

July 29, 2022

Felix Procacci

Dear Mr. Procacci,

Please be advised that your FOIL request is being denied in its entirety on the following two grounds:

1. Disclosure of the responsive records would result in an unwarranted invasion of personal privacy (the Board of Ethics did not find that Mr. Willdigg violated any duty), and
2. The responsive records are protected by the Deliberative Process Privilege (below is a description of the privilege).

The deliberative process privilege is designed to promote the quality of agency decisions by preserving and encouraging candid discussion between officials. It is based on "the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news." An inter- or intra-agency document may be subject to the privilege if it is both (1) predecisional and (2) deliberative. A document is predecisional "when it is prepared in order to assist an agency decision maker in arriving at his decision. The Second Circuit has noted some factors to consider in determining whether a document is "predecisional," including whether the organization asserting the privilege can (1) "pinpoint the specific decision to which the document correlates" and (2) "verify that the document precedes, in temporal sequence, the 'decision' to which it relates." A document is deliberative when it is "actually...related to the process by which policies are formulated." In other words, "the privilege does not protect a document that is merely peripheral to actual policy formulation; the record must bear on the formulation or exercise of policy oriented judgment." Thus, the privilege "focuses on documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated."

If you believe you have been denied access to Town records, you may make an appeal in writing within 30 days to: Donald Derham, Deputy Town Attorney/FOIL Appeals Officer, Office of the Town Attorney, One Washington Street, Hempstead, NY 11550 or by email to: donader@hempsteadny.gov

Yours truly,

Marie Jerome
Records Access Officer
Town of Hempstead
Office of the Town Clerk
1 Washington Street
Hempstead, New York 11550
516-812-3036
marijer@hempsteadny.gov