



**POLICE DEPARTMENT**  
**Office of Deputy Commissioner,**  
**Legal Matters**  
**One Police Plaza, Room 1406A**  
**New York, New York 10038**  
[FOILAppeals@NYPD.org](mailto:FOILAppeals@NYPD.org)

February 20, 2018

CJ Ciaramella  
[45396-33236635@requests.muckrock.com](mailto:45396-33236635@requests.muckrock.com)

**RE: FREEDOM OF INFORMATION LAW**  
**REQUEST: LBF #17PL14280**  
**Re: Lost Firearms/Shields**

Dear Mr. Ciaramella:

This letter is in response to your letter dated January 19, 2018 appealing the determination of the Records Access Officer made on January 9, 2018 regarding records requested from the New York City Police Department. Your request, pursuant to the Freedom of Information Law, was originally received by the FOIL unit on November 1, 2017 and subsequently denied pursuant to various subsections of the New York Public Officers Law.

As it pertains to your request for lost/stolen firearm/shield/ID reports filed by NYPD officers, the appeal is denied pursuant to Public Officers Law (POL) Section 87(2)(a) in that such records consist of Police Officer personnel records and are therefore specifically exempted from disclosure under the provisions of New York state statute Civil Rights Law Section 50-a. The records that you have requested are used to evaluate the performance of a police officer in connection with continued employment or promotion and are therefore barred from disclosure.

As it pertains to your request for spreadsheets or reports summarizing lost/stolen firearm and shield reports, your appeal is denied because a diligent search has been conducted for the requested records based on the information provided; however, no records were located.

The New York Court of Appeals has determined that “[w]hen an agency is unable to locate documents properly requested under FOIL, Public Officers Law § 89(3) requires the agency to certify that it does not have possession of a requested record or that such record cannot be found after diligent search . . . Neither a detailed description of the search nor a personal statement from the person who actually conducted the search is required” *Raittley v. New York City Police Dept.*, 96 NY2d 873, 875; 730 NYS2d 768 (2001).

Furthermore, in 2009, the Appellate Division held that an agency cannot produce documents it does not possess or cannot disclose and that the Court cannot require respondents to

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produce documents that they certify they cannot find after a diligent search because petitioner “has received all that he . . . is entitled to under the law” *Bernstein Family Ltd. P’ship v. Sovereign Partners, L.P.*, 66 AD3d 1, 8; 883 NYS2d 201, 206 (1<sup>st</sup> Dept 2009).

You may seek judicial review of this determination by commencing an Article 78 proceeding within four months of the date of this decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Jordan S. Mazur". The signature is fluid and cursive, with the first letter of each name being significantly larger and more stylized.

Jordan S. Mazur

Sergeant

Records Access Appeals Officer

c: Committee on Open Government