

From: [Cathy](#)
To: ["New Hartford Supervisor"](#)
Cc: ["Cully, Herb"](#); ["robert.freeman@dos.state.ny.us"](mailto:robert.freeman@dos.state.ny.us); ["edmund j wiatr jr"](#); ["Tracey, Sara"](#); ["Don Backman"](#)
Subject: RE: FOIL Hampton Inn
Date: Thursday, October 03, 2013 4:29:40 PM
Attachments: [certifytrue.pdf](#)

Dear Attorney Cully and Supervisor Tyksinski:

You seem to misunderstand, I am not objecting, I am asking for certification that the documents I have received thus far are true town documents, a right which is afforded me under the Freedom of Information Law.

According to Robert Freeman's Opinion Letter F8378 dated July 21, 1994 [copy attached]:

[Pursuant to §1401.2\(b\)\(5\) and to implement §89\(3\) concerning an agency's duty to provide certification, the records access officer has the duty of ensuring that Town personnel certify that copies of records are true copies.](#)

To that end, the town clerk was sent an email last evening asking that I be notified when I might receive said certification.

Further, in your letter of this date, you state:

["... and the deposit ticket was signed by the Supervisor's secretary."](#)

A receipt is **NOT** a deposit ticket...I did not receive a deposit ticket nor did I receive any documentation that would be considered a deposit ticket. I was sent a receipt signed by Carol E. Ryan, account clerk.

I look forward to receiving any other documentation that might be provided in response to my September 12, 2013 FOIL request. Please note that any other information that I receive should be accompanied by certification as to the fact that they are true town records.

Additionally, as I wrote in my FOIL request dated September 12, 2013, if any part of my request cannot be fulfilled because the documents do not exist, I would appreciate receiving certification that no other documents do exist.

Thank you.

Catherine Lawrence

From: New Hartford Supervisor [mailto:NHSupervisor@town.new-hartford.ny.us]
Sent: Thursday, October 03, 2013 3:31 PM
To: cathy@snsdolls.com
Cc: Cully, Herb; robert.freeman@dos.state.ny.us
Subject: FOIL Hampton Inn



**State of New York
Department of State
Committee on Open Government**

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99 Washington Ave.
Albany, New York 12231
(518) 474-2518
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July 21, 1994

Ms. Roberta Russell Krieger
P.O. Box 1440
Lake Placid, NY 12946

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence.

Dear Ms. Krieger:

I have received your letter of July 18 as well as the materials attached to it.

In your "attempt to remedy the wrongs perpetrated by the Harrietstown Zoning Board of Appeals in their handling of the Kilroy Variance", you have asked the Town Supervisor to certify records disclosed by the Town. He has apparently failed to do so, and you asked for my views on the matter. In addition, you asked whether you are entitled to a list of documents contained within a particular file in order "to show that what [you] have is all-inclusive."

In this regard, I offer the following comments.

First, when a request for a record is approved, §89(3) of the Freedom of Information Law states in part that:

"Upon payment or offer to pay, the fee prescribed therefor, **the entity shall provide a copy of such record and certify to the correctness of such copy if so requested**, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search."

Based upon the foregoing, an agency is required to certify that a copy of a record made or to be made available is a true copy upon request to do so.

Second, I point out that §89(1)(b)(iii) of the Freedom of Information Law requires the Committee on Open Government to promulgate regulations concerning the procedural aspects of the Law (see 21 NYCRR Part 1401). In turn, §87(1)(a) of the Law states that:

"the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on open government in conformity with the provisions of this article, pertaining to the administration of this article."

In this instance, the governing board of a public corporation, the Town of Harrietstown, is the Town Board, and the Board is required to promulgate appropriate rules and regulations consistent with those adopted by the Committee on Open Government and with the Freedom of Information Law.

The initial responsibility to deal with requests is borne by an agency's records access officer, and the Committee's regulations provide direction concerning the designation and duties of a records access officer. Specifically, §1401.2 of the regulations provides in relevant part that:

"(a) The governing body of a public corporation and the head of an executive agency or governing body of other agencies shall be responsible for insuring compliance with the regulations herein, and shall designate one or more persons as records access officer by name or by specific job title and business address, who shall have the duty of coordinating agency response to public requests for access to records. The designation of one or more records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so."

As such, the Town Board has the duty to designate "one or more persons as records access officer". In towns, the clerk is usually so designated in view of the functions of that position. Section 1401.2(b) of the regulations describes the duties of a records access officer and states that:

"The records access Officer is responsible for assuring that agency personnel:

(1) Maintain an up-to-date subject matter list. (2) Assist the requester in identifying requested records, if necessary. (3) Upon locating the records, take one of the following actions:

(i) make records promptly available for inspection; or (ii) deny access to the records in whole or in part and explain in writing the reasons therefor.

(4) Upon request for copies of records:

(i) make a copy available upon payment or offer to pay established fees, if any; or (ii) permit the requester to copy those records.

(5) Upon request, certify that a record is a true copy. (6) Upon failure to locate the records, certify that:

(i) the agency is not the custodian for such records; or (ii) the records of which the agency is a custodian cannot be found after diligent search."

Pursuant to §1401.2(b)(5) and to implement §89(3) concerning an agency's duty to provide certification, the records access officer has the duty of ensuring that Town personnel certify that copies of records are true copies.

Further, although there is nothing in the Freedom of Information Law that requires that an agency prepare a list identifying each document in a file, if a request for a file is granted, and there is no indication that any aspect of the file has been withheld, it may be assumed, in my opinion, that the entirety of the file, at the time of the disclosure, was made available. When portions of a file are withheld, a response to the request must indicate that the request was denied in part, and the applicant must be informed of the right to appeal the denial in accordance with §89(3) of the Freedom of Information Law and §1401.7 of the regulations.

Lastly, whether a document in possession of an agency is signed or unsigned, undated or characterized as unofficial, it nonetheless falls within the coverage of the Freedom of Information Law. That statute pertains to all agency records and defines the term "record" expansively to include:

"any information kept, held, filed, produced, reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes."

In an effort to encourage compliance with and understanding of the Freedom of Information Law, copies of this response will be sent to Town officials.

I hope that I have been of some assistance.

Sincerely,

Robert J. Freeman
Executive Director

RJF:jm

cc: Town Board
Zoning Board of Appeals
Hon. William F. Gallagher, Supervisor
Hon. Margaret E. Haig, Clerk

f8378