



KATHY HOCHUL
Governor

ROBERT L. MEGNA
Chair

FRANK G. HOARE, ESQ.
Executive Director

Daniel Lewis
ProtectLiverpoolNY.org
Via dannydotlewis@gmail.com

RE: Appeal of FOIL No.: 000082-032026

Dear Mr. Lewis,

I am in receipt of your appeal dated May 8, 2026 (“Appeal”), relative to the Freedom of Information Law (“FOIL”) request referenced above and the response provided thereto by the New York State Thruway Authority (“Authority”). Please be advised that I have been delegated the authority to serve as a FOIL Appeals Officer on behalf of the Authority.

Background:

On March 20, 2026, the Authority received your FOIL request entitled “Macro Telecommunications Tower at NYS Thruway (I-90) Interchange, Electronics Parkway” for “any and all public records pertaining to the approval, leasing, and construction of the macro telecommunications tower/mast located within the Thruway Authority right-of-way.” You also specifically requested:

1. **Permits and Lease Agreements:** All Highway Work Permits, Use and Occupancy (U&O) agreements, and right-of-way master lease agreements granted by the NYS Thruway Authority to the telecommunications applicant (e.g., Crown Castle, American Tower, Verizon, AT&T, or their site acquisition contractors) for this specific site.
2. **Environmental and Engineering Reviews:** All State Environmental Quality Review Act (SEQRA) documents, environmental impact assessments, structural engineering reports, and Radio Frequency (RF) emissions and propagation studies submitted by the applicant to the Thruway Authority.
3. **Official Correspondence:** All communications (including emails, letters, and memorandums) between NYS Thruway Authority officials and the telecommunications applicant regarding the siting, approval, and construction of this tower.
4. **Public Notices and Municipal Coordination:** Copies of all records indicating whether the Thruway Authority or the applicant notified the local municipality (Town of Salina) or adjacent private property owners of this construction. Please include any proof of mailing, public hearing notices, or correspondence with Town of Salina officials regarding this site.
5. **Financial Compensation and Revenue:** All schedules, addendums, or payment records detailing the financial compensation, rent, or revenue-sharing the NYS Thruway Authority receives from the telecommunications applicant for the use of this specific highway interchange parcel.

6. Fall Zone and Structural Safety Hazard Reports: All engineering documents, blueprints, and site plans detailing the tower's engineered "fall zone" or structural failure radius. Specifically, provide any documentation indicating whether this fall zone overlaps with private residential property lines, public roadways, or the Electronics Parkway right-of-way.

7. Alternative Site Analysis: Any site justification reports or "Alternative Site Analysis" submitted by the applicant demonstrating why this specific highway infield was chosen over other locations further from residential zones.

On March 25, 2026, the Authority timely acknowledged receipt of your request and advised that "A determination as to whether your request is granted or denied will be reached in approximately 20 business days or we will notify you in writing if the responsible program area(s) should require additional time to locate, assemble and review documents that may be responsive to your request."

On April 22, 2026, the Authority timely advised you that it needed additional time to complete its response to your request, advising "Staff continues to review Authority documents, that potentially respond to your request, for appropriate exemptions under FOIL. We will provide you with a status update on May 20, 2026." On April 24, 2026, you filed an appeal stating that "extending the timeframe to May 20 is unreasonable".

On May 8, 2026, the Authority timely responded to your FOIL request with 94 records and also responded to your appeal stating it was moot, given that the Authority provided you with records.

Appeal: On May 8, 2026, you filed an appeal of "both (1) specific redactions within the production made under POL §§ 87(2)(b) and 87(2)(g), and (2) the constructive denial of categories of records that were responsive to my March 20, 2026 request but not produced." Referring to various sections of your appeal¹, you requested the Appeals Officer order disclosure of redactions made to:

- T3U250002_-_PTI_Salina_Cell_Tower_Occupancy_Permit_Redacted,
- US-NY-2029_T3U250002_PERMIT_FEE_CHECK_Redacted,
- US-NY-2029_CHECK_Redacted,
- T3U250002_Int._37_New_Cell_Tower_Amendment_ATT_Anchor_Tenant_Redacted
- T3U250002_Int._37_New_Cell_Tower_Amendment_Verizon_Tenant_Install_Redacted.

You also requested a Vaughn-style redaction index, a sworn POL § 89(3)(a) certification of search and identification of any responsive records destroyed under retention schedule, addressing in particular Item 7 (Alternative Site Analysis), and finally assert constructive denial of records identified in Section III, paragraphs 2 through 11 of your appeal.

Decision: Your appeal is denied.

First, as to redactions made to items listed in II A of your appeal:

- T3U250002_-_PTI_Salina_Cell_Tower_Occupancy_Permit_Redacted
- US-NY-2029_T3U250002_PERMIT_FEE_CHECK_Redacted
- US-NY-2029_CHECK_Redacted
- T3U250002_Int._37_New_Cell_Tower_Amendment_ATT_Anchor_Tenant_Redacted

¹ See full message history from GovQA.

- T3U250002_Int._37_New_Cell_Tower_Amendment_Verizon_Tenant_Install_Redacted

The redactions applied were made to routing numbers and check numbers, not fee amounts as you allege. The Authority may have more properly asserted POL §87(2)(i) rather than 87(2)(b) as the justification for such redactions, inasmuch as the checks were municipal or commercial, rather than personal; nonetheless, the redactions are appropriate.² This portion of your appeal is denied.

Second, your request for a Vaughn-style redaction index is denied inasmuch as this is not a requirement under NY statutory or case law.³ This portion of your appeal is denied.

Third, you allege constructive denial of certain records identified in Section III, paragraphs 2 through 11 of your appeal and demand production or inclusion on a §89(3)(a) certification, specifically:

1. Alternative Site Analysis
2. RF Antenna Design Sheet for Verizon RFDS Project ID 17326150
3. T-Mobile RFDS, co-location agreement or mount/loading study
4. USFWS consultation correspondence including informal or formal Section 7 consultation letters under the Endangered Species Act, the IPaC project record, or any USFWS reply to the Authority or to PTI
5. State Historic Preservation Office (SHPO) clearance
6. Tribal coordination correspondence
7. The PTI–Verizon, PTI–AT&T, and PTI–T-Mobile co-location agreements with rent terms.
8. The \$50,000 surety bond referenced in PTI Permit
9. The Spill Prevention, Control, and Countermeasure (SPCC) plan or equivalent fuel-storage compliance documentation for the 30-kilowatt diesel generator with 145-gallon fuel belly tank installed pursuant to NYSTA Construction Permit dated 11/06/2025.
10. The lift plan as approved by NYSTA Traffic Control.
11. Air-quality and NSPS-compliance documentation for the diesel generator

Upon review, the Authority does not have records responsive to items 1, 2, 3, 8, 9, 10, and 11. Information in the Authority’s possession and responsive to items 4, 5, 6 was provided in the May 8, 2026 response. Subsequent to receipt of your FOIL on March 20, 2026, the Authority received co-location agreements for Verizon and AT&T. Copies of these agreements are attached.

Further, POL § 89(3)(a) states that an agency must provide “a statement of the approximate date, which shall be reasonable under the circumstances of the request when such request will be granted or denied” (see *Matter of Data Tree, LLC v Romaine*, 9 N.Y.3d 454, 465 [2007]). However, “there is no specific time period in which [an] agency must grant access to...records” (*Matter of Data Tree, LLC*, 9 N.Y.3d at 465). The sole standard for a timely FOIL response is what is “reasonable in view of the attendant circumstances”

² Committee on Open Government (COOG) Advisory Opinion (AO) 14921, POL §87(2)(b) authorizes an agency to deny access to records insofar as disclosure would constitute "an unwarranted invasion of personal privacy", including personal account numbers. With respect to municipality or commercial entities, POL §87(2)(i) currently states that an agency may withhold records or portions of records which "if disclosed, would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures."

³ COOG AO 15614 advises "...there is nothing in the Freedom of Information Law or judicial decisions construing that statute that would require that a denial at the agency level identify every record withheld or include a description of the reason for withholding each document. Such a requirement has been imposed under the federal Freedom of Information Act, which may involve the preparation of a so-called "Vaughn index" [see *Vaughn v. Rosen*, 484 F.2d 820 (1973)].... we are unaware of any decision involving the New York Freedom of Information Law that requires the preparation of a similar index."

(Matter of Data Tree, LLC, 9 N.Y.3d at 465). Those circumstances include the volume of the request, the retrieval methods, and the complexity of the issues involved in determining whether the materials fall within one of the exceptions to disclosure (see Matter of Data Tree, LLC, 9 N.Y.3d at 465; Linz v. The Police Department of the City of New York, Dec. 17, 2001 [Sup. Ct., NY County 2001]; Comm on Open Govt FOIL-AO-18579 [2011]).

Here you were timely advised that NYSTA was continuing Its review of responsive records for potential exemptions. As such It advised you that an update on progress would be provided on May 20, 2026. NYSTA then responded earlier than anticipated on May 8, 2026, only 35 days from your initial request. This was reasonable under the circumstances and due to factors including but not limited to:

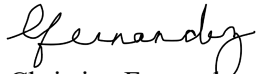
- the records you requested are different types, in different locations, and are not easily gathered through database query or similar methods;
- the records required review for exemptions from disclosure under the Article 6 of the POL.⁴

Thus, since the Authority timely responded to your request with all responsive records in its possession at the time of your March 20, 2026 request, it is fully complying with the law, you have not been denied access to the records you seek, and this portion of your appeal is denied.

Last, you request a sworn POL § 89(3)(a) certification of records search and this certification is provided. However, no certification is made regarding destroyed records inasmuch as they are not in our possession and therefore not subject to FOIL.⁵ Further, since you did not ask for this in your original request it is a new request, and thus this portion of your appeal is denied.

Pursuant to Public Officers Law § 89(4)(b), this determination constitutes a final agency action. Judicial review may be sought in a proceeding under Article 78 of the Civil Practice Law and Rules.

A copy of this determination is being transmitted to the Committee on Open Government as required by statute.


Christine Fernandez
FOIL Appeals Officer

⁴ The 94 records provided consisted of 1,664 pages of information.

⁵ COOG AO 18319, "...the Freedom of Information Law pertains to existing records, and an agency is not required to create a record in response to a request [see §89(3)]. Similarly, if records that once existed have legally been disposed of or destroyed, the Freedom of Information Law would not apply."