

**FILED  
AND  
ENTERED  
ON 6-11-2021  
WESTCHESTER  
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X Index No. 50599/2021  
In the Matter of the Application of  
CYNTHIA GREER GOLDSTEIN,

Petitioner,

For a Judgment pursuant to Article 78 of the Civil  
Practice Law and Rules,

- against -

DECISION AND ORDER  
Seq. No. 1

INCORPORATED VILLAGE OF MAMARONECK,  
AGOSTINO A. FUSCO, in his capacity as Clerk-Treasurer,  
and JERRY BARBERIO, in his capacity as Village  
Administrator,

Respondents.

-----X  
NEARY, J.

The Petitioner has moved pursuant to CPLR Article 78 and Public Officers Law Article 6 for an order directing the Respondents to produce copies of the records sought pursuant to a Freedom of Information Law (FOIL) request submitted on August 25, 2020 and in effect appealing the Respondents' denial of said request. The Respondents oppose the Petition in all respects.

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The Court has reviewed the following submitted papers by the parties:

Petitioner's Notice of Petition, Verified Petition, Affirmation  
with Exhibits lettered A through K and Memorandum of Law  
In Support

Petitioner's Supplemental Affirmation with Exhibit lettered L

Respondents' Affirmation in Opposition with Exhibits lettered  
A through B, Certification of Record and Memorandum of Law

Petitioner's Reply Affirmation.

On August 25, 2020, the Petitioner submitted a FOIL request to Respondent  
Village seeking the following information:

- All records including but not limited to letters, memos, email messages, phone messages, audio recordings, video recordings, text messages, social media postings, and transcripts reflecting the recusal pursuant to Village Code of Ethics §21-4(C)(1) of any member of the Village Board of Trustees, Board of Ethics, Board of Architectural Review, Harbor & Coastal Zone Management Commission, Planning Board or Zoning Board of Appeals during the period January 1, 2015 to the present, and
- All records including but not limited to letters, memos, email messages, phone messages, audio recordings, video recordings, text messages, social media postings, and transcripts reflecting any request, recommendation, demand or direction that a member of the Village Board of Trustees, Board of Ethics, Board of Architectural Review, Harbor & Coastal Zone Management Commission, Planning Board or Zoning Board of Appeal recuse himself or herself pursuant to Village Code of Ethics §21-4(C)(1) during the period January 1, 2015 to the present, and
- All records including but not limited to letters, memos, email messages, phone messages, audio recordings, video recordings, text messages, social media postings, and transcripts reflecting a disclosure made pursuant to Village Code of Ethics §21-(C)(2) or §21-4(N) by any member of the Village Board of Trustees,

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Board of Ethics, Board of Architectural Review, Harbor & Coastal Zone Management Commission, Planning Board or Zoning Board of Appeals during the period January 1, 2015 to the present.

The Respondents received the FOIL request at a time when the Village Hall was closed due to the COVID pandemic and was operating with a greatly reduced staff. After some delay, the Respondent Village Manger Jerry Barberio denied the FOIL request on December 18, 2020 stating "As the Village does not file records in this way and to review all meetings/minutes on the Board of Trustees and Land Use Boards for the last five (5) years is a Herculean task . . . , your request is denied."

The Petitioner submitted an appeal from the denial on December 28, 2020. The Respondents' never provided a response to the Petitioner's appeal letter and the Petitioner timely commenced this proceeding.

To promote open government and public accountability, FOIL imposes a broad duty on governmental agencies to make their records available to the public. [See Public Officers Law §84]. All government records are, thus, presumptively open for public inspection and copying unless they fall within one of the enumerated exemptions of Public Officers Law §87(2). [See *Gould v. New York City Police Dept.*, 89 NY2d 267]. However, the failure of a requester to "reasonable describe" desired records is a ground for nondisclosure that is entirely separate from the exemption provisions under Public Officer Law §87(2). [See *Konigsberg v. Coughlin*, 68 NY2d 245; *Matter of Asian Am. Legal Defense & Educ. Fund*, 125 AD3d 531].

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Many of the items sought in the FOIL request are not records *per se*, but an open ended array of papers, recordings, messages, transcripts, social medial posts, etc. which are not maintained as records and are not readily identifiable or retrievable. The Respondents' assert that a search of the Villages' e-mail database alone using the search terms "recus" and "disclos" received approximately fifty-two thousand (52,000) possible matches which would have to be viewed individually to determine if they were in any related to the Petitioner's FOIL request. Although, the Respondents have described this as a Herculean task, the issue is not whether the task is burdensome, but whether the request provided a reasonable description of what was being sought.

In the present case, the Court finds that the Respondents have demonstrated that most of the descriptions in the FOIL request were insufficient for purposes of locating and identifying the documents sought and were, therefore, justified in denying the request for reasons of overbreadth. [See *Konigsberg v. Coughlin, supra*; *Matter of Asian Am. Legal Defense & Educ. Fund, supra*]. The Petitioner failed to meet her burden to reasonably describe the documents so that they can be located. [See *Mitchell v. Slade*, 173 AD2d 226].

The Court finds that the Respondents should have filed a response which at least directed the Petitioner to their website and described the on-line access to records. However as the Petitioner's exhibits demonstrate, she did, in fact, access records on line which addressed much if not all of her FOIL request.

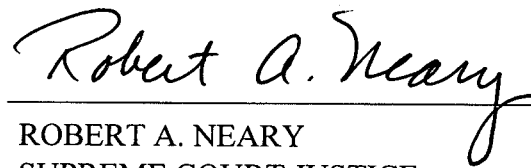
Therefore, the Court finds that the Respondent's determination denying the FOIL requests was not affected by an error of law. [See *Mulgrew v. Board of Educ. of the City School*

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*Dist. of the City of N.Y.*, 87 AD3d 506]. Accordingly, the Petition is denied, and the matter is dismissed

The foregoing constitutes the decision, order and judgment of the Court.

Dated: White Plains, New York  
June 10, 2021

  
ROBERT A. NEARY  
SUPREME COURT JUSTICE

Steven G. Leventhal, Esq.  
Leventhal, Mullaney & Blinkoff, LLP  
Attorneys for Petitioner  
15 Remsen Avenue  
Roslyn, New York 11576  
[sleventhal@ckmslaw.com](mailto:sleventhal@ckmslaw.com)

Robert A. Spolzino, Esq.  
Abrams, Fensterman, Fensterman,  
Eisman, Formato, Ferrara, Wolf  
& Carone, LLP  
Attorneys for Respondents  
81 Main Street, Suite 306  
White Plains, New York 10601  
[rspolzino@abramslaw.com](mailto:rspolzino@abramslaw.com)