

-----X
In the Matter of the Application of
RECLAIM THE RECORDS and
BROOKE SCHREIER GANZ,

Index No. 04058-18

Petitioners,

-against-

AFFIDAVIT

NEW YORK STATE
DEPARTMENT OF HEALTH,

Respondent,

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

DAVID J. SPELLMAN, being duly sworn, deposes and says:

1. I am the Records Access Appeal Officer at the New York State Department of Health ("DOH") and respond to administrative appeals submitted to DOH by any person who believes he or she was denied access to governmental records pursuant to a Freedom of Information Law ("FOIL") request. The following is based upon my personal knowledge as well as my review of records maintained by DOH in the regular course of DOH's business.

2. I make this affidavit to oppose the Verified Petition of Reclaim the Records and Brooke Schreier Ganz ("the Requester") dated June 20, 2018 which seeks an Order: (a) directing respondent DOH to produce all records and documents responsive to Petitioners' October 17, 2017 FOIL request #17-10-253; (b) directing respondent to explain the manner in which records are kept that allegedly prevent a search for responsive documents; (c) directing respondent to produce information regarding its employees who conducted the search and their duties; (d) directing respondent to produce information about the subject matter of its records; (e) directing respondent to certify that a diligent search was conducted that failed to produce responsive

records and documents requested; (g) awarding petitioners costs and disbursements and legal fees and (h) any other and further relief as the Court may deem just and proper.

Applicable Law

3. The Freedom of Information Law is contained in Public Officers Law ("POL"), Article 6, §§ 84-90.

4. POL § 89(4)(a) provides that

...any person denied access to a record may within thirty days appeal in writing such denial to...the person therefor designated...who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought...Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial.

5. POL §89(4)(b) requires that a person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to Article seventy-eight of the Civil Practice Law and Rules.

Petitioner's FOIL request

6. On October 17, 2017, the Requester submitted a FOIL request for

"all correspondence, emails, proposals, drafts, notes, agreements, contracts, meetings and calendar entries, phone logs, meeting minutes, budget items, receipts, vendorization forms or data, bids, evaluation materials, Freedom of Information Law (FOIL) records requests and their associated correspondence and any appeals, and any other documentation or communications between the New York State Department of Health and Ancestry.com, or such materials within the New York State Department of Health about Ancestry.com. Ancestry.com might also be listed as Ancestry, Ancestry LLC, Ancestry.com LLC, Ancestry.com holdings, Ancestry.com Holdings LLC, or similar terms.

I am requesting these materials for all dates between January 1, 2015 to October 17, 2017, inclusive."

A copy of the request is annexed hereto as **Exhibit A**.

7. On January 23, 2018, DOH issued a complete and final response to the request. This response constituted a partial grant of access to records and a partial denial as it provided the following:

1. Requester was provided with records responsive to the portion of the request concerning "Freedom of Information Law (FOIL) requests and their associated correspondence."
2. Requester was advised that the responsive materials provided in response to part 1 above contained redactions pursuant to POL § 87(2)(b) because disclosure would constitute an unwarranted invasion of personal privacy and § 87(2)(g) as inter-agency or intra-agency materials.
3. Requester was advised that the New York State death index had been previously released to requester in response to a separate FOIL request.
4. Requester was advised that with respect to the portion of the request concerning appeals pertaining to Ancestry.com, no records responsive to the request had been located.
5. Finally, Requester was advised that the remainder of the request was denied pursuant to POL §89(3) as the request failed to reasonably describe the records sought with sufficient detail to enable DOH to locate them. The requester was asked to provide a list of specific employees whose communications the requester was seeking as well as the subject matter of the types of records sought.

A copy of the response letter is annexed hereto as **Exhibit B**.

8. On February 20, 2018, requester appealed DOH's January 23, 2018 response letter. A copy of the appeal is annexed hereto as **Exhibit C**.

9. On February 26, 2018, DOH responded to the February 20, 2018 appeal by upholding the response letter in its entirety. A copy of the appeal determination letter is annexed hereto as **Exhibit D**. The determination advised the Requester that DOH correctly applied POL §89(3) with respect to the nineteen elements of the request as applied to all of the approximately 5,400 DOH employees.

10. The appeal determination noted that the email records for 5,400 DOH employees would need to be searched for all six permutations of Ancestry as well as the catch-all of "similar terms". Such a catch all is a never-ending, self-perpetuating haystack of similar possible terms.

11. Although the materials provided in response to the request included redactions pursuant to POL §87(2)(b) because disclosure would constitute an unwarranted invasion of

personal privacy and §87(2)(g) as inter-agency or intra-agency materials, the appeal did not contest such redactions and thus such redactions were not addressed in the appeal determination.

12. While Petitioner alleges that the appeal provided additional specificity as to the records sought, any additional details provided were still insufficient. The appeal stated that the subject matter of the request was business and contracts with DOH and Ancestry.com, yet the plain wording of the request does not support the conclusion that it was intended to be so narrowly construed. Additionally, the appeal states that emails sought are “likely” to belong to certain divisions of DOH and that “some of the relevant emails may be between” certain divisions. Again, this is insufficient to allow a comprehensive search to be completed. If RAO conducted a search that it knew may only uncover “some” responsive materials, this would not be an appropriate response to a FOIL request. There is nothing barring Petitioner from submitting a follow up FOIL request using more specific subject matter terms or limiting the universe of potential custodians to specific DOH divisions.

13. On February 26, 2018 I was advised that the appeal determination had been mailed to the Requester. Craig Rippon, a DOH administrative assistant whose duties include mailing appeal determinations, mailed said determination by placing it in a postage paid envelope using regular mail and depositing the envelope in a post office box or official depository of the United States Postal Service at the Empire State Plaza Post Office. This is the standard procedure used to mail all appeal determinations. An affidavit of mailing is annexed hereto as **Exhibit E**.

14. Additionally, on February 26, 2018, Craig Rippon forwarded a copy of the appeal determination to Robert Freeman, the Executive Director of the Committee on Open Government, pursuant to the provisions of POL § 89(4)(a). A copy of the email is annexed hereto as **Exhibit F**.

15. The DOH mailing envelopes are printed with DOH's full and accurate return address. Nevertheless, to date the appeal determination mailed to the Requester on February 26, 2018 has not been returned to DOH as undeliverable.

16. Based on the foregoing, DOH has fully complied with the requirements of the POL to appropriately and fully respond to Petitioner's appeal in a timely manner.

WHEREFORE, it is respectfully requested that the Court dismiss the Petition in its entirety and deny Petitioner's request for attorney's fees and costs.



DAVID J. SPELLMAN

Sworn to before me this
19th day of September, 2018



Notary Public

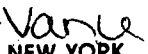

DIANA FILKINS 
NOTARY PUBLIC-STATE OF NEW YORK
No. 02FI6255406
Qualified in Rensselaer County
My Commission Expires February 06, 

Exhibit A

From: 44580-07857453@requests.muckrock.com
Sent: Tuesday, October 17, 2017 4:54 PM
To: doh.sm.BOB-FOIL
Subject: Freedom of Information Law Request: All New York State Department of Health communications to or about Ancestry.com

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

October 17, 2017
New York State Department of Health
Records Access Office
New York State Department of Health
Corning Tower, Room 2364
Albany, New York 12237-0044

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request the following records:

I am requesting copies of all correspondence, e-mails, proposals, drafts, notes, agreements, contracts, meetings and calendar entries, phone logs, meeting minutes, budget items, receipts, vendorization forms or data, bids, evaluation materials, Freedom of Information Law (FOIL) records requests and their associated correspondence and any appeals, and any other documentation or communications between the New York State Department of Health and Ancestry.com, or such materials within the New York State Department of Health about Ancestry.com. Ancestry.com might also be listed as Ancestry, Ancestry LLC, Ancestry.com LLC, Ancestry.com Holdings, Ancestry.com Holdings LLC, or similar terms.

I am requesting these materials for all dates between January 1, 2015 to October 17, 2017, inclusive.

In the event that there are fees, please inform me of the total charges in advance of fulfilling my request. I would prefer that this request be filled electronically, by e-mail attachment if available or USB hard drive if not. The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

If any clarification is necessary, please feel free to call me at 917-572-3834 or e-mail me at info@reclaimtherecords.org.

Thank you in advance for your anticipated cooperation in this matter. I look forward to your response within five days, as required by the law.

Sincerely,

Brooke Schreier Ganz
President and Founder, Reclaim The Records
<https://www.ReclaimTheRecords.org/>

Filed via MuckRock.com

E-mail (Preferred): 44580-07857453@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/new-york-state-department-health-4384/all-new-york-state-department-of-health-communications-to-or-about-ancestrycom-44580/?uuid-login=42870ffa-e3a4-449c-9b0e-d3e92fa015eb&email=foi%40health.state.ny.us#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock

DEPT MR 44580

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.



Exhibit B



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 23, 2018

Brooke Schreier Ganz
MuckRock News
DEPT MR 44580
411A Highland Ave
Somerville, MA 02144

FOIL #: 17-10-253

Dear Ms. Ganz:

This letter responds to your Freedom of Information Law request of October 17, 2017, in which you requested the following:

[C]opies of all correspondence, e-mails, proposals, drafts, notes, agreements, contracts, meetings and calendar entries, phone logs, meeting minutes, budget items, receipts, vendorization forms or data, bids, evaluation materials, Freedom of Information Law (FOIL) records requests and their associated correspondence and any appeals, and any other documentation or communications between the New York State Department of Health and Ancestry.com, or such materials within the New York State Department of Health about Ancestry.com Holdings, Ancestry.com Holdings, LLC or similar terms...for all dates between January 1, 2015 to October 17, 2017, inclusive.

With respect to the portion of your request concerning "Freedom of Information Law (FOIL) records requests and their associated correspondence" pertaining to Ancestry.com, I have enclosed documents responsive to your request. Certain information contained in these documents has been redacted pursuant to New York Public Officers Law § 87(2)(b), because disclosure "would constitute an unwarranted invasion of personal privacy;" and § 87(2)(g), as "inter-agency or intra-agency materials." Please be advised we are not enclosing the records responsive to Ancestry.com's request for the New York State death index, as that record was released to you in response to your FOIL request #16-01-037 via a portable drive.

With respect to the portion of your request concerning "any appeals" pertaining to Ancestry.com, please be advised that after conducting a diligent search, no records responsive to your request have been located.

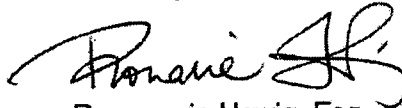
The remaining portion of your request is denied pursuant to NYS Public Officers Law § 89(3) as your FOIL request fails to reasonably describe the records you are seeking with sufficient detail to enable this Department to locate them. Given the considerable number of individuals employed by the Department of Health, a list of specific employees whose

communications you are seeking, as well as the subject matter of the types of records you seek would be required in order for this Department to perform a diligent search.

Should you feel that you have been unlawfully denied access to records, you may appeal such denial in writing within 30 days to the Records Access Appeals Officer, Division of Legal Affairs, Empire State Plaza, 2438 Corning Tower, Albany, New York 12237-0026.

If you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,



Rosemarie Hewig, Esq.
Records Access Officer

RH/sa

Exhibit C

BELDOCK LEVINE & HOFFMAN LLP
99 PARK AVENUE, PH/26TH FLOOR
NEW YORK, N.Y. 10016-1601

CYNTHIA ROLLINGS
JONATHAN MOORE
KAREN L. DIPPOLD
JONATHAN K. POLLACK
HENRY A. DLUGACZ
STEPHEN J. BLUMERT
MARC A. CANNAN
DAVID B. RANKIN
MYRON BELDOCK (1929-2016)
LAWRENCE S. LEVINE (1934-2004)
ELLIOT L. HOFFMAN (1929-2016)

TEL: (212) 490-0400
FAX: (212) 277-5880
WEBSITE: blhny.com

COUNSEL
BRUCE E. TRAUNER
PETER S. MATORIN
MARJORY D. FIELDS
JOSHUA S. MOSKOVITZ
EMILY JANE GOODMAN
(JUSTICE, NYS SUPREME COURT, RET.)
FRANK HANDELMAN

REF: 828900.02500

WRITER'S DIRECT DIAL:

Via United States Postal Service

February 20, 2018

Records Access Appeals Officer
Division of Legal Affairs
Empire State Plaza
2438 Corning Tower, Room 2438
Albany, NY 12237-0026

Dear Access Appeals Officer:

I am writing to appeal New York State Department of Health Records Access Officer Rosemarie Hewig's January 23, 2018 denial of a portion of Ms. Brooke Ganz's FOIL request 17-10-253, originally submitted October 17, 2017. Ms. Ganz's original FOIL request sought:

Copies of all correspondence, e-mails, proposals, drafts, notes, agreements, contracts, meetings and calendar entries, phone logs, meeting minutes, budget items, receipts, vendorization forms or data, bids, evaluation materials, Freedom of Information Law (FOIL) records requests and their associated correspondence and any appeals, and any other documentation or communications between the New York State Department of Health and Ancestry.com, or such materials within the New York State Department of Health about Ancestry.com. Ancestry.com might also be listed as Ancestry, AncestryLLC, Ancestry.com LLC, Ancestry.com Holdings, Ancestry.com Holdings LLC, or similar terms.

Ms. Ganz's original FOIL request, the New York State Department of Health's Acknowledgement Letter, Extension Letter, and Response Letter Granting in Part and Denying in Part FOIL request 17-10-253, and the responsive materials received, are enclosed with this appeal.

Ms. Ganz was provided with documents responsive to the portion of her request seeking "Freedom of Information Law (FOIL) records requests and their associated correspondence,"

Records Access Appeals Officer

February 20, 2018

Page 2

and was advised that there were no documents responsive to the portion of her request requesting "any appeals." However, the remaining portion of Ms. Ganz's request was denied; Ms. Hewig cited NYS Pub. Officer's L. § 89(3) for the proposition that insufficient detail was provided to enable the Department to locate the records. In particular, Ms. Hewig requested "a list of specific employees whose communications you are seeking, as well as the subject matter of the types of records you seek."

The requirement that Ms. Ganz supply an exhaustive list of names of employees who may have worked on the matter related to Ancestry.com is contrary to the spirit of the FOIL Law, which was enacted for the purpose of providing "the public with a means of access to governmental records in order to encourage public awareness and understanding of and participation in government and to discourage official secrecy." (*Alderson v. New York State Coll. of Agric. & Life Scis. at Cornell Univ.*, 4 NY3d 225, 230 [2005]). The FOIL Law provides no public access at all if members of the public are required to provide the individual names of employees who worked on a particular matter in order to obtain information related to that matter, where the agency has provided no forum where members of the public can learn the names of various employees and the types of matters on which they work.

As the Committee on Open Government has noted in advisory opinions, "search mechanisms in electronic information systems often permit the retrieval of records based on a variety of possibilities, *i.e.*, the use of dates, names, products, etc." See (Comm on Open Gov't FOIL-AO-17989 [2010]) [Note: FOIL Advisory Opinion]. Per the opinion of the Committee on Open Government, if an agency can locate records using the information provided in a FOIL request via an electronic search, it is required to provide the documents retrieved this way. *Id.* In her FOIL request, Ms. Ganz provided several search terms that could be used to search through the emails of Department of Health employees. Given the subject matter of the request—business and contracts between the Department of Health and Ancestry.com—emails sought are likely to belong to employees within the Department of Vital Records. In addition, some of the relevant emails may be between employees or agents of Ancestry.com and DOH employees who are member of the Division of Legal Affairs who work with the Department of Vital Records. The Department of Health's Records Access Office should be required, under the FOIL Law, to conduct a diligent search of the email accounts of employees of the DOH Office of Vital Records and the DOH Division of Legal Affairs who may have worked on a contract or project with Ancestry.com and its employees and/or agents.

Ms. Hewig's denial does not provide any specific reason for denying access to the other portions of Ms. Ganz's request seeking "proposals, drafts, notes, agreements, contracts, meetings and calendar entries, phone logs, meeting minutes, budget items, receipts, vendorization forms or data, bids, evaluation materials" related to Ancestry.com. As the Court of Appeals has noted, in denying a FOIL request because the documents requested were not "reasonably described," the agency must establish that "the descriptions were insufficient for purposes of locating and identifying the information sought." (*Matter of Konigsberg v. Coughlin*, 68 NY2d 245, 249 [1986]). Ms. Hewig's denial does not establish that the descriptions of the documents requested were insufficient; like in *Konigsberg*, Ms. Hewig provides no information about how these types

BELDOCK LEVINE & HOFFMAN LLP

Records Access Appeals Officer

February 20, 2018

Page 3

of records are indexed, so that Ms. Ganz would be able to locate them in a future request. Accordingly, the Department of Health Records Access Office should supply the records assuming they can be located using the search terms provided in Ms. Ganz's FOIL request #17-10-253, or else it should provide information about how these types of records are indexed to facilitate a future FOIL request.

Thank you for your prompt consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'David B. Rankin', with a stylized, sweeping flourish extending to the right.

David B. Rankin

DBR/dkp
Enclosures

From: Reclaim The Records

10/17/2017

Subject: Freedom of Information Law Request: All New York State Department of Health communications to or abo...

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request the following records:

I am requesting copies of all correspondence, e-mails, proposals, drafts, notes, agreements, contracts, meetings and calendar entries, phone logs, meeting minutes, budget items, receipts, vendorization forms or data, bids, evaluation materials, Freedom of Information Law (FOIL) records requests and their associated correspondence and any appeals, and any other documentation or communications between the New York State Department of Health and Ancestry.com, or such materials within the New York State Department of Health about Ancestry.com. Ancestry.com might also be listed as Ancestry, Ancestry LLC, Ancestry.com LLC, Ancestry.com Holdings, Ancestry.com Holdings LLC, or similar terms.

I am requesting these materials for all dates between January 1, 2015 to October 17, 2017, inclusive.

In the event that there are fees, please inform me of the total charges in advance of fulfilling my request. I would prefer that this request be filled electronically, by e-mail attachment if available or USB hard drive if not. The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

If any clarification is necessary, please feel free to call me at 917-572-3834 or e-mail me at info@reclaimtherecords.org.

Thank you in advance for your anticipated cooperation in this matter. I look forward to your response within five days, as required by the law.

Sincerely,

Brooke Schreier Ganz
President and Founder, Reclaim The Records
<https://www.ReclaimTheRecords.org/>



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

October 18, 2017

Brooke Ganz
MuckRock News
DEPT MR 44580
411A Highland Ave
Somerville, MA 02144

FOIL # 17-10-253

Dear Ms. Ganz:

This will acknowledge receipt of your request for records under the Freedom of Information Law, received by this office on October 17, 2017.

Your request has been forwarded to the appropriate Department program area(s) to identify documents that are responsive to your request and which may be made available pursuant to all applicable provisions of the Freedom of Information Law.

A determination as to whether your request is granted or denied will be reached in approximately 20 business days or we will notify you in writing if the responsible program area(s) should require additional time to locate, assemble, and review documents that may be responsive to your request.

Please note that, pursuant to Article 6 of the Public Officers Law, a charge may be applied to your request, including the actual cost of the medium used to respond to your Freedom of Information Law request and/or other related costs. When responsive records have been identified, you will be informed of any cost and how payment should be made.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemarie Hewig".

Rosemarie Hewig, Esq.
Records Access Officer

RH/sjp



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

November 15, 2017

Brooke Schreier Ganz
MuckRock News
DEPT MR 44580
411A Highland Ave
Somerville, MA 02144

FOIL #: 17-10-253

Dear Ms. Ganz:

This letter is in regard to your Freedom of Information Law request of October 17, 2017, which is currently being processed.

Please be advised this Office is unable to respond to your request by the date previously given to you because the records potentially responsive to your request are currently being reviewed for applicable exemptions, legal privileges and responsiveness.

We estimate that this Office will complete its process by January 23, 2018. The Department will notify you in writing when/if the responsive materials are available for release or if the time needed to complete your request extends beyond the above date.

Should you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,



Rosemarie Hewig, Esq.
Records Access Officer

RH/sa



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 23, 2018

Brooke Schreier Ganz
MuckRock News
DEPT MR 44580
411A Highland Ave
Somerville, MA 02144

FOIL #: 17-10-253

Dear Ms. Ganz:

This letter responds to your Freedom of Information Law request of October 17, 2017, in which you requested the following:

[C]opies of all correspondence, e-mails, proposals, drafts, notes, agreements, contracts, meetings and calendar entries, phone logs, meeting minutes, budget items, receipts, vendorization forms or data, bids, evaluation materials, Freedom of Information Law (FOIL) records requests and their associated correspondence and any appeals, and any other documentation or communications between the New York State Department of Health and Ancestry.com, or such materials within the New York State Department of Health about Ancestry.com Holdings, Ancestry.com Holdings, LLC or similar terms...for all dates between January 1, 2015 to October 17, 2017, inclusive.

With respect to the portion of your request concerning "Freedom of Information Law (FOIL) records requests and their associated correspondence" pertaining to Ancestry.com, I have enclosed documents responsive to your request. Certain information contained in these documents has been redacted pursuant to New York Public Officers Law § 87(2)(b), because disclosure "would constitute an unwarranted invasion of personal privacy;" and § 87(2)(g), as "inter-agency or intra-agency materials." Please be advised we are not enclosing the records responsive to Ancestry.com's request for the New York State death index, as that record was released to you in response to your FOIL request #16-01-037 via a portable drive.

With respect to the portion of your request concerning "any appeals" pertaining to Ancestry.com, please be advised that after conducting a diligent search, no records responsive to your request have been located.

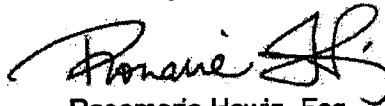
The remaining portion of your request is denied pursuant to NYS Public Officers Law § 89(3) as your FOIL request fails to reasonably describe the records you are seeking with sufficient detail to enable this Department to locate them. Given the considerable number of individuals employed by the Department of Health, a list of specific employees whose

communications you are seeking, as well as the subject matter of the types of records you seek would be required in order for this Department to perform a diligent search.

Should you feel that you have been unlawfully denied access to records, you may appeal such denial in writing within 30 days to the Records Access Appeals Officer, Division of Legal Affairs, Empire State Plaza, 2438 Corning Tower, Albany, New York 12237-0026.

If you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemarie Hewig". The signature is fluid and cursive, with a large, stylized "H" at the end.

Rosemarie Hewig, Esq.
Records Access Officer

RH/sa

doh.sm.BOB-FOIL

From: Jared Akenhead <jakenhead@ancestry.com>
Sent: Thursday, March 09, 2017 4:40 PM
To: doh.sm.BOB-FOIL
Cc: Robinson, Cynthia M (HEALTH)
Subject: FOIL Request

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unknown email addresses.

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request the following records:

I would like to receive a copy of the New York State death index, from June 1880 (or as early as such records are available) through December 31, 1956, inclusive. Please note that this request is for the basic fiche index only, and not the actual death certificates.

I request that a copy of the fiche be sent to the address below, attention to myself, at which time we will convert the fiche to digital format. Once this process has been completed we will return the original fiche back to you, along with a copy of the digital product, once its completed. We are more than happy to pay for the shipping and insurance costs for this delivery. Please advise me ahead of time of these costs.

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.

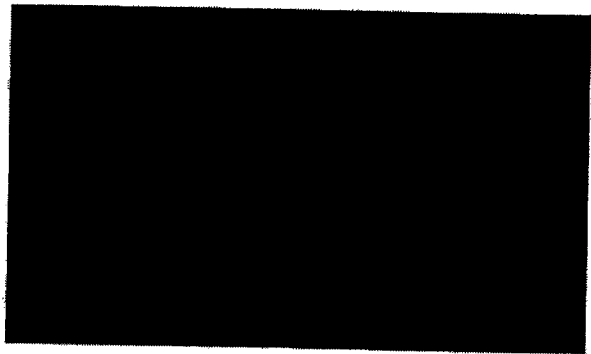
Sincerely,

Jared Akenhead Senior Manager - Content Acquisition

Ancestry.com

P 801.705.7135 C [REDACTED] E jakenhead@ancestry.com

1300 W. Traverse Pkwy Lehi, UT 84043





Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 10, 2017

Jared Akenhead
Ancestry
1300 W. Traverse Pkwy
Lehi, UT 84043

FOIL # 17-03-180

Dear Mr. Akenhead:

This will acknowledge receipt of your request for records under the Freedom of Information Law, received by this office on March 9, 2017.

Your request has been forwarded to the appropriate Department program area(s) to identify documents that are responsive to your request and which may be made available pursuant to all applicable provisions of the Freedom of Information Law.

A determination as to whether your request is granted or denied will be reached in approximately 20 business days or we will notify you in writing if the responsible program area(s) should require additional time to locate, assemble, and review documents that may be responsive to your request.

Please note that, pursuant to Article 6 of the Public Officers Law, a charge may be applied to your request, including the actual cost of the medium used to respond to your Freedom of Information Law request and/or other related costs. When responsive records have been identified, you will be informed of any cost and how payment should be made.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemarie Hewig".

Rosemarie Hewig, Esq.
Records Access Officer

RH/dxd



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

April 7, 2017

Jared Akenhead
Ancestry
1300 W. Traverse Pkwy
Lehi, UT 84043

FOIL #: 17-03-180

Dear Mr. Akenhead:

This letter is in regard to your Freedom of Information Law request of March 9, 2017, which is currently being processed.

Please be advised this Office is unable to respond to your request by the date previously given to you because a diligent search for responsive documents is still being conducted.

We estimate that this Office will complete its process by June 12, 2017. The Department will notify you in writing when/if the responsive materials are available for release or if the time needed to complete your request extends beyond the above date.

Should you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,


Rosemarie Hewig, Esq.
Records Access Officer

RH/jt

From: doh.sm.BOB-FOIL
To: "akenhead@ancestry.com"
Subject: FOIL# 17-03-180
Date: Monday, May 15, 2017 9:01:00 AM

Good Morning Mr. Akenhead,

This email correspondence serves to acknowledge your receipt of the digitized records you requested (NYS Death Index). As such we now consider your FOIL request closed. If you have any questions or concerns please do not hesitate to contact us. Thank you.

Jessica Tomkiell, Esq.

Senior Attorney

NYSDOH Division of Legal Affairs

Records Access Office

Corning Tower, Room 2364

Albany, NY 12237

(P) 518-474-8734

(F) 518-486-9144

doh.sm.BOB-FOIL

From: Jared Akenhead <jakenhead@ancestry.com>
Sent: Thursday, June 22, 2017 3:27 PM
To: doh.sm.BOB-FOIL
Cc: Robinson, Cynthia M (HEALTH)
Subject: FOIL Request

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unknown email domains.

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request the following records:

I would like to receive a copy of the New York State marriage index, from January 1881 (or as early as such records are available) through December 31, 1940, inclusive. Please note that this request is for the basic fiche index only, and not the actual marriage certificates.

I request that a copy of the fiche be sent to the address below, attention to myself, at which time we will convert the fiche to digital format. Once this process has been completed we will return the original fiche back to you, along with a copy of the digital product, once its completed. We are more than happy to pay for the shipping and insurance costs for this delivery. Please advise me ahead of time of these costs.

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,

Jared Akenhead
Senior Manager – Content Acquisition
jakenhead@ancestry.com

M: [REDACTED]
O: (801) 705-7135
1300 W. Traverse Pkwy
Lehi, UT 84043





Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

June 23, 2017

Jared Akenhead
Ancestry
1300 W. Traverse Pkwy
Lehi, UT 84043

FOIL # 17-06-346

Dear Mr. Akenhead:


This will acknowledge receipt of your request for records under the Freedom of Information Law, received by this office on June 22, 2017.

Your request has been forwarded to the appropriate Department program area(s) to identify documents that are responsive to your request and which may be made available pursuant to all applicable provisions of the Freedom of Information Law.

A determination as to whether your request is granted or denied will be reached in approximately 20 business days or we will notify you in writing if the responsible program area(s) should require additional time to locate, assemble, and review documents that may be responsive to your request.

Please note that, pursuant to Article 6 of the Public Officers Law, a charge may be applied to your request, including the actual cost of the medium used to respond to your Freedom of Information Law request and/or other related costs. When responsive records have been identified, you will be informed of any cost and how payment should be made.

Sincerely,


Rosemarie Hewig, Esq.
Records Access Officer

RH/sjp



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

July 24, 2017

Jared Akenhead
Ancestry
1300 W. Traverse Pkwy
Lehi, UT 84043

FOIL #: 17-06-346

Dear Mr. Akenhead:

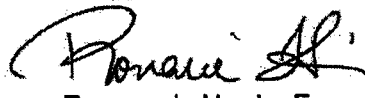
This letter is in regard to your Freedom of Information Law request of June 22, 2017, which is currently being processed.

Please be advised this Office is unable to respond to your request by the date previously given to you because a diligent search for responsive documents is still being conducted.

We estimate that this Office will complete its process by September 26, 2017. The Department will notify you in writing when/if the responsive materials are available for release or if the time needed to complete your request extends beyond the above date.

Should you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,



Rosemarie Hewig, Esq.
Records Access Officer

RH/jt



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

September 26, 2017

Jared Akenhead
Ancestry
1300 W. Traverse Pkwy
Lehi, UT 84043

FOIL #: 17-06-346

Dear Mr. Akenhead:

This letter is in regard to your Freedom of Information Law request of June 22, 2017, which is currently being processed.

Please be advised this Office is unable to respond to your request by the date previously given to you because a diligent search for responsive documents is still being conducted.

We estimate that this Office will complete its process by December 1, 2017. The Department will notify you in writing when/if the responsive materials are available for release or if the time needed to complete your request extends beyond the above date.

Should you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosemarie Hewig".

Rosemarie Hewig, Esq.
Records Access Officer

RH/jt

Exhibit D



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 26, 2018

David B. Rankin, Esq.
Beldock Levine & Hoffman LLP
99 Park Avenue PH/26th Floor
New York, NY 10016-1601

Re: FOIL Appeal # 17-10-253 (Brooke Ganz)
Your Reference: 828900.02500

Dear Mr. Rankin:

This regards your administrative appeal to the New York State Department of Health ("DOH") related to the request of your client, Brooke Ganz, for certain records pursuant to the Freedom of Information Law ("FOIL"), Public Officers Law ("POL") Article 6.

On October 17, 2017, your client requested under FOIL that DOH's Records Access Office ("RAO") provide:

Copies of all correspondence, e-mails, proposals, drafts, notes, agreements, contracts, meetings and calendar entries; phone logs, meeting minutes, budget items, receipts, vendorization forms or data, bids, evaluation materials, Freedom of Information Law (FOIL) records requests and their associated correspondence and any appeals, and any other documentation or communication between the New York State Department of Health and Ancestry.com, or such materials within the New York State Department of Health about Ancestry.com. Ancestry.com might also be listed as Ancestry, AncestryLLC, Ancestry.com LLC, Ancestry.com Holdings, Ancestry.com Holdings LLC, or similar terms.

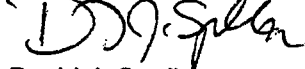
The RAO acknowledged your client's request, continued to communicate with your client, and on January 23, 2018 provided responsive records for a part of your client's request, reminded your client that she had previously been furnished a portable drive with responsive records for a part of her request, and then denied the remainder of her request. The RAO denied a portion of your client's request pursuant to POL §89(3) because the remainder of the FOIL request failed reasonably to describe the records sought with sufficient detail to enable DOH to locate them. DOH received your appeal as to the portion denied on February 20, 2018.

The RAO correctly applied the standard within POL §89(3) with respect to the remaining nineteen elements of your client's request as applied to all of the approximately 5400 DOH employees regarding six permutations of Ancestry in addition to the global catch-all request of "similar terms" for Ancestry. Hence, the remainder of your client's request was properly denied because it was not a "request for a record reasonably described." POL § 89(3)(a). For at least thirty years, FOIL has been interpreted as not requiring an agency to search for the equivalent of a needle in a haystack. For requests in which there could be, "...thousands of email

communications involving scores of topics...[r]eview of those communications to ascertain rights of access would, in the words of [Fisher v. Davidson], 'transcend a normal request[.]' Committee on Open Government, FOIL-AO-18863 (2012) (quoting Fisher v. Davidson, No. 8772, slip op. (N.Y. Sup. Ct., N.Y. Cnty. Sept. 27, 1988) ("Petitioner's actual demand transcends a normal or routine request by a taxpayer. It brings in its wake an enormous administrative burden that would interfere with the day-to-day operations of an already burdened bureaucracy."). Additionally, in the view of the Committee on Open Government, "...a request for email encompassing thousands of communications, each of which would require review to determine rights of access, might not be considered to have met the standard of reasonably describing the records." Id. Here, the email records of approximately 5400 DOH employees would need to be searched for six permutations of Ancestry as well as the catch-all of "similar terms" which, as a catch-all, is inherently a never-ending, self-perpetuating haystack of similar possible terms. And email encompasses only one of the nineteen needles sought.

For the reasons stated above, your appeal is denied in its entirety. Judicial review of this decision may be obtained pursuant to CPLR Article 78.

Sincerely,



David J. Spellman
DOH Records Access Appeals Officer

cc: Robert J. Freeman, Executive Director, NYS Committee on Open Government

Exhibit E

Nirav R. Shah, M.D., M.P.H.
Commissioner

NEW YORK
state department of
HEALTH

Sue Kelly
Executive Deputy Commissioner

AFFIDAVIT OF MAILING

State of New York)
County of Albany)
City of Albany)

I, Craig Rippon being duly sworn, depose and say that I mailed

Record access appeal decision # 17-10-253 appeal to Brooke Ganz DAVID B. RANKIN, Esq.

by placing it in a secure postage paid envelope addressed as follows:

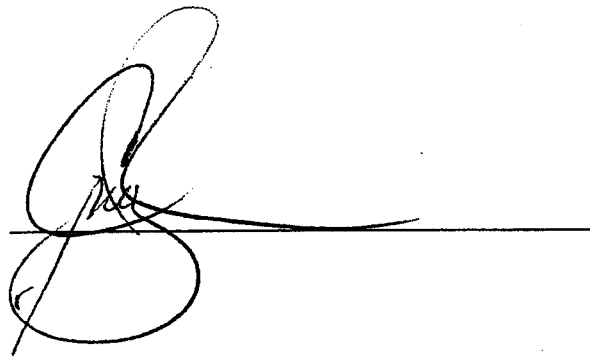
99 Park Avenue PH/26th Floor New York, NY 10016-1601

that this material was mailed to the above-named person by **REGULAR MAIL** and was

deposited in a post office box or official depository under the exclusive care and custody of the

United States Postal Service at the Empire State Plaza Office, Albany, New York 12220-9998,

on the 26th day of February, 2018; and that at the time of mailing I was at least eighteen years old.



Sworn before me this

26th day of February, 2018

notarization

DAVID J. SPELLMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02SP6275180
Qualified in Albany County
My Commission Expires January 22, 2021

HEALTH.NY.GOV
facebook.com/NYSDOH
twitter.com/HealthNYGov

Exhibit F

From: Rippon, Craig A (HEALTH)
Sent: Monday, February 26, 2018 12:31 PM
To: Freeman, Robert J (DOS)
Subject: Appeal Decision 17-10-253
Attachments: 17-10-253 Rankin, David.pdf



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 26, 2018

David B. Rankin, Esq.
Beldock Levine & Hoffman LLP
99 Park Avenue PH/26th Floor
New York, NY 10016-1601

Re: FOIL Appeal # 17-10-253 (Brooke Ganz)
Your Reference: 828900.02500

Dear Mr. Rankin:

This regards your administrative appeal to the New York State Department of Health ("DOH") related to the request of your client, Brooke Ganz, for certain records pursuant to the Freedom of Information Law ("FOIL"), Public Officers Law ("POL") Article 6.

On October 17, 2017, your client requested under FOIL that DOH's Records Access Office ("RAO") provide:

Copies of all correspondence, e-mails, proposals, drafts, notes, agreements, contracts, meetings and calendar entries, phone logs, meeting minutes, budget items, receipts, vendorization forms or data, bids, evaluation materials, Freedom of Information Law (FOIL) records requests and their associated correspondence and any appeals, and any other documentation or communication between the New York State Department of Health and Ancestry.com, or such materials within the New York State Department of Health about Ancestry.com. Ancestry.com might also be listed as Ancestry, AncestryLLC, Ancestry.com LLC, Ancestry.com Holdings, Ancestry.com Holdings LLC, or similar terms.

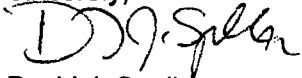
The RAO acknowledged your client's request, continued to communicate with your client, and on January 23, 2018 provided responsive records for a part of your client's request, reminded your client that she had previously been furnished a portable drive with responsive records for a part of her request, and then denied the remainder of her request. The RAO denied a portion of your client's request pursuant to POL §89(3) because the remainder of the FOIL request failed reasonably to describe the records sought with sufficient detail to enable DOH to locate them. DOH received your appeal as to the portion denied on February 20, 2018.

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Sincerely,



David J. Spellman
DOH Records Access Appeals Officer

cc: Robert J. Freeman, Executive Director, NYS Committee on Open Government