ADMINISTRATIVE APPEAL UNDER THE FREEDOM OF INFORMATION LAW

To:
David Gruenberg, Esq.
Attorney to the Town /Records Access Appeals Officer
Town of East Greenbush
225 Columbia Turnpike, Rensselaer, NY 12144

Submitted through: Ellen Pangburn, Town Clerk and Records Access Officer
Copy: Committee on Open Government, NYS Department of State
From: Eric - publiusnewyork@gmail.com
Date: August 21, 2026
Re: Appeal from the constructive denial of six requests under the Freedom of Information Law

Attachment: Written response of Christen Smith, Senior Attorney, NYS Committee on Open Government, dated Aug 20, 2026.

Available on request: Complete correspondence file covering nine requests, July 16 through August 20, 2026

Mr. Gruenberg,

Pursuant to Public Officers Law § 89(4)(a) and 21 NYCRR 1401.5(e), I appeal the constructive denial of the six requests identified below.

The Town's website identifies you as Attorney to the Town and general counsel to the Town Board. The Town Clerk has advised that appeals are to be addressed to the Town Attorney. If this appeal should be directed to a different designated appeals officer, I ask that it be forwarded and that I be advised of the correct designation.

The requests

Filed	Subject	Acknowledged
July 16, 2026	Records of ALPR devices installed or in trial within Town limits	July 17, 2026
July 16, 2026	Flock Safety contract, cost, procurement, grant funding, and ALPR policy records	July 17, 2026
July 20, 2026	Communications with Flock Safety representatives and related vendor-provided goods, services, or hospitality	August 5, 2026
July 27, 2026	Request A - Flock network and organization audit logs since inception	August 5, 2026
July 27, 2026	Request B - Flock detection records, full retention period	August 5, 2026
July 27, 2026	Request C - ALPR policy, sharing agreements, and system configuration	August 5, 2026

No records have been produced through the FOIL process in response to any of these six requests, and no date certain has been provided for any of them. One partial exception is noted below.

Three later requests, filed August 18 and August 20, are not the subject of this appeal. They were acknowledged promptly and their statutory periods have not run.

The governing standard

21 NYCRR 1401.5(e) provides that a failure to comply with FOIL's time limitations constitutes a denial that may be appealed, and enumerates the situations that qualify. Among them:

> **(2)** acknowledges the receipt of a request within five business days but fails to furnish an approximate date when it will grant or deny a request in whole or in part;
>
> **(6)** does not grant a request in whole or in part within twenty business days of its acknowledgment of the receipt of a request and fails to provide the reason in writing explaining its inability to do so and a date certain by which the request will be granted in whole or in part.

I have attached a written response I received from Christen Smith, Senior Attorney at the New York State Committee on Open Government, addressing these provisions. I recognize that the Committee issues advisory opinions that are not binding, and I offer it only as the view of the state body charged with overseeing the Freedom of Information Law.

First ground: no date certain has been provided for any request

On August 5, 2026, the Town Clerk wrote:

> "Please note, I have received an update from our Police Department that your (2) prior FOIL Requests from 7/16 will take additional time beyond the 20 business days due to the length of the requests. That will be the same for the 7/20 request as well as the (3) for 7/27. Additionally, the Police Department is continuing to process a backlog of other pending FOIL requests."

That message supplies the reason. It does not supply a date certain, and none has been supplied since.

Twenty business days from the July 17 acknowledgment of the two July 16 requests expired on **August 14, 2026**. Those requests were not granted in whole or in part. No date certain was provided. That is the situation described at 21 NYCRR 1401.5(e)(6).

As to the remaining four requests, the Town determined on August 5 that each would exceed twenty business days. The obligation to furnish a date certain attaches to that determination. It has not been met.

On August 7, 2026, the Town Clerk advised: "If you do not receive your reply within 20 business days, a tentative date will be issued." With respect, that reverses the required sequence, and a tentative date is not a date certain.

Each of the three requests filed July 27, 2026 expressly asked the Town to "acknowledge receipt within five business days and provide a date certain for production, as required by Public Officers Law § 89(3)." That request has been outstanding since July 27 and remains unanswered.

Second ground: the July 17 acknowledgments furnished no approximate date

The July 17, 2026 acknowledgments of the two July 16 requests stated: "I will let you know when I receive a reply within 20 business days or let you know the status."

That is a statement of an outer limit and a promise to report status. It is not an approximate date when the request would be granted or denied, as contemplated by 21 NYCRR 1401.5(e)(2). Should the Town contend otherwise, the twenty business days it describes expired on August 14 with no production and no further communication, which brings the matter within subsection (6) in any event.

Third ground: untimely acknowledgment of four requests

The request filed **July 20, 2026** was not acknowledged until **August 5, 2026**, twelve business days later. The only response within five business days was an automatic out-of office reply.

An automatic reply does not grant access, deny access, state that the record is not possessed, or acknowledge receipt with an approximate date. The Committee on Open Government has advised, in the attached response, that a five-business-day response must accomplish one of those four things, and that an automatic response that does not do so would not, in its opinion, be consistent with the requirements of FOIL.

The out-of-office reply directed inquiries to the Deputy Clerk and to the Town Clerk. No acknowledgment followed from either.

The three requests filed **July 27, 2026** were acknowledged **August 5, 2026**, seven business days later.

Fourth ground: whether a diligent search of the agency has occurred

This ground is raised as an observation rather than a contention, and I would welcome correction.

The Town Clerk has advised that all six requests were forwarded to the Police Department. Several of the records sought would not ordinarily be held there. The Flock Safety

agreement is a Town contract. Cost records, vouchers, and the abstract of audited claims are ordinarily maintained by the Comptroller or the Supervisor. Procurement records generated under the Town's policy adopted pursuant to General Municipal Law § 104-b would ordinarily be maintained by whichever officer administers that policy. Grant applications and Town Board resolutions are ordinarily maintained by the Clerk. Correspondence with a vendor may exist on the accounts of Town officers outside the Police Department.

The agency subject to FOIL is the Town of East Greenbush, not any single department. As the Committee's attached response notes, an agency is expected to search for records in all locations where it would expect to find responsive records given its indexing and filing system.

If a search of Town offices other than the Police Department has been conducted, I would be glad to be told so, and I will withdraw this ground.

What is not in dispute

Several facts weigh in the Town's favor and should be part of this record.

The Town Clerk, Ellen Pangbuirn - has been responsive, courteous, and kind throughout. She acknowledged the two July 16 requests within one business day. She confirmed in writing that no fee would apply. She identified the Police Department contact, apologized for the delay in acknowledging four requests, and advised that she would follow up with the Department.

The Supervisor invited residents to file records requests at the July 15, 2026 Town Board meeting and waived the applicable fees.

The Police Department has reported a backlog of other pending requests, and two of these requests are voluminous.

Since these six requests were filed, I have filed three more. Each was acknowledged within two business days, and one was acknowledged the same day it was filed. The Clerk's office has been prompt throughout.

I do not contend that anyone has acted in bad faith, and I am not asking that anyone work faster than they are able. A longer date, honestly estimated, would be an acceptable answer to this appeal. **The difficulty is that no date has been given at all.**

Two of the failures identified above required no search of records. Providing a date certain requires only an estimate of the work involved. Identifying the designated appeals officer required no search at all.

One exception should be stated plainly. On August 18th, 2026 Supervisor Conway for the Flock Safety agreement and the Department's ALPR policy. On August 20, 2026, Supervisor Conway provided me by email with the executed Flock Safety agreement and the Department's ALPR policy. Both are responsive to my request of July 16. They did not come

through the FOIL records process, and I did not ask him for them in that form, but they reached me and I am grateful for them.

I note this so that this appeal is not read as claiming nothing at all has been received. It also bears on the question before you. The two documents most readily produced were, in the end, produced in a single email by one officer of the Town. The audit logs, the detection records, and the sharing configuration remain outstanding, and no date has been given for any of them.

Why the timing is material

By Resolution 176-2026, the Town Board scheduled a public hearing on the Flock license plate readers for **September 16, 2026** at 6:00 p.m., stating that the Board is interested in a comprehensive review of the program.

The records sought are the contract, the cost, the procurement record, the written policy, the audit logs, the detection records, and the sharing configuration. These are the records ordinarily needed to review a program of this kind.

Under the schedule the Town has described, a tentative date for four of these requests would not issue until on or about September 2, 2026, with production at an unspecified interval afterward. Records produced after September 16 cannot inform the hearing they concern.

On August 7, 2026 I offered to accept production on a rolling basis, and noted that the Flock Safety agreement and the written ALPR policy are each a single document. That offer has not been answered. I renew it here.

I would also note a pattern that bears on what a reasonable date certain looks like here. Three further requests were filed on August 18 and August 20 and were acknowledged promptly on August 20, in each case with the same language: that I would be notified within twenty business days of a reply, or of the status and a date my reply would be available. Twenty business days from that acknowledgment is **September 18, 2026**, two days after the Board's scheduled hearing.

One of those three requests seeks a single screen from the Department's Flock administrative interface, showing which National Crime Information Center hotlist topics the Department has selected. Another agency in New York has produced that record. It is not a search of files; it is a screenshot.

I raise this not as a separate ground for appeal, since those requests are timely and their periods have not run, but because it illustrates the difficulty. Requests filed to inform a hearing, and acknowledged the same week, are nonetheless placed on a schedule that closes after the hearing occurs.

Relief requested

1. That the requests be granted and all responsive records produced.
2. In the alternative, a date certain for each request, as required by 21 NYCRR 1401.5(c)(4) and Public Officers Law § 89(3)(a).
3. Rolling production, beginning with the Flock Safety agreement and the Department's written ALPR policy.
4. As to any record withheld in whole or in part, a written statement identifying the record and citing the specific statutory exemption relied upon.
5. Confirmation of the name and address of the officer designated to determine appeals for the Town.

Public Officers Law § 89(4)(a) requires a written determination within ten business days of receipt of this appeal, and requires that a copy of this appeal and of the ultimate determination be forwarded to the Committee on Open Government. I have copied the Committee as a courtesy; that does not relieve the Town of its own obligation.

I would rather have records than an appeal, and I remain willing to work with the Town on any reasonable schedule.

Thank you for your consideration.

Eric publiusnewyork@gmail.com