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May 21, 2018

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By email: [HFriedman@schools.nyc.gov](mailto:HFriedman@schools.nyc.gov)

CC: [FOIL@schools.nyc.gov](mailto:FOIL@schools.nyc.gov)

Robert J. Freeman, NYS Committee on Open Government, [Robert.Freeman@dos.ny.gov](mailto:Robert.Freeman@dos.ny.gov)

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*Re: Freedom of Information Law Appeals, DOE #s: F12,215; F12,216; F12,273*

I hereby appeal the constructive denial of access regarding three requests of information from the Department of Education, each filed more than two years ago:

1. Technology Spending of the DOE FY 2011-2015, DOE# F12,215, originally filed March 26, 2016.

Most recent communication from DOE was an extension letter dated February 20, 2018, stating I would receive a response on April 24, 2018. I never did and have received no more communications on my request.

2. Cost of charter school leases & facility upgrades for charter schools in leased buildings FY 2014-2016, DOE# F12,216, originally filed March 26, 2016.

Most recent communication from DOE was an extension letter dated January 19, 2018, stating I would receive a response on April 9, 2018. I never did and have received no more communications on my request

3. A list of non-DOE organizations receiving access to student personal information and the consent agreements provided to parents governing their use, DOE# F12,273, originally filed April 13, 2016.

Most recent communication from DOE was an extension letter dated November 27, 2017, stating I would receive a response on December 26, 2017. I never did and have received no more communications on my request.

All three requests are still listed as "Open" on the City's Open Portal site; see links below.

While the DOE did not object to the release of these records, it has not provided any information or access to them. However, month after month, it delayed fulfilling the requests providing boilerplate prose. First the following:

*“This letter concerns the above-referenced Freedom of Information Law (FOIL) request. Pursuant to section VI.B of Chancellor’s Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request.”*

After the Chancellor’s regulations on FOILs were amended in November 2017, supposedly to provide more specificity, the only change was that the boilerplate prose became longer – but not substantively different, with the DOE still claiming the delay was due to the volume of my request, the need to review records to see the extent to which they must be disclosed, and the number of other requests made:

*This letter concerns the Freedom of Information Law (FOIL) request referenced above, and is being sent to you pursuant to Section VIC of New York City Department of Education (DOE) Chancellor’s Regulation D-110 (CR D-110), revisions to which were adopted on November 28, 2017. Additional time is needed to respond to your request. Factors to be considered under CR D-110 in determining whether there exist circumstances necessitating more time to respond to a request may include, but are not limited to, “[1] the volume of a request, [2] the ease or difficulty in locating, retrieving or generating records, [3] the complexity of the request, [4] the need to review records to determine the extent to which they must be disclosed, [and 5] the number of requests received by the agency.”<sup>1</sup>*

*With respect to (1), the volume of the request, it is my understanding that records responsive to your request are likely to be voluminous. With respect to (4), the need to review records to determine the extent to which they must be disclosed, every responsive record must be reviewed to determine if any record or portion of emails are exempt from disclosure pursuant to various subsections of Public Officers Law § 87(2). Record retrieval and review for redaction remains ongoing. With respect to (5) the number of requests received by the DOE, at the time you made your request, many other FOIL requests were already pending, many of which involved multiple factors cited above. Accordingly, a response is scheduled for April 9, 2018.*

In all three cases, I have heard nothing from the DOE about my requests since February 20, 2018, January 19, 2018, and November 27, 2017 respectively.

In this regard, I note that the Freedom of Information Law provides direction concerning the time and manner in which agencies must respond to requests. Specifically, §89(3) of the Freedom of Information Law states in part that:

*“Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, **when such request will be granted or denied, which shall be reasonable in consideration of the circumstances relating to the request and shall not exceed twenty business days from the date of such acknowledgment, except in unusual circumstances.** In the event that such unusual circumstances prevent the grant or denial of the request within twenty business days, the **agency shall state in writing** both the reason for the inability to do so **and a date certain within a reasonable time, based on such unusual circumstances, when the request shall be granted or denied.**” [emphasis added]*

Yet the DOE has not specified any dates certain by which I will receive the documents, nor described any unusual circumstances for the undue delay of more than two years that I have waited so far, and in fact, has ceased all communications about my requests.

If an agency delays responding for an unreasonable time beyond the approximate date of less than twenty business days given in its acknowledgment, acknowledges that a request has been received, but has failed to grant access by the specific date given beyond twenty business days, or if the specific date given is unreasonable, a request may be considered to have been constructively denied [see §89(4)(a)]. In such a circumstance, the denial may be appealed in accordance with §89(4)(a), which states in relevant part that:

*"...any person denied access to a record may within thirty days appeal in writing such denial to the 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."*

I therefore now appeal the constructive denial of the Department of Education to provide access to and/or copies of all the records that I have requested.

Because I have waited for over two years, however, I now update the request for technology spending of the DOE from FY 2011-FY 2017 rather than through FY 2015; and the cost of charter leases and facility upgrades for charter schools in leased buildings renovations from FY 2014-FY 2017 instead of FY 2014-FY 2016.

I expect to be granted access to these documents within ten business days. As Section 89(4)(b) now holds, a failure to determine an appeal within ten business days of the receipt of an appeal constitutes a denial of the appeal. In that circumstance, I will have exhausted my administrative remedies and may initiate a challenge to a constructive denial of access under Article 78 of the Civil Practice Law and Rules.

Below you will find a copy of my FOIL requests as recorded in the city's OpenRecords website, along with extensions thereof.

In addition, please be advised that the Freedom of Information Law directs that all appeals and determinations that follow be sent to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.

Yours,



Leonie Haimson  
Executive Director  
Class Size Matters  
124 Waverly Pl.  
New York, NY 10011  
917-435-9329  
[leonie@classsizematters.org](mailto:leonie@classsizematters.org)

<https://a860-openrecords.nyc.gov/request/view/FOIL-2016-040-00031>

FOIL-2016-040-00031

**Title: Total spending on technology, with vendor names and amounts per year FY 2011- FY 2015**

Open

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**Department of Education (DOE)**

1  
**EXTENSION**

.....  
Wednesday, 03/07/2018 at 3:02 PM

2  
**EXTENSION**  
Please refer to NYC DOE email dated 11/06/17  
Monday, 11/06/2017 at 5:49 PM

3  
**EXTENSION**  
Please refer to NYC DOE email dated 10/6/17  
Tuesday, 10/10/2017 at 4:08 PM

4  
**EXTENSION**  
This letter concerns the above-referenced Freedom of Information Law (FOIL) request. Pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a response is currently anticipated by March 21, 2017.  
Tuesday, 02/21/2017 at 5:41 PM

5  
**EXTENSION**  
Monday, 01/23/2017 at 3:44 PM

6  
**EXTENSION**  
Wednesday, 12/21/2016 at 4:02 PM

7  
**EXTENSION**  
Monday, 11/21/2016 at 5:33 PM

8  
**EXTENSION**  
Friday, 10/21/2016 at 4:28 PM

9

**EXTENSION**

Thursday, 09/22/2016 at 5:31 PM

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<https://a860-openrecords.nyc.gov/request/view/FOIL-2016-040-00032>

FOIL-2016-040-00032

**Title: *Spending on charter leases and facilities upgrades for charter co-locations FY 2014-2016***

Open

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**Department of Education (DOE)**

Due Date: 12/06/2017

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Responses

1

**EXTENSION**

Please refer to NYC DOE email dated 11/06/17

Monday, 11/06/2017 at 5:52 PM

2

**EXTENSION**

Please refer to NYC DOE email dated 11/06/17

Monday, 11/06/2017 at 5:51 PM

3

**EXTENSION**

Please refer to NYC DOE email dated 11/06/17

Monday, 11/06/2017 at 5:50 PM

4

**EXTENSION**

Please refer to NYC DOE 10/6/17

Tuesday, 10/10/2017 at 4:09 PM

5

**EXTENSION**

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. Pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a response is currently anticipated by March 21, 2017.

Tuesday, 02/21/2017 at 5:39 PM

6

**EXTENSION**

Monday, 01/23/2017 at 3:44 PM

7

**EXTENSION**

Wednesday, 12/21/2016 at 4:02 PM

8

**EXTENSION**

Monday, 11/21/2016 at 5:37 PM

9

**EXTENSION**

Friday, 10/21/2016 at 4:29 PM

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<https://a860-openrecords.nyc.gov/request/view/FOIL-2016-040-00083>

**FOIL-2016-040-00083**

*Title: Privacy agreements and organizations outside DOE receiving student personal data*

Open

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**Department of Education (DOE)**

Due Date: 12/26/2017

1

**EXTENSION**

Please refer to NYC DOE email dated 11/06/17

Monday, 11/06/2017 at 5:52 PM

2

**EXTENSION**

Please refer to NYC DOE email dated 11/06/17

Monday, 11/06/2017 at 5:51 PM

3

**EXTENSION**

Please refer to NYC DOE email dated 11/06/17

Monday, 11/06/2017 at 5:50 PM

4

**EXTENSION**

Please refer to NYC DOE 10/6/17

Tuesday, 10/10/2017 at 4:09 PM

5

**EXTENSION**

This letter concerns the above-referenced Freedom of Information Law (FOIL) request. Pursuant to section VI.B of Chancellor's Regulation D-110, due to the volume and complexity of requests we receive and process, and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2), additional time is required to respond substantively to your request. Accordingly, a response is currently anticipated by March 21, 2017.

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6

**EXTENSION**

Monday, 01/23/2017 at 3:44 PM

7

**EXTENSION**

Wednesday, 12/21/2016 at 4:02 PM

8

**EXTENSION**

Monday, 11/21/2016 at 5:37 PM

9

**EXTENSION**

Friday, 10/21/2016 at 4:29 PM