

On 7/8/2011 I requested the Excel spreadsheet file 2012 FFD Budget 4acweb2 as of 050511.xls (or, preferably, an updated copy of this file) from the Fairview Fire District records access officer, Chief Chris Maeder, in accordance with [Fairview's Freedom of Information Law Policy](#). On 7/13/2011, my request was denied by FFD Secretary Cathy Gallinger, acting on behalf of Chief Maeder. See correspondence below. *I hereby appeal this decision* to you as Chairperson of the Board of Fire Commissioners, in accordance with [Fairview's FOIL policy](#).

Fairview Owns Excel Spreadsheet File

The Excel spreadsheet file I have requested was created by an official or officials acting in their capacities as Fairview officers. The file was created for the sole purpose of analyzing possible budgets and taxes of the Fairview Fire District. It may even have been created by someone who was paid by Fairview to create it. If so, this file is the property of the Fairview Fire District, and not the property of the person who created it. Therefore, *the Fairview Fire District has the authority to control the distribution of this file*, not the person who created it.

Reason to Grant My Request: No Potential for Harm

As I see it, the denial of my request is not in conformance with New York's Freedom of Information Law. *New York's Freedom of Information Law provides for the presumption of access*, with certain exceptions based on potential for harm. The file I have requested pertains to the calculation of publicly-available property tax information on Fairview Fire District budgets. The release of this file, in my view, has no potential for harm. Thus, in the spirit of the FOIL act, *public access to this file should be presumed*.

Reason to grant My Request: The Benefit of Public Scrutiny

My request is for information related to the calculation of fire taxes. As I see it, Fairview should welcome scrutiny of these calculations by a responsible member of the public. Such scrutiny could help uncover mistakes. Correction of errors would be beneficial to Fairview -- not harmful.

Your Obligations under FOIL

As I understand [New York's FOIL appeal process](#) and [Fairview's FOIL policy](#), you are obligated, within 10 business days, to "fully explain in writing the reasons for further denial of access or to provide access to the record". You are also obligated to "notify the committee on open government of the appeal and send a copy of the appeal and the determination to the committee." "A failure to determine an appeal within 10 business days of its receipt is considered a denial of the appeal."

You Can Grant My Request Regardless of FOIL

New York's Freedom of Information Law requires municipalities such as Fairview to provide broad access to government records. But *there is nothing in the FOIL act which would prohibit Fairview from granting me access to the requested file*, if Fairview chooses to do so. In other words, *if you choose to do so, you can grant me access to this file*, even if FOIL doesn't force you to do so.

Your Authority as Chairperson

[Fairview's FOIL policy](#) clearly states that FOIL appeals are to be directed to the "Chairperson of the Board of Commissioners", not to the Board as a whole. Fairview's FOIL Policy further clearly states that it is the Chairperson -- not the Board as a whole -- who decides FOIL appeals. Although the FOIL act permits municipalities to designate "governing body" for FOIL appeals, Fairview has chosen instead to invest that power in you as "appeals officer". I interpret this to mean that *you are authorized to grant my FOIL request in your sole discretion*, without a vote by the board as a whole. Please let me know if you determine that my interpretation is incorrect. In any case, *the FOIL act still requires a decision on my appeal within 10 business days of its receipt*.

FOIL Appeals Cause Extra Effort

I sincerely regret that the Fairview Fire District must now incur additional effort by you and possibly others to notify the Committee on Open Government, send it a copy of the appeal and determination, and possibly perform other tasks, all because my original FOIL request was denied. I can only thank you in advance for your consideration of my appeal.

Bill Rubin