



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

December 26, 2017

Mr. Rusty Weiss
MuckRock News
DEPT MR 46007
411A Highland Ave
Somerville, MA 02144-2516

Dear Mr. Weiss:

This letter responds to your letter dated December 5, 2017, which was received on December 11, 2017, appealing the Executive Chamber's (the "Chamber") determination regarding your Freedom of Information Law (FOIL) request dated November 19, 2017.

1. Background

On November 19, 2017, you requested the following records pursuant to FOIL:

Any and all e-mails and documents mentioning the names Lisa Marie Cater or William "Sam" Hoyt. Search on keywords "Cater" and "Hoyt". Also, "Empire State Development Corp".

On November 20, 2017, the Chamber advised you that your request did not reasonably describe the records requested. The Chamber also advised you that you may resubmit your request with an appropriate description of the documents sought. On November 21, 2017, you responded via email asserting this was an "absurd response" and essentially claimed that the Chamber should simply run a search using the three key terms provided. On December 5, 2017, you sent another email stating that you were following up on a previous request. However, in the caption of that December 5th email, you addressed it to "FOIL Appeal" so the Chamber has treated this email as an appeal of its determination.

2. Analysis

The New York Freedom of Information Law's legislative declaration sets forth that "government is the public's business," and thus imposes upon the State a broad responsibility to make its records available to the public so that citizens may obtain information relating to the day-to-day functions of the government (see Public Officers Law § 84; Fink v. Lefkowitz, 47 N.Y.2d 567, 571 (1979)).

However, Public Officers' Law § 89(3) requires a request for records to be "reasonably described." Whether a request is reasonably described may be dependent upon the nature of an agency's filing or record keeping system and agency employees are not required to engage in herculean or unreasonable efforts to locate records (see Konigsburg v. Coughlin, 68 N.Y.2d 245 (N.Y. 1986); Committee on Open Government FOIL-AO-18949 (Aug. 20, 2012) and 18863 (Apr. 5, 2012)).

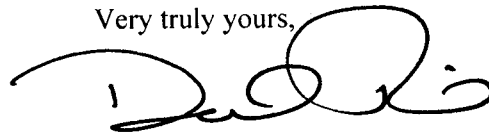
Your request, and subsequent appeal, incorrectly assume that the Chamber is capable of conducting one electronic global search for each defined term and return all results. The Chamber's servers and email communications systems do not permit this type of search. Therefore, Chamber does not have a "format that permits practical retrieval" and it would take a "herculean effort" to conduct a manual review of all of Chamber's documents without a custodian, timeframe, date limitation and/or subject matter that contain the search terms provided (see Matter of Konigsberg v. Coughlin, 68 NY2d at 249; Hearst Corp. v. New York State Dept. of Corrections and Community Supervision (Sup. Ct. Albany County, Index No. 88-16, Sept. 19, 2016); Committee On Open Government, FOIL-AO-15771, (January 27, 2006); Committee On Open Government, FOIL-AO-18949, (August 20, 2012); Committee On Open Government, FOIL-AO-15048, (December 16, 2004); Committee on Open Government, FOIL-AO-17989, (February 3, 2010); see also Bader v Bove, 273 AD2d 466 (2d Dept 2000); Asian Am. Legal Defense & Educ. Fund v NYC Police Dept., 41 Misc.3d 471 (Sup. Ct. NY County, May 6, 2013); Matter of Urban Justice Ctr. v NYC Police Dept., 2010 N.Y. Misc. LEXIS 4258 (Sup. Ct. NY County, Sept. 1, 2010); Matter of James, Hoyer v State of NY OAG, 27 Misc 3d 1223(A) (Sup. Ct. NY County, Mar. 31, 2010)).

The Committee on Open Government has clearly stated that, "[a] request for 'all' records, without limitation, that include a certain name, for example, might not be found to reasonably describe the records when a search using that name produces thousands of email communications or other records irrespective of the content of those items." FOIL-AO-18949. In this opinion, the Committee considered a request for "any and all communications" between two individuals. Your request is far broader and seeks unspecified communications and documents by and between every employee of the Executive Chamber. This type of request "transcends a normal or routine request . . . and would bring in its wake an enormous administrative burden that would interfere with the day-to-day operations of an already heavily burdened bureaucracy" (Fisher & Fisher v. Davison, 1988 N.Y. Misc. LEXIS 876, 9-10 (NY Sup. Ct., 1988)).

3. Conclusion

The Chamber's response and determination was proper and is hereby affirmed. As stated in the Chamber's initial decision, this determination does not preclude you from resubmitting your FOIL request reasonably describing the records sought.

Very truly yours,



David Perino
Assistant Counsel to the Governor
FOIL Appeals Officer

cc: Robert J. Freeman (via email)
NYS Committee on Open Government