

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel

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March 19, 2024

Sent via email to: chrisamato112@gmail.com

Chris Amato
Protect the Adirondacks
P.O. Box 48
North Creek, NY 12853

Re: Freedom of Information Law Appeal W126301-013124

Dear Chris Amato:

This is in response to your FOIL appeal, received March 6, 2024, alleging the Department denied you access to records. The incoming request sought the following: *For the period January 1, 2023 to the date of this request, all records consisting of, concerning or relating to communications between the Department of Environmental Conservation and NYCO Minerals, Inc. and between the Department of Environmental Conservation and Imerys and between the Department of Environmental Conservation and any other person or entity concerning Lot 8 in the Jay Mountain Wilderness Area in the Adirondack Park.*

The Records Access Office acknowledged your request on January 31, 2024, the same day it was received. On February 27, 2024, you were advised that responsive records were available for review in GovQA. In addition, you were advised DEC has withheld certain responsive documents or portions thereof from disclosure in accordance with one or more of the following provisions of the Public Officers Law (POL):

- POL 87.2(c)- Would impair present or imminent contract awards or collective bargaining negotiations.
- POL 87.2(d)-Trade secrets or are submitted to agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the enterprise.
- POL 87.2(g)- Inter-agency or intra-agency materials.
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Upon receipt of your appeal, I reviewed the records that were withheld, and the particular exemptions identified in Public Officers Law. I have also read the various arguments in your appeal letter and will address them in the order presented.

- I. Regarding the data and information collected by NYCO during exploratory drilling, the DEC does not possess this data since it wasn't submitted to the Department.
- II. The negotiations indirectly involve other parties because the land transaction under contemplation may require NYCO to purchase lands it does not yet own. NYCO is in some sense acting as DEC's land agent in a process of evaluating properties to acquire land that best suit the State's goals.

DEC is the agency charged by the Legislature with "the care, custody, and control" of the forest preserve per ECL §9-0105(1), so the initial negotiation is between DEC and NYCO. DEC then must present a proposal to the Legislature for approval.

- III. CBI materials are not subject to disclosure simply because the requestor is not in direct competition with the party who submitted the records (6 NYCRR 616.7(c)(2)). Disclosure would cause "substantial injury" since it could drive up the price of the privately-held parcels under consideration. Unlike the State, NYCO does not have the option to appropriate land at its appraised value; it presumably must negotiate a sale. If the seller is aware that the State

is likely to direct NYCO to obtain particular parcels of land, NYCO is at a disadvantage in the negotiations.

- IV. The Department has released all responsive records that are not subject to an exemption under the Public Officers Law.

For the reasons set forth above, Department staff properly withheld records and your appeal is hereby denied.

This determination is a final agency action. To the extent you believe you have been denied access to any records, you may obtain judicial review of this determination in accordance with Public Officers Law §89.4(b) by bringing a proceeding in court pursuant to Article 78 of the New York Civil Practice Laws and Rules.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Denué".

Rebecca Denué, Esq.
FOIL Appeals Officer

cc: Committee on Open Government
Mark Sanza, Deputy Counsel
Stephen Giunta, Records Access Officer