



FOIL Appeal

Robyn Gray <robyn3201@gmail.com>
To: "Peter G. Barber" <barberp@togny.org>

Fri, Jul 5, 2024 at 1:20 PM

July 5, 2024

Mr. Peter Barber, Supervisor
Appeals Officer
Town of Guilderland
P.O. Box 339
5209 Western Turnpike
Guilderland, NY 12084

Re: Freedom of Information Law Appeal

Dear Supervisor Barber:

I hereby appeal the denial of access regarding my request, which was made on May 22, 2024 and sent to Ms Lynne Buchanan, Town Clerk, Town of Guilderland, P.O. Box 339, 5209 Western Turnpike, Guilderland, NY 12084.

The records that were denied include a copy of the draft Comprehensive Plan that was distributed to the Comprehensive Plan Committee. I disagree with the denial that 'The Town is not in possession of any documents responsive to this request' for the following reasons:

- The Comprehensive Plan Update Committee (referred to as the Committee) was selected and appointed by the Town Board, and ultimately reports to the Town Board. Therefore, the Town Board has access to the documentation if it so requests from this Committee.
- The Town Board selected and hired MJ Engineering and Land Surveying, P.C. to work with the Committee in developing the updated plan, and in fact, they are the ones who distributed the draft to the committee on or about May 14, 2024. In addition, the contract signed off on by the Engineering firm and the Town clearly states that 'the Engineer will:

- Deliver to the Municipality all reports, drawings, specifications, summary of analysis and recommendations, and other deliverables, if any, required to be furnished as in delivery of the service.....' The draft of the Comprehensive Plan is a deliverable in terms of what the contract states.
- The draft of the Comprehensive Plan was distributed to the Committee as stated in the last meeting of this Committee on May 14, 2024, therefore it was in possession of Town appointed committee members and therefore available to the Town upon request.

As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of the appeal. If the records are denied on appeal, please explain the reasons for denial fully in writing as required by law.

If your response to any request herein is that the Documents are not in your possession, custody or control, describe in detail the unsuccessful efforts you made to locate the documents.

In addition, please be advised that the Freedom of Information Law directs agencies to send all appeals and determinations that follow to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231.

Thank you for your attention to this matter.

Sincerely,

Robyn Gray
4238 Amanda Lane
Schenectady, NY 12303
robyn3201@gmail.com

Chapter 89. Records

Article III. Public Access to Records

§ 89-8. Purpose and scope.

- A. The People's right to know the process of government decisionmaking and 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.
- B. These regulations provide information concerning the procedures by which records may be obtained.
- C. Personnel shall furnish to the public the information and records required by the Freedom of Information Law (§ 84 et seq. of the Public Officers Law), as well as records otherwise available by law.
- D. Any conflict among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

§ 89-9. Designation and duties of records access officer.

- A. The Town Board of the Town of Guilderland is responsible for ensuring compliance with the regulations herein and designates the Town Clerk and, in his or her absence, the Deputy Town Clerk as records access officer, who shall be responsible for ensuring appropriate agency response to public requests for access to records. The designation of a records access officer shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so.
- B. The records access officer shall ensure that personnel:
 - (1) Assist the requester in identifying requested records, if necessary.
 - (2) Upon locating the records, take one of the following actions:
 - (a) Make records available for inspection.
 - (b) Deny access to the records in whole or in part and explain, in writing, the reasons therefor.
 - (3) Upon request for copies of records:
 - (a) Make a copy available upon payment or offer to pay established fees, if any, in accordance with § 89-15; or
 - (b) Permit the requester to copy those records.
 - (4) Upon request, certify that a record is a true copy.
 - (5) Upon failure to locate records, certify that:

- (a) The Town of Guilderland is not the custodian for such records; or
- (b) The records of which the Town of Guilderland is a custodian cannot be found after diligent search.

§ 89-10. Location of records.

Records shall be available for public inspection and copying at the office of the Town Clerk, Town Hall, Route 20, Guilderland, New York.

§ 89-11. Hours for inspection.

Requests for public access to records shall be accepted and records produced during all hours that the Clerk's office is regularly open for business.

§ 89-12. Requests for access.

- A. A written request may be required, but oral requests may be accepted.
- B. A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of the request.
- C. A request shall reasonably describe the record or records sought. Wherever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.
- D. If the records access officer does not provide or deny access to the records sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within 10 business days after the date of acknowledgment of receipt of a request, the request may be construed as a denial of access that may be appealed.

§ 89-13. Denial of access; appeals.

- A. Denial of access to records shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the individual or body established to hear appeals.
- B. If requested records are not provided promptly, as required in § 89-12D of this article, such failure shall also be deemed a denial of access.
- C. The Town Board shall hear appeals for denial of access to records under the Freedom of Information Law. Such appeals shall be made within 30 days of a denial.
- D. The time for deciding an appeal by the body designated to hear appeals shall commence upon receipt of a written appeal identifying:
 - (1) The date of the appeal.
 - (2) The date and location of the request for records.
 - (3) The records to which the requester was denied access.
 - (4) Whether the denial of access was in writing or due to failure to provide records promptly as required by § 89-12D.

- (5) The name and return address of the requester.
- E. The body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to the Committee on Open Government, Department of State, 162 Washington Avenue, Albany, New York 12231.
- F. The Town Board shall inform the appellant and the Committee on Open Government of its determination, in writing, within 10 business days of receipt of an appeal. The determination shall be transmitted to the Committee on Open Government in the same manner as set forth in Subsection **E** of this section.

§ 89-14. Fees.

- A. There shall be no fee charged for:
 - (1) Inspection of records.
 - (2) Search for records.
 - (3) Any certification pursuant to this article.
- B. The fee for photocopies not exceeding 8 1/2 inches by 14 inches is \$0.25 per page.
- C. The fee for copies of records not covered by Subsections **A** and **B** of this section shall not exceed the actual reproduction cost (which is the average unit cost for copying a record, excluding fixed costs of the town, such as operator salaries).