

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

March 11, 2013

Mr. James M. Odato
Albany Times Union
PO Box 15000
Albany, NY 12212

Re: FOIL Appeal # 12-11-301

Dear Mr. Odato:

This letter resolves your administrative appeal to the New York State Department of Health (“DOH”) from its denial of your request for certain records pursuant to the Freedom of Information Law (“FOIL”), Public Officers Law (“POL”) Article 6.

On November 21, 2012, you submitted a FOIL request for “a copy of a video recording from November 20, 2012 of Mr. James Cox, NYS Medicaid Inspector General, addressing employees of the Office of Medicaid Inspector General.” On February 25, 2013, DOH’s Records Access Office (“RAO”) denied your request based on POL § 87(2)(g), and on the same day DOH received your appeal of the denial.

Since this record of the Medicaid Inspector General addressing employees of the Office of the Medicaid Inspector General is clearly “inter-agency,” the only issue is whether the record, or some portion of it, is “statistical or factual tabulations or data” or “instructions to staff that affect the public.”

I have reviewed the video, and there are no specific instructions about how OMIG employees should be doing their jobs that could be considered instructions to staff that affect the public.

DOH is not required to release inter-agency or intra-agency materials that do not contain factual data. See Matter of The New York Times Co. v City of New York Fire Dept., 4 NY3d 477, 488; Matter of Tuck-It-Away Assoc. v Empire State Dev. Corp., 54 AD3d 154, 166. POL § 87(2)(g) does not exempt from disclosure materials that are “statistical or factual tabulations or data.” Factual data means “objective information, in contrast to opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making” Matter of Gould v. New York City Police Dept., 89 NY2d 267, 277. The