: (Vives) FOIL Request - Status Update

Dear Ms. Vives,

Please be advised that we are still processing the attached FOIL request. We hope to have a response to you on or before November 5, 2015.

Thank you.

From: esd.sm.foil
Sent: Thursday, September 10, 2015 12:05 PM
To: 'nvives@couchwhite.com'
Cc: esd.sm.foil
Subject: (Vives) FOIL Request - Acknowledgement

Dear Ms. Vives,

ESD is in receipt of the attached FOIL request seeking access to certain records of the New York State Urban Development Corporation ("UDC") doing business as Empire State Development.

ESD is considering your request in accordance with the Freedom of Information Law (Public Officers law, Section 84 et seq.) and its rules concerning access to the records of the Corporation. ESD will notify you of the results of its search for responsive documents within ten (10) business days.

Thank you.

IMPORTANT: This e-mail message and any attachments contain information intended for the exclusive use of the individual(s) or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction. Please immediately notify the sender by electronic mail or notify the System Administrator by telephone (518)292-5180 or e-mail (administrator@esd.ny.gov) and delete the message.
Thank you.

Empire State Development
633 Third Avenue
New York City, NY 10017
(212) 803-3130
www.esd.ny.gov

December 29, 2015

Nairobi S. Vives
Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222

Dear Ms. Vives:

ESD is in receipt of your appeal dated December 15, 2015 concerning your September 20, 2015 request for documents made pursuant to Freedom of Information Law (Public Officers Law, § 84, et seq.) ("FOIL"). Your appeal asserts that ESD has constructively denied the Request for lack of a response.

As indicated in your appeal, ESD acknowledged your request via e-mail on September 24, 2015 and stated that ESD was processing your request and hoped to have a response to you on or before November 5, 2015. ESD sent a second e-mail message on November 5, 2015, stating that ESD was processing your request and hoped to have a response to you on or before December 7, 2015. ESD sent a third e-mail message to you on December 7, 2015 stating that ESD was processing your request and hoped to have a response to you on or before January 6, 2016. All ESD messages were sent in a timely manner pursuant to POL §89(3)(a).

Moreover, as the New York State Court of Appeals stated in Matter of Data Tree, LLC v. Romaine, 9 N.Y.3d 454, 465 (2007), "there is no specific time period in which the agency must grant access to the records [in response to FOIL requests]. Indeed, the time needed to comply with the request may be dependent on a number of factors, including the volume of the request and the retrieval methods." An agency responding to a FOIL request must provide responsive records in a time "which is reasonable in view of the attendant circumstances." Id.

Please note that in order to fulfill your request, ESD has to contact the appropriate staff members, gather the materials, review them for applicable exemptions pursuant to FOIL and prepare a final response.

Moreover, please note that your request is one of a number of pending FOIL requests, including a number of complex FOIL requests that ESD is processing. A number of the requests in process were received prior to your request. ESD is diligently working on preparing its responses to all FOIL requests, and to the extent that is reasonable given the nature of the

Empire State Development
633 Third Avenue
New York City, NY 10017
(212) 803-3130
www.esd.ny.gov

request and the materials, responding to requests in the order that they were received. Given this context, the time to process your request is not unreasonable.

The materials that you requested are subject to potential redactions pursuant to exemptions from disclosure under Section 87(2)(b), (d) and (g) of FOIL. In the event ESD determines to make redactions pursuant to one of more of these exemptions, of course, you are free to appeal ESD's determination(s) pursuant to FOIL.

Therefore your appeal is denied.

ESD continues to process your request. ESD's assigned Records Access Officer will provide you with an update regarding the date by which you can expect to receive a next response regarding the status of your request.

Very truly yours,



Antovk Pidedjian
Senior Counsel, Lending Programs

cc: Robert J. Freeman
Executive Director
Committee on Open Government
coog@dos.ny.gov

September 20, 2015

VIA E-MAIL to FOIL@esd.ny.gov

Records Access Officer
Empire State Development
633 3rd Avenue, 37th Floor
New York, New York 10017

Re: Freedom of Information Law Request – Teagan Trucking, LLC

Dear Records Access Officer:

Under the provision of the New York Freedom of Information Law, Article 6 of the Public Officers Law (“FOIL”), I hereby request all records or portions thereof pertaining to the WBE known as Teagan Trucking, LLC (“Teagan”), owned by Anne-Marie Galasso and located at 111 Josephine Dr., Cobleskill, New York 12043.

If this request is too broad or does not adequately describe the records sought, please contact me so that I may clarify my request, and when appropriate, inform me of the manner in which the records are filed, retrieved or generated.

We are prepared to pay the customary fees for the copying of these documents, but we would like the opportunity to review any documents which are voluminous prior to copying to minimize your effort and our expense. If that is the case, please advise me of the appropriate time during normal business hours and the location for inspecting the Records. If reasonably possible, I would like to request access to the above-described records via e-mail to nvives@couchwhite.com.

As you know, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly.

If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Thank you for your assistance, and please let us hear from you with the time period required by the statute.

Very truly yours,

COUCH WHITE, LLP

Nairobi N. Vives

Nairobi N. Vives