

May 4, 2011

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TOWN OF NEW HARTFORD  
TOWN CLERK

12:45 PM  
SLB

Patrick Tyksinski  
Town Supervisor  
Town of New Hartford  
Butler Hall  
New Hartford, N.Y. 13413

Re: Freedom of Information Law Appeal

Dear Mr. Tyksinski:

I hereby appeal the denial of access regarding my request, which was made on April 28, 2011 via email to Gail Wolanin Young, Town Clerk & Records Officer, Town of New Hartford, N.Y., Genesee Street, New Hartford, N.Y. 13413.

The records that were denied include: a cd containing the assessment data used for the Tentative Roll for 2011 and created with the FOIL utility function of the RPS program used by the assessor.

First of all, since the FOIL request was made by me, via my personal email account, I am perplexed as to why the conversation denying the request took place between Town Attorney Herb Cully and Edmund J. Wiatr, Jr. However, Mr. Wiatr informed me that Town Attorney Herb Cully allegedly spoke to Robert Freeman and was told that the town did not need to provide me with a copy of the database because it was available on the town website.

To confirm Attorney Cully's assertion, Mr. Freeman was called shortly thereafter and he categorically denied saying that the town did not have to provide the data disk. We are entitled to the FOILED disk upon payment of the actual cost of the disk which has always been \$1.80.

It is well established by law and contained on the website of the Committee on Open Government that:

**Real Property Records** [ <http://www.dos.state.ny.us/coog/foilnews2.html> ]

A new subparagraph (iv) added to section 89(2)(c) specifies that disclosure of records involving real property, such as assessment records critical to enable individuals to ascertain the fairness of their real property tax assessment, would not constitute an unwarranted invasion of personal privacy if disclosed. Those records have historically been accessible to the public pursuant to the Real Property Tax Law, as well as FOIL. A recent judicial decision appeared to limit disclosure and created confusion and difficulties in gaining access [COMPS, Inc. v. Town of Islip, 822 NYS2d 768 (2006)]. The amendment ends the confusion and guarantees public rights of access.

The Office of Real Properties created the database utility program in response to this new addition to the FOI law.

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Paul has already informed us that the data disk has been created; however, he has been instructed by Town Attorney Cully not to release the disk until further notice. FOI Law does not allow a government to unduly withhold easily attainable FOIed information just to delay its release.

As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal. If the records are denied on appeal, the agency must fully explain in writing the reason for further denial or provide the requested records.

In addition, please be advised that the Freedom of Information Law directs that all appeals and the determinations that follow be sent to the Committee on Open Government, Department of State, 41 State Street, Albany, New York 12231.

Sincerely,

A handwritten signature in cursive script that reads "Catherine R. Lawrence".

Catherine R. Lawrence  
67 Imperial Drive  
New Hartford, N.Y. 13413