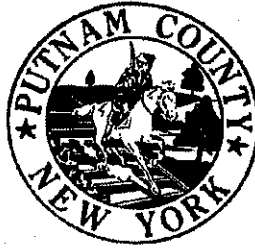


**ANDREW W. NEGRO**  
*First Deputy County Attorney*

**ANNA M. DIAZ**  
*Senior Deputy County Attorney*



**DINA M. DIBLASI**  
*Senior Deputy County Attorney*

**CONRAD J. PASQUALE**  
*Senior Deputy County Attorney*

**JENNIFER S. BUMGARNER**  
*County Attorney*

## DEPARTMENT OF LAW

October 4, 2019

**Via Email: [editor@highlandscurrent.org](mailto:editor@highlandscurrent.org)**

Chip Rowe  
161 Main Street  
Cold Spring, New York 10516

**Re: Freedom of Information Law Request dated September 3, 2019**

Dear Mr. Rowe:

Please be advised that your September 3, 2019 Freedom of Information Law ("FOIL") request submitted to the Law Department has been processed for further review. A copy of said request is attached for reference.

Upon a diligent search of records that can be considered responsive to your request, access to these records has been denied for several reasons. First, certain responsive records are not subject to disclosure by state law, that is NYS Civil Practice Law and Rules § 4503, which makes records consisting of attorney client communications privileged and not subject to disclosure. Accordingly, access to these records is denied under N.Y.S. Public Officers Law § 87(2) (a) which provides for denial of a FOIL request when records are specifically exempted from disclosure by state law.

Additionally, certain other responsive documents maintained by the County are exempt from disclosure because they constitute inter-agency or intra-agency materials which are not: i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policies or determinations; or iv. external audits, including but not limited to audits performed by the comptroller and federal government (See N.Y.S. Public Officers Law § 87(2)(g)).

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**48 GLENEIDA AVENUE, CARMEL, NEW YORK 10512**

Tel. (845) 808-1150 / Fax (845) 808-1903\*

*\*This office will not accept service via facsimile*

You are entitled to appeal the denial of your FOIL request within thirty (30) days hereof to the following address:

Honorable MaryEllen Odell, County Executive  
40 Gleneida Avenue  
Carmel, New York 10512

Sincerely,



Amber Wodraska

Law Clerk

Cc: Hon. Michael C. Bartolotti, County Clerk (via email)  
Jennifer S. Bumgarner, County Attorney (via email)

**48 GLENEIDA AVENUE, CARMEL, NEW YORK 10512**

Tel. (845) 808-1150 / Fax (845) 808-1903\*

*\*This office will not accept service via facsimile*

# PUTNAM COUNTY EXECUTIVE

MaryEllen Odell  
*County Executive*

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Nicholas DePerno Jr.  
*Director of Constituent  
Services*

Patricia Simone  
*Chief of Staff*

Theresa M. Oliver  
*Confidential Secretary*



October 23, 2019

**Via Email: [editor@highlandscurrent.org](mailto:editor@highlandscurrent.org)**

Chip Rowe  
161 Main Street  
Cold Spring, New York 10516

**Re: Freedom of Information Law (FOIL) Request Appeal  
Chip Rowe, October 7, 2019**

Dear Mr. Rowe:

It is my understanding you submitted a Freedom of Information Law (FOIL) request to the Law Department on September 3, 2019, wherein you sought:

Any information kept, held, filed, produced or reproduced by, with or for the Law Department, in any physical form whatsoever (including electronic media), including but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photographs, letters, microfilms, computer tapes or discs, rules, regulations or code, whether a draft or final document, dated from August 1, 2019 to August 31, 2019, and marked "[C]onfidential".

Your FOIL request seeking such records was reviewed by the Law Department and was thereafter denied by letter dated October 4, 2019 ("Denial Letter"). The Law Department cited NYS Civil Practice Law and Rules ("CPLR") § 4503, which makes records consisting of attorney client communications privileged and not subject to disclosure pursuant to Public Officer's Law ("POL") § 87(2) (a) which provides for the denial of a FOIL request when records are specifically

exempted from disclosure by state law. The Law Department also cited POL § 87 (2)(g) which exempts records from disclosure if they constitute inter-agency or intra-agency materials. You appealed the denial of your FOIL request by letter dated October 7, 2019 (“Appeal”), which was received by my office on October 10, 2019.

In your Appeal, you challenge the denial of access to records specifically marked confidential within or for the Law Department. Your Appeal relies on a paragraph from the Committee on Open Government’s Advisory Opinion AO-f17794 which in sum states that even if a record falls within one or more of the enumerated exemptions of POL § 87 (2), an agency still has an obligation to review the record in its entirety, redact portions that are exempted and release the remaining portions of the records. In light of opinion AO-f17794, you ask the Law Department to review and redact portions of requested records.

An important distinction has to be made with respect to the rules and standards of CPLR as compared to FOIL. Under FOIL, redactions to records that fall within one or more of the enumerated exemptions of POL §87(2) are an acceptable and standard practice with government agencies. However, this is not the case with CPLR. There is no indication or authority that under CPLR redactions of records that fall under attorney-client privilege or attorney work product are permissible. Your Appeal fails to show any authority to the contrary. Furthermore, the purpose of FOIL is to obtain access to government records, not to circumvent other rules, such as CPLR § 4503, to access records that are protected from disclosure. The Committee on Open Government addressed the exemption of attorney client privilege in opinion A0-19176 that stated:

For more than a century, the courts have found that legal advice given by a municipal attorney to his or her clients, municipal officials, is privileged when it is prepared in conjunction with an attorney-client relationship. As such, we believe that a municipal attorney may engage in a privileged relationship with his or her client and that records prepared in conjunction with an attorney-client relationship are considered privileged under §4503 of the Civil Practice Law and Rules. Further, since the enactment of the Freedom of Information Law, it has been found that records may be withheld when the privilege can appropriately be asserted when the attorney client privilege is read in conjunction with § 87(2)(a) of the Law.

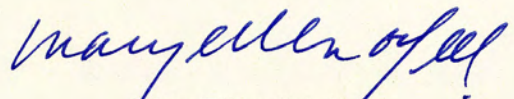
In connection with your Appeal, the Law Department was correct in denying your FOIL request on the basis of CPLR § 4503, attorney-client privilege, in conjunction with POL § 87(2)(a). Courts have found that predominately legal documents containing portions of non-legal information are still protected from disclosure on the grounds that the attorney-client privilege does not detach from the document solely because the document contains portions of non-legal matters. *See Rossi v. Blue Cross and Blue Shield of Greater New York*, 540 N.E. 2d 703, 706 (1989)(Memorandum consisting of legal advice as well as non-legal matters was exempt from disclosure under attorney-client privilege); *see also Matter of Rye Police Association v. City of Rye*, 34 A.D. 3d 591 (2006)(Appellate Court concluded documents prepared by attorney were exempt from disclosure under the attorney-client privilege because such documents were pre-

dominantly legal in nature and were made to render legal services). Here, it is my understanding that the Law Department has records that consist of legal advice, recommendations and opinions that are intertwined with non-legal matters within their communications to their clients. Your FOIL request asked for records specifically marked confidential from the Law Department, while these have not been reviewed as to preserve the attorney-client privilege, by their very description, such records, using the CPLR and relevant caselaw as guidance, are protected from disclosure under the attorney-client privilege.

Moreover, the Law Department was correct in denying your request on the basis of N.Y.S. Public Officers Law § 87(2)(g). Certain documents maintained by the County which are responsive to your request are exempt from disclosure, as they constitute inter-agency or intra agency materials which are not: i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. Final agency policies or determinations; or iv. external audits, including but not limited to audits performed by the comptroller and federal government (See N.Y.S. Public Officers Law § 87(2)(g)).

Accordingly, based upon a review of your Appeal, as well as the surrounding facts and the relevant law, it is the determination of this office that your FOIL request was properly denied by the Law Department.

Very truly, yours,



MaryEllen Odell  
Putnam County Executive

Cc: Committee on Open Government  
Hon. Michael C. Bartolotti, County Clerk  
Jennifer S. Bumgarner, Esq., County Attorney