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Via Email

October 20, 2026

FOIL Appeals Officer
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1500

**Re: Appeal of Constructive Denial of FOIL Record Request
No. W158779-010926**

Dear Sir or Madam:

Protect the Adirondacks ("PROTECT") respectfully appeals the Department of Environmental Conservation's ("DEC") constructive denial of its request pursuant to the New York Freedom of Information Law ("FOIL"), Public Officers Law §§ 85-90, seeking records concerning or relating to the development of Table 2 on page 14 of DEC's draft OPDMD policy, including any analysis, factual basis, review, documentation or projections forming the basis or grounds for the determinations set forth in Table 2.

Background

PROTECT's FOIL request was submitted on January 9, 2026. Since that time, DEC has postponed its response date eight times, claiming it would provide a response by February 9, March 9, April 9, May 11, June 11, July 10, August 10, September 10, October 9, and now November 10, 2026. DEC has failed to provide any justification for these repeated postponements other than to provide a boilerplate statement that "[e]nsuring that DEC has located all responsive records will take additional time." This is not a credible justification, given that all responsive records are presumably located at DEC central office and thus easily obtainable. Nor does it justify the continuing failure by DEC to provide access to a single responsive record over a period of eleven months. DEC's failure to provide a single responsive record within a reasonable period of time constitutes a constructive denial of the request. PROTECT therefore appeals and requests that responsive records be provided promptly.

Protect the Adirondacks

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Legal Argument

FOIL imposes a duty on agencies to respond to record requests in a timely manner. Section 89(3)(a) of FOIL states:

Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, *which shall be reasonable under the circumstances of the request*, when such request will be granted or denied

(Emphasis added).

Indeed, FOIL contemplates that production by an agency of responsive records will occur within twenty days of the date the request is received and acknowledged:

If an agency determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records *within twenty business days from the date of the acknowledgement of the receipt of the request*, the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days *and a date certain within a reasonable period, depending on the circumstances*, when the request will be granted in whole or in part.

Id. (emphasis added).

The requirement for timely disclosure of responsive records is echoed in the FOIL implementing regulations of the Committee on Open Government, the State entity tasked with overseeing FOIL and issuing advisory opinions. Those regulations specify that, upon receipt of a FOIL request, it is the duty of the agency Records Access Officer to “make [responsive] records *promptly available for inspection*.” 21 NYCRR 1401.2(b)(4)(i); (emphasis added). The Committee on Open Government has also recognized that the 2005 amendments to FOIL “are clearly intended to prohibit agencies from unnecessarily delaying disclosure.” Comm. on Open Govt. Advisory Opinion 19034 (May 6, 2013).

Courts have found that the twenty-day response period contemplated in FOIL is presumed to be the “appropriate time period for compliance,” with extensions allowable only for “the extraordinary case.” *Jennings v. New York City Police Dep’t*, Case No. 402807/97, 1998 WL 35427632 (Sup. Ct. N.Y. County 1998); *see also Empire Ctr. for Pub. Policy v. N.Y. State Dep’t of Health*, 2021 N.Y. Slip Op. 21150 (N.Y. Sup. Ct. 2021) (holding that the New York State Department of Health violated FOIL by not providing access to responsive electronic records within a reasonable time and awarding attorneys’ fees); *Miller v. N.Y.S. Dep’t of Env’tl. Conserv.*, Index No. 96/06 (Sup. Ct. Albany County 2006) (holding that delays of 12 weeks and 15 weeks in

providing access to first and second sets of responsive records “constitute an unreasonable withholding of disclosed documents”).

In addition, an agency’s unreasonable delay in providing responsive records—such as DEC’s in this instance—constitutes a constructive denial of the FOIL request. *Matter of Wagner v. NYC Dept. of Health & Mental Hygiene*, 246 AD3d 748, 750 (2d Dept. 2026) (holding that agency’s repeated extensions of date for production constituted constructive denial of the FOIL request); *Matter of Kohler-Hausmann v. NYC Police Dept.*, 133 AD3d 437, 437 (1st Dept. 2015) (holding that respondent’s failure to provide responsive records “for months after [the initial] deadline” constituted constructive denial of the request).

Conclusion

DEC’s unreasonable, nearly year-long delay in providing responsive records therefore constitutes a constructive denial of PROTECT’s FOIL request. Because there is no legally justifiable basis for the denial, PROTECT requests that DEC promptly provide access to responsive records as required by FOIL.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles R. [unclear]", written in a cursive style.

Conservation Director and Counsel