

August 7, 2023

VIA U.S.P.S MAIL and E-MAIL

Jackson Parker
MuckRock News
DEPT MR 147108
263 Huntington Ave
Boston, MA 02115

Dear Jackson Parker:

The City University of New York (the “University” or “CUNY”) Office of the General Counsel and Senior Vice Chancellor for Legal Affairs submits this letter in response to your July 17, 2023 letter (the “FOIL Appeal”) appealing CUNY’s purported denial of your June 7, 2023 request for records under the New York State Freedom of Information Law (“FOIL”). **See** Public Officers Law § 84 *et seq* (the “POL”).

A. Procedural Background

Your June 7, 2023 FOIL request sought the following records:

1. A copy of the Memorandum of Understanding (“MOU”) bearing tracking number SED MOU: 018-015 between the New York State Education Department (“NYSED”) and the City University of New York - Asian American/Asian Research Institute (“AAARI/CUNY”). This MOU was signed by Joyce Moy, Executive Director of AAARI at CUNY, on August 2, 2018, and was countersigned by Elizabeth R. Berlin, Executive Deputy Commissioner of NYSED, on July 30, 2018.
2. A copy of the amended MOU (“Amendment #1”) to the aforementioned MOU. This amended MOU was signed by Joyce Moy on February 13, 2020, and by Phyllis D. Morris, CFO of NYSED, on January 31, 2020.
3. All communications, including but not limited to e-mails, letters, and memos, between the named signature parties (Joyce Moy, Elizabeth R. Berlin, and Phyllis D. Morris) related to the MOU and its amendment. Please note that e-mail

metadata, such as sender, recipient, date, and subject line, is considered responsive factual data and should be included in the disclosure, even if the content of the communications is exempt.

4. All cash receipts, invoices, and payments received or disbursed related to the funds specified in the MOU and its amendment, as well as any related to the work product or completion of the MOU but borne by CUNY.
5. All communications with third parties, subcontractors, or external entities to AAARI/CUNY related to the MOU and its amendment. This includes, but is not limited to, copies of any and all work product and interim work product viewed by outside parties, including NYSED, subcontractors, advisors, consultants, etc.

On June 14, 2023, the CUNY Records Access Officer (RAO) acknowledged your request and informed you that you would be notified whether your request would be granted or denied, in whole or in part, by July 14, 2023. In an e-mail accompanying this acknowledgement, the RAO informed you that requests 3 and 5 were overly broad and, as such, requested additional information including a date range, search terms, and the identities of the specific individuals whose records you were requesting. That same e-mail informed you that, if the RAO did not receive additional information by June 28, 2023, requests 3 and 5 would be denied as overbroad. You did not provide additional information by June 28, 2023.

On July 13, 2023, you finally responded to the RAO's request for additional information. In response, the RAO noted that, due to the fact that you did not provide additional information by June 28, 2023, requests 3 and 5 had been administratively closed. However, the RAO informed you that it would treat your July 13, 2023 e-mail as a new FOIL request for those two categories of records. The RAO also informed you that you would receive a response by September 8, 2023. On July 17, 2023, you submitted the FOIL Appeal arguing, in substance, that the RAO's "response constitutes an arbitrary denial of access and a willful attempt to avoid responding to my request." For the reasons discussed below, your appeal is denied.

B. Analysis & Decision

Your third and fifth requests in the June 7, 2023 application sought "All communications" related the descriptions in those respective requests. As noted by the Committee on open Government, "requests of this nature make it difficult, if not impossible, for agency staff to identify and locate the responsive records." **See** FOIL-AO-19721(discussing requests for "all records."). Although there may be records that fit broad requests such as yours, "an agency need not search through the haystack in an effort to find the needles, even if it is known that the needles are there, somewhere." **See** FOIL-AO-19738. As such, the RAO's request for additional information needed to effectuate the location of records responsive to these requests was appropriate. You did not provide the requested information. Your appeal is thus denied.

Further, as noted above, the RAO accepted your July 13, 2023 e-mail as a new FOIL request and is in the process of identifying responsive records. Thus, the RAO has not, in fact, denied your request. Indeed, in your July 13, 2023 e-mail, you included search terms to help the RAO identify responsive records. Your FOIL Appeal is therefore moot and your appeal is denied for this reason as well.

Very truly yours,

/s/ Derek Davis

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cc (via e-mail):

Committee on Open Government (coog@dos.ny.gov)
CUNY Records Access Officer (CUNY.RecordsOfficer@cuny.edu)