

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF TOMPKINS

-----X  
In the Matter of, :

JENNY STEIN, :

Petitioner, :

-against- :

VILLAGE BOARD OF TRUSTEES OF THE  
VILLAGE OF CAYUGA HEIGHTS, :


Respondent, :

For a Judgment Pursuant to Article 78  
Of the Civil Practice Law and Rules. :

-----X

Index No. \_\_\_\_\_

VERIFIED PETITION

  
Index #: 2013-0151 CI2013-03182  
02/11/2013 02:12:08 PM  
VERIFIED PETITION  
Aurora R. Valenti, Tompkins County Clerk

Petitioner Jenny Stein, by her attorney, Trevor J. DeSane, Esq., for her verified  
petition against Respondent, respectfully alleges and states:

**PRELIMINARY STATEMENT**

1. Petitioner Jenny Stein respectfully submits this Verified Petition, seeking a judgment pursuant to Article 78 of the Civil Practice Law and Rules and asserting her right and the right of the public to access complete or redacted copies of certain public records regarding actual or potential sites for activities related to Respondent Board of Trustees of the Village of Cayuga Heights' "deer management" activities, including complete or redacted copies of permission and release forms completed and/or signed and submitted by individual property owners. In response to Petitioner's request for such records, made pursuant to Freedom of Information Law (FOIL), Article 6 of the New York Public Officers Law, Respondent has denied her access to records that are, upon information and belief, both in Respondent's possession and responsive to Petitioner's FOIL request.

2. Upon information and belief, from February 2012 through October 2012 Respondent Village Board of Trustees of the Village of Cayuga Heights ("Board of Trustees") sought, through various methods, to secure permission from individual property owners to carry out certain activities related to the Village of Cayuga Heights' Deer Management Plan on or near their properties. These methods included mailing to Village property owners, publishing online and otherwise making available, form contracts entitled "Landowner Consent Agreement." Upon information and belief, in distributing and seeking the return of these forms, Respondent sought permission to "Place or install bait sites for deer," "Capture deer and remove captured deer," "Discharge weapons within 500 feet of the residence on the Property," and/or "Kill deer and remove deer carcasses."

3. Upon information and belief, to avail herself of the opportunity, afforded by the Freedom of Information Law (FOIL), to gain access to information about the level of property owner consent to allow these activities on or near their properties and the nature of such consent, Petitioner Jenny Stein filed a FOIL request pursuant to Article 6 of the New York Public Officers Law with the Respondent Board of Trustees on August 24, 2012 asking for documents pertaining to potential or actual deer management sites and permission and release forms related to deer management activities.

4. Upon information and belief, Respondent refused to disclose the records sought in Petitioner's FOIL request both initially and after she appealed the denial of her request pursuant to §89(4)(a) of the New York Public Officers Law. The reasons stated in the Respondent's denial were that the records were "compiled for law enforcement purposes" and that their release "would endanger the life or safety of persons." Petitioner made a subsequent request for copies

of the requested documents with property owners' names and addresses redacted. Respondent also denied this request with no additional explanation.

5. Upon information and belief, Respondent alleges that disclosing the records sought in Petitioner's FOIL request "could endanger the life or safety of persons," because they contain the names and addresses of individual property owners and therefore those records allegedly fall within the exception to mandatory disclosure provided in §87(2)(f) of the Public Officers Law. However, in denying Petitioner's subsequent request for redacted versions of these records, Respondent simply cites its previous FOIL denial and makes no effort to explain how redacted copies of records, stripped of any property owners' names or identifying information, could possibly be included within the "life or safety of persons" exception of FOIL.

6. Having exhausted her administrative remedies, Petitioner hereby asks this Court to compel Respondent to comply with its statutory obligations under FOIL and produce full or redacted copies of the deer management records and permission and release forms sought by the Petitioner.

### **JURISDICTION AND VENUE**

7. This proceeding pursuant to Article 78 of the Civil Practice Law and Rules is the proper mechanism for seeking judicial review of a New York State municipal agency's determination with respect to a FOIL request. N.Y. Pub. Off. § 89(4)(b). Petitioner, Ms. Stein has exhausted Respondent's FOIL appeal process and this Verified Petition has been filed within the four month period thereafter, as required by CPLR § 217(1).

8. Pursuant to CPLR §§ 7804(b) and 506(b), the proper venue for this proceeding lies in Tompkins County because Respondent's offices are located within Tompkins County, at Marcham Hall, 836 Hanshaw Road in Ithaca, New York and Respondent made the

determinations at issue in Tompkins County, by issuing the FOIL request denials described in this Verified Petition from its offices at Marcham Hall in Ithaca.

### **PARTIES**

9. Petitioner Jenny Stein is a resident of Tompkins County. Ms. Stein is a professional filmmaker and a native of Ithaca, where she has resided for over 40 years. She has followed developments in Cayuga Heights pertaining to its deer management plan for over four years.

10. Respondent Village Board of Trustees of the Village of Cayuga Heights, is a municipal board organized and existing under the laws of the State of New York, and “performing a governmental or proprietary function for the state or any one or more municipalities thereof.” Respondent is therefore is an “agency,” per New York Public Officers Law § 86(3) and is subject to the requirements of the Freedom of Information Law, New York Public Officers Law § 84 et seq. (FOIL).

### **FACTS**

11. Upon information and belief, since the autumn of 2008, Respondent has been working to advance a “deer management” or “deer remediation” plan that would kill and/or sterilize most of the deer in the Village of Cayuga Heights.

12. Upon information and belief, the Village of Cayuga Heights mailed and otherwise made available to Village property owners a “Landowner Consent Agreement” form which sought permission to carry out certain deer management activities on residents’ private property, including baiting deer, capturing and removing deer, discharging weapons within 500 feet of residences, killing deer, and removing deer carcasses. Upon information and belief, the number and geographic location of property owners returning consent agreements granting permission for each of the activities listed on the form would be used by Respondent to determine which

sites within the Village could be viable locations for implementation of various facets of the plan. A copy of the "Landowner Consent Agreement" is appended to this Verified Petition as Exhibit A.

13. Upon information and belief, at a public meeting of the Village of Cayuga Heights Board of Trustees on November 13, 2012, Village Mayor Kathryn Supron announced that the Village would be unable to carry out the shooting component of the plan, due to the refusal by a number of residents to allow the discharge of firearms within 500 feet of their homes.

### **PROCEDURAL HISTORY**

14. Upon information and belief, on August 24, 2012, Petitioner submitted a Freedom of Information Law request to Respondent seeking a copy of records or portions thereof pertaining to (or containing the following):

From January 1, 2011 to the present, all communications/correspondence/ memos/emails (including all notes regarding conversations in person or by phone or by video chat) between Village officials/Village appointees/Village employees and any village residents and/or property owners related to the topics of:

- a) Actual or potential sites within and/or around Cayuga Heights for activities related to deer management; and
- b) Permission forms/release forms related to deer management activities, including documents that have been completed and/or signed and submitted by individual residents and property owners.

A copy of Petitioner's August 24, 2012 FOIL request is appended to this Verified Petition as Exhibit B.

15. Upon information and belief, Village of Cayuga Heights Deputy Clerk Angela Podufalski responded to Petitioner's FOIL request on behalf of the Respondent on September 21, 2012, stating that Petitioner's access to the records requested was denied, allegedly because:

***The Village of Cayuga Heights must deny the release of records that may be responsive to this request because the records requested have been compiled for law enforcement purposes and could if disclosed endanger the life or safety of persons.***

A copy of Respondent's September 21, 2012 denial of Petitioner's FOIL request is appended to this Verified Petition as Exhibit C.

16. On October 19, 2012, the Petitioner submitted an appeal of Respondent's September 21, 2012 denial of her FOIL request. Petitioner explained in her appeal that while Respondent sought to deny access to the requested records under § 87(2)(e) of Article 6 of the Public Officers Law, such denial was wrongful because the requested records were not compiled for law enforcement purposes nor do they meet any of the additional requirements of §87(2)(e). Petitioner also stated in her appeal that the Respondent's attempt to invoke §87(2)(f) to justify its denial of her FOIL request was improper, since Respondent provided no credible information demonstrating that disclosure of the requested records could endanger the life or safety of any resident whose name appeared on a returned consent form. A copy of Petitioner's October 19, 2012 FOIL Appeal is appended to this Verified Petition as Exhibit D.

17. Upon information and belief, in a response dated October 31, 2012, Respondent stated its determination to deny Petitioner's appeal of the denial of her original August 24, 2012 FOIL request. In its denial, Respondent conceded that Public Officers Law § 87(2)(e) does not provide a valid justification for denial of the Petitioner's request, stating: "The Village does not dispute your analysis of Public Officers Law Section 87(2)(e)," but maintained that access to the records could be denied under §87(2)(f) "because such records 'if disclosed could endanger the life or safety of persons.'" In support of its decision to withhold the requested records, Respondent alleged that its denial was meant "to protect individual property owners who simply have provided consent to use their property for the Village to conduct its deer management program by maintaining the confidentiality of such forms." The Respondent further alleged,

[T]he denial [sic] of records that would reveal the identity of property owners who have given their permission for culling operations to take place on their properties would endanger the life or safety of these persons, and therefore this denial of records falls squarely within the exception for deniable records provided in Public Officer's Law Section 87(2)(f)

(Upon information and belief, the Respondent erroneously used the word "denial" in place of "disclosure" in its determination. Respondent confirmed this error in subsequent correspondence dated November 26, 2012). A copy of Respondent's October 31, 2012 denial of Petitioner's FOIL appeal is appended to this Verified Petition as Exhibit E.

18. Without waiving her objection to Respondent's denial of her FOIL request, Petitioner contacted Respondent by e-mail on November 16, 2012 requesting access to copies of the records in redacted form, expecting that this would address the Respondent's alleged concerns and provide at least some of the information sought in a timely manner. Petitioner asked for copies of the records with all property owners' identifying information redacted. Petitioner's request stated,

Assuming, merely for the sake of argument, that disclosing the requested documents could endanger the life or safety of property owners because their identities would be revealed, then it certainly follows that disclosing the requested documents with any identifying information redacted would not endanger any party. No rational or legal basis exists to deny, pursuant to Section 87(2)(f) or any provision of FOIL, access to redacted copies of permission/release forms or other communications pertaining to deer management activities.

A copy of the Petitioner's November 16, 2012 request for redacted records under FOIL is appended to this Verified Petition as Exhibit F.

19. Upon information and belief, in a letter dated November 26, 2012, Respondent denied Petitioner's request for redacted copies of the subject records, offering no coherent explanation for rejecting this reasonable and pragmatic path to resolution offered by the Petitioner. Respondent alleged that Petitioner's November 16, 2012 request "does not provide any basis or

justification for the Village releasing the subject records.” Although Respondent’s October 31, 2012 FOIL request denial did not address a request for redacted records, and could not have, since Petitioner first requested redacted versions of the subject records on November 16, 2012, Respondent added, “I suggest that you review the contents of my October 31, 2012 letter again for the thorough explanation of this denial.” A copy of Respondent’s November 26, 2012 denial of Petitioner’s FOIL request for redacted records is appended to this Verified Petition as Exhibit G.

**CAUSE OF ACTION: ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL REQUEST**

20. Petitioner repeats and re-alleges each and every allegation set forth in the foregoing paragraphs 1-19, as fully set forth herein.

21. A proceeding under Article 78 is the appropriate method for review of agency decisions regarding Freedom of Information Law requests, as provided by New York Public Officers Law §89(4)(b).

22. Under the Freedom of Information Law, public agency documents and records are subject to mandatory disclosure unless the public agency in question can justify their withholding. New York’s FOIL clearly establishes that the burden is on the agency to justify its denial of a FOIL request. Petitioner Jenny Stein, as a member of the public, has a clear right to access the records requested pertaining to deer management activities in the Village of Cayuga Heights unless the Village can demonstrate the applicability of an exception to FOIL under these particular circumstances. Respondent’s November 26, 2012 determination, alleging that Petitioner’s request “does not provide any basis or justification for the Village releasing the subject records,” demonstrates a fundamental misunderstanding of the Respondent’s obligations under FOIL. Public Officers Law §89(4)(b) provides:



Except as provided in subdivision five of this section, a person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

Therefore, An individual seeking access to records pursuant to FOIL has no burden to meet with respect to providing any "basis or justification" for her request. Under FOIL, in seeking to deny access to records requested by the Petitioner, the Respondent has the burden of proving that an exception applies (Public Officers Law §89(4)(b)).

23. Respondent has cited two reasons for its denial of access to these public records: that they have been "compiled for law enforcement purposes" and "could if disclosed endanger the life or safety of persons." Regarding the first alleged ground, FOIL sets forth both a threshold test and specific tests that must be met for the law enforcement exception. Neither is met in this case. Regarding the threshold test, these records were not "compiled for law enforcement purposes." Nor would they, "if disclosed [...] (i) interfere with law enforcement investigations or judicial proceedings;" or "(ii) deprive a person of a right to a fair trial or impartial adjudication;" or "(iii) identify a confidential source [...];" or "(iv) reveal criminal investigative techniques or procedures." New York Public Officers Law Sec. 87 (2)(e).

24. The Respondent's next alleged ground for denial of access to these public records is that they "could if disclosed endanger the life or safety of persons." New York Public Officers Law Sec. 87 (2)(f). Petitioner's request for redacted records meets any possible objection on this ground.

25. Under FOIL, Respondent may redact portions of a document if the redacted portions are indeed exempt from FOIL's disclosure obligations, but must disclose the remaining portions of

the document. A petitioner's right to access redacted copies of agency records pursuant to a FOIL request is a question already decided by the New York State Court of Appeals in *Schenectady County Society for the Prevention of Cruelty to Animals v. Mills*, 18 N.Y.3d 42 (N.Y. Ct. App. 2011). In *Schenectady County SPCA*, the Court of Appeals unequivocally stated:

We hold that an agency responding to a demand under the Freedom of Information Law (FOIL) may not withhold a record solely because some of the information in that record may be exempt from disclosure. Where it can do so without unreasonable difficulty, the agency must redact the record to take out the exempt information. *Id.* at 45.

The Court determined that the Appellant state agency had the choice of disclosing existing records that were responsive to Petitioner, the Schenectady County SPCA's FOIL request, either in full or in redacted form, by removing the addresses that Appellant did not want to disclose and the Petitioner did not demand. The Court explained its decision and emphatically communicated its expectations for agencies that refuse to comply with their FOIL obligations by issuing blanket denials under a FOIL exemption to avoid redacting portions of records when doing so would allow their disclosure:

In responding to petitioner's FOIL request, the Department had the choice of producing the existing record in full or removing the information that it did not want to produce and that petitioner did not demand. It cannot refuse to produce the whole record simply because some of it may be exempt from disclosure.

We are at a loss to understand why this case has been litigated. It seems that an agency sensitive to its FOIL obligations could have furnished petitioner a redacted list with a few hours' effort, and at negligible cost. Instead, lawyers for both sides have submitted briefs and argued the case in three courts, demanding the attention of 13 judges, generating four judicial opinions and resulting in a delay in disclosure of almost four years. It is our hope that the Department, and other agencies of government, will generally comply with their FOIL obligations in a more efficient way. *Id.* at 46.

26. Respondent has not produced the information sought by the Petitioner. Respondent's obligation under FOIL to disclose the requested records is mandatory, not discretionary.

27. Petitioner has exhausted her administrative remedies with the Village of Cayuga Heights when she requested documents under FOIL, appealed the denial of her FOIL request, and further requested redacted copies of the subject records. Petitioner has no other remedy at law.

### **REQUESTED RELIEF**

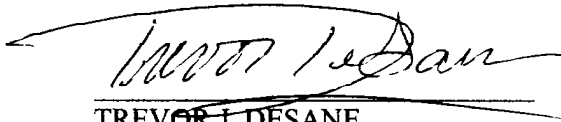
WHEREFORE, based on the foregoing, Petitioner seeks judgment:

(1) Pursuant to C.P.L.R. §7806, directing Respondent to comply with the duties imposed on it by the Freedom of Information Law;

(2) Directing the Respondent to provide, as the Court deems appropriate, either full copies or redacted copies of the records sought by Petitioner in her August 24, 2012 FOIL request;

(3) Awarding reasonable attorney's fees and reasonable litigation costs as allowed under New York Public Officers Law §89(4)(c); and

(4) Granting such other and further relief as the Court deems necessary, appropriate and equitable.



TREVOR J. DESANE  
Attorney for the Petitioner  
10 River Road Unit 15G  
New York, NY 10044  
(617) 230-8278

Dated: New York, NY  
February 8, 2013

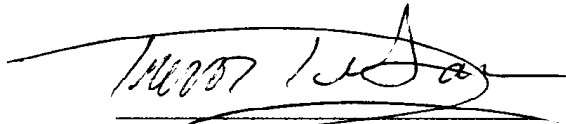
**VERIFICATION**

STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NEW YORK )

I, TREVOR J. DESANE, an attorney admitted to practice in the courts of the State of New York,  
affirm the following to be true under penalty of perjury:

- 1) I am the attorney of record for Petitioner herein.
- 2) I have read the foregoing Petition and know the content thereof.
- 3) The same is true to my own knowledge, except as to matters therein stated to be  
alleged on information and belief, and as to those matters I believe it to be true.
- 4) Pursuant to New York Civil Practice Law and Rules § 3020(d)(3), this verification is  
made by me and not by the Petitioner because the Petitioner is in Tompkins County and not New  
York County, the county where I have my office.
- 5) The grounds of my belief as to all matters not stated upon my knowledge are as  
follows: review of pertinent records and documents of Respondent Village Board of Trustees of  
the Village of Cayuga Heights, and pertinent records of the petitioners, and discussions with  
petitioner.

Dated: New York, NY  
February 8, 2013



Trevor J. DeSane

# **Exhibit A**

## Landowner Consent Agreement

This Agreement is made by and between \_\_\_\_\_, whose address is \_\_\_\_\_, (the "Landowner"), and the Village of Cayuga Heights, a New York municipal corporation having offices at 836 Hanshaw Rd, Ithaca, New York 14850 (the "Village"), acting through the Village's Police Department (the "CHPD").

- A. The Landowner is familiar with the Village's efforts to manage and reduce the population of deer within the Village, referred to in the Agreement as the Village's Deer Management Plan ("DMP").
- B. The Landowner understands that the Village has engaged or will engage the services of an independent contractor to assist with the DMP (the "Contractor"), and that Contractor may be White Buffalo, Inc., a Connecticut nonprofit corporation with offices at 26 Davison Rd, Moodus, Connecticut 06469.
- C. The Landowner is willing to allow the Village, including the CHPD, and the Contractor to use the Landowner's property in connection with the DMP as stated in this Agreement.

For the consideration set forth in this Agreement, the Landowner and the Village agree as follows:

1. The Landowner owns the property located at \_\_\_\_\_, in the Village of Cayuga Heights, Town of Ithaca, New York (the "Property").
2. The Landowner hereby consents and grants permission to the Village, including to the CHPD, and to the Contractor to use the Property to take the following action(s):
 

a. Place or install bait sites for deer	YES	NO
b. Capture deer and remove captured deer	YES	NO
c. Discharge weapons within 500 feet of the residence on the Property	YES	NO
d. Kill deer and remove deer carcasses	YES	NO
3. Any action taken on the Property will be in accordance with applicable Village law, New York State law, any permit required for such action issued by the New York State Department of Environmental Conservation, and the agreement between the Village and the Contractor.
4. The Village will arrange for the Contractor to remove from the Property all deer killed.
5. The Village agrees to indemnify the Landowner for, and save the Landowner harmless from and against, any and all losses, costs, damages, expenses, claims, liabilities and obligations (including reasonable attorneys fees) sustained or incurred by the Landowner as a result of the Village's or the Contractor's performance of the actions that the Landowner has consented to in Section 2 of this Agreement, except to any extent sustained or incurred as a result of any action of the Landowner.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Village of Cayuga Heights

Landowner(s)

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

# **Exhibit B**

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Wednesday, February 6, 2013 11:59:34 AM Eastern Standard Time

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**Subject:** Freedom of Information Law Request - August 24, 2012

**Date:** Friday, August 24, 2012 2:37:01 PM Eastern Daylight Time

**From:** Jenny Stein

**To:** Mary Mills

**BCC:** James LaVeck

August 24, 2012

Dear Trustees:

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request a copy of records or portions thereof pertaining to (or containing the following):

From January 1, 2011 to the present, all communications/correspondence/memos/emails (including all notes regarding conversations in person or by phone or by video chat) between Village officials/Village appointees/Village employees and any village residents and/or property owners related to the topics of:

- a) Actual or potential sites within and/or around Cayuga Heights for activities related to deer management; and
- b) Permission forms/release forms related to deer management activities, including documents that have been completed and/or signed and submitted by individual residents and property owners.

Under current New York State law, if an agency has the ability to scan records in order to transmit them via email and doing so will not involve any effort additional to an alternative method of responding, it is required to do so. In that instance, transferring a paper record into electronic format would eliminate any need to collect and account for money owed or paid for preparing paper copies, as well as tasks that would otherwise be carried out. In addition, when a paper record is converted into a digital image it remains available in electronic format for future use.

If all the requested records cannot be emailed to me, please inform me by email of the portions that cannot be emailed and advise me of the cost for reproducing the remainder of the records requested. If, for any reason, any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

As you know, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly.

Sincerely,  
Jenny Stein  
PO Box 149  
Ithaca, NY 14851



# **Exhibit C**



# Village of Cayuga Heights

MARCHAM HALL  
836 HANSHAW ROAD  
ITHACA, NEW YORK 14850

(607) 257-1238  
fax (607) 257-4910

Kathryn D. Supron, Mayor  
Mary E. Mills, Clerk  
Angela M. Podufalski, Deputy Clerk  
Joan M. Mangione, Treasurer  
Brent A. Cross, Engineer

September 21, 2012

Jenny Stein [<mailto:jenny@tribeofheart.org>]

RE: Response to FOIL request 8/24/2012

I have responded to your questions directly under each question in **BOLD** print.

1. From January 1, 2011 to the present, all communications/correspondence/memos/emails (including all notes regarding conversations in person or by phone or by video chat) between Village officials/Village appointees/Village employees and any village residents and/or property owners related to the topics of:

a) Actual or potential sites within and/or around Cayuga Heights for activities related to deer management;

***The Village of Cayuga Heights must deny the release of records that may be responsive to this request because the records requested have been compiled for law enforcement purposes and could if disclosed endanger the life or safety of persons.***

b) Permission forms/release forms related to deer management activities, including documents that have been completed and/or signed and submitted by individual residents and property owners.

***The Village of Cayuga Heights must deny the release of records that may be responsive to this request because the records requested have been compiled for law enforcement purposes and could if disclosed endanger the life or safety of persons.***

Sincerely,

Angela M. Podufalski  
Village Deputy Clerk

Police Dept. & Village Administration  
OFFICE HOURS  
9 AM – 4:30 PM

<http://www.cayuga-heights.ny.us>

Page 1

# **Exhibit D**

Trevor J. DeSane, Esq.  
10 River Road Unit #15G  
New York, NY 10044

October 19, 2012

Mayor Kate Supron  
Village of Cayuga Heights  
Marcham Hall  
836 Hanshaw Road  
Ithaca, NY 14850

Re: Freedom of Information Law Appeal

Dear Mayor Supron:

I am writing to you on behalf of Jenny Stein. Under the provisions of the New York State Freedom of Information Law (Article 6 of the Public Officers Law), Ms. Stein hereby appeals the denial of access to the documents sought in her FOIL request dated August 24, 2012. In her FOIL request (see attached), Ms. Stein sought access to:

From January 1, 2011 to the present, all communications/correspondence/memos/emails (including all notes regarding conversations in person or by phone or by video chat) between Village officials/Village appointees/Village employees and any village residents and/or property owners related to the topics of:

- a) Actual or potential sites within and/or around Cayuga Heights for activities related to deer management;
- b) Permission forms/release forms related to deer management activities, including documents that have been completed and/or signed and submitted by individual residents and property owners.

Village Deputy Clerk Angela Podufalski responded to Ms. Stein's FOIL request on September 21, 2012 (see attached), stating that access to the records requested was denied, allegedly because:

***"The Village of Cayuga Heights must deny the release of records that may be responsive to this request because the records requested have been compiled for law enforcement purposes and could if disclosed endanger the life or safety of persons."***

This denial is an apparent attempt to invoke two FOIL exceptions contained in Section 87, subsection two of Article 6 of the Public Officers Law. This provision reads, in relevant part:

"Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that: [...]

(e) are compiled for law enforcement purposes **and which, if disclosed, would:**

- i. interfere with law enforcement investigations or judicial proceedings;
- ii. deprive a person of a right to a fair trial or impartial adjudication;
- iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
- iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(f) if disclosed could endanger the life or safety of any person [emphasis added]

It is clear that the portion of Subsection 2 creating an exception for documents compiled for law enforcement purposes does not operate to exempt all documents allegedly compiled for "law enforcement purposes." The exception provided under FOIL, for records compiled for "law enforcement purposes" is not a broad, blanket exception, as the Village attempts to use it in this FOIL denial, but rather, it is a very narrow exception, which is only applicable in the very limited and well-defined set of circumstances as noted above. None of these circumstances are even remotely relevant to the documents sought by Ms. Stein in her FOIL request. Ms. Stein requested documents pertaining to actual or potential sites for deer management activities and permission or release forms related to deer management activities. Even by the most creative interpretation of §87(2)(e), this provision simply cannot be applied to justify a denial of Ms. Stein's FOIL request.

Moreover, assuming arguendo, that the actual language of the FOIL did permit the Village to withhold any and all records compiled for law enforcement purposes (which it does not, as explained above), the Village still may not withhold the records requested by Ms. Stein because they are not in fact compiled for any reason related to law enforcement. While the Village evidently has decided to route permission/release forms through its police department rather than through the Village Clerk, this in itself does not qualify them as records compiled for "law enforcement purposes." If merely diverting documents through a police department were sufficient to render them exempt from FOIL requests, we can be sure that any state and local agency with an interest in conducting certain affairs in secret and defeating the intent of FOIL would be doing the same. Calling upon residents to send permission/release forms to the police department does not make deer management a "law enforcement" issue. There is simply no justification for denying access to these records under §87(2)(e).

The Village's denial of Ms. Stein's request also attempts to invoke §87(2)(f), which allows an agency to deny access to records which if disclosed could endanger the life or safety of any person. Arbitrarily declaring that the disclosure of information and permission/release forms pertaining to deer management could endanger a person may well serve the political agenda of the Cayuga Heights Trustees, but the Village has provided no explanation as to who would be in danger or what that danger would be. As you are no doubt aware, Article 6, Section 89(4a) states:

Except as provided in subdivision five of this section, any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such 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.

Therefore if, after this appeal, the Village continues to maintain that the disclosure of the records sought by Ms. Stein will be denied, then a full explanation of its reasons for denial must be given. In the event this explanation is not sufficiently detailed or sound, Section 89(4)(b) provides:

Except as provided in subdivision five of this section, a person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

It seems that the denial of Ms. Stein's FOIL requests, hereby appealed, follows an ongoing pattern of attempts on the part of the Cayuga Heights government to circumvent the operation and intent of the Open Meetings and Freedom of Information Laws. The cumulative effect has been that decision-making processes that state law requires to be carried out in an open and transparent manner are carried out behind closed doors, and shielded from public scrutiny. The Freedom of Information Law unequivocally states:

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government [...] The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

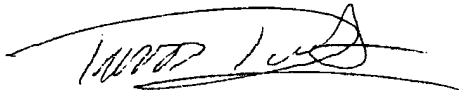
The Village's denial of Ms. Stein's FOIL request spuriously invokes the exceptions of §87(2) and in fact, underscores the very reason that the state legislature felt the need to enact FOIL in the first place. The legislature recognized that without public access and oversight, the unrestrained political and personal interests of elected officials can all too easily result in the loss of transparency and in the discouragement of public participation in government.

As stated in the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal, as well as immediately forward copies of both the appeal and determination to the Committee on Open Government (per New York Public Officers Law §89(4)(a)):

NYS Committee on Open Government  
Department of State  
One Commerce Plaza  
99 Washington Avenue, Suite 650  
Albany, NY 12231

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Trevor J. DeSane", written over a horizontal line.

Trevor J. DeSane, Esq.

---

Friday, October 19, 2012 5:39:42 PM ET

---

**Subject:** FW: Freedom of Information Law Request - August 24, 2012  
**Date:** Thursday, September 27, 2012 2:45:14 PM ET  
**From:** Jenny Stein  
**To:** Trevor DeSane

----- Forwarded Message

**From:** Angela Podufalski <[APodufalski@cayuga-heights.ny.us](mailto:APodufalski@cayuga-heights.ny.us)>  
**Date:** Fri, 21 Sep 2012 13:12:33 +0000  
**To:** "[jenny@tribeofheart.org](mailto:jenny@tribeofheart.org)" <[jenny@tribeofheart.org](mailto:jenny@tribeofheart.org)>  
**Subject:** Freedom of Information Law Request - August 24, 2012

Dear Ms. Stein:

Please find attached the response to your FOIL request.

Best regards,

Angela M. Podufalski  
Deputy Village Clerk  
Village of Cayuga Heights  
836 Hanshaw Road  
Ithaca, NY 14850  
Ph. 607-257-1238  
Fax 607-257-4910

**From:** Jenny Stein [<mailto:jenny@tribeofheart.org>]  
**Sent:** Friday, August 24, 2012 2:37 PM  
**To:** Mary Mills  
**Subject:** Freedom of Information Law Request - August 24, 2012

August 24, 2012

Dear Trustees:

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request a copy of records or portions thereof pertaining to (or containing the following):

>From January 1, 2011 to the present, all communications/correspondence/memos/emails (including all notes regarding conversations in person or by phone or by video chat) between Village officials/Village appointees/Village employees and any village residents and/or property owners related to the topics of:

- a) Actual or potential sites within and/or around Cayuga Heights for activities related to deer management; and
- b) Permission forms/release forms related to deer management activities, including documents that have been completed and/or signed and submitted by individual residents and property owners.



Under current New York State law, if an agency has the ability to scan records in order to transmit them via email and doing so will not involve any effort additional to an alternative method of responding, it is required to do so. In that instance, transferring a paper record into electronic format would eliminate any need to collect and account for money owed or paid for preparing paper copies, as well as tasks that would otherwise be carried out. In addition, when a paper record is converted into a digital image it remains available in electronic format for future use.

If all the requested records cannot be emailed to me, please inform me by email of the portions that cannot be emailed and advise me of the cost for reproducing the remainder of the records requested. If, for any reason, any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

As you know, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly.

Sincerely,  
Jenny Stein  
PO Box 149  
Ithaca, NY 14851

----- End of Forwarded Message



# Village of Cayuga Heights

MARCHAM HALL  
836 HANSHAW ROAD  
ITHACA, NEW YORK 14850

(607) 257-1238  
fax (607) 257-4910

Kathryn D. Supron, Mayor  
Mary E. Mills, Clerk  
Angela M. Podufalski, Deputy Clerk  
Joan M. Mangione, Treasurer  
Brent A. Cross, Engineer

September 21, 2012

Jenny Stein [<mailto:jenny@tribeofheart.org>]

RE: Response to FOIL request 8/24/2012

I have responded to your questions directly under each question in **BOLD** print.

1. From January 1, 2011 to the present, all communications/correspondence/memos/emails (including all notes regarding conversations in person or by phone or by video chat) between Village officials/Village appointees/Village employees and any village residents and/or property owners related to the topics of:

a) Actual or potential sites within and/or around Cayuga Heights for activities related to deer management;

***The Village of Cayuga Heights must deny the release of records that may be responsive to this request because the records requested have been compiled for law enforcement purposes and could if disclosed endanger the life or safety of persons.***

b) Permission forms/release forms related to deer management activities, including documents that have been completed and/or signed and submitted by individual residents and property owners.

***The Village of Cayuga Heights must deny the release of records that may be responsive to this request because the records requested have been compiled for law enforcement purposes and could if disclosed endanger the life or safety of persons.***

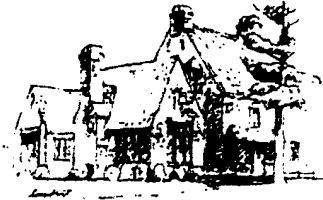
Sincerely,

Angela M. Podufalski  
Village Deputy Clerk

Police Dept. & Village Administration  
OFFICE HOURS  
9 AM – 4:30 PM

<http://www.cayuga-heights.ny.us>

# **Exhibit E**



## Village of Cayuga Heights

MARCHAM HALL  
836 HANSHAW ROAD  
ITHACA, NEW YORK 14850

(607) 257-1238  
fax (607) 257-4910

Kathryn D. Supron, Mayor  
Mary E. Mills, Clerk  
Angela M. Podufalski, Deputy Clerk  
Joan M. Mangione, Treasurer  
Brent A. Cross, Engineer

October 31, 2012

### VIA U.S. MAIL

Trevor J. DeSane, Esq.  
10 River Road, Unit #15G  
New York, New York 10044

Re: Jenny Stein's Freedom of Informational Law Appeal

Dear Mr. DeSane:

On October 19, 2012, I received your letter describing Jenny Stein's appeal of the Village of Cayuga Heights' denial of certain records requested in Ms. Stein's FOIL request dated August 24, 2012. As Mayor of the Village of Cayuga Heights, I am providing this letter in response to Ms. Stein's appeal to fully explain the reasons for the denial of access to the requested records. As required in accordance with New York Public Officers Law Section 89(4)(a), a copy of your October 19, 2012 letter, along with this response, will be delivered to the Committee on Open Government.

As you note in your letter, Ms. Stein was seeking copies of records described as:

From January 1, 2011 to the present, all communications/correspondence/memos/emails (including all notes regarding conversations in person or by phone or by video chat) between Village officials/Village appointees/Village employees and any village residents and/or property owners related to the topics of:

- a) Actual or potential sites within and/or around Cayuga Heights for activities related to deer management;
- b) Permission forms/release forms related to deer management activities, including documents that have been completed and/or signed and submitted by individual residents and property owners.

Also as noted in your letter, the Village Deputy Clerk responded to this request with the statement:

The Village of Cayuga Heights must deny the release of records that may be responsive to this request because the records requested have been compiled for law enforcement purposes and could if disclosed endanger the life or safety of persons.

Trevor J. DeSane, Esq.  
October 31, 2012  
Page 2

After careful consideration of your letter appealing this denial on Ms. Stein's behalf, I have determined that access to the requested records should be denied for the following reasons. The Village does not dispute your analysis of Public Officers Law Section 87(2)(e). However, the Village's denial of Ms. Stein's request falls squarely within the exception to access provided in Public Officers Law Section 87(2)(f), and as stated in the Village Deputy Clerk's response, because such records "if disclosed could endanger the life or safety of persons."

As you know, the records that Ms. Stein has requested pertain to the Village's deer population management plan. As you may or may not be aware, this plan has been developed as a result of in excess of ten years of assemblage of public comments, consultation with experts, collection of relevant studies and data, numerous public hearings and the conduct of an extensive State Environmental Quality Review process. Throughout the many years under which the Village's deer management plan was being developed, opposition has been expressed to the plan, and in particular to the component of the plan that involves the culling of the Village's deer herd. This opposition has been expressed by many individuals and organizations, in many cases by individuals and organizations located outside of the Village. In numerous instances, these expressions of opposition to the culling of deer have been extremely threatening. In particular, statements have been made by opponents of the plan indicating that they would prefer to see the Village officials who have supported the plan killed, rather than the deer.

In fact, I myself, in my role as Mayor of the Village, and in that role overseeing various aspects of the plan, have received death threats and threats to my safety. These threats have in every case made reference to the issue of culling deer in the Village. Needless to say, in each instance of myself or another Village official receiving threats to our persons we have reported such events to the Village Police. Over the years that the culling of deer in the Village has been discussed, and the plan to do so developed, we have been advised to take every precaution in response to threats of this nature and to be vigilant in reporting such instances.

Given the threats to the safety of persons that Village officials have regularly received over the years during which culling of the Village deer herd has been under consideration, it is quite apparent that individual property owners who have granted the Village permission to undertake culling operations on their property would likewise become the subject of such threats from opponents to the deer culling program. Given the wide range of statements made by the opponents, including, at the extreme, death threats, it is of the utmost importance, and it is the clear responsibility of the Village administration, to protect individual property owners who simply have provided consent to use their property for the Village to conduct its deer management program by maintaining the confidentiality of such consent forms.

Additionally, opponents of the deer culling program have regularly indicated that they would undertake various activities in an effort to prevent the program from proceeding. Given the extreme levels of threat that have been posed to Village officials, it is plainly the case that opponents to the deer culling program would mount efforts to physically prevent the culling

Trevor J. DeSane, Esq.  
October 31, 2012  
Page 3

operations by conducting activity at the culling sites. In order to address this concern, the Village had discussed and evaluated the issue of the culling sites being made public. These considerations were reflected in the Village's Draft Environment Impact Statement, Findings Statement and Final Environmental Impact Statement produced in accordance with the State Environmental Quality Review process. Specifically, in the Draft Environmental Impact Statement, Section 4.0, "Potential Impacts," in subsection 4.1, "Potential Land Use and Zoning Impacts," provides, in pertinent part that the Village:

Will work with the VCH Police Chief and the Department of Environmental Conservation officer to develop and oversee the culling protocol and hiring of licensed professional sharp shooters. ...

The protocol for culling varies from situation to situation. However, generally a meeting is held with participating volunteer landowners so they may understand what is involved in a remote euthanasia program. ...

A baiting program is established to pattern the deer and bring them to the selected areas. Shooting lanes are then cleared to insure that there are no obstructions in the trajectory of the bullet. Patterns of human activity in the site vicinity are recorded to ensure maximum safety and discretion. Specialized weapon systems designed for select site characteristics may then be selected based on maximal shooting range, acceptable noise, proximity to homes and deer abundance. ...

Subsequent to a decision by the landowner and the New York State DEC and the Village to implement a culling operation, the following procedures would commonly be used: ...

Every occupied structure would be identified and areas of connectivity be noted in order to proceed with work in a safe, discreet, efficient manner.

Bait sites would be selected with the involvement of the landowner, the DEC and the Village. Each site is selected based on human safety. ...

During the activity, there is continuous communication between community members, municipal officials and the culling agent, to keep all parties fully informed regarding field activities and to avoid conflicts. ...

**For safety reasons, the DEC and the DRAC [Deer Remediation Advisory Committee] have recommended against publicizing culling sites and times.** Some Village residents have expressed their view that safety would be enhanced by publicizing the sites and times. The VCH Board may enact a local law making it illegal and punishable by fine, to interfere in any portion of a culling operation. [emphasis added] ...

Trevor J. DeSane, Esq.  
October 31, 2012  
Page 4

**Culling sites would be closely monitored to deter human activity during the operation. During those times, land use activities in the culling sites may be highly restricted.** [emphasis added] ...

With no record of incidents and oversight by the NYS DEC and local police, the likelihood of a significant adverse impact to normal human activities from culling activities as anticipated and described herein and is projected to be very low.

As is readily apparent from the brief excerpts above from the Environmental Impact Statement, a thorough analysis was performed by the Village of the potential safety concerns with regard to publicizing of culling sites. Of course, the Village's primary interest in conducting the deer management program, as in any other Village undertaking, is the utmost protection of the safety of the Village's residents. Based upon the input of the Village's consultants, experts in the field of wild animal removal, and of the New York State Department of Environmental Conservation, the Village determined that the safety of the Village's residents is best protected by non-disclosure of the culling sites.

The Village has invested substantial time and resources in the development of the Village's deer management program. These efforts are amply reflected in the Village's Environmental Impact Statement detailing the basis and impacts of the program. Of course, the Environmental Impact Statement was developed with substantial input both from the public and from experts in the area of deer population management. A significant conclusion from the years of work invested in developing the deer management plan was that the safety of Village residents is best protected by maintaining the culling sites as confidential.

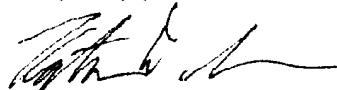
It should be noted that opponents of the Village's deer management plan sued the Village challenging the adequacy of the Village's Environmental Impact Statement. The opponent's lawsuit questioned, among other things, the adequacy of the Village's protection of the safety of its residents in the conduct of culling operations. The Village succeeded in defending against this lawsuit in every respect. Of particular reference, in rejecting the opponents' contentions, Judge Rumsey stated, "... it also bears noting that the [plan] adopted by [the Village] is generally consistent with the DEC's recommendations for managing deer populations in urban and suburban areas ... where, as here, hunting is impractical, the bait and shoot technique adopted by [the Village] is the preferred option for dealing with over abundant deer in suburban areas." It is also notable that, although the lawsuit included a wide range of criticisms of the Village's plan and the environmental review of the plan, the lawsuit did not challenge the components of the plan described above, wherein culling sites would be maintained as confidential.

In fully affirming this judgment, the Appellate Division stated, in pertinent part, "The DEIS was detailed in describing the problem, the proposed solution, the potential impacts, and the alternative approaches. Moreover, the DEIS was similar in its recommendations to the

DRAC report, which had been issued and made public over a year before the DEIS was issued. There was ample information and sufficient time to comment, as reflected by over 60 comments received. The comments were sufficiently addressed in the FEIS." On the basis of the Village's deer management program having been carefully constructed over many years time, publically vetted in a variety of forums, challenged and upheld at the New York State Supreme Court and again by affirmation in the Appellate Division, there is no rational basis for challenging the denial of records that would reveal the location of culling sites, which the Village's plan, and the detailed environmental review of the Village's plan, made clear would be maintained as confidential in the interest of assuring the safety of the Village's residents.

In summary, the lengthy and involved development of the Village's deer management plan, together with the comprehensive and detailed environmental analysis of the plan, resulted in a clear determination that the safety of persons would be best protected by maintaining the location of culling sites as strictly confidential. Further, given the regular, and in some cases extreme, threats delivered to Village officials concerning their own safety should they participate further in the culling of the deer herd in the Village, it became clear that any persons more directly involved in the deer culling program, such as property owners who provided permission for culling operations to take place on their properties, would be likewise endangered. Of course, it is the Village's primary responsibility to assure the safety of its residents. For these reasons, the denial of records that would reveal the identity of property owners who have given permission for culling operations to take place on their properties would endanger the life or safety of these persons, and therefore this denial of records falls squarely within the exception for deniable records provided in Public Officer's Law Section 87(2)(f) that such records "could if disclosed endanger the life or safety of any person."

Very truly yours,



Kate Supron, Mayor

cc: NYS Committee on Open Government  
Department of State  
One Commerce Plaza  
99 Washington Avenue, Suite 650  
Albany, NY 12231



# **Exhibit F**

Trevor J. DeSane, Esq.  
10 River Road Unit #15G  
New York, NY 10044

November 16, 2012

Mayor Kate Supron  
Village of Cayuga Heights  
Marcham Hall  
836 Hanshaw Road  
Ithaca, NY 14850

Re: Village Denial of Jenny Stein's FOIL Appeal

Dear Mayor Supron,

Ms. Stein and I are in receipt of your October 31 response to her Freedom of Information Law appeal, dated October 19, 2012. I disagree with the Village's determination to deny Ms. Stein's request on appeal and find the Village's attempt to invoke New York Public Officers Law Section 87(2)(f) to justify such denial improper. At this point, it seems likely that the Village's full compliance with the Freedom of Information Law may only be attained by judicial intervention, in the form of a proceeding under Article 78 of the New York Civil Practice Law and Rules.

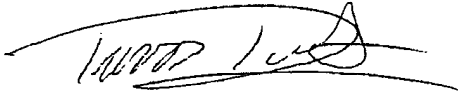
However, after carefully considering your response to Ms. Stein's FOIL appeal, it is evident that the Village's actions in this matter may at least be brought into partial compliance with state law without our commencing such a proceeding. The Village's response argues that "the denial of records that would reveal the identity of property owners who have given permission for culling operations to take place on their properties would endanger the life or safety of these persons" (Re: Jenny Stein's Freedom of Information Law Appeal, 10.31.12, p. 5) (Based on the statements in your letter preceding this conclusion, it seems that the word "denial" is erroneously used in place of "disclosure" in this sentence. I believe your denial should read, "the *disclosure* of records that would reveal the identity..."). Assuming, merely for the sake of argument, that disclosing the requested documents could endanger the life or safety of property owners because their identities would be revealed, then it certainly follows that disclosing the requested documents with any identifying information redacted would not endanger any party. No rational or legal basis exists to deny, pursuant to Section 87(2)(f) or any provision of FOIL, access to redacted copies of permission/release forms or other communications pertaining to deer management activities.

Therefore, I urge you to provide Ms. Stein with redacted copies of the documents sought in her FOIL request dated August 24, 2012 and her appeal dated October 19, 2012. If I do not receive a response from the Village by November 30, 2012, I will consider this a denial of the request.

This request does not constitute a waiver of any of Ms. Stein's legal rights, including her right pursuant to Article 6, Section 89(4b) of the Public Officers Law, to commence an Article 78 proceeding challenging the Village's denial of her FOIL appeal.

Thank you for your continued attention to this matter. I look forward to hearing from you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Trevor DeSane", with a long horizontal flourish extending to the right.

Trevor DeSane. Esq.

# **Exhibit G**

**Village of Cayuga Heights**

**MARCHAM HALL  
836 HANSHAW ROAD  
ITHACA, NEW YORK 14850**

(607) 257-1238  
fax (607) 257-4910

Kathryn D. Supron, Mayor  
Mary E. Mills, Clerk  
Angela M. Podufalski, Deputy Clerk  
Joan M. Mangione, Treasurer  
Brent A. Cross, Engineer

November 26, 2012

**VIA U.S. MAIL**

Trevor J. DeSane, Esq.  
10 River Road, Unit #15G  
New York, New York 10044

Re: Jenny Stein's Freedom of Information Law Appeal

Dear Mr. DeSane:

The Village has received your letter of November 16, 2012.

I am in complete agreement with the point that you stressed concerning the typographical error in my letter of October 31, 2012. As you note, the word "denial" is erroneously used in place of the word "disclosure" in the first clause of the last sentence of my letter.

The remainder of your letter, stating that you disagree with the Village's denial of Ms. Stein's request on appeal, does not provide any basis or justification for the Village releasing the subject records. I suggest that you review the contents of my October 31, 2012 letter again for the thorough explanation of the basis of this denial.

Very truly yours,

Kate Supron, Mayor

cc: NYS Committee on Open Government  
Department of State  
One Commerce Plaza  
99 Washington Avenue, Suite 650  
Albany, New York 12231

**Police Dept. & Village Administration  
OFFICE HOURS  
9 AM - 4:30 PM**

<http://www.cayuga-heights.ny.us>