



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

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FOIL AO 19874

October 18, 2024

By Electronic Mail Only

The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence.

Dear :

On October 17, 2024, we received a copy of an appeal determination issued by the Geneseo Central School District (District) and transmitted by you by email to the Committee on Open Government (Committee). The appeal determination is in response to Freedom of Information Law (FOIL) request for “a list of ALL teachers and administrators, including the superintendent’s cabinet, in the Geneseo CSD by name, title and most recent salary.” The District denied the request on the ground that the applicant for records preferred to remain anonymous and did not want to provide their name. We offer this advisory opinion in response to your client’s denial of this FOIL request because the denial reflects a critical misunderstanding of the law and a clear misapplication of its core principles.

In sum, and as discussed more fully below, your client has not articulated a valid ground for denying this FOIL request and in denying it on those grounds is placing an unreasonable barrier to access to government records. The Legislative Intent of FOIL provides:

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government. As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible. The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. The legislature therefore declares that government is the public's business and that the public, individually and collectively

and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

Public Officers Law (POL) § 84. By refusing to honor a request from an individual who wishes to remain anonymous, the District has refused “to extend public accountability wherever and whenever feasible” and has refused to provide access to records that should be publicly available to “the public, individually and collectively.” The Committee has previously discussed this concept with you and your client. In that correspondence, we confirmed to you and your client that the identity of an applicant seeking records is irrelevant unless there are personal privacy concerns relating to disclosure, which is not the case here.

We address your client’s arguments for prohibiting anonymous requests with more specificity below.

In its initial determination, the District stated that “without your name we cannot verify you are a person.” The term “person” is defined, in part, by the [Merriam-Webster Dictionary](#) as “one (such as a human being, a partnership, or a corporation) that is recognized by law as the subject of rights and duties.” (Indeed, FOIL requests are often filed by, and fulfilled to, “entities” and not humans.) The District received a FOIL request by electronic mail (as authorized by POL § 89(3)(b)) by an individual exercising their statutory rights under FOIL. The email address of the requester included a first initial and a last name. Even if the provision of one’s “legal name” were required by FOIL, and it is not, this email address should have been sufficient evidence that the request came from “a person.” Providing a name does not constitute evidence of “personhood” any more than the provision of an e-mail address.

In its appeal determination, the District states:

[POL] Sections [sic] 89(3)(a) requires that agencies respond to requests from a “person”; Without a name or other identifying information, we cannot verify that the request is coming from a “person” as specified by the statute. Allowing anonymous requests could potentially lead to abuse of the FOIL process, including duplicate requests or countless requests designed to overwhelm agency resources. . . . Nothing in FOIL requires the District to respond to an anonymous request from an individual who may not constitute a member of the public or the citizenry. Due to the risk that your request is auto-generated, the District declined to complete any anonymous request.

In our view, there is no evidence to support this contention. Nothing within the request even suggests that the anonymous individual who has submitted this request has submitted “duplicate requests or countless requests designed to overwhelm agency resources.” The request is limited and reasonably described and easily fulfilled.

The District also argues that it is not obligated to respond to anonymous requests made by individuals “who may not constitute a member of the public or the citizenry” and that Committee advisory opinions, which rely on Court of Appeals precedent, inappropriately “expand” this precedent to authorize anonymous requests. In our view, these arguments are inconsistent with the legislative intent and plain language of FOIL, and over forty years of judicial interpretation thereof.

With respect to an applicant for records, FOIL establishes minimum obligations: it requires only that the applicant must submit “a written request for a record reasonably described.” POL § 89(3)(a). With

respect to a custodian of records, FOIL imposes many more obligations as it is based upon a presumption of access. FOIL requires an agency such as the District to respond to all requests it receives regardless of whether the individual who submits the request is a resident of a particular municipality within New York, or of the State of New York, or even of the United States. There is no “citizenship” requirement for submitting FOIL requests.¹ See, e.g., *M. Farbman & Sons, Inc. v. New York City Health & Hospitals Corporation*, 62 N.Y.2d 75, 80 (1984) (“Full disclosure by public agencies is, under FOIL, a public right and in the public interest, irrespective of the status or need of the person making the request.”). Indeed, as mentioned above, a FOIL request need not be submitted by a “person” as the District seems to believe person is defined. See, e.g., *City of Newark v. Law Dep't of City of New York*, 305 A.D.2d 28, 32, 760 N.Y.S.2d 431, 435 (1st Dep't 2003) (“We reject . . . [the] argument that Newark [New Jersey], as a foreign governmental entity, lacks standing under FOIL.”).

The District also argues: “In addition, there are cybersecurity concerns from exchanging correspondence and information with anonymous parties, inasmuch as malicious links or attachments may be shared and the sending party would be unknown.” Cybersecurity concerns exist when communicating electronically, regardless of whether an individual provides their name when making a FOIL request. Indeed, the fact that a name is provided does not convert the requestor from “unknown” to “known” when the email is received. (Indeed, in the course of our work, the Committee understands that there are hundreds, if not thousands, of applicants for records who use pseudonyms or email addresses only out of fear of reprimand or retribution against themselves or family members. These valid concerns should not prevent an individual from being able to exercise their statutory rights under FOIL.) It is incumbent upon the District to train its staff on appropriate information technology security procedures. If the records access officer has concerns that the email poses a security risk, they should consult their information technology staff for assistance. In this instance, the applicant did not ask the District to open an attachment or click on an unknown link. As they are authorized to do by statute, the applicant simply emailed a FOIL request for publicly available records and requested that the District respond by email.

Based upon the facts and circumstances of this request for records and your client’s responses thereto, we believe that no court in New York would agree that your client has complied with its basic FOIL obligations and we urge your client to reconsider its denial of access to this requester. As noted earlier, the Court of Appeals, the state’s highest court, has held that an applicant’s “status or need” is irrelevant with regard to their request for records. See *Farbman*, 62 N.Y.2d at 80. Absent a factual showing, not present here, that a particular request exposes the District to cybersecurity risks or has led to an actual abuse of the FOIL process, in our opinion the District has no grounds for denying a request based on this applicant’s desire to remain anonymous.

Sincerely,

Kristin O’Neill
Deputy Director and Counsel

cc: Dr. Jon Hunter
Anonymous

¹ A decision by an agency to investigate the residency and citizenship of each applicant for records would certainly “overwhelm agency resources” and would ultimately have no bearing on an applicant’s rights under the statute. See *Daily Gazette Co. v. City of Schenectady*, 93 N.Y.2d 145, 156 (1999) (“[a]n agency’s inquiry into, or reliance upon the status and motive of a FOIL applicant would be administratively infeasible, and its intrusiveness would conflict with the remedial purposes of FOIL”).