

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

Re FOIL #21-06-480

August 10, 2021

To the Records Access Appeals Officer:

I am writing to appeal the constructive denial of FOIL request #21-06-480 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 cases among nursing home residents identified by confirmed or presumed on each date in each facility 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 has gathered the requested information through surveys conducted in the spring of 2020 and through its Health Emergency Response Data System (HERDS). It has repeatedly published selected information from both sources and previously produced records from HERDS under FOIL after being ordered to do so by a court. 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 computer databases 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
President & CEO
Empire Center for Public Policy
30 South Pearl Street, Suite 1210
Albany, NY 12207
(518) 434-3100
data@seethroughny.org