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June 29, 2017

Honorable Steven Otis
Member of the Assembly
Legislative Office Building Room 325
Albany, New York 12248

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence, except as otherwise indicated.

Dear Assemblymember Otis:

I have received a variety of material concerning your efforts to communicate with residents of the City of Rye.

By way of brief background, it is my understanding that there is disagreement between the Mayor, Joseph Sack, and yourself with regard to an issue involving Thruway property. The Mayor expressed his views through the use of the City's "list-serve", its email list of City residents. To enable you to indicate your position on the matter, you asked that the City distribute a response to comments made by the Mayor through the use of the City's email list of residents. The Mayor refused to authorize the distribution of your letter of response, and due to his refusal, you requested the list on June 23 pursuant to the Freedom of Information Law (FOIL) "in a digital format that would allow distribution of the same list." On the same day, the Mayor wrote to you, indicating that "We have forwarded your request to the Council and your FOIL [sic] request is being reviewed." Later in the day, he asked that you "appear at our next public City Council meeting on July 12, 2017, to answer questions from the City Council..." and that you "confirm your appearance as soon as possible, so that I can include it as an item on our public agenda."

From my perspective, there are several aspects of the foregoing that are inconsistent with FOIL.

First, as a general matter, FOIL is based on a presumption of access. All government agency records are available, except to the extent that one or more of the grounds for denial appearing in §87(2) of FOIL may properly be asserted.



**Department
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Second, based on a recent decision of the Appellate Division, Second Department, involved a list of email addresses of residents maintained by the Town of Greenburgh, also in Westchester County, it was determined that the Town could not demonstrate that any exception to rights of access could properly be asserted to deny access to the list [Livson v. Town of Greenburgh, 141 AD3d 658 (2016)]. Based on that decision, there is precedent indicating that the list of email addresses that you requested must be disclosed to comply with law. Further, you transmitted a copy of the decision with your request, so there is knowledge of the decision on the part of the Mayor and other City officials.

Third, FOIL includes a legislative declaration that embodies the Legislature's intent concerning the goals to be accomplished by that law. The declaration states in part that "it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible." Based on that statement and the clear intent of FOIL, this office has advised on countless occasions that if a record is available pursuant to law and can be readily found, there is no valid reason for unnecessarily delaying disclosure.

It is clear that the email list exists; the Mayor has used it to communicate his point of view, and equally clear that the list must be disclosed. That being so, delaying disclosure for nearly three weeks after submission of your request is, in my opinion, inconsistent with law. I point out, too, that §89(3)(a) of FOIL provides that any delay in response greater than five business days from the receipt of a request shall be reasonable under the circumstances of the request." Under the circumstances of your request, again, the delay suggested by the Mayor frustrates the intent of FOIL.

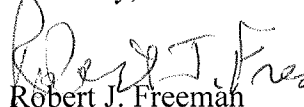
Next, the City's website includes the procedures for implementation of FOIL. In this regard, §87(1) of FOIL requires the Committee on Open Government to promulgate general procedural rules and regulations concerning FOIL, and in turn, the governing body of a public corporation, such as the City of Rye, is required to adopt procedures consistent with those promulgated by the Committee. One element of the procedure involves the designation of a records access officer. The City has adopted such a procedure, and the City Clerk, not the Mayor, is designated as records access officer.

Finally, based on our conversation, your request involves email addresses only; it does not include any additional or personal information.

In sum, to give effect to the letter and the spirit of FOIL, I believe that the City of Rye is obliged to disclose the record sought without delay.

I hope that I have been of assistance.

Sincerely,



Robert J. Freeman
Executive Director

cc: Honorable Joseph A. Sack, jsack@ryeny.gov
City Council and Marcus Serrano, City Manager, Council&Manager@ryeny.gov