

video that was withheld here contains opinions, ideas and advice that the Medicaid Inspector General communicated to his staff during a staff meeting.

Matter of The New York Times held that “[t]he point of the intra-agency exception is to permit people within an agency to exchange opinions, advice and criticism freely and frankly, without the chilling prospect of public disclosure” (4 NY3d, at 488). There is no rule that for inter-agency or intra-agency materials, sentences or parts of sentences that might be characterized as factual in nature must be extracted and disclosed as “statistical or factual tabulations or data.” Parts of the video are not separable records that are “statistical or factual tabulations or data.” In Matter of Tuck-It-Away, the Court held that whole e-mails were properly withheld under the intra-agency exception, because “the communications were not factual in nature” (54 AD3d, at 166). See also Matter of Visiting Nurse Serv. of NY Home Care v New York State Dept. of Health, 2012 NY Slip Op 32975U (N.Y. Sup. Ct. Nov. 28, 2012). Likewise, the video at issue here is “not factual in nature,” and no part of it is required to be disclosed under FOIL.

For the reasons stated above, your appeal is denied in its entirety. Judicial review of this decision may be obtained pursuant to CPLR Article 78.

Sincerely,



Jonathan Karmel
DOH Records Access Appeals Officer

cc: James P. O'Hare, Acting DOH Records Access Officer
Robert J. Freeman, Executive Director, NYS Committee on Open Government
James E. Dering, DOH General Counsel