



**State of New York
Department of State
Committee on Open Government**

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FOIL AO 19805

By Electronic Mail Only

April 30, 2021

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 :

I am writing in response to your request for an advisory opinion regarding the manner in which the City of Saratoga responded to your Freedom of Information Law (FOIL) request for copies of complaints of excessive force and records reflecting the disposition of those complaints against unidentified City police officers.

In response to your request and to your appeal of the City's initial denial of access to records reflecting unsubstantiated allegations of excessive force, the City relied on recent advisory opinions issued by staff of the Committee on Open Government (the Committee) in denying access to the records in their entirety ([FOIL AO 19775](#) and [FOIL AO 19785](#)). The City's appeal officer stated in his April 6, 2021 appeal determination:

The Committee clearly indicated that its opinion remained unchanged, thus affirming that where, as here, an agency has determined that disclosure would result in an unwarranted invasion of personal privacy, the requested records may be withheld in their entirety.

In my view, this characterization of the Committee's advisory opinion is not entirely accurate. In FOIL AO 19775, staff opined:

In sum, Committee staff have long advised that where an agency determines that a record of an unsubstantiated or unfounded complaint would, if disclosed (even in a redacted form (see, e.g., [FOIL AO 19771](#))), constitute an unwarranted invasion of personal privacy, such record need not be disclosed.

FOIL AO 19771 was prepared in response to an inquiry relating to unsubstantiated allegations of misconduct against a named public employee. In it, the Committee opined:

The public is aware that the former City Manager was the subject of the investigation. Redaction of the City Manager's name would not be sufficient to protect his privacy interests. We understand that the remainder of the report contains the details of the allegation of

misconduct. Accordingly, in our view, if the investigation report cannot be redacted sufficiently to protect the subject of the report from an unwarranted invasion of personal privacy with regard to those allegations, the report can be withheld in its entirety.

The important distinction between the facts presented in FOIL AO 19771 and those presented in your FOIL request is that you have not requested records relating to named individuals. Here, it is my understanding that neither you, nor the general public, know the names of the police officers against whom the unsubstantiated complaints were made.

The introductory language of § 87(2) of FOIL refers to the authority to withhold “records or portions thereof” that fall within the scope of the exceptions that follow. In our view, the phrase quoted in the preceding sentence evidences a recognition on the part of the Legislature that a single record or report, for example, might include portions that are available under the statute, as well as portions that might justifiably be withheld. That being so, we believe that it also imposes an obligation on an agency to review records sought, in their entirety, to determine which portions, if any, might properly be withheld or deleted prior to disclosing the remainder. Section 89(2)(c)(i) of FOIL states: “Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision . . . when identifying details are deleted.”

In our opinion, if the City is able to prevent disclosure of records which would constitute an unwarranted invasion of personal privacy through the redaction of identifying details, it has an obligation to redact those details and disclose the remainder of the records (unless another ground for denial can be asserted).

I hope this information proves useful.

Sincerely,

/s/ Kristin O'Neill

Kristin O'Neill
Assistant Director

cc: Anthony Izzo
Vincent DeLeonardis