



Department of Health

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Commissioner

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Executive Deputy Commissioner

September 16, 2020

By email only: billh@empirecenter.org

Mr. Bill Hammond
Senior Fellow for Health Policy
Empire Center for Public Policy
30 South Pearl Street, Suite 1210
Albany, NY 12207

Re: FOIL Appeal # 20-08-016

Dear Mr. Hammond:

This letter regards your administrative appeal to the New York State Department of Health ("DOH") related to your request for certain records pursuant to the Freedom of Information Law ("FOIL"), Public Officers Law ("POL") Article 6.

On August 3, 2020 DOH's Records Access Office ("RAO") received your FOIL request for records as to "Covid-19-related deaths of residents of nursing homes and assisted living facilities." The RAO wrote to you on August 31, 2020 with an updated estimated date as to when a response might be forthcoming. On September 1, 2020, DOH received your appeal saying your request has been constructively denied.

There is no provision in FOIL that prohibits extensions, even repeated extensions, which are particularly reasonable under the circumstances at hand. Specifically, documents need to be located and then reviewed for responsiveness, accuracy, legal privileges, and applicable FOIL exemptions under the POL. Accordingly, the response time of DOH's RAO is reasonable under the circumstances. POL § 89(3)(c); see also, Matter of Data Tree v. Romaine, 9 NY3d 454, 465; Matter of New York Times Co. v. City of NY Police Dept., 103 AD3d 405, 406-407.

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,
David J. Spellman

David J. Spellman
DOH Records Access Appeals Officer

cc: NYS Committee on Open Government