



Cornell Law School

Heather E. Murray
Managing Attorney, Local
Journalism Project
First Amendment Clinic
Myron Taylor Hall
Ithaca, New York 14853
Phone: [REDACTED]
E-mail: [REDACTED]

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Michael Siudzinski
Assistant Deputy Counsel
FOIL Appeals Officer
25 Beaver Street, 10th Floor
[REDACTED]

VIA E-MAIL

Re: Freedom of Information Law Appeal

Dear Mr. Siudzinski:

We are writing on behalf of Scrutinize and Janon Fisher to appeal the constructive denial of two FOIL requests, dated November 14, 2024. The Office of Court Administration's final response to the requests is overdue, and its boilerplate deadline extension violates FOIL in multiple ways. We therefore appeal the constructive denials of these requests.

The first request seeks records sufficient to identify "[a]ll judges currently presiding in New York State courts," including their full names, specific courts in which they are presiding, the dates of their hires and their current terms and any specific roles within their court. The second request seeks records sufficient to identify "[a]ll judges who have been designated as Acting Supreme Court Justices (ASCJ) starting from January 1, 2010, to the time the request is fulfilled," including their date of hire, specific dates in which they were designated and redesignated as an ASCJ (or alternatively denied redesignation), any organizations outside the court system that were contacted for information about the judges during consideration of their designation or redesignation, and the names of members of the Panel who selected each judge as an ASCJ. The request also seeks "[a]ny and all guidelines, rules, criteria, or policies used in the process of evaluating and deciding on ASCJ designations and redesignations," and "[a]ny internal memos, reports, or communications made pursuant to 22 NYCRR 121.2(b) (with personal identifying information redacted where necessary) from January 1, 2010, to the present." The FOIL requests call for records to be produced on a rolling basis. Attached as **Exhibit A** is a copy of the FOIL requests.

On November 14, 2024, the Office of Court Administration acknowledged the request and stated that "we will provide you with a status update on or before December 19, 2024." Attached as **Exhibit B** is a copy of FOIL correspondence. On December 19, 2024, the agency stated that "we require additional time to complete our response to your FOIL request dated 11/20/2024. We will provide you with a status update on or before January 21, 2025, if we have not completed our response by then." Ex. B. On January 21, 2025, the agency provided the same boilerplate response in extending the time to respond to February 20, 2025. Attached as **Exhibit C** is a copy of FOIL



correspondence. On February 19, 2025, the agency provided the same boilerplate response in extending the time to respond to March 19, 2025. *See* Ex. B. On March 19, 2025, the agency provided the same boilerplate response in extending the time to respond to April 16, 2025.

Now, after several deadline extensions, Scrutinize and Mr. Fisher file this administrative appeal regarding the constructive denial of their requests. The Office of Court Administration has constructively denied the requests for at least two independent reasons: (1) it has no authority to grant itself multiple extensions; and (2) any self-imposed deadline must be reasonable in the context of the specific request, not justified by mere boilerplate, and the agency's delay is not reasonable.

FOIL and the law's implementing regulations establish a clear timeline for an agency to respond to a request. An agency must respond within five business days and provide "an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than 20 business days after the date of the acknowledgment." 21 N.Y.C.R.R. § 1401.5(c)(3). If the agency knows that "circumstances prevent disclosure within 20 business days," it must provide "a statement in writing stating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part." *Id.*; *see also* N.Y. Pub. Off. Law § 89(3)(a) (stating that if "circumstances prevent disclosure" of a record within 20 days of the agency's acknowledgment, "the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part"). In other words, an agency must grant or deny the request within 20 days of receiving it, or else explain why it cannot and give a reasonable "date certain" when it will grant or deny the request.

An agency's "failure to comply" with those timing requirements "shall constitute a denial of a request that may be appealed." 21 N.Y.C.R.R. § 1401.5(e); *see also* N.Y. Pub. Off. Law § 89(4)(a) ("Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial."). The State's regulations provide specific examples of circumstances in which an agency violates the timing requirements and a requester may file an appeal. 21 N.Y.C.R.R. § 1401.5(e). Three of those examples are relevant here, including when an agency gives an "approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request," when the agency "does not grant a request in whole or in part within 20 business days . . . and fails to provide the reason in writing explaining its inability to do so and a date certain by which the request will be granted in whole or in part," and when the agency states "that more than 20 business days is needed to grant or deny the request in whole or in part and provides a date certain within which it will do so, but such date is unreasonable under the circumstances of the request." *Id.*

Notably, each of these timing requirements demands that the agency's response date is "reasonable." Both the statute and regulations specify that reasonableness is measured based on the specific request at issue. The statute requires that the date must be "reasonable under the circumstances of the request." N.Y. Pub. Off. Law § 89(3)(a). And the regulations set out factors to consider in assessing reasonableness, including "the volume of a request, the ease or difficulty

in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on an agency's ability to grant access to records promptly and within a reasonable time." 21 N.Y.C.R.R. § 1401.5(d).

Here, the Office of Court Administration has violated these obligations in at least two ways. It has sought repeated extensions of its response time, despite no statutory authority to do so. And it has failed to establish that its extensions are reasonable under the circumstances of these particular requests. Each of these failures constitutes a constructive denial of the requests.

First, the agency has constructively denied the requests because its response dates were accompanied by nothing explaining why the dates provided were reasonable. This falls far short of FOIL's requirements. The statute requires an agency to set a response date that is "reasonable under the circumstances *of the request*" itself and to provide an explanation if it is unable to respond within 20 days, not a vague description that could apply to every single request. N.Y. Pub. Off. Law § 89(3)(a) (emphasis added); *see also Empire Ctr. for Pub. Pol'y v. New York State Dep't of Health*, 72 Misc. 3d 759, 769 (N.Y. Sup. Ct., Albany Cnty. 2021) (holding that agency's "estimated date for responding" to request was not "reasonable under the circumstances of the request"). The implementing regulations make it even clearer that an agency's explanation must be specific to the particular request at issue, noting that the factors that influence reasonableness include the request's volume and complexity, and "the ease or difficulty in locating, retrieving or generating" the records sought in the request. 21 N.Y.C.R.R. § 1401.5(d).

The Office of Court Administration's response dates fall woefully short of these obligations. The agency does nothing to explain why the extensions were reasonable for these specific requests, nor does it provide any explanation at all for the extensions. No explanation can be provided that would justify the need to take several months to provide basic information regarding judges employed in New York State. Indeed, as the requests pointed out, some of the information requested is readily available in copies of current payroll records, which indisputably are required to be maintained under FOIL and are open to the public. The Office of Court Administration has therefore failed to meet the requirements that its "estimated date for responding" to the request is properly explained and is "reasonable under the circumstances of the request." *Empire Ctr. for Pub. Pol'y*, 72 Misc. 3d at 769.

Second, the Office of Court Administration granting itself repeated extensions likewise plainly does not comply with the law. "FOIL precludes an agency from engaging in multiple delays." Comm. Open Gov't Advisory Op. 19646 (Feb. 16, 2018), <https://docsopengovernment.dos.ny.gov/coog/ftext/f19646.htm>. Indeed, COOG has emphasized time and again that the law includes "no provision that permits repeated delays." Comm. Open Gov't Advisory Op. 19646; *see also* Comm. Open Gov't Advisory Op. 19305 (Nov. 30, 2015), <https://docsopengovernment.dos.ny.gov/coog/ftext/f19305.html> ("[T]here is no provision in the statute for repeated extensions."); Comm. Open Gov't Advisory Op. 19355 (Jan. 13, 2016), <https://docsopengovernment.dos.ny.gov/coog/ftext/F19355.html> (same).

We ask that this appeal be promptly granted within 10 business days, as required under FOIL, by producing all responsive documents and claiming a proper exemption if any records are being

withheld. Please contact me if you have any questions or if it would be otherwise helpful to discuss this matter.

Sincerely,

**CORNELL LAW SCHOOL
FIRST AMENDMENT CLINIC**

By: /s/ Heather E. Murray

Heather E. Murray
Myron Taylor Hall
Ithaca 853
[REDACTED]

Counsel for Scrutinize and Janon Fisher