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FOIL Appeal – Request #26-0130

1 message

Cadhla McBride <admin@transparentlawenforcement.com>
To: countyexecutive@monroecounty.gov

Wed, Feb 18, 2026 at 12:15 PM

Dear Appeals Officer Grower,

Pursuant to Public Officers Law § 89(4)(a), Transparent Law Enforcement hereby appeals the denial of FOIL Request #26-0130.

Timeliness / Notice: Although the denial letter is dated February 5, 2026, the County transmitted the determination by email on February 18, 2026 at 10:49 AM. Accordingly, this appeal is timely and is filed within 30 days of receipt of the determination.

The denial cites Public Officers Law §87(2)(g) (inter-/intra-agency materials) and §87(2)(e)(iv) (non-routine criminal investigative techniques or procedures). The determination is deficient for the reasons below.

I. Failure to Segregate Non-Exempt Material (§87(2)(g))

Section 87(2)(g) does not authorize blanket withholding of communications. The statute expressly requires disclosure of:

- Factual tabulations or data
- Instructions to staff that affect the public
- Final agency policy or determinations
- External audits

New York courts have consistently required agencies to review records and release reasonably segregable non-exempt portions (see *Gould v. New York City Police Department*, 89 N.Y.2d 267 (1996)).

The denial provides no indication that any segregation analysis was conducted. It does not describe:

- The volume or categories of records withheld;
- Whether factual portions were reviewed for release;
- Whether email headers, routing chains, dates, distribution lists, calendar entries, acknowledgments, or other factual/logistical components were evaluated separately.

A categorical denial under §87(2)(g), without documented segregation, is inconsistent with FOIL's structure and governing case law.

II. Lack of Particularized Justification for §87(2)(e)(iv)

The denial also invokes §87(2)(e)(iv), which applies only where records are compiled for law enforcement purposes and disclosure would reveal non-routine criminal investigative techniques or procedures.

The request concerns communications relating to ADA Title II compliance and interpreter access issues, and identifies custodians across multiple County functions, including non-law-enforcement offices and advisory bodies.

The determination does not explain:

- How the responsive records were “compiled for law enforcement purposes”; or
- How disclosure would reveal “non-routine criminal investigative techniques or procedures.”

A recitation of statutory language is insufficient. If a discrete subset of records is believed to fall within §87(2)(e)(iv), the County must articulate a particularized basis for that claim and release the remainder, with redactions where appropriate.

III. Scope of Search and Custodians

FOIL Request #26-0130 expressly identified multiple custodians reasonably likely to possess responsive communications, including non-law-enforcement offices and County advisory bodies.

The denial letter does not describe:

- Which offices, custodians, or systems were searched;
- Whether non-law-enforcement departments were searched;
- Whether any certification of nonexistence was made as to any custodian.

Absent such information, meaningful appellate review is not possible.

Requested Relief

Transparent Law Enforcement respectfully requests that the Appeals Officer:

1. Direct a renewed search of the custodians and systems identified in the request, including non-law-enforcement offices reasonably likely to maintain responsive communications;
2. Require document-by-document review with release of all reasonably segregable non-exempt material, including factual and logistical components;
3. For any continued withholding, provide a sufficiently particularized explanation of the exemption applied, and where §87(2)(e)(iv) is invoked, identify the asserted law enforcement purpose and the specific non-routine technique or procedure allegedly implicated;
4. Provide written certification describing the custodians and systems searched if responsive records are determined not to exist.

Please provide the appeal determination within the timeframe required by FOIL.

Respectfully,

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