Gmail **Eric <publiusnewyork@gmail.com>**

Advisory opinion request - date certain under POL § 89(3)(a)

2 messages

Eric <publiusnewyork@gmail.com> Wed, Aug 19, 2026 at 4:14 PM
To: coog@dos.ny.gov

To the Committee on Open Government:

I am requesting an advisory opinion on a single question, and would be grateful for an oral response by telephone in the interim if that is possible.

Question: Where an agency has determined and stated in writing that a request will require more than twenty business days, and has provided a reason but no date certain, has it satisfied Public Officers Law § 89(3)(a)? And does that failure constitute a denial under § 89(4)(a), such that an administrative appeal may be filed without waiting for the twenty business days to elapse?

Facts. I filed six FOIL requests with the Town of East Greenbush between July 16 and July 27, 2026, concerning the Town's automated license plate reader system. Two were acknowledged July 17. Four were acknowledged August 5. No record of any kind has been produced.

On August 5, 2026 the Town's Records Access Officer wrote: "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."

No date certain accompanied that statement, and none has been provided since. On August 7 the Town advised that "If you do not receive your reply within 20 business days, a tentative date will be issued."

The twenty business day period on the two earliest requests expired August 14, 2026, with no production and no date.

Secondary questions, if the Committee is able to address them:

1. Is a statement that a tentative date will issue only after twenty business days elapse consistent with § 89(3)(a)?
2. Is an automatic out-of-office reply an acknowledgment for purposes of the five-business-day requirement?
3. Where a records access officer routes all requests to a single department, has the agency conducted a reasonable search when responsive records would ordinarily be held by the Clerk, Comptroller, or Supervisor?

I am aware the Committee does not adjudicate. I am seeking guidance, and a citation to any prior opinion on point would be helpful.

The Town has scheduled a public hearing on this subject for September 16, 2026, which is why the timing matters.

Thank you.

Eric
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dos.sm.Coog.InetCoog <dosCOOG@dos.ny.gov> Thu, Aug 20, 2026 at 8:11 AM
To: Eric <publiusnewyork@gmail.com>

Good morning,

Agencies are required to provide a written response to a FOIL request within five business days either: (i) granting

access; (ii) denying access and providing the basis for the denial; (iii) stating the agency does not possess the record sought (or that the record cannot be located after a diligent search); or (iv) acknowledging receipt of the request and providing "a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied." § 89(3)(a). The five-business day response must accomplish one of the above. If the automatic response you received did not do so, it would, in our opinion, not be consistent with the requirements of FOIL.

Once a request is acknowledged, agencies are generally permitted twenty business days to search for responsive records, grant or deny access and prepare the requested records. When an agency believes that requiring more than twenty business days to make a determination is reasonable based on the circumstances of the request, it must notify the requestor of a "date certain" as well as the reasons why the request cannot be fulfilled within twenty business days. 21 NYCRR 1401.5(c)(4).

With respect to constructive denials, the FOIL Regulations provide

> A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed. Such failure shall include situations in which an agency:
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> (1) fails to grant access to the records sought, deny access in writing or acknowledge the receipt of a request within five business days of the receipt of a request;
>
> (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;
>
> (3) furnishes an acknowledgment of the receipt of a request within five business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request;
>
> (4) fails to respond to a request within a reasonable time after the approximate date given or within twenty business days after the date of its acknowledgment of the receipt of a request;
>
> (5) determines to grant a request in whole or in part within twenty business days of its acknowledgment of the receipt of a request, but fails to do so, unless the agency provides the reason for its inability to do so in writing and a date certain within which the request will be granted 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; or
>
> (7) responds to a request, stating that more than twenty business days is needed to grant or deny the request in whole or in part and provides a date certain within which it will do so, but such date is unreasonable under the circumstances of the request.

21 NYCRR 1401.5(e).

Failure to provide a date certain, failure to provide a reason that is consistent with the Regulations, or providing a response date that is otherwise unreasonable under the circumstances of the request, can be appealed as a constructive denial. If you believe that the timeframe constitutes a constructive denial, you may appeal to the agency's

appeals officer. The appeals officer must issue a written determination within ten business days of receipt. Failure to do so constitutes a constructive denial of the appeal and the requestor may seek judicial review by initiating an Article 78 proceeding in state supreme court.

With respect to your third question, FOIL presumes that agencies will conduct a diligent search for responsive records in response to a FOIL request. That term is not defined but generally means that the agency must search for the records in all locations where it would expect to find responsive records given its indexing and filing system. Whether a particular search conforms to these requirements is a fact specific determination for the judiciary.

Sincerely,

Christen Smith *(she/her/hers)*

Senior Attorney

New York Department of State

Committee on Open Government

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Committee on Open Government | Open Government

From: Eric <publiusnewyork@gmail.com>
Sent: Wednesday, August 19, 2026 4:15 PM
To: dos.sm.Coog.InetCoog <dosCOOG@dos.ny.gov>
Subject: Advisory opinion request - date certain under POL § 89(3)(a)

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