

Records Access Appeals Officer
New York State Department of Health
Corning Tower, Room 2364
Albany, New York 12237-0044

Re FOIL #21-06-462

August 30, 2021

To the Records Access Appeals Officer:

I am writing to appeal the denial of FOIL request #21-06-462 in a response dated Aug. 23 (both attached).

The original request, dated June 22, 2020, sought “records of the number of COVID-19 fatalities, confirmed and presumed, for each date and each ZIP code of residence from March 1, 2020, forward.”

The department’s response said: “Your request is denied, as the records you are seeking are not ‘retrievable with reasonable effort.’ ... Production here would therefore constitute the creation of a new record, which is not required under Public Officers Law §89(3)(a).”

The department instead provided a link to its open data portal, where the information available falls well short of what the Empire Center requested. The death data provided there are county-specific rather than ZIP code-specific and omit two entire categories of COVID deaths – deaths that are presumed to be caused by COVID but not laboratory-confirmed, and deaths that occurred outside of hospitals, nursing homes and adult-care facilities. The data set’s earliest entries date to March 27, 2020, almost two weeks after the state’s first recorded death.

Those omissions were not consistent with our request – and they involve a large share of the available records.

As [reported by the Associated Press](#) and confirmed by state officials, the department has shared records with the federal Centers for Disease Control and Prevention that itemize approximately 55,000 COVID-19 deaths, or 12,000 more than posted at the open data portal. In other words, the portal fails to account for more than one-fifth of the state’s pandemic victims.

In denying our request, the department notably did not dispute that it possesses the records in question. Instead, it asserted that those records cannot be retrieved with “reasonable effort.”

The department failed to explain why retrieving records from its computerized database – from which it routinely reports to the CDC – would be so difficult. It failed to provide an estimate of the labor involved or give the Empire Center the opportunity to consider defraying the expense. It failed to work with the center to modify or partially fulfill its request.

In the absence of more information, the claim that the requested records cannot be retrieved with reasonable effort defies credulity.

Last fall, in support of the governor's "micro-cluster zone" policy, the state regularly shared COVID-19 test results on a date- and ZIP code-specific basis. It's unclear why retrieving death counts in the same way would be significantly much more difficult. The [website of the New York City Department of Health and Mental Hygiene](#) includes an interactive feature that allows users to enter a ZIP code and immediately retrieve a count of deaths in that neighborhood, as well as cases and vaccinations.

For all the above reasons, the department's denial of our request was unjustified and improper under the Freedom of Information Law, and we hereby ask that it be reversed.

Please provide the records we have requested without further delay.

Sincerely,

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