



March 13, 2024

Andrew Carboy
Law Offices of Andrew J. Carboy LLC
One Liberty Plaza, Floor 23
New York, New York 10006
By Email: acarboy@carboylaw.com
CC: NYS Committee on Open Government at coog@dos.ny.gov

RE: February 13, 2024 and February 28, 2024 FOIL Appeal Response Letter

Dear Mr. Carboy:

This letter is in response to your February 13, 2024 appeal and February 28, 2024 supplemental appeal regarding your September 8, 2023 Freedom of Information Law (“FOIL”) Request (FOIL-2023-017-00064) which sought a wide array of records related to the September 11, 2001 World Trade Center attacks.

On January 16, 2024, New York City Emergency Management (“NYCEM”) responded to your request and stated that:

“A diligent search for records responsive to your request did not locate any such records. Accordingly, your request is denied. You may appeal the decision to deny access to material that was redacted in part or withheld in entirety by contacting the agency's FOIL Appeals Officer: foilrequests@oem.nyc.gov within 30 days.”

You have now appealed this decision. Specifically, your appeal contains two contentions, each of which will be addressed in turn. First, you state that:

“OEM failed to appropriately “certify that it does not have possession of such record or that such record cannot be found after diligent search.” N.Y. Pub. Off. Law § 89 (McKinney) Instead, OEM offers a boilerplate response, devoid of detail concerning any search, and lacking certification. The denial is improper and conclusory, violative of New York’s Public Officers Law.”

As you note, New York Public Officers Law §89 describes agency responsibilities with respect to Freedom of Information Law responses. Section 89(3)(a) requires agencies to certify either that they do not have possession of the records being sought or that such records cannot be found after a diligent search. As stated in NYCEM’s response to your request, “a diligent search for records responsive to your request did not locate any such records.” NYCEM’s response properly certified that a diligent search for such records did not locate any such records. As such, the requirements of Section are met.



Second, you state that:

“[P]ublic information and legal decisions are replete with references to the leading role OEM assumed in the aftermath of the September 11th attacks. For OEM to deny the subject FOIL request, entirely, is a repudiation of its well-documented leadership following the World Trade Center collapse. This 2024 denial is wholly at odds with the historical record made over two decades ago.”

As you may be aware, NYCEM (the Mayor’s Office of Emergency Management at the time), was headquartered in the World Trade Center at the time of the attacks. As such, records from prior to the attacks were destroyed and records from the aftermath are sparse. As you correctly note, NYCEM did serve as a coordinating agency in the response to the attacks. Some records do survive from that time period, however, as discussed below, none of them are responsive to the specific requests below.

Your requests are addressed here:

- 1) Requests 1-9 are not applicable to NYCEM. Our agency does not and would not have records responsive to these requests.
- 2) For requests 10-11 it may be that NYCEM did at one time possess responsive records. However no such records were located following a diligent search. It may be that they were destroyed in the attacks or subsequently lost.
- 3) Requests 12-16 are not applicable to NYCEM. Our agency does not and would not have records responsive to these requests.
- 4) For requests 17-18 it may be that NYCEM did at one time possess responsive records. However no such records were located following a diligent search. It may be that they were destroyed in the attacks or subsequently lost.
- 5) Requests 19-27 are not applicable to NYCEM. Our agency does not and would not have records responsive to these requests.
- 6) With respect to Request 28, our records are not maintained in a manner that would allow us to determine whether they have previously been publicly disclosed. Pursuant to NYCEM’s retention schedule for Freedom of Information Law requests, such requests are maintained in our records for ten (10) years prior to destruction. As such, we are unable to determine whether records in our possession have been disclosed prior to 2014.

While you are, of course, free to submit additional FOIL requests for records that you believe are within our possession, we can only conduct a diligent search and produce records that are responsive to the categories above when we have the mechanism in place or documentation to do so.

In sum, it is the determination of this agency that all records responsive to your request have been provided.



New York City Emergency Management
165 Cadman Plaza East
Brooklyn, New York, 11201

This letter is the final determination of this agency. You may seek judicial review of this determination pursuant to Article 78 of the Civil Practice Law and Rules.

Sincerely,

A handwritten signature in black ink that reads "Sonja Orgias".

Sonja Orgias
FOIL Appeals Officer


20240314 Carboy Appeal Response

Final Audit Report

2024-03-14

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