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October 19, 2012

Mayor Kate Supron  
Village of Cayuga Heights  
Marcham Hall  
836 Hanshaw Road  
Ithaca, NY 14850

Re: Freedom of Information Law Appeal

Dear Mayor Supron:

I am writing to you on behalf of Jenny Stein. Under the provisions of the New York State Freedom of Information Law (Article 6 of the Public Officers Law), Ms. Stein hereby appeals the denial of access to the documents sought in her FOIL request dated August 24, 2012. In her FOIL request (see attached), Ms. Stein sought access to:

From January 1, 2011 to the present, all communications/correspondence/memos/emails (including all notes regarding conversations in person or by phone or by video chat) between Village officials/Village appointees/Village employees and any village residents and/or property owners related to the topics of:

- a) Actual or potential sites within and/or around Cayuga Heights for activities related to deer management;
- b) Permission forms/release forms related to deer management activities, including documents that have been completed and/or signed and submitted by individual residents and property owners.

Village Deputy Clerk Angela Podufalski responded to Ms. Stein's FOIL request on September 21, 2012 (see attached), stating that access to the records requested was denied, allegedly because:

***"The Village of Cayuga Heights must deny the release of records that may be responsive to this request because the records requested have been compiled for law enforcement purposes and could if disclosed endanger the life or safety of persons."***

This denial is an apparent attempt to invoke two FOIL exceptions contained in Section 87, subsection two of Article 6 of the Public Officers Law. This provision reads, in relevant part:

“Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that: [...]

- (e) are compiled for law enforcement purposes ***and which, if disclosed, would:***
  - i. interfere with law enforcement investigations or judicial proceedings;
  - ii. deprive a person of a right to a fair trial or impartial adjudication;
  - iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
  - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (f) if disclosed could endanger the life or safety of any person [emphasis added]

It is clear that the portion of Subsection 2 creating an exception for documents compiled for law enforcement purposes does not operate to exempt all documents allegedly compiled for “law enforcement purposes.” The exception provided under FOIL, for records compiled for “law enforcement purposes” is not a broad, blanket exception, as the Village attempts to use it in this FOIL denial, but rather, it is a very narrow exception, which is only applicable in the very limited and well-defined set of circumstances as noted above. None of these circumstances are even remotely relevant to the documents sought by Ms. Stein in her FOIL request. Ms. Stein requested documents pertaining to actual or potential sites for deer management activities and permission or release forms related to deer management activities. Even by the most creative interpretation of §87(2)(e), this provision simply cannot be applied to justify a denial of Ms. Stein’s FOIL request.

Moreover, assuming arguendo, that the actual language of the FOIL did permit the Village to withhold any and all records compiled for law enforcement purposes (which it does not, as explained above), the Village still may not withhold the records requested by Ms. Stein because they are not in fact compiled for any reason related to law enforcement. While the Village evidently has decided to route permission/release forms through its police department rather than through the Village Clerk, this in itself does not qualify them as records compiled for “law enforcement purposes.” If merely diverting documents through a police department were sufficient to render them exempt from FOIL requests, we can be sure that any state and local agency with an interest in conducting certain affairs in secret and defeating the intent of FOIL would be doing the same. Calling upon residents to send permission/release forms to the police department does not make deer management a “law enforcement” issue. There is simply no justification for denying access to these records under §87(2)(e).

The Village’s denial of Ms. Stein’s request also attempts to invoke §87(2)(f), which allows an agency to deny access to records which if disclosed could endanger the life or safety of any person. Arbitrarily declaring that the disclosure of information and permission/release forms pertaining to deer management could endanger a person may well serve the political agenda of the Cayuga Heights Trustees, but the Village has provided no explanation as to who would be in danger or what that danger would be. As you are no doubt aware, Article 6, Section 89(4a) states:

Except as provided in subdivision five of this section, any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought.

Therefore if, after this appeal, the Village continues to maintain that the disclosure of the records sought by Ms. Stein will be denied, then a full explanation of its reasons for denial must be given. In the event this explanation is not sufficiently detailed or sound, Section 89(4)(b) provides:

Except as provided in subdivision five of this section, a person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

It seems that the denial of Ms. Stein's FOIL requests, hereby appealed, follows an ongoing pattern of attempts on the part of the Cayuga Heights government to circumvent the operation and intent of the Open Meetings and Freedom of Information Laws. The cumulative effect has been that decision-making processes that state law requires to be carried out in an open and transparent manner are carried out behind closed doors, and shielded from public scrutiny. The Freedom of Information Law unequivocally states:

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government [...] The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

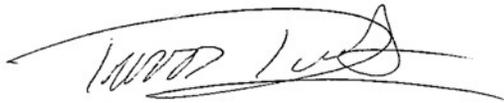
The Village's denial of Ms. Stein's FOIL request spuriously invokes the exceptions of §87(2) and in fact, underscores the very reason that the state legislature felt the need to enact FOIL in the first place. The legislature recognized that without public access and oversight, the unrestrained political and personal interests of elected officials can all too easily result in the loss of transparency and in the discouragement of public participation in government.

As stated in 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, as well as immediately forward copies of both the appeal and determination to the Committee on Open Government (per New York Public Officers Law §89(4)(a)):

NYS Committee on Open Government  
Department of State  
One Commerce Plaza  
99 Washington Avenue, Suite 650  
Albany, NY 12231

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Trevor J. DeSane", written over a horizontal line.

Trevor J. DeSane, Esq.