

Records Access Appeals Officer  
New York State Department of Health  
Corning Tower, Room 2364  
Albany, New York 12237-0044

Re FOIL #20-08-016

September 1, 2020

To the Records Access Appeals Officer:

I am writing to appeal the constructive denial of my FOIL request of August 3 (#20-08-016) in an "extension letter" from the department dated August 31 (both attached).

Under New York's Freedom of Information Law, the department is required to provide records within 20 business days or, if that is not possible, give an explanation for the delay and a date certain when the records will be delivered. Instead, the department has given an "estimate" that the department will notify me "when/if the responsive materials are available" on November 5, while raising the possibility that the process could take longer. This does not amount to a date certain.

The department's failure to provide the requested records within 20 days – and its failure to set a date certain for completing the request – amounts to an effective denial of the request, which I hereby appeal.

The request seeks records of COVID-19-related deaths of residents of nursing homes and assisted living facilities, including those who died while physically outside of the homes. The department's explanation for not fulfilling the request within 20 days is that "a diligent search for responsive documents is still being conducted."

The records in question are being gathered by the department through its Health Emergency Response Data System. The state health commissioner, Dr. Howard Zucker, acknowledged that the department possesses these records during his recent testimony at hearings held by the Legislature. Locating the documents could not reasonably require more than 20 days, let alone three months.

Please provide the records I have requested without further delay.

Sincerely,

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