

Appeal for Denial of FOIL Request #498-23 Westchester County Department of Public Safety

John M. Nonna  
Westchester County Attorney/Appeals Officer  
148 Martine Avenue  
Michaelian Office Building Room 600  
White Plains, NY 10601

Re: Freedom of Information Law Appeal

Dear John Nonna,

I hereby appeal the denial of access regarding my request, which was made on 10/26/23 and sent to Sgt. Jose Calero of the Westchester County Department of Public Safety Records Unit filed under F.O.I.L. Request #498-23. The Request of which is attached to this message.

**The records that were denied include:**

- 1) All records in digital audio format of all broadcasts made by the Westchester County Real-Time Crime Center, a unit within the Westchester County Department of Public Safety/Police Department, using the software platform "Zello" or any other product created by Zello INC. of whose Headquarters is Austin, Texas between May 1st, 2023 and October 1st, 2023.
- 2) All records of Invoices, Purchase orders, Payments, and Contracts made between the Westchester County Department of Public Safety/Police Department and Zello Inc. whose headquarters is in Austin, Texas or any of its affiliates for the use of their services generated between 2013 and 2023.

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**The explanation for the denial is as follows:**

"I have reviewed your FOIL request for "all records in digital audio format of all broadcasts made by the Westchester County Real-Time Crime Center, using the software platform Zello between May 1st, 2023 and October 1st, 2023. In accordance with Article 6, § 84 et seq. of the New York Public Officers Law and Act No. 56 1989 of Westchester County. Please be advised that your request is denied pursuant to Public Officers Law §87(2)(a), which provides that access to records may be denied when said records are specifically exempted from disclosure by state or federal statute.

You are respectfully referred to Article 6, § 308 Subdivision (4) of NYS County Law which states that: "Records, in whatever form they may be kept, of calls made to a municipality's E911 system shall not be made available to or obtained by any entity or person, other than that municipality's public safety agency, another government agency or body, or a private entity or a person providing medical, ambulance or other emergency services, and shall not be utilized for any commercial purpose other than the provision of emergency services".

As for the second part of your request, "All records of Invoices, Purchase orders, Payments, and Contracts made between the Westchester County Department of Public Safety/Police Department and Zello Inc. for the use of their services generated between 2013 and 2023"- There are no responsive documents, as Zello Inc. offers the department a free professional account. “

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### **Statement and Reason for Appeal:**

First and foremost I am requesting to appeal the denial of foil request #498-23 because the request for records does not apply to the E-911 system. Zello communications work outside the E-911 system and my request for records does not ask for “...calls made *to* a municipality’s E911 system” as Sgt. Calero of the Westchester County Department of Public safety cited in his denial letter by referencing “Article 6, § 308 Subdivision (4) of NYS County Law which states that: “Records, in whatever form they may be kept, of calls made to a municipality’s E911 system shall not be made available to or obtained by any entity or person, other than that municipality’s public safety agency, another government agency or body, or a private entity or a person providing medical, ambulance or other emergency services, and shall not be utilized for any commercial purpose other than the provision of emergency services”

The operative word in my request for reconsideration is “*To*”. As you can see in my supporting documents attached to this appeal, the Zello system is not connected to the dispatch center of the Westchester County Department of Public safety or it’s E-911 system but rather to it’s Real-Time Crime Center. The Real-Time Crime Center is party in operating a vast mass surveillance system of CCTV cameras integrated with license plate reading software and has access to historical license plate recording data. The Zello system is likely used as a communication tool for license plate ‘Hits’ and requests for historical data analysis. However, due to the observed clandestine posture of the unit, it is not clear to the public as to what capacity this surveillance apparatus is being used. There are currently no New York State statutes regulating License Plate Reader Surveillance with the exception of the NYS archives Retention and Disposition Schedule which makes it mandatory to retain aggregate historical license plate reader data for a *minimum* of 1 year on a rolling basis. This was changed in 2022 from 20 years.

The absence of state regulation on use of License Plate Readers and a virtually absent or long outdated reference to this unit or an acceptable use policy for License Plate Readers in the Department Manuals of the Westchester County Department of Public Safety is of serious concern to the public. This request will shed light on how the Real-Time Crime Center and possibly by extension the Westchester County District Attorney’s Crimes Strategies Center/Intelligence Center is currently operating and allow for an informed dialogue regarding it’s existence and reach.

In prior decades such transparency was not at issue as police radio communication was unencrypted and accessible to the general public and members of the press. However as technology has advanced and a generalized reevaluation of surveillance and civil liberties began after the events

September 11<sup>th</sup> 2001 a move to encrypted radio transmission has effected the county at a detriment to transparency and public accountability.

New York State has just emerged from a period where extended emergency orders arbitrarily suspended constitutional guarantees of rights to peaceful assembly in private residences, houses of worship and places of business. Mass surveillance is a defining and integral feature of totalitarian governments. According to the legal doctrine of “Mosaic Theory” prolonged data aggregation of license plate movements that can be cross referenced to individuals may meet the standards of search and seizure. It is therefore of great interest to the public to oversee how large scale data collection is being used or abused.

If this appeal is approved, I would humbly request that it be amended to include metadata associated with broadcasts and text messages broadcast from the same platform. To clarify, broadcast is meant to mean communications between more than 2 people. Please reference the attached instructions provided by Zello Inc. for utilizing it’s “Message Vault”; a broadcast would therefore include “Dispatch” “Channel” and “Everyone” records but exclude “Direct Messages”

In regards to section 2 of Foil Request 498-23 as cited below for reference, it seems difficult to believe there were no responsive documents from Zello Inc. regarding it’s use by the Department of Public Safety. Zello’s website claims it allows First Responders access to its service at no charge for 5 years. My request also makes requests for “Contracts” which at a minimum would include a service agreement.

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As required by the Freedom of Information Law, 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.

In addition, please be advised that the Freedom of Information Law directs agencies to send all appeals and the determinations that follow to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.

I thank you greatly for your consideration and time spent in review of this appeal.

Sincerely,

David Smith  
Lifelong Westchester Resident  
Muckrock News Affiliate

## ADDENDUM

### Communications with Jose Calero, FOIL officer of Westchester County Department of Public Safety:

FOIL Request #498-23 Westchester County Department of Public Safety

#### Original Request

Submitted 10/26/23:

To Whom It May Concern:

Pursuant to the New York Freedom of Information Law, I hereby request the following records:

1) All records in digital audio format of all broadcasts made by the Westchester County Real-Time Crime Center, a unit within the Westchester County Department of Public Safety/Police Department, using the software platform "Zello" or any other product created by Zello INC. of whose Headquarters is Austin, Texas between May 1st, 2023 and October 1st, 2023.

2) All records of Invoices, Purchase orders, Payments, and Contracts made between the Westchester County Department of Public Safety/Police Department and Zello Inc. whose headquarters is in Austin, Texas or any of its affiliates for the use of their services generated between 2013 and 2023.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Sincerely,

David Smith

## **Response**

**Recieved 11/21/2023:**

Re: Westchester County Department of Public Safety F.O.I.L. request # 498-23

Mr. Smith:

I have reviewed your FOIL request for "all records in digital audio format of all broadcasts made by the Westchester County Real-Time Crime Center, using the software platform Zello between May 1st, 2023 and October 1st, 2023. In accordance with Article 6, § 84 et seq. of the New York Public Officers Law and Act No. 56 1989 of Westchester County. Please be advised that your request is denied pursuant to Public Officers Law §87(2)(a), which provides that access to records may be denied when said records are specifically exempted from disclosure by state or federal statute.

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You may appeal this decision within 30 days of this letter by furnishing a copy of your request to the Westchester County Attorney, John M. Nonna, Room 600, Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601. [FOIL-Appeals@westchestergov.com](mailto:FOIL-Appeals@westchestergov.com)

If you have any other questions, please contact the undersigned at (914) 864-7676.

Respectfully,

Sgt. Jose Calero  
Westchester County Police/Records Unit

## External Links

### 1) Zello Data Export Instructions

<https://support.zellowork.com/hc/en-us/articles/115003944994-Downloading-messages-and-exporting-metadata-with-Message-Vault->

### 2) Zello Blog posted June 15<sup>th</sup> 2023

<https://blog.zello.com/westchester-county-connects-46-different-police-departments-and-turns-minutes-into-seconds-when-tracking-real-time-crime>

### 3) Forbes Magazine July 2023 Article

<https://www.forbes.com/sites/thomasbrewster/2023/07/17/license-plate-reader-ai-criminal/>