

To: Patrick Tyksinski, Town Supervisor  
Herb Cully, Town Attorney  
Richard Woodland, Town Councilman  
Paul Miscione, Town Councilman  
David Reynolds, Town Councilman  
James Messa, Town Councilman  
Gail Wolanin Young, Town Clerk

Date: May 17, 2017

Re: FOIL appeal –Denial dated May 17, 2017. From the town clerk:

“The Town Supervisor believes the draft financial statement is considered property of the accounting firm, much the same as their work papers are considered their property, and therefore denies access to said document(s). Under the Freedom of Information Law, you may file an appeal within thirty (30) days in writing directed to the Town Board, the appeals agency for the Town. Within ten (10) business days of receipt of such appeal, the Town Board must fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. “

The financial statements described by Supervisor Tyksinski as being a draft are still considered to be records of the town if they exist in some physical form.

My videotape of the March 8, 2017 town board meeting will show the Director of Finance, Dan Dreimiller, stating that the auditor’s field work was completed by the end of February 2017 and the 2016 audit was expected to be available for distribution by March 31, 2017.

My videotape of the May 10, 2017 town board meeting will show Supervisor Tyksinski admitting to Councilman Woodland that the town is in possession of what he described as the “draft” audit and it would be distributed to the town board upon request.

Again, even though the supervisor has labelled it as a “draft”, it is a record of the town and as such clearly falls within the scope of the Freedom of Information Law.

According to Robert Freeman, Executive Director of the Committee on Open Government, Opinion AO-f19246, attached:

“In short, even though the materials that you requested might exist in draft form, that they exist in some physical form brings them within the coverage of FOIL.

Second, as a general matter, FOIL is based upon a presumption of access. Stated differently, all records of an agency are available, except to the extent that records or portions thereof fall within one or more grounds for denial appearing in §87(2)(a) through (l) of the Law.

Specifically, §87(2)(g) permits an agency to withhold records that:

"are inter-agency or intra-agency materials which are not:

- i. statistical or factual tabulations or data;
- ii. instructions to staff that affect the public;
- iii. final agency policy or determinations; or
- iv. external audits, including but not limited to audits performed by the comptroller and the federal government..."

The person or body designated to determine appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals.

Respectfully submitted,

Cathy Lawrence