



OFFICE OF THE DISTRICT ATTORNEY, Bronx County

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May 19, 2023

VIA ELECTRONIC MAIL

Frida Cai
Columbia University
Graduate School of Journalism
600 West 57th Street
New York, NY 10019
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Re: **Determination Letter**
Freedom of Information Law Request
Information Concerning Syringe Disposal Kiosks

Dear Ms. Cai:

I am an Assistant District Attorney in the Office of the Bronx County District Attorney. I am writing to inform you that your request for documents dated January 24, 2020, submitted pursuant to Public Officers Law, Article 6, §§84, et seq., New York's Freedom of Information Law ("FOIL"), has been denied.

On January 24, 2020, you requested the following records:

- “1. HIV/AIDS Surveillance & Hepatitis C Report 2019 for the [sic] New York City and the Bronx
2. Syringe collection both off the ground and in the kiosks in the Bronx across different time periods, ever since they were installed.
3. Who is responsible for the syringe kiosks program right now?
4. Longitude and latitude information of the syringe disposal kiosks. The one on NYC Open Data does not match with the records given the City Parks Department.

I would like to receive the information in the following format: electronic, CSV / Excel, and in machine readable format. . . .”

Your request for “HIV/AIDS Surveillance & Hepatitis C Report 2019 for the New York City and the Bronx” is denied because we could not locate the requested record after a diligent search. An agency is not required to furnish documents which it does not possess, nor is an agency required to create new records or compile data from documents in its possession to respond to a FOIL request. Matter of Rivette v. District Attorney of Rensselaer County, 272 A.D.2d 648, 649 (3d Dept. 2000); Matter of Brown v. New York City Police Department, 264 A.D.2d 558, 561-62 (1st Dept. 1999) (holding denial of FOIL request proper because it sought in part documents which are themselves exempt or do not exist); Matter of Adams v. Hirsch, 182 A.D.2d 583, 583 (1st Dept. 1992) (FOIL does not require an entity to prepare any record not possessed or maintained by such entity); Matter of Reubens v. Murray, 194 A.D.2d 492, 492 (1st Dept. 1993) (upholding denial of FOIL request for “aggregate data” not maintained by agency); Matter of He’ron v. Office of the Dist. Attorney, Bronx County, 96 A.D.3d 531, 531 (1st Dept. 2012) (respondent satisfied the requirements of Pub. Off. L. §89(3) by certifying that a diligent search had been conducted and the documents could not be located in respondent's files).

Furthermore, your request for “syringe collection both off the ground and in the kiosks in the Bronx across different time periods, ever since they were installed” is denied because the Bronx County District Attorney’s Office does not have a syringe collection program. This Office does not maintain or manage any kiosks in the Bronx and is not privy as to who is responsible for the kiosks program right now. For the same reasons, your request for the “longitude and latitude information of the syringe disposal kiosks” is also denied. This Office does not possess the longitude and latitude information of syringe disposal kiosks because it does not maintain or manage any syringe disposal kiosks.

Additionally, “[n]othing in [the Freedom of Information Law] shall be construed to require any entity to prepare any record not possessed or maintained by such entity.” Pub. Off. L. §89(3); see Matter of Lugo v. Galperin, 269 A.D.2d 338, 338-39 (1st Dept. 2000), lv. denied, 95 N.Y.2d 755 (2000) (ADA’s statement “that he conducted a diligent search of the DA’s file and did not find the requested documents . . . suffices to satisfy respondent’s FOIL obligations”). This determination letter is accompanied by a records certification detailing our attempts to locate the requested records.

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Appeal

If you wish to appeal any portion of this FOIL determination, you must do so within 30 days of the date of this letter. Your appeal should be mailed to: Peter Coddington, Records Access Appeals Officer, Bronx County District Attorney's Office, 260 East 161st Street, 5th Floor, Bronx, NY 10451, coddingtonp@bronxda.nyc.gov.

Sincerely,



Mabel Jimenez

Assistant District Attorney

Civil Litigation Bureau, FOIL Unit

Bronx County District Attorney's Office

Enclosure: Records Certification