



OFFICE OF THE DISTRICT ATTORNEY, Bronx County

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May 20, 2022

Via Electronic Mail to 119642-13494075@requests.muckrock.com

Akash Mehta
MuckRock News
411A Highland Avenue
Somerville, MA 02144

Re: Determination Letter
Freedom of Information Law Request
Arraignments prosecuted by the Bronx County District Attorney's Office in 2019,
2020 or 2021

Dear Mr. Mehta,

I am writing to inform you that your request for documents, received on or about September 30, 2021 pursuant to New York Public Officers Law, Article 6, §§84, *et seq.*, New York's Freedom of Information Law ("FOIL"), has been denied.

Specifically, you requested a spreadsheet of every arraignment this Office prosecuted in 2019, 2020 or 2021 (to date), with the following information:

"name of the ADA, arraignment date, case ID (used by the court system), name of the judge, cash bail requested, cash bail set, top severity at arraignment (felony or misdemeanor)"

Explanation of Denials

Your request for a spreadsheet listing every arraignment this Office prosecuted in 2019, 2020 or 2021 is denied. Such a request is not cognizable under New York's FOIL statute, but applies only to requests made under the federal Freedom of Information Act ("FOIA"). See Vaughn v. Rosen, 484 F.2d 820, 827 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974) (interpreting request for itemized and indexed documents under the federal FOIA); John Doe Corp. v. John Doe Agency, 850 F.2d 105, 110 (2d Cir. 1988), rev'd. on other grounds, 493 U.S. 146, 155-56 (1989) (Vaughn index authorized under federal FOIA). Indeed, under the New York FOIL statute, an agency has no duty to create documents that are not in existence. See Matter of Brown v. New York City Police Dept., 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).

Moreover, 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. 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); Matter of Adams v. Hirsch, 182 A.D.2d 583, 583 (1st Dept. 1992). Moreover, Pub. Off. L. §89(3) does not require an agency to create records in order to respond to a FOIL request. See Matter of Reubens v. Murray, 194 A.D.2d 492, 492 (1st Dept. 1993).

Additionally, transcripts/minutes of court proceedings, such as arraignments, are court records, not agency records, and are not subject to FOIL disclosure. See Matter of Roque v. Kings County D.A.'s Office, 12 A.D.3d 374, 374-75 (2d Dept. 2004); Matter of Dupont v. Kings County District Attorney's Office, 15 A.D.3d 480, 480 (2d Dept. 2005); Matter of Moore v. Santucci, 151 A.D.2d 677, 680 (2d Dept. 1989) ("the respondent is not required to make available for inspection and copying the suppression hearing or trial transcripts of a witness' testimony in its possession, because the transcripts are court records, not agency records"); see also, Public Officers Law §86(3); CPLR §8002 (stenographers are entitled to a fee for transcribed copies of his or her stenographic notes of testimony or other proceedings taken in a court). You may obtain transcripts of court proceedings (other than grand jury proceedings) by contacting the Office of the Court Reporters, Supreme Court Bronx County, 265 East 161st Street, Bronx, NY, 10451.

FOIL Determination Letter

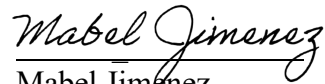
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Appeal

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, CODDINGP@bronxda.nyc.gov.

Sincerely,



Mabel Jiménez

Assistant District Attorney

Civil Litigation Bureau, FOIL Unit

Bronx County District Attorney's Office

Enclosure