

Exhibit 13

FOUR TIMES SQUARE
24TH FLOOR
NEW YORK 10036-6522

—
(212) 735-3000

DIRECT DIAL
212.735.3552
DIRECT FAX
917.777.3552
EMAIL ADDRESS
MICHAEL.MORITZ@PROBONOLAW.COM

February 7, 2019

Via Email

Records Access Officer
NYC Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, 14th Floor, CN31
Long Island City, NY 11101
recordsaccess@health.nyc.gov

RE: FOIL Request: NYC Death Certificates, 1949-1968

Dear Records Access Officer:

I represent Reclaim the Records (“RTR”), a not-for-profit organization that promotes and advocates for greater transparency and public access to genealogical, archival and vital records across the United States. Pursuant to New York’s Freedom of Information Law (“FOIL”), RTR respectfully requests one complete set of the digital scans, in uncertified form, previously made by your agency of all New York City death certificates issued between and including 1949 and 1968.

Scope of FOIL Request

New York City death certificates issued between 1949 and 1968 are “records” that are held by the New York City Department of Health and Mental Hygiene (“DOHMH”), and pursuant to FOIL, DOHMH (an agency) “shall . . . make available for public inspection and copying all records,” unless there is a specific exemption preventing disclosure. FOIL § 87(2). Agency records are subject to FOIL “in any physical form whatsoever,” including in digital and electronic form. *See Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462–65 (2007); FOIL § 86(4).

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RTR specifically requests one set of the digital scans, in uncertified form, that DOHMH previously made of these certificates (the “Scans”),¹ to be copied onto one or more hard drive(s) and shipped to the above address. This FOIL request for the uncertified Scans is for genealogical and research purposes—so that the public may gain access to this trove of incredibly valuable historical information—and is not for any profit-making purpose. To ensure that the Scans will not be used for improper purposes, RTR will undertake to stamp or watermark the digital images “UNCERTIFIED COPY – FOR GENEALOGICAL PURPOSES ONLY” (or something substantially similar) before they are made available to the public.

Please let us know the expected “actual cost” of reproduction, as defined by FOIL § 87(1)(c), before the copies are prepared.

This Request is Not Exempted by FOIL

FOIL “is based on a presumption of access to [agency] records, and an agency . . . carries the burden of demonstrating that [an] exemption applies to the FOIL request.” *Data Tree*, 9 N.Y.3d at 462. Thus, “to deny disclosure, the Clerk must show that the requested information ‘falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.’” *Id.* at 462–63 (emphasis added) (citations omitted).

First, no state or federal statute prohibits the disclosure of uncertified copies of death certificates that are over 50 years old. In fact, to the contrary, New York law explicitly permits disclosure of an “uncertified copy” of a death certificate for “genealogical or research purposes.” Pub. Health Law § 4174(3). Meanwhile, New York City’s newly imposed regulations addressing the public availability of death certificates, NYC Health Code §§ 207.11 and 207.21, do not alter DOHMH’s disclosure obligations because *only state or federal statutes may create specific exemptions under FOIL; city regulations cannot.* See FOIL § 87(2)(a); *Brownstone Publishers, Inc. v. N.Y.C. Dep’t of Fin.*, 150 A.D.2d 185, 186–87 (1st Dep’t 1989) (a “provision [of the NYC Administrative Code] did not constitute an

¹ See N.Y.C. Dep’t of Health & Mental Hygiene, Bd. of Health Mtg., Sept. 12, 2017 (statement of Steven Schwartz, N.Y.C. Registrar of Vital Statistics), at 73:21-74:6 (“[I]n 2006 we imaged all of our birth and death records, about 13 million records. . . . [W]e only did the front side. . . . [I]f we simply transferred, which might be really logistically easy by just transferring the electronic records, it would only be the face of it.”); Catherine Leahy Scott (N.Y.S. Inspector General), N.Y.S. Office of the Inspector General, *Investigation of the New York State Department of Health Bureau of Vital Records* 7 (June 2016) (“The New York City Department of Health, using funds obtained from a federal grant, embarked on a project in 2006 to scan and index its birth and death records using a contracted vendor working at a secure on-site facility. In less than nine months, the vendor digitized more than 13 million records.”).

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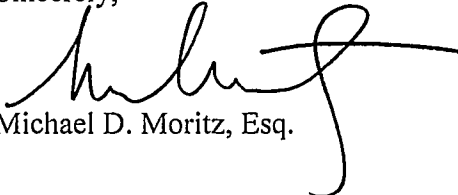
exemption from FOIL disclosure because it was not a state or federal statute”); *N.Y. Times Co. v. N.Y.S. Dep’t of Health*, 173 Misc.2d 310, 319 (Sup. Ct. Albany Cty. 1997) (“[E]xemptions from FOIL may only be created by State or Federal statute, not by administrative regulation. To the extent . . . regulations purport to create a personal privacy exemption which does not exist under the Public Officers Law, the Court concludes they are not enforceable.” (citations omitted)).

Second, there are no legitimate privacy concerns that prevent disclosure of the Scans. Deceased individuals do not have a right to privacy under New York law. *See, e.g., Jones v. Town of Kent*, 46 Misc.3d 1227(A), at *3 (Sup. Ct. Putnam Cty. 2015) (“The Court has been unable to locate any authority holding that a right of privacy extends to those person[s] no longer living. In fact, the holdings are to the contrary.”). Additionally, the Scans—copies of records that are *more than 50 years old*—are inherently not private, and other New York agencies plainly acknowledge this fact. Throughout the rest of the State, uncertified copies of death certificates “may be provided [to anyone] for genealogical research purposes” as long as the “record of death . . . has been on file for at least 50 years.” 10 NYCRR § 35.5(c)(3). And New York City’s Office of the City Clerk further recognizes that marriage licenses (which contain largely the same factual information as death certificates) are public after 50 years, stating on its website that “[a] Marriage Record older than 50 years from today’s date is considered a historic record and is available to the general public.”²

Fulfilling this FOIL request would be in line with the more than twenty states that have already permitted genealogy service providers, including Ancestry.com and FamilySearch.org, to make available online death certificates into at least the 1960s, including those from Texas, Virginia, Pennsylvania, North Carolina and California.

We look forward to working with DOHMH in fulfilling this request.

Sincerely,



Michael D. Moritz, Esq.

cc: Brooke Schreier Ganz (info@reclaimtherecords.org)

² See Office of the City Clerk, *Marriage Records*, <https://www.cityclerk.nyc.gov/html/marriage/records.shtml> (last visited Feb. 7, 2019).