

Thomas J. Parisi

07 February 2018

The Honorable Damian M. Ulatowski  
Town Supervisor/FOIL Appeals Officer  
Town of Clay  
4401 State Route 31  
Clay, NY 13041

**RE: FOIL Appeal; Warnings, Appearance Tickets, and Citations**

Dear Supervisor Ulatowski,

I hereby appeal the denial of access regarding my request, which was dated 31 January 2018 and sent to Ms. Jill Hageman-Clark, Records Access Officer, at the above address, under the New York Freedom of Information Law, N.Y. Pub. Off. Law §84 et seq.

The records that were denied include: **All warnings, appearance tickets, and citations issued since 03 April 2017 for violations of the following Town of Clay Ordinance Codes:**

- **§211-29A “Parking of certain motor vehicles and trailers prohibited in residential districts.”**
- **§211-29B “Parking of certain motor vehicles and trailers prohibited in residential districts.”**

The reason cited for denying access to the records was that they are “Court Records, therefore not subject to Freedom of Information Law as noted in §89 of the Committee on Open Government – Freedom of Information”.

Please allow me to clarify my request. I am requesting the above stated “records”, which were “produced” by the Code Enforcement arm of the Town of Clay Department of Planning and Development (the “Agency”) directly from the Records Management Officer of the aforementioned Agency. These records are reasonably expected to exist in at least one of three places, under the control of the Department of Planning and Development:

- a. On the automated computing equipment used by the Code Enforcement Officers to produce the warnings/citations
- b. On an electronic filing system used by the Department of Planning and Development
- c. As paper records archived under the control of the Department of Planning and Development and accessible by the Records Management Officer of the Agency

My request was NOT made to the Town of Clay Court (the "Judiciary") for Court Records. Whether or not the above described records were, or may someday be, filed with a Court is irrelevant to the request to obtain them from the agency.

Respectfully, if it is the Town's position that documentation generated by the Code Enforcement arm of the Department of Planning and Development is not subject to FOIL applicability (because it is, or will likely become, part of a court record), then the Town would be taking a position that every Law Enforcement Agency in the state of New York would also be outside of the applicability of FOIL for all enforcement matters. This position has been negated through extensive case law as well as multiple opinion papers written by the New York State Committee on Open Government (which I will not list here for the sake of brevity, but would be happy to provide upon request).

I would however like to draw your attention to three cases which have applicability to my request:

Newsday v. Empire State Development Corporation, 98 NY2d 359, 746 NYS2d 855 (2002): Just as I would contend that the Town of Clay Department of Planning and Development is not a part of the Judiciary, in this case the Appeals Court found the Agency in question was not a part of the Judiciary and therefore is a governmental entity subject to FOIL, and must disclose the documents in its possession, irrespective of whether they are deemed to have been a mandate of a court or issued for a court.

Hearst Corp. v. City of Albany, 88 AD3d 1130, 931 NYS2d 713 (2011): Petitioner requested copies of parking tickets, particularly in this case, ones that had been voided or dismissed by the city. The city refused to release the tickets and cited CPL §160.50 (Order upon termination of criminal action in favor of the accused) and further asserted that releasing the tickets would result in an "unwarranted invasion of personal privacy". The court ruled for the release of the un-redacted tickets on the grounds that a parking ticket is not a criminal matter and therefore CPL §160.50 does not apply. Moreover, the privacy interest urged by the respondent was determined not to outweigh the public interest of the research being conducted by the petitioner.

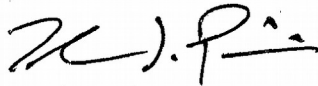
Johnson Newspapers Corp. v. Stainkamp, 94 AD2d 825, 463 NYS2d 122, modified 475 NYS2d 272, 61 NY2d 958 (1984): Petitioner requested copies of all Speeding Tickets issued by the New York State Police in Jefferson County over a specified timeframe. Francis P. Stainkamp, Assistant Deputy Superintendent and Records Access Officer for the State Police, denied the request on two grounds: the "broad nature" of the request and the "intra-agency" FOIL exemption. The court ruled for release of the un-redacted tickets on the grounds that "The description set forth was sufficiently detailed to enable the respondent governmental agency to locate the records in question" and "the 'intra-agency' exemption is inapplicable" for the following reason: "Respondents contend that here the sought-after documents are 'intra-agency' materials because the tickets and lists are used by supervisors to compile police records. This reading of the exemption renders many materials used by an agency for record-keeping purposes inaccessible and gravely impairs the presumption of accessibility".

Hopefully the argument laid out above, as well as the case law referenced, is sufficient to not only satisfy any doubts that the documents sought are subject to FOIL (as official records produced by a government agency outside the Judiciary), but also to convey that precedent exists for the release of traffic and parking citations under FOIL. If not, please let me know if there is a further appeal process or any other information, clarification, or supporting data that should be provided. It is my intent to pursue all administrative remedies to the extent they are available.

As required by the Freedom of Information Law, PBO §89-4(a), the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal. If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.

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, 41 State Street, Albany, New York 12231

Sincerely,



Thomas J. Parisi

Thomas241@gmail.com

cc: Jill Hageman-Clark, Town Clerk

Sent via

Email: [supervisor@townofclay.org](mailto:supervisor@townofclay.org)  
[townclerk@townofclay.org](mailto:townclerk@townofclay.org)

USPS: 7017 1450 0002 3114 3658