



July 6, 2012



John W. Caffry
Caffry & Flower
100 Bay Street
Glens Falls, NY 12801

Dear Mr. Caffry:

RE: Freedom of Information Request #12-03-14

Enclosed please find the records from P2005-100 as requested in your letter received on March 23, 2012. The request resulted in 149 pages at \$0.15 per page. Please remit \$22.35 to the Adirondack Park Agency at the address below.

Records that were previously shared with all parties to the hearing have not been included with this response. The Agency's review of these records, many of which are included in the 23,000 page hearing record, was time consuming and comprehensive.

The Agency has no mechanism to search for the records you have requested in Item #1 and #2 of your letter. However, the cover memo to the "Guidelines for Biological Survey" has been included.

Also not released in response to your request are inter-agency or intra agency materials that are not: (i) statistical or factual tabulations or data; (ii) instructions to staff that affect the public; (iii) final agency policy or determinations; or (iv) external audits, including but not limited to audits performed by the comptroller and the federal government. Such materials are exempt from release pursuant to §87(2)(g) of the Public Officer's Law.

Additional records not provided in response to your request are exempt from release pursuant to §87(2)(b) of the Public Officer's Law, as disclosure of these records would result in an unwarranted invasion of personal privacy as defined in §89(2)(b) of the Public Officer's Law.

John W. Caffry

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Should you wish to appeal the denial of access to those materials, you may do so by filing a request with the Agency's Counsel pursuant to 9 NYCRR 587.1(i). Pursuant to that provision, you must appeal in writing within 35 days of the date of this letter.

Sincerely,



Brian M. Ford
Records Access Officer

BMF:mp

Caffry & Flower

ATTORNEYS AT LAW

100 BAY STREET
GLENS FALLS, NEW YORK 12801
(518) 792-1582 • FAX: 793-0541

JOHN W. CAFFRY

CLAUDIA K. BRAYMER

KRISTINE K. FLOWER

MELISSA L. BAKER, Paralegal

July 12, 2012

Sarah Reynolds
Associate Counsel
Adirondack Park Agency
PO Box 99
1133 NYS Route 86
Ray Brook, NY 12977

Re: Appeal of Partial Denial of FOIL Request
No. 12-3-14

Dear Ms. Reynolds:

Pursuant to 9 NYCRR § 587.1(i), Protect the Adirondacks! Inc. and Sierra Club hereby appeal the partial denial of FOIL request No. 12-3-14. This appeal includes all records that are within the scope of the FOIL request to which access was denied and which were not provided to the undersigned.

Pursuant to the Freedom of Information Law, Public Officers Law Article 6 ("FOIL"), on March 23, 2012, I filed with Brian Ford the above-referenced FOIL request on behalf of this firm's clients, Protect the Adirondacks, Inc! and Sierra Club.

The request was partially denied by Mr. Ford, in a letter dated July 6, 2012. The alleged grounds for denial were that the unreleased records were not releasable under Public Officers Law § 87(2)(g), § 87(2)(b), and § 89(2)(b). Copies of the FOIL request and APA's partial denial are enclosed.

We hereby appeal this determination on the grounds that the denial was vague and failed to enumerate the individual documents withheld. The denial also failed to disclose which exemption applied to each individual document withheld. The general nature of the denial is overly broad and does not meet the Agency's burden of proof to demonstrate that the records are exempt from disclosure.

Under City of Newark v. Law Department of the City of New York, 305 A.D.2d 28 (1st Dept. 2003), the agency withholding the records may not rely on a "blanket invocation" of the statutory exemptions. Instead, it must enumerate or describe the documents withheld and offer specific bases for the claims of exemption. Id., at 33-34.

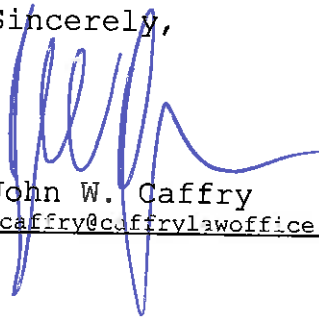
Mr. Ford's refusal to release the records simply quoted the Public Officers Law and offered no specifics. As such, it did not meet the requirements of the law. To remedy this inadequacy, I respectfully request you to review and release all of the documents which have been withheld, in accordance with FOIL.

Any claimed exemptions must be reviewed in light of the policy that the exemptions to FOIL shall be narrowly construed. Capital Newspapers v. Whalen, 69 N.Y.2d 246, 252 (1987). Moreover, all government records are presumptively open to the public unless they fall squarely within one of the enumerated FOIL exceptions. Gould v. New York City Police Department, 89 N.Y.2d 267, 274 (1996). These exceptions are to be "narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption." Id., at 275.

As required by 9 NYCRR § 587.1(i)(8), please respond to this appeal within 7 business days. If access to the records is denied on appeal, please explain the reasons for the denial fully in writing, as required by law, for each and every record withheld.

In addition, please be advised that the Freedom of Information Law directs that all appeals and the determinations that follow be sent to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231.

Sincerely,


John W. Caffry
jcaffry@caffrylawoffice.com

JWC/ljs
enc.

cc: Lawrence Rappoport, Esq.
Clients
Brian Ford, APA
Committee on Open Government
(w/enc.)



July 6, 2012



John W. Caffry
Caffry & Flower
100 Bay Street
Glens Falls, NY 12801

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John W. Caffry
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Sincerely,



Brian M. Ford
Records Access Officer

BMF:mp

Caffry & Flower

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(518) 792-1582 • FAX: 793-0541

JOHN W. CAFFRY

KRISTINE K. FLOWER

CLAUDIA K. BRAYMER

MELISSA L. BAKER, Paralegal

March 23, 2012

VIA E-MAIL

Brian Ford
FOIL Officer
Adirondack Park Agency
P.O. Box 99
NYS Route 86
Ray Brook, New York 12977

RE: FOIL Request
Application of Preserve Associates, Inc.
APA Project No. 2005-100

Dear Mr. Ford:

Pursuant to the Freedom of Information Law, Public Officers Law Article 6 ("FOIL"), I request that you provide me with copies of the following records and documents concerning the above-referenced matter (hereinafter "ACR"):

1. All permits, orders, biological surveys and other records in which APA's "Guidelines for Biological Survey", dated September 10, 1993, has been cited, referred to, or relied upon, from September 10, 1993 to date, excluding any such records related to the ACR application.
2. All reports, and other records discussing such reports, on the use of said "Guidelines for Biological Survey", including, but not limited to, the report requested on the cover memo to the "Guidelines for Biological Survey" from Raymond P. Curran to Bob Glennon, et al., dated September 10, 1993.
3. All day calendars or other calendars or docket systems, maintained by or for the persons listed in paragraph A below, including, but not limited to, paper calendars, "Groupwise" records, calendars or records kept on any "Blackberry" or similar electronic device, and the like, below regarding any contacts or communications of any kind with the persons listed in paragraph B below.

4. All phone messages, memos, meetings summaries or minutes, correspondence, notes and other records produced by or for the persons listed in paragraph A below regarding any contacts of any kind with the persons listed in paragraph B below regarding the ACR application.

A. The persons for whom such records are sought pursuant to items 3 and 4 above are as follows:

1. John Banta
2. Terry Martino
3. Lani Ulrich
4. Edward Snizek
5. Richard Weber
6. Sarah Reynolds
7. Greg Bendell
8. Daniel Kelleher
9. Matt Kendall
10. Mark Sengenberger
11. Paul Van Cott

B. Production of records pursuant to items 3 and 4 above is requested for any such records with entries regarding contacts, correspondence, phone calls, meetings, e-mails, and the like, and any other form of communication, with the following:

1. Michael Foxman
2. Thomas Lawson
3. Thomas Ulasewicz
4. Robert Sweeney
5. Jeff Anthony
6. Kevin Franke
7. Any other employee of the LA Group
8. Any other representative of Preserve Associates, LLC or any other person speaking for, or on behalf of, the applicants for the ACR project.
9. Frederick Monroe (regarding the ACR project)
10. State Senator Elizabeth Little, or any member of her staff or other representative (regarding the ACR project)
11. Any member of the New York State Assembly or any member of his or her staff or other representative (regarding the ACR project)

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12. Any employee or representative of The Executive Chamber, a/k/a the Governor's Office, a/k/a the Second Floor (regarding the ACR project)
13. Paul Maroun (regarding the ACR project)
14. Roger Amell (regarding the ACR project)
15. Any other representative of the Town and/or Village of Tupper Lake

C. Production of records pursuant to items 3 to 4 above may be limited to the period from January 1, 2010 to date.

D. If you wish to provide electronic copies of these records at the e-mail address below, or on one or more CDs, mailed to the postal address above, that would be acceptable. However, if records kept on Groupwise, a Blackberry, or other such device require Groupwise, Blackberry, or other such software to view them, please provide paper copies of such records.

E. This request includes any responsive records held by any member, officer or employee or other person connected to the Adirondack Park Agency, regardless of the physical location of such records. This request includes any responsive documents held by any attorney (either staff attorney or outside counsel),¹ except those documents subject to the attorney-client privilege, and any consultant, temporary employee, or contract employee.

F. Please be advised that the terms "documents" and "records" as used herein are defined as including, but not limited to, memoranda, correspondence, handwritten or other notes, faxes, reports, schedules, charts, graphs, surveys, minutes of meetings, agenda of meetings, transcription of meetings, audio recordings of meetings, e-mail, computer records or disks, permits, maps, and any drafts thereof.

G. Minutes and other records of the monthly public meetings of the members of the APA may be excluded.

H. If any of the requested information is withheld on a claim of privilege against disclosure under the Freedom of Information Law, please provide access to and/or copies of any portions of documents containing such information that are not subject to the claim of privilege. Also, please provide a written summary description of any requested information not

¹ But see, paragraph H.

Brain Ford - FOIL Request
Application of Preserve Associates, Inc.
APA Project No. 2005-100

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disclosed and the basis for any claim of privilege against disclosure.

Pursuant to FOIL, a reply is requested within 5 business days. If there is a charge for the copies, please forward an invoice with the copies and we will pay it promptly upon receipt.

If you wish to clarify or otherwise discuss any of these record requests, please feel free to contact me.

Sincerely,

/s/ John W. Caffry

John W. Caffry
jcaffry@caffrylawoffice.com

cc: John Banta, Esq.
Lisa Burianek, Esq.
Clients
(all via e-mail)

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