

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

Petitioners,

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

VERIFIED ANSWER  
Index No. 04058-18

-against-

NEW YORK STATE DEPARTMENT OF HEALTH,

Respondent.

Respondent, New York State Department of Health (hereinafter "DOH"), by its attorney, Barbara D. Underwood, Attorney General of the State of New York, John F. Moore, of counsel, answers upon information and belief the Verified Petition as follows:

1. Denies each and every allegation contained in the Verified Petition that alleges or tends to allege that the challenged action was in any way contrary to constitutional, statutory, regulatory or case law, and refer all questions of law to the Court.

2. With respect to the allegations in Paragraph "1" of the Verified Petition, admits insofar as a FOIL request was filed, refers the Court to that FOIL request for its true and accurate contents therein, denies the allegations to the extent that they are inconsistent with the content of that FOIL request, or that Petitioners' access to records was delayed as alleged in that paragraph, denies knowledge or information sufficient to form a belief as to the remainder of the allegations therein, including Petitioners' motivation for filing of FOIL request(s), and refers all questions of law to the Court.

3. Denies knowledge or information sufficient to form a belief as to the allegations in the paragraphs numbered "2", "3", "9" "10", "13" and the second paragraph numbered "84" of the

abuse of discretion on the part of the Respondent, or that Petitioners are entitled to the relief sought, and refers all questions of law to the Court.

8. Admits the allegations contained in paragraph “12” of the Verified Petition insofar as a FOIL request was submitted with that date, refers the Court to that document (Petitioner’s Exhibit “A”) for its true and accurate contents, denies to the extent that paragraph “12” is inconsistent with that document, lacks knowledge or information as to the motive behind the FOIL request, and refers all questions of law to the Court.

9. Denies the allegations and/or statements contained in the paragraphs numbered “14”, “37”, “45”, “47”, “65”, “70”, “78”, “80”, “81”, the first paragraph numbered “84”, the first paragraph numbered “85”, the first paragraph numbered “86”, the first paragraph numbered “89”, paragraphs “90”, “91”, “95”, “97”, the second paragraph numbered “85”, the second paragraph numbered “87”, and the second paragraph numbered “88” of the Verified Petition, and refers all questions of law to the Court.

10. Admits the allegations contained in paragraph “15” of the Verified Petition insofar as a FOIL request was submitted with that date, refers the Court to that document (Petitioner’s Exhibit “B”) for its true and accurate contents, denies to the extent that paragraph “15” is inconsistent with that document, and refers all questions of law to the Court.

11. Admits the allegations contained in paragraph “16” of the Verified Petition insofar as a letter was issued dated March 18, 2016, refers the Court to that document (Petitioner’s Exhibit “C”) for its true and accurate contents, denies to the extent that paragraph “16” is inconsistent with that document, and refers all questions of law to the Court.

12. Admits the allegations contained in paragraph “17” of the Verified Petition insofar as a letter was issued dated March 29, 2016, refers the Court to that document (Petitioner’s Exhibit

“D”) for its true and accurate contents, denies to the extent that paragraph “17” is inconsistent with that document, and refers all questions of law to the Court.

13. Admits the allegations contained in paragraph “18” of the Verified Petition insofar as a letter was submitted dated April 4, 2016, refers the Court to that document (Petitioner’s Exhibit “E”) for its true and accurate contents, denies to the extent that paragraph “18” is inconsistent with that document, and refers all questions of law to the Court.

14. Admits the allegations contained in paragraph “19” of the Verified Petition insofar as a letter was issued dated May 27, 2016, refers the Court to that document (Petitioner’s Exhibit “F”) for its true and accurate contents, denies to the extent that paragraph “19” is inconsistent with that document, and refers all questions of law to the Court.

15. Admits the allegations contained in paragraph “20” of the Verified Petition insofar as an appeal was filed dated June 3, 2016, refers the Court to that document (Petitioner’s Exhibit “G”) for its true and accurate contents, denies to the extent that paragraph “20” is inconsistent with that document, and refers all questions of law to the Court.

16. Admits the allegations contained in paragraph “21” of the Verified Petition insofar as an appeal determination was issued dated June 20, 2016, refers the Court to that document (Petitioner’s Exhibit “G”) for its true and accurate contents, denies to the extent that paragraph “21” is inconsistent with that document, and refers all questions of law to the Court.

17. Admits the allegations contained in paragraph “22” of the Verified Petition insofar as a FOIL request was submitted dated October 14, 2016, refers the Court to that document (Petitioner’s Exhibit “I”) for its true and accurate contents, denies to the extent that paragraph “22” is inconsistent with that document, and refers all questions of law to the Court.

18. Admits the allegations contained in paragraph “23” of the Verified Petition insofar as an e-mail/letter was issued dated November 15, 2016, refers the Court to that document (Petitioner’s Exhibit “J”) for its true and accurate contents, denies to the extent that paragraph “23” is inconsistent with that document, and refers all questions of law to the Court.

19. Admits the allegations contained in paragraph “24” of the Verified Petition insofar as a letter was issued dated December 20, 2016, refers the Court to that document (Petitioner’s Exhibit “K”) for its true and accurate contents, denies to the extent that paragraph “24” is inconsistent with that document, and refers all questions of law to the Court.

20. Admits the allegations contained in paragraph “25” of the Verified Petition insofar as an emailed letter was submitted dated December 28, 2016, refers the Court to that document (Petitioner’s Exhibit “L”) for its true and accurate contents, denies to the extent that paragraph “25” is inconsistent with that document, and refers all questions of law to the Court.

21. Admits the allegations contained in paragraph “26” of the Verified Petition insofar as a FOIL response was issued to Brooke Ganz dated May 15, 2017, refers the Court to that document (which is not attached as Petitioner’s Exhibit “M”) for its true and accurate contents, denies to the extent that paragraph “26” is inconsistent with that document, and refers all questions of law to the Court.

22. Admits the allegations contained in paragraph “27” of the Verified Petition insofar as a FOIL request was received dated March 9, 2017, refers the Court to that document (Petitioner’s Exhibit “N”) for its true and accurate contents, denies to the extent that paragraph “27” is inconsistent with that document, and refers all questions of law to the Court.

23. Admits the allegations contained in paragraph “28” of the Verified Petition insofar as a response was issued dated May 15, 2017, refers the Court to that document (Petitioner’s

Exhibit "O") for its true and accurate contents, denies to the extent that paragraph "28" is inconsistent with that document, and refers all questions of law to the Court.

24. Admits the allegations contained in paragraphs "29" and "30" of the Verified Petition insofar as a FOIL request was submitted with that date, refers the Court to that document (Petitioner's Exhibit "A") for its true and accurate contents, denies to the extent that paragraphs "29" and "30" are inconsistent with that document, lacks knowledge or information as to the motivation for that filing, and refers all questions of law to the Court.

25. Admits the allegations contained in paragraph "31" of the Verified Petition insofar as a letter was issued dated October 18, 2017, refers the Court to that document for its true and accurate contents, denies to the extent that paragraph "31" is inconsistent with that document, and refers all questions of law to the Court.

26. Admits the allegations contained in paragraph "32" of the Verified Petition insofar as a letter was issued dated November 15, 2017, refers the Court to that document (Petitioner's Exhibit "Q") for its true and accurate contents, denies to the extent that paragraph "32" is inconsistent with that document, and refers all questions of law to the Court.

27. Admits the allegations contained in paragraphs "33" and "34" of the Verified Petition insofar as a response was issued dated January 23, 2018, refers the Court to those documents (Petitioner's Exhibit "R") for the true and accurate contents, denies to the extent that those paragraphs are inconsistent with those documents, and refers all questions of law to the Court.

28. Deny the allegations contained in paragraph "35" as stated, affirmatively state that DOH additionally advised that Petitioner Ganz already had some documents which were released to her on a portable drive in response to her own FOIL request and were responsive to

Ancestry.com's FOIL request, and that DOH advised that after a diligent search, no FOIL appeals were located, admit that the remaining portion of the request was denied pursuant to POL §89(3) because the "FOIL request fail[ed] to reasonably describe the records you are seeking with sufficient detail to enable this Department to locate them", refers the Court to those documents (Petitioner's Exhibit "R") for the true and accurate content of the response, denies to the extent that those paragraphs are inconsistent with those documents, and refers all questions of law to the Court.

29. Admits the allegations contained in paragraph "36" of the Verified Petition insofar as a response was issued dated January 23, 2018, refers the Court to those documents (Petitioner's Exhibit "R") for the true and accurate contents, denies to the extent that those paragraphs are inconsistent with those documents or that Public Officers Law 89(3) requires a detailed description of the search, refer the Court to that statute for its true and accurate contents, and refers all questions of law to the Court.

30. Admits the allegations contained in paragraphs "38", "39", "40", "41" and "42" of the Verified Petition insofar as an appeal was filed dated February 20, 2018, refers the Court to that document (Petitioner's Exhibit "T") for its true and accurate contents, denies to the extent that paragraphs "38", "39", "40", "41" and/or "42" are inconsistent with that document, and refers all questions of law to the Court.

31. Paragraph "43" of the Verified Petition represents Petitioners' characterizations of the content and requirement of POL 89(a)(4) and as such, requires no response. To the extent that a response may be required, Respondent denies the allegations to the extent that they imply any failure to perform a duty enjoined by law, error, arbitrary or capricious reasoning, wrongdoing or abuse of discretion on the part of the Respondent, or that Petitioners are entitled to the relief sought.

Respondent refers the Court to the attached agency record and POL 89(4)(b) for its true and accurate contents therein, and refers all questions of law to the Court.

32. With respect to paragraph “44” of the Verified Petition, lacks knowledge or information sufficient to form a belief as to Petitioner’s receipt of the response, affirmatively states that an appeal determination was mailed on or about February 26, 2018, as set forth in the accompanying affidavit of David J. Spellman, and Exs. “D” – “E” thereto, and refer all questions of law to the Court.

33. With respect to paragraphs “48”, “58” and “74” of the Verified Petition, lacks knowledge or information as to Petitioners’ beliefs, denies the allegations to the extent that they imply any failure to perform a duty enjoined by law, error, arbitrary or capricious reasoning, wrongdoing or abuse of discretion on the part of the Respondent, or that Petitioners are entitled to the relief sought, and refers all questions of law to the Court.

34. With respect to the paragraph numbered “49” of the Verified Petition, admits that Rosemarie Hewig and Danielle Rysedorph were involved in handling Ms. Ganz’s FOIL requests, admit that Rosemarie Hewig was involved in handling the Ancestry.com FOIL requests, denies the remainder of the allegations therein, and refers all questions of law to the Court.

35. With respect to the allegations in paragraphs “50”, “71”, “75”, “76”, the first paragraph numbered “87” and the first paragraph numbered “88” of the Verified Petition, refer to Petitioner’s Exhibit “A” for the content of the Petitioner’s FOIL request, denies the allegations in that paragraph to the extent it is inconsistent therewith, and refers all questions of law to the Court.

36. With respect to the allegations in paragraph “51” of the Verified Petition, refer to Petitioner’s Exhibit “D” for the content of the Respondent’s response to Ganz, denies the

allegations in that paragraph to the extent it is inconsistent therewith, and refers all questions of law to the Court.

37. With respect to the allegations in paragraphs “52” and “53” of the Verified Petition, refer to Petitioner’s Exhibit “N” for the content of the March 9, 2017 FOIL request, denies the allegations in those paragraphs to the extent that they are inconsistent therewith, and refers all questions of law to the Court.

38. With respect to the allegations in paragraph “54” of the Verified Petition, refer to Petitioner’s Exhibit “O” for the content of the Respondent’s response to Ancestry.com, denies the allegations in that paragraph to the extent it is inconsistent therewith, and refers all questions of law to the Court.

39. With respect to the allegations in paragraphs “55”, “56” and “57” of the Verified Petition, refer to Petitioner’s Exhibit “R” for the content of the Respondent’s responses to Ancestry.com, denies the allegations in that paragraph to the extent they are inconsistent therewith, and refers all questions of law to the Court.

40. With respect to the allegations in paragraphs “59”, “60”, “61”, “63” and the first paragraph numbered “82” of the Verified Petition, refer to Petitioner’s Exhibit “D” for the content of the Respondent’s March 29, 2016 letter to Ganz, denies the allegations in that paragraph to the extent they are inconsistent therewith, and refers all questions of law to the Court.

41. With respect to the allegations in paragraphs “62”, “64” and “69” of the Verified Petition, refer to Petitioner’s Exhibit “R” for the content of the Respondent’s responses to Ancestry.com, denies the allegations in that paragraph to the extent they are inconsistent therewith, and refers all questions of law to the Court.



42. With respect to paragraph “66” of the Verified Petition, lacks knowledge or information as to Petitioners’ beliefs, denies the allegations to the extent that they imply any failure to perform a duty enjoined by law, error, arbitrary or capricious reasoning, wrongdoing or abuse of discretion on the part of the Respondent, or that Petitioners are entitled to the relief sought, denies that any “Health Index date” was requested by Ancestry.com or billed for, and refers all questions of law to the Court.

43. With respect to the allegations in paragraphs “67”, “68” and “72” of the Verified Petition, refer to Petitioner’s Exhibit “F” for the content of the Respondent’s May 27, 2016 letter to Ganz, denies the allegations in that paragraph to the extent they are inconsistent therewith, and refers all questions of law to the Court.

44. With respect to the allegations in paragraphs “73”, the first paragraph numbered “83” of the Verified Petition, “92”, “93” and “94”, refers to Petitioner’s Exhibit “R” for the content of the Respondent’s January 23, 2018 FOIL response, denies the allegations in those paragraphs to the extent they are inconsistent therewith, and refers all questions of law to the Court.

45. With respect to the allegations in the first sentence of paragraph “77” of the Verified Petition, refer to Petitioner’s Exhibit “A” for the content of the Petitioner’s FOIL request, denies the allegations in that paragraph to the extent it is inconsistent therewith, refer the Court to POL 87(5)(b) for its requirements therein, and refers all questions of law to the Court. With respect to the allegations in the second sentence of paragraph “77” of the Verified Petition, denies the allegations and/or statements contained in that sentence, and refers all questions of law to the Court.

46. Admits the allegations contained in paragraph “79” of the Verified Petition, refers to Petitioner’s Exhibit “R” for the content of the Respondent’s January 23, 2018 FOIL response,

denies the allegations in that paragraph to the extent they are inconsistent therewith, and refers all questions of law to the Court.

47. With respect to the allegations in the paragraph numbered “96” of the Verified Petition, admit that the Records Access Officer for DOH was in the position to know which employees had handled the Ancestry.com FOIL requests, denies that the Records Access Officer for DOH would know who, if anyone, would have responded to vendor bids, denies the remainder of the allegations therein, and refers all questions of law to the Court

48. Admits the allegations and/or statements contained in the second paragraph numbered “82” of the Verified Petition insofar as POL 87(3)(b) contains that language, refers the Court to that statute for its full and accurate language therein, and refers all questions of law to the Court.

49. Admits the allegations contained in the second paragraph numbered “83” of the Verified Petition, refers to Petitioner’s Exhibit “R” for the content of the Respondent’s January 23, 2018 FOIL response, denies the allegations to the extent that they imply that DOH’s response evidenced any failure to perform a duty enjoined by law, error, arbitrary or capricious reasoning, wrongdoing or abuse of discretion on the part of the Respondent, and refers all questions of law to the Court.

50. Lacks knowledge or information sufficient to form a belief as to whether Ms. Ganz would have been better able to do anything based upon the hypothetical circumstances presented in the second paragraph numbered “86” of the Verified Petition, affirmatively states that a subject matter list is publicly available, and refers all questions of law to the Court.

51. Lacks knowledge or information sufficient to form a belief as to what purpose or motivations Ms. Ganz has for seeking records and documents as set forth in the second paragraph numbered “89” of the Verified Petition, and refers all questions of law to the Court.

52. Repeats the above responses with respect to the allegations of paragraphs numbered “46” of the Verified Petition as if fully set forth herein.

53. Denies that Petitioners are entitled to legal fees and costs, and all allegations set forth in the paragraphs titled “LEGAL FEES AND COSTS” on p. 25 of the Verified Petition, and refer all questions of law to the Court.

54. The paragraph labeled “WHEREFORE” of the Verified Petition is a prayer for relief and, thus, requires no response from Respondent. However, Respondent denies Petitioners’ representation of the underlying facts, characterizations and conclusions, and the right to any relief except as set forth in the accompanying papers.

55. Denies each and every allegation of the Verified Petition not specifically responded to above.

#### **OBJECTIONS IN POINT OF LAW**

56. Petitioners fail to state a claim that Respondent failed to perform a duty enjoined by law.

57. All actions taken by Respondent have been consistent with its lawful duties.

58. Some or all of Petitioners’ claims should be dismissed as moot.

59. The Petition fails to state a cause of action against Respondent. C.P.L.R. 3211(a)(7).

60. The Petition should be dismissed for all reasons set forth in Respondents’ Memorandum of Law submitted in opposition to the Verified Petition.

## **AFFIDAVITS SUBMITTED**

61. Included with these papers are the Affidavits of DOH's David J. Spellman, Esq. (with Exhibits "A" – "F" annexed), and Rosemarie Hewig, Esq. (with Exhibits "A" – "D" annexed), which address issues raised in the Verified Petition.

## **RECORD BEFORE THE AGENCY BELOW**


62. Upon information and belief, the attached documents, annexed hereto as Exhibit "1" and bates-stamped as set forth below, constitute the record before the administrative agency in this matter. These documents are annexed to the accompanying affidavits of David J. Spellman, Esq. and Rosemarie Hewig, Esq. as indicated below:

- A. Request (Bates-Stamped ("BS") pp. 000001 – 000002; also Exhibit "A" to Hewig Affidavit, Exhibit "A" to Spellman Affidavit);
- B. Acknowledgement Letter (BS pp. 000003; also Exhibit "B" to Hewig Affidavit);
- C. Extension Letter (BS pp. 000004; also Exhibit "C" to Hewig Affidavit);
- D. Response letter with attachments (BS pp. 000005 – 000014; also Exhibit "D" to Hewig Affidavit, Exhibit "B" to Spellman Affidavit);
- E. Appeal with attachments (BS pp. 000015 – 000030; also Exhibit "C" to Spellman Affidavit);
- F. Appeal determination (BS pp. 000031 - 000033; also Exhibits "D" – "E" to Spellman Affidavit); and
- G. E-mail to Bob Freeman (BS pp. 000034 - 000036; also Exhibit "F" to Spellman Affidavit)

WHEREFORE, Respondent respectfully requests that the relief requested in the Verified Petition be denied, that the Verified Petition and this proceeding be dismissed, and that Respondent be awarded costs and disbursements or, in the event the Court grants the Verified Petition, that the Court remand the matter for a review of the technical matters complained of by Petitioners so they may be remedied, together with such other relief as may be right and just.

Dated: Albany, New York  
September 21, 2018

BARBARA D. UNDERWOOD  
Attorney General of the State of New York  
Attorney for Respondent  
The Capitol  
Albany, New York 12224-0341

By:   
John F. Moore  
Assistant Attorney General, of Counsel  
Telephone: (518) 776-2293

TO: Lewis B. Oliver, Jr., Esq.  
Oliver Law Office  
156 Madison Avenue  
Albany, NY 12202



# Exhibit 1

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**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](mailto: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/>



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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=foil%40health.state.ny.us#agency-reply](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=foil%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.

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## 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.

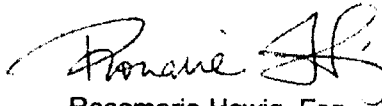
The remaining portion of your request is denied pursuant to NYS Public Officers Law § 89(3) as your FOIL request fails to reasonably describe the records you are seeking with sufficient detail to enable this Department to locate them. Given the considerable number of individuals employed by the Department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

Rosemarie Hewig, Esq.  
Records Access Officer

RH/sa

**doh.sm.BOB-FOIL**

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**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 unexpected emails.*

**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,

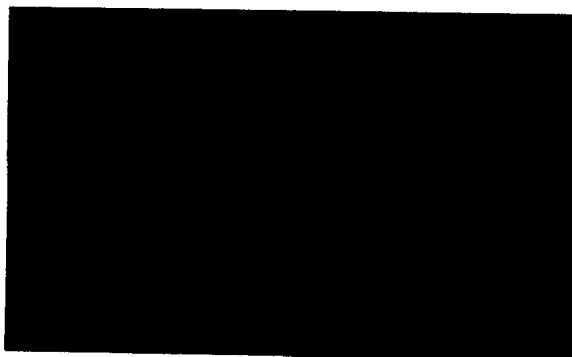
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**Jared Akenhead** Senior Manager - Content Acquisition

ancestry.com

# 801.705.7135 C [REDACTED] E [jakenhead@ancestry.com](mailto: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 cursive script, 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:** "jakenhead@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 untrusted origins.*

**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](mailto: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,

A handwritten signature in black ink, appearing to read "RHewig" followed by a vertical line and the number "51".

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:

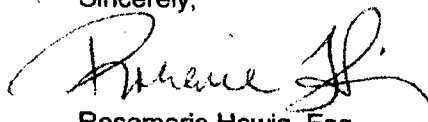
This letter is in regard to your Freedom of Information Law request of June 22, 2017, which is currently being processed.

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,



Rosemarie Hewig, Esq.  
Records Access Officer

RH/jt

**BELDOCK LEVINE & HOFFMAN LLP**  
**99 PARK AVENUE, PH/26<sup>TH</sup> 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  
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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,"

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, consisting of a large, stylized 'D' followed by a horizontal line extending to the right.

David B. Rankin

DBR/dkp  
Enclosures

000017



**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](mailto: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

November 15, 2017

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

FOIL #: 17-10-253

Dear Ms. Ganz:

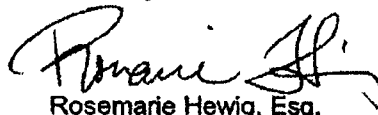
This letter is in regard to your Freedom of Information Law request of October 17, 2017, which is currently being processed.

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.

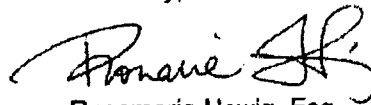
The remaining portion of your request is denied pursuant to NYS Public Officers Law § 89(3) as your FOIL request fails to reasonably describe the records you are seeking with sufficient detail to enable this Department to locate them. Given the considerable number of individuals employed by the Department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

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](mailto: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

**From:** doh.sm.BOB-FOIL  
**To:** "jakenhead@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

*All attachments in this email come from an external source. Do not open attachments or click on links unless you are expecting them from a trusted sender.*

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](mailto: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,

A handwritten signature in black ink, appearing to read "RHewig" followed by a stylized "15".

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,

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

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:

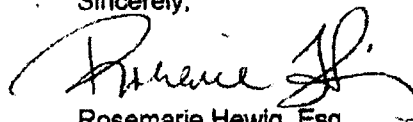
This letter is in regard to your Freedom of Information Law request of June 22, 2017, which is currently being processed.

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,



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

February 26, 2018

David B. Rankin, Esq.  
Beldock Levine & Hoffman LLP  
99 Park Avenue PH/26<sup>th</sup> 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.

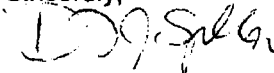
The RAO acknowledged your client's request, continued to communicate with your client, and on January 23, 2018 provided responsive records for a part of your client's request, reminded your client that she had previously been furnished a portable drive with responsive records for a part of her request, 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

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**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

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.

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Sincerely,



David J. Spellman  
DOH Records Access Appeals Officer

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

### VERIFICATION

Diana M. Vance, an attorney admitted to practice in the State of New York, affirms the following under penalty of perjury pursuant to CPLR 2106:

I am an Attorney with Respondent, New York State Department of Health, and, as such, I am acquainted with the pleadings, papers, and proceedings to date. I have also personally examined all of the exhibits annexed to this Verified Answer and the records of Respondent referred to by same.

I have read the foregoing Verified Answer. The same is true to my knowledge, except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.

I make this verification pursuant to CPLR Section 3020(d)(2), because Respondent is an agency of the State of New York, and I am acquainted with the facts of this proceeding.

Dated: Albany, New York  
September 21, 2018

  
\_\_\_\_\_  
Diana M. Vance