

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

Re FOIL #21-06-464

August 10, 2021

To the Records Access Appeals Officer:

I am writing to appeal the constructive denial of FOIL request #21-06-464 in an "extension letter" from the department dated July 20, 2021 (both attached).

Under New York's Freedom of Information Law, the department is required to provide records within five business days or, if that is not possible, provide an explanation for the delay and a date certain when the records will be delivered.

To date, the department has provided neither the records, a bona fide explanation for the delay nor a date certain. This amounts to an effective denial of the request, which I hereby appeal.

The request seeks records of the number of COVID-19 fatalities, confirmed and presumed, for each date and each county of residence, identified by age group, sex, race/ethnicity and comorbidities from March 1, 2020, forward.

The department's explanation for not promptly fulfilling the request is that "a diligent search for responsive documents is still being conducted." This is not plausible. The department routinely publishes selected portions of the requested data on its COVID tracker website. It has acknowledged sending more comprehensive fatality reports the federal government. The request is seeking records that the department works with every day. No "search" could possibly be necessary.

The extension letter gave an "estimate" that the department will notify me "when/if the responsive materials are available" on Sept. 22, 2021, while raising the possibility that the process might take longer. This does not amount to a "date certain."

The records in question are clearly in the possession of the Health Department, clearly subject to FOIL and clearly stored in a computer database where they could easily be located and copied for release. Under the circumstances, the public should not have to wait more than three months to see its own records.

Please provide the records I have requested without further delay.

Sincerely,

Tim Hoefler
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