

EXHIBIT D



POLICE DEPARTMENT
Office of Deputy Commissioner,
Legal Matters
One Police Plaza, Room 1406A
New York, New York 10038
FOILAppeals@NYPD.org

June 3, 2021

Jesse Barber
NYCLU
jbarber@nyclu.org

RE: FREEDOM OF INFORMATION LAW
REQUEST: FOIL-2021-056-06673
Re: Databases

Dear Mr. Barber:

This letter is in response to your email dated June 3, 2021, appealing the determination of the Records Access Officer (RAO) made on May 5, 2021 regarding records requested from the New York City Police Department. Your request, pursuant to the Freedom of Information Law, was originally received by the FOIL unit on April 30, 2021 and subsequently denied because it was determined that your request failed to reasonably describe a record in a manner that could enable a search.

Your appeal of that determination is denied because your request does not reasonably describe a specific record in a manner that could lead to its retrieval. Public Officers Law Section 89(3) requires that a FOIL request describe the records it seeks in a manner that can reasonably lead to the retrieval of records maintained by the entity to which the request was directed; however, your request does not adequately specify any records maintained by this agency and does not provide the information necessary to locate any responsive records.

The Court of Appeals has held that to deny a request on the ground that it fails to reasonably describe the records, an agency must establish that "the descriptions were insufficient for purposes of locating and identifying the documents sought" [*Konigsberg v. Coughlin*, 68 NY 2d 245, 249 (1986)]. Whether a request reasonably describes the records sought, as suggested by the Court of Appeals, may be dependent upon the terms of a request, as well as the nature of an agency's filing or record-keeping system. See, Committee on Open Government Advisory Opinion, FOI-AO-18498 (May 25, 2011).

When an agency has the ability to locate and identify records sought in conjunction with its filing, indexing and retrieval mechanisms, it was found that a request meets the requirement of reasonably describing the records, irrespective of the volume of the request. By stating, however, that an agency is not required to follow "a path not already trodden" (*id.*, 250) in its attempts to locate records, we believe that the Court determined, in essence, that agency officials are not required to search through the haystack for a needle, even if they know or surmise that the needle may be there. In short, agency staff are not required to engage in herculean or unreasonable efforts in locating records to accommodate a person seeking records. See, Committee on Open Government Advisory Opinion, FOI-AO-18949 (August 20, 2012).

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The records described in Item No. 1 of your request would require the creation of a new record. Your request seeks “[d]ocuments sufficient to identify all databases . . . that include information about (a) complaints or reports of misconduct . . . or (b) discipline of Department employees” (emphasis added). This does not reasonably describe any actual documents maintained by this agency and would require the NYPD to first identify which databases fit your criteria, and then to locate any document that might subjectively “identify” that database. This is simply not required under FOIL as an agency is not required to guess what documents may or may not be responsive to a request.

As it pertains to Item No. 2 of your request, the request also fails to reasonably describe a record in a manner that could enable a search to the extent that Item No. 1 could not be fulfilled. Moreover, to the extent that certain databases are maintained by this agency for the purpose of logging complaints or discipline, the request for “any documents that include” certain descriptions identified in 2a-2c, also does not reasonably describe a record.

As it pertains to Item Nos. 3 & 4, your requests again fail to reasonably describe a record and, instead, appear to request copies, not of actual records, but of certain databases themselves, including “[a]ny databases” that include information about either “complaints or reports of misconduct” or “discipline of Department employees.” It is unclear, first, which databases are responsive to your request because no actual databases are identified. Your request is overbroad in that the scope of records responsive to your request cannot be determined since a “database” could include not only Department-wide systems but also documents like Excel spreadsheets maintained at a precinct-level by individual Integrity Control Officers or other supervisors. It is also unclear how any responsive records, if identified, could actually be provided absent allowing access to information technology assets.

Finally, to the extent that you seek certain data, please note that the data described in your request is not maintained by this agency in a manner in which it can be simply exported to a spreadsheet for disclosure and, in addition, that the First Department has held that an agency is not required to extrapolate raw data and transform it into the values sought in your request by anything more than simple manipulation; anything more would result in the creation of a new record, *see United Prob. Officers Ass'n v. City of N.Y.*, 2019 N.Y. Slip Op. 30337 (N.Y. Sup. Ct. 2019) quoting *Matter of Data Tree, LLC v Romaine*, 9 NY3d 454, 465 [2007]).

You may seek judicial review of this determination by commencing an Article 78 proceeding within four months of the date of this decision.

Respectfully,



Jordan S. Mazur

Sergeant

Records Access Appeals Officer

c: Committee on Open Government

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