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August 12, 2015

### E-Mail

TO: Brook Schreier Ganz (asparagirl@gmail.com)

FROM: Robert J. Freeman, Executive Director



CC: Ken Cobb (kcobb@records.nyc.gov)

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence, except as otherwise.

Dear Ms. Ganz:

As you are aware, I have received your correspondence. I hope that you will accept my apologies for the delay in response.

You have sought an advisory opinion concerning your request made to the New York City Municipal Archives for "copies of the 1908-1929 City Clerk's office marriage license series..." You were informed that the records at issue, which are not accessible online or via other electronic media, but rather are stored on microfilm, are available to view at the Municipal Archives. Because you reside in California, traveling to New York City to inspect the records would be unreasonable, and you have offered to pay for copies of the "48 microfilms for the indices to the City Clerk marriage license series" at the rate of 35\$ per roll, plus the cost of shipping. However, Kenneth Cobb, the Director of the Archives, wrote that "The indexes to vital records, in any format, are not subject to FOIL and are not available for purchase."

In consideration of the language of the law and its interpretation by the courts, I respectfully disagree with Mr. Cobb's response. In this regard, I offer the following comments.

First, the Freedom of Information Law (FOIL) pertains to all government agency records, and §86(4) of that statute defines the term "record" to mean "any information kept, held, filed, produced or reproduced by, with or for an agency...in any physical form whatsoever..." Based on that provision, it is clear in my opinion that the microfilms at issue constitute "records" that fall within the scope of FOIL and are subject to rights of access.

Second, the correspondence between you and Mr. Cobb indicates that the content of the records sought is clearly public. Although he wrote that the indices are neither subject to FOIL nor available for purchase, in the same paragraph, he added that they "are available to the public, at no cost, in our facility at 31 Chambers Street, and in some instances they are available online at no cost." For the reason expressed above, all



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government agency records fall within the scope of FOIL, and §87(2) has since its enactment required that accessible records be made available for inspection and copying. Further, pursuant to §89(3)(a), agencies must copy accessible records upon payment of the requisite fee.

Third, it has been found by the courts that analogous records are available under FOIL, and that the Domestic Relations Law, §19, which deals specifically with access to marriage records, does not serve as valid basis for denying access to the records sought. In Gannett Co., Inc. v. City Clerk's Office, City of Rochester [596 NYS2d 968 (1993)], the issue involved names of persons to whom marriage licenses were issued that were contained in "a log", which would appear to be the equivalent of the indices maintained by the Municipal Archives. In short, the court determined that disclosure of the names "does not equate with the type of personal, confidential, or sensitive information precluding public access, or which would constitute an 'unwarranted invasion of personal privacy'", and that petitioners have the right to gain "unrestricted access to the names of couples to whom marriage licenses have been issued" (*id.*, 970). I point out that the Appellate Division affirmed for the same reasons as those expressed by Supreme Court (197 AD2d 919).

In an effort to enhance understanding of and compliance with applicable law, a copy of this opinion will be forwarded to Mr. Cobb.

I hope that I have been of assistance.